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Friday
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Selected Subjects

Administrative Practice and Procedure
Administrative Conference of United States

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Asbestos
Environmental Protection Agency

Crop Insurance
Federal Crop Insurance Corporation

Government Property Management
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Animal and Plant Health Inspection Service

Securities
Securities and Exchange Commission

Trade Practices
Federal Trade Commission

Water Pollution Control
Environmental Protection Agency

Wine
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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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States, at its Thirtieth Plenary Session, adopted three recommendations. A proposed recommendation regarding legislation providing for the establishment of a corps of administrative law judges was recommitted to the Conference's Committee on Adjudication.

Recommendation 85–1, Legislative Preclusion of Cost/Benefit Analysis, urges that Congress state explicitly in regulatory legislation whether it intends to prohibit the administering agency from applying cost/benefit analysis in adopting regulations. Recommendation 85–2, Agency Procedures for Performing Regulatory Analysis of Rules, contains advice to agencies on ways to integrate regulatory analysis into the rulemaking process and on the use and limits of regulatory analysis. Recommendation 85–3, Coordination of Public and Private Enforcement of Environmental Laws, proposes certain administrative steps that the Environmental Protection Agency (EPA) can take to achieve better coordination between its enforcement process and so-called "citizen suits" that are authorized under various environmental statutes.

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing general interest, are published in the code of Federal Regulations (1 CFR Parts 305 and 310).

DATES: These recommendations were adopted June 13–14, 1985 and issued July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, General Counsel (202–254–7065).

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States. (5 U.S.C. 574(1).)

At its Thirtieth Plenary Session, held June 13–14, 1985, the Assembly of the Administrative Conference of the United States adopted three recommendations.

In Recommendation 85–1 the Conference addressed the situation in which Congress precludes an agency's use of cost/benefit analysis to consider the potential costs, benefits, or risks associated with a contemplated regulatory action. The Conference recommended that legislation containing such a preclusion use specific language to make clear Congress' intent.

Recommendation 85–2 suggests in Parts 1 and 2 ways agencies can more effectively integrate regulatory analysis into their decisionmaking process, including ways to use effectively regulatory analysis for identifying regulatory options. Part 3 of the Recommendation addresses the use of regulatory analysis where it is not required or where certain options are foreclosed by the limits of the agency's statutory authority. Other topics addressed by the Recommendation are, in Part 4, information that should be routinely included in regulatory analysis documents; in Part 5, procedures for obtaining and using information in regulatory analysis; in Part 6, use of consultants in performing regulatory analysis; and finally, in Part 7, observations on the scope and limits of regulatory analysis.

Recommendation 85–3 proposes certain administrative steps that the Environmental Protection Agency (EPA) can take to achieve better coordination between its enforcement process and so-called "citizen suits" that are authorized under various environmental statutes. The Conference suggests that EPA, as feasible, indicate its views on enforcement criteria, calculation of penalties, and settlement of contested cases. EPA is also advised to consider improving the quality of information available about the compliance status of regulated persons and firms and the outcome of environmental actions. Finally, the Conference recommends that when EPA receives notice from a private party of an alleged violation, the agency should ask that party to keep EPA informed about any related action in which EPA is not itself a party.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, NW., Washington, D.C.

Lists of Subjects in 1 CFR Part 305

Administrative practice and procedure, Regulatory analysis, Citizens suits.

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 305 continues to read as follows:

Authority: 5 U.S.C. 571–576.

2. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.
305.85–1 Legislative preclusion of cost/benefit analysis (Recommendation No. 85–1).
305.85–2 Agency procedures for performing regulatory analysis of rules (Recommendation No. 85–2).
305.85–3 Coordination of public and private enforcement of environmental laws (Recommendation No. 85–3).

3. Section 305.85–1 is added to read as follows:

§ 305.85–1 Legislative preclusion of cost/benefit analysis (Recommendation No. 85–1).

Cost/benefit analysis [1] may ordinarily be applied by an agency to a regulatory action,

[1] The term "cost/benefit analysis" is used here to include all forms of analysis (cost/benefit, cost effectiveness, risk/benefit, etc.) in which the

Continued

except when Congress has forbidden its use or has specified, in the authorizing legislation, the precise regulatory outcome Congress desired. Any legislative directive short of complete specificity, however, can lead to disputes as to whether Congress intended—or even contemplated—the application of cost/benefit analysis by the agency in the agency's adoption of legislative rules to carry out the program. Disputes about the agency's authority can undermine the regulatory program, and may last for decades, only to be resolved, and then perhaps only temporarily, in a judicial—rather than a legislative—forum. Protracted disputes over an agency's authority to apply cost/benefit analysis can be largely avoided by direct congressional attention to the matter.

Recommendation

When enacting regulatory legislation, if Congress intends to prohibit the application of cost/benefit analysis by the agency charged with administering the regulatory program, Congress should explicitly so state.

4. Section 305.85–2 is added to read as follows:

§ 305.85–2 Agency procedures for performing regulatory analysis of rules (Recommendation No. 85–2).

Since 1974 executive branch agencies have been subject to a series of Presidential executive orders that required agencies to prepare comprehensive impact analyses for major rulemaking proposals. Variously termed "inflation impact statements," "regulatory analyses," and "regulatory impact analyses," these analyses were all designed to identify or measure the costs and benefits of rulemaking options being considered by Federal administrative agencies. Congress also has imposed impact analysis requirements on administrative agencies through the National Environmental Policy Act of 1969, the Regulatory Flexibility Act of 1980, and by amendments to authorizing statutes for particular agencies.

The regulatory analysis function has become increasingly formalized within agencies as a result of the proliferation and durability of these requirements. This Recommendation is based on a Conference study of the ways agencies have incorporated the regulatory analysis function into their decisionmaking process. A general conclusion from this study is that regulatory analysis can be a useful device in rulemaking if it is taken seriously by upper level agency decisionmakers; the regulatory analysis function is effectively integrated into the rulemaking process, and the limitations of regulatory analysis are recognized by those who rely upon it.

The Recommendation contains specific advice on the use and limits of regulatory analysis and on integration of regulatory analysis into the agency rulemaking process. Unless expressly so stated, the Recommendation is not intended to address application of the Freedom of Information Act to agency records used in regulatory analysis. In particular, it is not intended to expand or decrease the statutory protections afforded trade secrets and commercial or financial information obtained for use in regulatory analysis.

Recommendation

1. The Use of Regulatory Analysis to Identify Options

Regulatory analysis[1] can be most useful to agency decisionmakers in identifying regulatory options if the regulatory analysis function is an integral part of the agency decisionmaking process. To make regulatory analysis a more effective device for identifying options, agencies should adopt the following practices:

a. When an agency begins intensive information-gathering and other analytical efforts on a rule, the agency's technical staff and regulatory analysts should attempt, at an early stage, to identify a broad range of regulatory options.

b. Agencies should experiment with a phase system of reducing options. Under a phased system, the agency initially should identify as large a number of options as it can for brief study. As options are considered and rejected, the remaining options should be analyzed with increasing thoroughness. As resource constraints preclude further consideration of an option, the agency should list the option in its regulatory analysis document and explain briefly why the option did not warrant further study.

c. Although the extent to which options are identified and analyzed in regulatory analysis documents is largely a matter for individual agency management, regulatory analysis documents normally should attempt to identify and analyze several realistic regulatory options.

2. Integrating Regulatory Analysis Into the Decisionmaking Process

a. *Timing of Analytical Input.* If regulatory analysis is to be used in a rulemaking, the agency decisionmaking process should be structured to involve agency regulatory analysts early in the evolution of the rule, before alternatives have been eliminated. Regulatory analysis should not be used to produce post hoc rationalizations for decisions already made, nor should it be allowed to unduly delay rulemaking proceedings.

b. *Communicating Policy to Regulatory Analysts.* Regulatory analysis can be a valuable tool for communicating policy within regulatory agencies because a primary function of regulatory analysis is to measure regulatory options against agency policy goals. Upper level policymakers in agencies should provide clear guidance to subordinate decisionmaking units (such as steering committees and working groups) on the policies that should guide the agency in choosing among options in individual rulemaking proceedings.

c. *High Level Involvement at Important Decisionmaking Junctures.* Because of the different prespectives of an agency's regulatory analysts and its technical staff, disagreements over appropriate agency policy will often result when both staffs are relied upon in the decisionmaking process. The agency should adopt procedures that will encourage resolution of such disagreements at important decisionmaking junctures at a high policy level.

d. *Regulatory Analyst's Role in Responding to Comments.* When an agency solicits public comment on a regulatory analysis document or on provisions of a proposed rule that are supported by the regulatory analysis document, the agency should structure its decisionmaking process to ensure that the agency's regulatory analysts participate in developing the agency's response to the public comments.

e. *Intragovernmental Comments.* Agencies should palce in the public file

potential costs, benefits, and risks of a proposed action, along with possible alternative courses of action, are quantified if feasible and appraised in relation to one another. See Recommendation 79–4.

[1] The following definitions are used in this recommendation:

"Regulatory analysis" is a comprehensive analysis of the economic, social, and environmental impacts of one or more alternatives for addressing a problem undertaken in connection with an agency rulemaking effort. A regulatory analysis may include or be separate from an environmental impact assessment of a rule prepared in compliance with the National Environmental Policy Act of 1969.

A "regulatory analysis document" is a written regulatory analysis, whether drafted to comply with Executive Order 12,291, the Regulatory Flexibility Act, or other statutes and executive orders. Regulatory analysis documents also may include similar documents which, though not required by statute or executive order, are prepared to comply with agency regulations or directives stating that the agency intends to treat the documents as regulatory analyses. The term "regulatory analysis document" is intended to include only final analyses prepared in connection with a proposed or a final rule.

A "regulatory analyst" is an agency employee who prepares the whole or part of a regulatory analysis. Regulatory analysts often are economists or policy analysts by training, and they often are assigned to a separate institutional unit within an agency.

The "technical staff" is composed of agency employees within a program office who conduct investigations, prepare technical support documents, and often draft preambles and recommended language for proposed and final agency rules. When a member of the technical staff is assigned to perform a regulatory analysis, he or she then is both a regulatory analyst and a member of the technical staff.

of the rulemaking proceeding any material factual information (as distinct from indications of governmental policy) from other agencies that is directed to the contents of regulatory analysis documents. See ACUS Recommendation 80-6 (1 CFR 305.80-6).

f. *Public Availability of Regulatory Analysis Documents.* Agencies should make regulatory analysis documents available to the public when they publish proposed and final rules in the Federal Register, even if the Freedom of Information Act's exemption for intra-agency memoranda, 5 U.S.C. § 552(b)(5), might apply to portions of the documents. As appropriate, agencies also should prepare brief summaries of regulatory analysis documents and make them available to the public and appropriate congressional committees. The summaries should contain tables, charts, and other devices, as needed, to make the information contained in the regulatory analysis documents understandable.

3. Use of Regulatory Analysis Where Not Required or Where Options Are Foreclosed

a. Regulatory analysis documents should identify the costs and benefits of reasonable options, even if the agency may lack the statutory authority to implement some of the options. If the agency determines that the best options cannot be implemented under its statutory authority, the agency should so inform the institutions with power to implement them, such as Congress and other agencies.

b. Agencies should consider using regulatory analysis when undertaking significant rulemaking proceedings with projected impacts falling below the established thresholds for requiring formal regulatory analyses.

4. Information in Regulatory Analysis Documents

This part of the Recommendation addresses the information that should be included in regulatory analysis documents for use by the public and agency decisionmakers.[2]

a. When agencies use quantitative models to quantify important variables in regulatory analysis documents, the known limitations of those models should be clearly stated.

b. To prevent quantitative models from oversimplifying complex decisionmaking factors, agencies should require regulatory analysis documents to (1) state clearly the major assumptions that undergird the models relied upon in the regulatory analysis, and (2) describe important decisionmaking variables that are not subject to quantitative analysis.

c. Agencies should require that regulatory analysis documents attempt to characterize the uncertainties that are included in quantitative predictions by using tools such as confidence intervals, multiple assessment models, sensitivity analysis, and worst case analysis.

d. Agencies should require that regulatory analysis documents address explicitly the distributional impacts of rulemaking options and the methods used for discounting future costs and benefits. Agencies should consider using more than one discount rate to clarify the sensitivity of the analytical projections to the discount rate.

e. Agency regulatory analysis documents should make explicit reference to any agency policies that motivate the agency to choose one set of assumptions over another, draw one inference rather than another, or choose one quantitative model over another.

5. Informational Needs for Regulatory Analysis

a. *Agency Access to Information.* Adequate information on the costs and economic impacts of proposed rules is essential to the regulatory process, and often the most important source of this information is a regulated party. Therefore, in exercising its authority under the Paperwork Reduction Act, the Office of Management and Budget should allow agencies to address reasonable requests for cost and economic impact information to regulated parties when the information is needed for regulatory analysis. The Office of Management and Budget should continue to coordinate its regulatory analysis review function with its paperwork reduction function to ensure that it approves information-gathering activities that are designed to yield information that it is likely to require later in the rulemaking review process.

b. *Coordination of Information Gathering Activities.* Agencies should coordinate their sponsored research activities with their regulatory analysis initiatives. More specifically, agencies should include regulatory analysts in their process for setting long-term research priorities. In addition, agencies should encourage the participation of representatives from the office responsible for agency-sponsored research in the rulemaking process at the very early stages when informational needs are defined.

c. *Cooperative Regulatory Analysis.* Agencies should consider whether the techniques suggested for negotiation of proposed regulations in ACUS Recommendation 82-4 (1 CFR 305.82-4) might be useful in undertaking, in specific proceedings, "cooperative regulatory analysis." This would consist of bringing representatives of all affected parties together, consistent with the Federal Advisory Committee Act where applicable, to assess the validity of particular studies prior to relying upon those studies in regulatory analysis documents.

d. *Reducing Potential Bias.* Agencies should attempt to reduce the impact of bias in the sources of the information that they use in preparing regulatory analysis documents. Though agencies should consider the source of information in giving it weight, this does not mean that they should automatically attach less value to information simply because it comes from a source with an interest in the outcome of the rulemaking. Agencies should reduce the impact of bias by:

(i) Consulting, whenever possible, multiple sources of information in preparing regulatory analysis documents;

(ii) Carefully citing in regulatory analysis documents all information upon which the analysis draws, and making the information available for public scrutiny at convenient times and places;

(iii) Actively soliciting comment and criticism from acknowledged experts in the fields that the documents address.

e. *Retrospective Assessments of Previous Analyses.* Agencies should regularly perform retrospective assessments of the predictions made previously in regulatory analysis documents. Retrospective analysis can provide information on the accuracy of past agency predictions and thereby enable an agency to increase the accuracy of future predictions or make judgments about the value of regulatory analysis to its regulatory effort.

6. Use of Consultants in Preparing Regulatory Analysis Documents

Agencies can benefit from entering into consulting contracts with qualified experts to aid in gathering and analyzing information for regulatory analysis documents. However, agency personnel should retain the ultimate responsibility for the contents of regulatory analysis documents and guard against consultant conflict of interest. To these ends, agencies should ensure that: (1) Agency employees, not

[2] The Conference has previously recommended that agencies using cost-benefit and similar analyses include in notices of particular proceedings certain information about the analytical methods and assumptions used in conducting the analyses. See ACUS Recommendation 79-4 (1 CFR 305.79-4).

consultants, draft regulatory analysis documents, and (2) when a regulatory analysis document relies upon consultant reports, the reports are placed in the public file of the rulemaking proceeding, even if the Freedom of Information Act's exemption for intra-agency memoranda, 5 U.S.C. 552(b)(5), might apply to portions of the reports.

7. The Scope and Limits of Regulatory Analysis

a. Cost-benefit analysis is an effective tool for marshalling and analyzing information and for establishing regulatory priorities.

b. Other analytical techniques, such as cost-effective analysis and multi-objective analysis, are also useful for rulemaking that involves health, environmental, historical, artistic, and aesthetic considerations for which markets do not exist.

c. Agency rulemaking decisions must take into account the limits of the agency's statutory authority and its overall policy goals, as well as the limits of the methods and data used in the regulatory analysis.

d. The same criteria should be used in granting exemptions from regulatory analysis requirements, irrespective of whether the proceeding has been commenced to formulate new rules or to amend or repeal existing rules.

5. Section 305.85-3 is added to read as follows:

§ 305.85-3 Coordination of public and private enforcement of environmental laws (Recommendation No. 85-3).

Congress has incorporated into the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, and other Federal environmental statutes provisions authorizing private parties to bring enforcement actions in the federal courts. These "citizen suit" provisions generally permit any person or organization to seek injunctions abating activities that violate agency rules, standards, or permits. In addition, the Clean Water Act and the Hazardous and Solid Waste Amendments of 1984 permit plaintiffs to seek civil penalties in private enforcement actions.

As use of private enforcement actions has grown, issues related to coordinating public and private enforcement activities have arisen. Coordination in the development and use of criteria regarding the bringing of cases and maintaining basic consistency in the imposition of penalties is important for several reasons. Notwithstanding the different enforcement perspectives and goals of public and private plaintiffs, inconsistencies in case selection or penalty policy may create actual and perceived unfairness to regulated entities, as similarly situated parties receive varying treatment. Uncertainties about the likelihood or outcome of enforcement actions may increase litigation and decrease voluntary compliance. Lack of coordination may also make it difficult for the Environmental Protection Agency and cooperating state agencies to deploy their limited enforcement resources in the most efficient and effective manner. The recommendation that follows proposes administrative steps which the Environmental Protection Agency can take to provide better guidance to those involved in the enforcement process, and to achieve better coordination between public and private enforcement.

Recommendation

1. Articulation of Enforcement Policy

In order to achieve better coordination between public and private enforcement efforts, the Environmental Protection Agency should, as feasible, enunciate its views concerning enforcement criteria, calculating penalties, and settling contested cases. When enunciated, the agency's views, or an announcement of their availability, should be published in the **Federal Register.**[1] Public knowledge of the means by which the EPA calculates penalties will be particularly helpful to courts performing similar calculations in private enforcement actions, and the agency should consider whether more detailed specification of its policies in this respect is feasible. EPA should offer opportunities, consistent with Recommendation 76-5, for public comment on statements of policy regarding calculation of penalties.[2]

2. Improvement of Information Systems

The availability of accurate, complete, and current information about (a) the compliance status of regulated persons and firms, and (b) the outcome of public and private enforcement actions, is essential both for the formulation and implementation of agency enforcement strategies and for the effective use of private enforcement actions. When designing management information systems and reporting requirements, the Environmental Protection Agency should consider improving the quality of such information and its availability for private enforcement, subject to statutory limitations on disclosure of confidential information. The Office of Management and Budget should give similar consideration to the role of compliance information when reviewing EPA data-gathering proposals.

3. Notice of Private Actions

When the Environmental Protection Agency receives from a private party notice of an alleged violation, the EPA should request from that party copies of all complaints[3] and other significant pleadings, settlement agreements, and judicial decrees in any action relating to the alleged violation, in which the EPA is not a party.[4]

Dated: July 8, 1985.

Richard K. Berg,

General Counsel.

[FR Doc. 85-16503 Filed 7-11-85; 8:45 am]

BILLING CODE 6110-01-M

[1] In administering the Clean Water Act, for example, the EPA has begun this process by issing a proposed rule to revise program reporting requirements for the assessment of permit noncompliance. See, e.g., 49 FR 29720 (July 23, 1984).

[2] See Recommendation 76-5, *Interpretive Rules of General Applicability and Statements of General Policy*, 4 ACUS Recommendations and Reports 62 (1979), 1 CFR 305.76-5. The Administrative Conference recommended that agencies adopting significant interpretive rules or policy statements normally should provide an opportunity for public comment.

[3] The Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, section 401 (to be codified at 42 U.S.C. 6972 (b)(2)(F)), provide that a plaintiff bringing an action under the citizen suit provision of the Resource Conservation and Recovery Act must serve a copy of the complaint on the Attorney General and the Administrator of the EPA.

[4] Nothing in this recommendation is intended to suggest that a request for or receipt of any such notice or other information or document has or should have any preclusive effect upon the federal government's ability to take enforcement action against the alleged violator.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-333]

Oriental Fruit Fly; Removal of Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms without change an interim rule published in the **Federal Register** on April 9, 1985, which amended the Domestic Quarantine Notices by removing "Subpart—Oriental Fruit Fly". Subpart—Oriental Fruit Fly had quarantined California and had imposed restrictions on the interstate movement of regulated articles from a regulated area in Los Angeles County, California. Subpart—Oriental Fruit Fly was removed from the Domestic Quarantine Notices because it was determined that all infestations of Oriental Fruit Fly in California have been eradicated and that Oriental Fruit Fly does not exist anywhere else in the United States. The effect of removing Subpart—Oriental Fruit Fly is to delete unnecessary

restrictions on the interstate movement of previously regulated articles from the previously regulated area in Los Angeles County, California.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Spaide, Assistant Staff Officer, National Program Planning Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301), 436-8295.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on April 9, 1985 (50 FR 13965-13966) set forth an interim rule amending the Domestic Quarantine Notices (7 CFR Part 301) by removing "Subpart—Oriental Fruit Fly" (7 CFR 301.93 *et seq.*).

Subpart—Oriental Fruit Fly had quarantined the State of California and had established regulations restricting the interstate movement of regulated articles from a regulated area in Los Angeles County, California, in order to prevent the artifical spread interstate of Oriental Fruit Fly. The document published on April 9, 1985, stated that the quarantine and regulations were being removed from the Domestic Quarantine Notices because trapping and sampling surveys conducted by inspectors of the U.S. Department of Agriculture and State agencies of California, had indicated that all infestations of Oriental Fruit Fly in California had been eradicated, and that Oriental Fruit Fly did not exist anywhere else in the United States. Therefore, there was no longer a basis for imposing restrictions on the interstate movement of regulated articles from any area in California, or from any other area in the United States because of the Oriental Fruit Fly.

The amendment became effective on the date of publication in order to relieve unncessary restrictions on the interstate movement of certain articles.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of April 9, 1985, still provides a basis for the amendment. Accordingly, it has been determined that the amendment should remain effective as published in the Federal Register on April 9, 1985.

Executive Order 12291 and Regulatory Flexibility Act

This amendment has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that the amendment will have an effect on the economy of less than 100 million dollars; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This amendment removes restrictions on the interstate movement of certain articles from portion of Los Angeles County in California which is approximately 108 square miles in size. It appears that very little or no commercial activity occurs in this area because it is an urban area comprised primarily of private residences. The only commercial activity stems from local street vendors, ten local nurseries, and activity at the Los Angeles International Airport. The street vendors and nurseries sell articles that were designated as regulated articles primarily for intrastate not interstate movement. Further, the only commercial activity at the Los Angeles International Airport that had been affected by Subpart—Oriental Fruit Fly were approximately 100 entities that shipped such articles, originating outside the regulated area, to the Los Angeles International Airport for movement interstate or internationally. None of these entities are small entities within the meaning of the Regulatory Flexibility Act. Further, the deletion of the quarantine and regulations had very little or no impact on these entities because the procedures normally followed by these entities (e.g., packing, marking and transporting) for transporting such articles are procedures that were consistent with and in compliance with the requirements that had been imposed by Subpart—Oriental Fruit Fly.

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

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Oriental Fruit Fly, Plant diseases, Plant pests, Plant (Agriculture), Quarantine, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 50 FR 13965-13966 on April 9, 1985, is adopted as a final rule.

Authority: 7 U.S.C. 150dd, 150ee, 161, 162; 7 CFR 2.17, 2.51 and 371.2(c).

Done at Washington, D.C., this 9th day of July 1985.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 85-16584 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 402

[Docket No. 2450S]

Raisin Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. The intended effect of this rule is to: (1) Remove the Premium Adjustment Table; (2) insure raisins from vineyards operated to produce table grapes by separate agreement; (3) clarify the procedures used to arrive at the insured tonnage; (4) eliminate the experience table; (5) limit the reconditioning allowance to wash and dry reconditioning; (6) shorten the length of time an insured has to give notice of loss from 7 days to 72 hours; (7) change the end of the insurance period from October 25 to October 20; (8) add definition for the terms "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes"; and (9) redefine "unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATES: *Effective Date:* July 12, 1985.

Comments: Written comments, data, and opinions on this interim rule must

be submitted not later than September 10, 1985, to be sure of consideration.

ADDRESS: Written comments on this interim rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action: (1) Is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On April 24, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 16090 to revise and reissue the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years. After publication of the proposed rule it was determined that the date by which changes in the raisin insurance policy were to be filed in the service offices could not be changed from May 15, the date required by the policy for the 1985 crop year, to June 30 as had been intended in order to give sufficient time to consider comments on the proposed rule, publish the final rule and file changes in the service offices by the required date.

All existing polices for insurance for the 1985 crop year have been cancelled. Insurance will be made available under the new policy contained herein to persons who had such insurance, who will receive a letter explaining this and advising them that they must sign a new application for insurance before the sales closing date, July 31, 1985. As with any new policy issued, the provision for non-cancellation is in effect for the first year. Any good insurance experience discount may be carried over into the new policy without penalty. In addition, the letter will advise that if the policyholder's 1984 premium reduction exceeded 5 percent, that reduction will be retained through the 1989 crop year or until the policyholder's loss ratio reaches .81, whichever occurs first.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which precludes notice and other public procedure because the current policy for insuring raisins does not provide coverage on an actuarially sound basis. The intention of FCIC in publishing a notice of proposed rulemaking on April 24, 1985, was to correct this situation and protect the integrity of the raisin insurance program.

One comment was received relative to the notice of proposed rulemaking (50 FR 16090, April 24, 1985) from the Office of Inspector General—Audit, USDA (OIG), making suggestions for change in three places in the policy provisions, as follows:

1. *Section 4(d).2.*—This section states in the determination of insured tonnage, that "Tray weights will be used to establish tons only if some raisins are not removed from the vineyard." OIG states that reliance on verifiable measures needs to be emphasized to the maximum extent possible. The existence of "some" raisins which cannot be removed from the vineyard does not necessarily mean damage is so severe as to preclude the use of delivered weights for the majority of the crop, or that the raisins left in the vineyard cannot be measured by verifiable means. OIG suggests that the language in that section specify the use of tray weights on tonnage not removed from the vineyard to ensure that tray weights are used on that portion too severely damaged to measure any other way. FCIS agrees with this.

Further, OIG suggests that the provision to reduce raisin tonnage damaged by rain should apply to any raisins with moisture in excess of 18 percent which are being valued for insurance purposes. The current wording precludes calculating this reduction on raisin tonnage which is reconditioned and passes; and, therefore, creates the potential to pay producers for water lost in the reconditioning process. FCIC agrees with this suggestion. The language in this sentence will be changed accordingly.

2. *Section 9.f.*—OIG recommends that courtesy inspections not be accepted unless the results are fully documented and the sample selected by the USDA Inspector. OIG also states that micro-analysis is a process used to detect microorganisms, not a condition subject to RAC tolerances, as implied in the present language. FCIC agrees with this and has changed the language. FCIC allows for reconditioning when the raisins are in excess of 18 percent moisture. OIG believes that the previous language of the policy implies that we determine moisture. This language is clarified in this new policy.

We will retain the 18 percent moisture determination in order to prevent the insured from obtaining a USDA inspection then contacting FCIC to request reconditioning for non-storable raisins. FCIC will determine by USDA inspection, and other factors such as weather conditions and the date, whether reconditioning will be authorized. OIG also suggested that FCIC allow for dry reconditioning in those cases where such reconditioning would be sufficient. Wash and dry reconditioning is the accepted and primary reconditioning process. Dry reconditioning is not generally available and our past experience with dry reconditioning has not been favorable. We purpose to monitor this condition for possible future change but are not now adopting the suggestion to allow dry reconditioning.

3. *Section 14.* Finally, OIG suggests that producers be required to maintain tray count records which are verifiable and segregated by farm unit. FCIC concurs with this and Section 14 now reflects this policy.

The principal changes in this raisin policy from the previous policy are:

1. *Section 2.f.*—Not insure table grapes placed on trays in some cases.

2. *Section 4.d.(2)*—Determine the insured tonnage by delivered tonnage, plus verifiable loss of production. Tray weights will be used to establish raisin tonnage not removed from the vineyard.

3. *Section 5.*—Remove the Premium Adjustment Table. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier. Since those insureds with good loss ratios and premium reductions stayed in the program while those with premium increases because of poor loss ratio tended to drop out, the premium structure under the premium adjustment table made actuarial projection difficult.

Remove the provisions for transfer of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 7.a.*—Change the insurance ending date from October 25 to October 20.

5. *Section 8.*—Shorten from 7 days to 72 hours the length of time the insured has to give notice of loss to better enable FCIC to adjust the loss.

6. *Section 9.f.*—Provide a reconditioning allowance when raisins are high moisture due to rain.

7. *Section 18.a.*—Deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

8. *Section 18.*—Define "loss ratio", "raisins", "net ton", "USDA inspection", and "table grapes."

Written comments on this interim rule are solicited by FCIC for 60 days after publication in the **Federal Register** and any written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday. This rule will be scheduled for review so that any amendment made necessary by comments received may be published as quickly as possible.

List of Subjects in 7 CFR Part 402

Crop insurance, Raisins.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Raisin Crop Insurance Regulations (7 CFR Part 402), effective for the 1985 and succeeding crop years, to read as follows:

PART 402—RAISIN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

402.1 Availability of raisin crop insurance.
402.2 Premium rates and amounts of insurance.
402.3 OMB control numbers.
402.4 Creditors.
402.5 Good faith reliance on misrepresentation.
402.6 The contract.
402.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for 1985 and Succeeding Crop Years

§ 402.1 Availability of raisin crop insurance.

Insurance shall be offered under the provisions of this subpart on raisins in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 402.2 Premium rates and amounts of insurance.

(a) The Manager shall establish premium rates and amounts of insurance per ton for raisins which will be included in the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time application for insurance is made, the applicant will elect an amount of insurance per ton from among those amounts contained in the actuarial table for the crop year.

§ 402.3 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 to Title 7 CFR.

§ 402.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 402.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the raisin insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 402.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the raisin crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 402.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the raisin crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county,

by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a raisin contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Raisin Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Raisin—Crop Insurance Policy

(This is a continuous contract. Refer to Section 16.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against the unavoidable loss of production resulting from rain, occurring within the insurance period, to raisins while in the vineyard, on trays or in rolls, for drying unless limited by the actuarial table.

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good raisin management practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) Any cause other than rain.

2. Tonnage and Share insured.

a. The crop insured for each crop year will be raisins of the grape varieties for which an amount of insurance and premium rate are provided by the actuarial table.

b. The tonnage insured for each crop year will be the tonnage in which you have a share, as reported by you or as determined by us, whichever we elect.

c. Raisins laid on trays after September 20 or the date specified by the actuarial table for such purpose will not be insured.

d. The insured share will be your share as landlord, owner-operator, or tenant in the insured raisins at the time insurance attaches.

e. We do not insure any raisins from table grapes or any raisins from vines that have had manual, mechanical, or chemical treatment to produce table grape sizing, unless we agree in writing to insure such raisins.

3. Report of tray count, tonnage, and share.

You must report on our form:

a. For *all* raisins which are not damaged, the net tons of insured raisins produced in the county in which you have a share and your share as soon as delivery records are available but in any event no later than March 1 following the crop year;

b. For insured raisins which are damaged:

(1) The variety;

(2) The location of the vineyard;

(3) The number of trays upon which the raisins have been placed for drying; and

(4) Your share.

You must report separately any tonnage that is not insurable. You must report if you do not have a share in any insurable tonnage in the county. This report must be submitted annually on or before March 1 of the year following the crop year. Indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of insurance and coverage levels.

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the amount of insurance and coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. The amount of insurance for the unit will be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share. Insured tonnage is determined:

(1) For raisins not damaged by rain, by the delivered tonnage; or

(2) For raisins damaged by rain, by adding delivered tonnage, if any, to any verifiable loss of production due to rain damage in the vineyard. Tray weights will be used to establish raisin tonnage not removed from the vineyard.

Raisin tonnage damaged by rain will be reduced .12 percent for each .1 percent moisture in excess of 16 percent.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured tonnage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premimum reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the raisin policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches at the time the raisins are placed on the trays for drying and ends the earlier of:

a. October 20; or

b. The date the raisins are boxed or removed from the vineyard.

8. Notice of damage or loss.

a. If you are going to claim an indemnity on any unit, we must be given notice within 72 hours from the time the rain fell on the raisins.

b. We may reject any claim for indemnity if such damage is not reported within 72 hours or if you fail to comply with any of the requirements of section 9.

9. Claim for indemnity.

a. Any claim for indemnity must be submitted to us on our form not later than March 31 after the calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of raisins on the unit and that any loss of production was directly caused by rain during the insurance period;

(2) Authorize us in writing to examine and obtain any records pertaining to the production and marketing of any raisins in which you have a share from the raisin packer, raisin reconditioner, Raisin Administrative Committee established under order of the United States Department of Agriculture or any other party who may have such records; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) Subtracting therefrom the total value of all insured damaged and undamaged raisins; and

(3) Multiplying this result by your share.

d. Undamaged raisins or raisins damaged solely by uninsured causes will be valued at 100 percent of the field price or the amount of insurance, whichever is higher.

e. Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, subject to an adjustment for any reduction in value due to uninsured causes.

f. Raisins damaged by rain, but which are reconditioned and meet Raisin Administrative Committee (RAC) standards for raisins, will be valued at 100 percent of the field price or the amount of insurance, whichever is higher. An allowance for reconditioning will be deducted from that value only if you obtained our prior written consent to reconditioning. The allowance for reconditioning will be made only when the raisins have been inspected by the USDA and, due to rain damage while on the tray are found to contain mold, embedded sand, excessive moisture, or micro-organisms in excess of RAC tolerances. Additionally, when raisins contain excessive moisture due to rain, the reconditioning allowance will be made only when the moisture is determined to be in excess of 18.0 percent and the raisins are wash and dry reconditioned. The maximum allowance for reconditioning is contained in the actuarial table, but the total reconditioning allowance will not exceed the value of the raisins after reconditioning. We may require you to recondition a representative sample of not more than 10 tons of raisins to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value such raisins at 100 percent of the field price or the amount of insurance, whichever is higher. If the representative sample does not meet RAC standards for marketable raisins, the cost of reconditioning the sample will be deducted from the total value of the raisins for the unit.

g. The value to count for any raisins produced on the unit and not removed from the vineyard will be the larger of the appraised salvage value or $35.00 per ton. You must box and deliver any raisins that can be removed from the vineyard.

h. We may acquire all of the right and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at "zero" in determining the amount of loss and we will have the right of ingress or egress to the extent necessary to take possession of, care for, and remove such raisins.

i. Raisins destroyed without inspection or put to another use without consent will be valued at the amount of insurance.

j. You must not abandon any tonnage to us.

k. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

l. We have a policy for paying your indemnity within 30 days of our approval of your claim or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

m. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to vineyard.

You must keep, for 2 years after the time of loss, records of tray counts, the insured, uninsured, and planted acreage and production information from your vineyard operation. Any person designated by us will have access to such records and the vineyard for purposes related to the contract.

15. Other insurance.

If in any crop year, you obtain any other insurance on any unit against rain damage or loss, and such insurance is obtained before insurance attaches under the contract this contract will be voided for that crop year on such unit.

16. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date such other payment was approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

f. The contract will terminate if no premium is earned for 5 consecutive years.

17. Contract changes.

We may change any terms and provisions of the contract from year to year. If the amount of insurance you selected is no longer offered, the actuarial table will provide the amount of insurance which you will be deemed to have elected. All contract changes will be available at your service office by the April 30 preceding the cancellation date for succeeding crop years. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

18. Meaning of terms.

For the purposes of raisin crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, coverage levels, premium rates, varieties, reconditioning allowances, and related information regarding raisin insurance in the county.

b. "Contiguous land" means land which is touching at any point except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "County" means the county shown on the application and any additional land

located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the calendar year in which the raisins are placed on trays for drying.

e. "Insured" means the person who submitted the application accepted by us.

f. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

g. "Net ton" means a ton of raisins delivered to and paid for by the processor.

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of the State, or any agency thereof.

i. "Raisins" means specific varieties of grapes as established by the actuarial table laid on trays or rolls in the vineyard to dry.

j. "Raisin tonnage report" means a form prescribed by us for annually reporting all your share and tonnage of raisins in the county.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Table grapes" means grapes which are grown for commercial sales as fresh grapes on acreage on which the cultural practices to produce fresh marketable grapes were carried out.

m. "Tenant" means a person who rents land from another person for a share of the raisins or a share of the proceeds therefrom.

n. "Ton" means 2,000 pounds. Raisin tonnage may be computed on the basis of one ton of raisins insured for every four and one half tons of fresh grapes when first placed on trays for drying.

o. "Unit" means all insurable acreage of the same grape variety, located on contiguous land, on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the raisins on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

p. "USDA inspection" means the actual determination by a USDA inspector of all defects. Limited inspections or inspections on submitted samples are not considerd inspections.

19. Descriptive headings.

The descriptive heading of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

20. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

21. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on June 5, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: July 9, 1985.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 85-16580 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 524 Lemon Reg. 523, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 330,000 cartons during the period July 14–20, 1985, and increases the quantity of lemons that may be shipped to 350,000 cartons during the period July 7–13, 1985. Such action is needed to provide for orderly marketing of fresh lemons for such periods due to the marketing situation confronting the lemon industry.

DATES: The regulation (§ 910.824) becomes effective July 14, 1985, and the amendment (§ 910.823) is effective for the period July 7–13, 1985.

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

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

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on July 9, 1985, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good on all sizes except larger sized second grade fruit.

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

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. New § 910.824 is added to read as follows:

§ 910.824 Lemon Regulation 524.

The quantity of lemons grown in California and Arizona which may be handled during the period July 14, 1985, through July 20, 1985, is established at 330,000 cartons.

3. § 910.823 Lemon Regulation 523 is revised to read as follows:

§ 910.823 Lemon Regulation 523.

The quantity of lemons grown in California and Arizona which may be handled during the period July 7, 1985, through July 13, 1985, is established at 350,000 cartons.

Dated: July 10, 1985.

Thomas R. Clark,

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

[FR Doc. 85-16792 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967, and 985

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967 and 985 for the respective 1985–86 fiscal year for each order. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1985—March 31, 1986 (§§ 911.224, 915.224, 921.224, 922.225, 923.225, and 924.225); March 1, 1985—February 28, 1986 (§§ 916.224, 917.241, 917.242, and 918.222); May 1, 1985—April 30, 1986 (§ 930.215); June 1, 1985—May 31, 1986 (§ 985.305); August 1, 1985—July 31, 1986 (§ 967.221).

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

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

These marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). These actions are based upon the recommendations and information submitted by each committee, established under the respective marketing orders, and upon other information.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective dates until 30 days after publication in the **Federal Register** (5 U.S.C. 553). Each order requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. To enable the committtees to meet current fiscal obligations, approval of the expenses is necessary without delay. Handlers have been apprised of the provisions and effective dates specified in this final rule. It is found that the specified expenses and assessment rates will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Parts 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967, and 985

Marketing Agreements and Orders, Limes (Florida), Avocados (Florida), Nectarines (California), Peaches and Plums (California), Peaches (Georgia), Peaches (Washington), Apricots (Washington), Cherries (Washington), Prunes (Washington-Oregon), Cherries, Celery (Florida), and Spearmint Oil.

1. The authority citation for 7 CFR Parts 911, 915, 916, 917, 918, 921, 922, 923, 924, 930, 967, and 985 continues to read as follows:

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

New §§ 911.224, 915.224, 916.224, 917.241, 917.242, 918.222, 921.224, 922.225, 923.225, 924.225, 930.215, 967.221, and 985.305 are added to read as follows (the following sections prescribe the annual expenses and assessment rates and will not be published in the Code of Federal Regulations):

PART 911—LIMES GROWN IN FLORIDA

§ 911.224 Expenses and assessment rate.

Expenses of $217,000 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.15 per bushel of limes is established for the fiscal year ending March 31, 1986.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

§ 915.224 Expenses and assessment rate.

Expenses of $173,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.11 per bushel of avocados is established for the fiscal year ending March 31, 1986.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.224 Expenses and assessment rate.

Expenses of $2,687,576 by the Nectarine Administrative Committee are authorized, and an assessment rate of $0.14 per No. 22D standard lug box of nectarines is established for the fiscal year ending February 28, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.241 Expenses and assessment rate.

Expenses of $2,651,280 by the Plum Commodity Committee are authorized, and an assessment rate of $0.18 per No. 22D standard lug box of plums is established for the fiscal year ending February 28, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

§ 917.242 Expenses and assessment rate.

Expenses of $2,346,443 by the Peach Commodity Committee are authorized, and an assessment rate of $0.14 per No. 22D standard lug box of peaches is established for the fiscal year ending February 28, 1986.

PART 918—FRESH PEACHES GROWN IN GEORGIA

§ 918.222 Expenses and assessment rate.

Expenses of $11,610 by the Industry Committee are authorized, and an assessment of $0.01 per bushel of peaches is established for the fiscal year ending February 28, 1986.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 921.224 Expenses and assessment rate.

Expenses of $21,556 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of $1.50 per ton of peaches is established for the fiscal year ending March 31, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 922.225 Expenses and assessment rate.

Expenses of $5,220 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $1.50 per ton of apricots is established for the fiscal year ending March 31, 1986.

Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

§ 923.225 Expenses and assessment rate.

Expenses of $60,209 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $1.00 per ton of cherries is established for the fiscal year ending March 31, 1986.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

§ 924.225 Expenses and assessment rate.

Expenses of $28,965 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $2.00 per ton of prunes is established for the fiscal year ending March 31, 1986.

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

§ 930.215 Expenses and assessment rate.

Expenses of $144,780 by the Cherry Administrative Board are authorized, and an assessment rate of $1.20 per ton of cherries delivered for processing is established for the fiscal year ending April 30, 1986. Unexpended funds from the 1984–85 fiscal year may be carried over as a reserve.

PART 967—CELERY GROWN IN FLORIDA

§ 967.221 Expenses and assessment rate.

Expenses of $126,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.02 per crate of celery is established for the fiscal year ending July 31, 1986. Unexpended funds may be carried over as a reserve.

PART 985—SPEARMINT OIL PRODUCED IN THE FAR WEST

§ 985.305 Expenses assessment rate, and operating reserve.

Expenses of $135,000 by the Spearmint Oil Administrative Committee are authorized, and an assessment rate payable by each handler in accordance with § 985.41 is fixed at 9 cents per pound for salable spearmint oil for the 1985–86 marketing year ending May 31, 1986. Unexpended funds may be carried over as a reserve in the maximum amount permitted pursuant to § 985.42.

Dated: July 8, 1985.

Thomas R. Clark,

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

[FR Doc. 85–16585 Filed 7–11–85; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 84–024–F]

Alpha-Tocopherol as an N-nitrosamine Inhibitor in Pump-Cured Bacon; Lecithin as an Emulsifier in Meat Food Products

Correction

In FR Doc. 85–16066, beginning on page 27573 in the issue of Friday, July, 5, 1985, on page 27574, at the top of the first column, insert "**EFFECTIVE DATE:** September 3, 1985."

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9185]

Middle Atlantic Conference; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Dismissal Order.

SUMMARY: The Federal Trade Commission has dismissed the complaint in this matter since the collective ratemaking activities of respondent are immunized by the state action doctrine. The Commission has found that "further prosecution of this matter does not appear to be in the public interest".

DATES: Complaint issued Sept. 18, 1984. Order Dismissing Complaint issued June 27, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Berry E. Barnes, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Room 1301, Boston, MA 02114. (617) 223–6621.

SUPPLEMENTARY INFORMATION: In the Matter of Middle Atlantic, Conference, a corporation.

List of Subjects in 16 CFR Part 13

Intrastate carriers, Collective ratemaking, Trade practices.

[1] Copies of the Complaint are filed with the original document.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Before Federal Trade Commission

[Docket No. 9185]

Order Dismissing Complaint

In the Matter of Middle Atlantic Conference, a corporation.

The Commission has considered this matter on complaint counsel's unopposed motion that the complaint be withdrawn.

In this case respondent has argued that its collective ratemaking activities are immunized by the state action doctrine. Complaint counsel now represents that all the elements of a state action defense as articulated by the Supreme Court in *Southern Motor Carriers Rate Conference* v. *United States*, 105 S. Ct. 1721 (1985), are available to the respondent. Accordingly, further prosecution of this matter does not appear to be in the public interest. The complaint is therefore dismissed.

By direction of the Commission.

Issued: June 27, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85–16604 Filed 7–11–85; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 13

[Docket No. C–3157]

Allied Corp. et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: The Federal Trade Commission has accepted a consent order with Allied Corporation and King Radio Corporation in settlement of alleged violations of section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The order requires Allied to divest the King Weather Radar Line to Narco Avionics, Inc., or another Commission-approved purchaser. With certain exceptions, the order also prohibits Allied, for a period of ten (10) years, from acquiring, without the Commission's prior approval, any interest in any company that manufactures or sells general aviation weather detection systems in the United States.

DATE: Complaint and Order issued June 17, 1985.[1]

FOR FURTHER INFORMATION CONTACT: Stephen W. Riddell, FTC/L-501-10, Washington, D.C. 20580. (202) 254-8577.

SUPPLEMENTARY INFORMATION: On Thursday, March 28, 1985, there was published in the **Federal Register**, 50 FR 12314, a proposed consent agreement with analysis In the Matter of Allied Corporation, a corporation, and King Radio Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order. The material for which confidential treatment was requested was provisionally deleted from the March 28, 1985 proposed consent agreement, pending the Commission's action on the confidentiality request. The consent order published below contains the deletion of the material for which the Commission has actually granted confidential treatment. The deleted material has been replaced in the text with the symbol [* * *].

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth below, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: S 13.5 Acquiring corporate stock or assets; 13.5-20 Federal Trade Commission Act.

List of Subjects in 16 CFR Part 13

Aviation weather detection systems, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Before Federal Trade Commission

[Docket No. C-3157]

Decision and Order

Commissioners: James C. Miller III, Chairman, Patricia P. Bailey, George W. Douglas, Terry C. Calvani, Mary L. Azcuenaga.

In the Matter of Allied Corporation, a corporation, and King Radio Corporation, a corporation.

The Federal Trade Commission, having initiated an investigation of the acquisition of King Radio Corporation ("King") by the Allied Corporation ("Allied"), and Allied and King having been furnished thereafter with a copy of a draft complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Allied and King with violations of the Clayton Act and Federal Trade Commission Act; and

Allied, King, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by Allied and King of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Allied and King that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Allied and King have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings an enters the following Order:

1. Allied is a corporation organized, existing and doing business under and by virtue of the laws of New York with its executive offices at Columbia Road and Park Avenue, Morris Township, New Jersey 07960.

2. King is a corporation organized, existing and doing business under and by virtue of the laws of Kansas with its executive offices at 400 North Rogers Road, Olathe, Kansas 66062.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Allied and King, and the proceeding is in the public interest.

Order

For purposes of this Order, the following definitions shall apply:

(A) "Allied means Allied Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by Allied and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(B) "King Radio" means King Radio Corporation, its predecessors, divisions, subsidiaries, groups and affiliates controlled by King Radio and their respective directors, officers, employees, agents and representatives and their respective successors and assigns.

(C) "King WeatherRadar Line" means all airborne weather detection systems currently manufactured, sold or owned by King Radio, including but not limited to the KWX 565 and the KWX 58 weatherradar systems; all airborne weather detection systems that King Radio has under development, including but not limited to the KWX 57, the KWX 460, and improvements or modifications to the KWX 56 or KWX 58 systems; and any other plans or research related to airborne weather detection systems. The KWX 56 and the KWX 58 weatherradar systems shall be construed to include, respectively, the KI 244 and the KI 248 control/indicators, the KA 126 and the KA 128 combined antenna/receiver/transmitter units and the KGR 356 and the KGR 538 graphics interface units.

(D) "Airborne weather detection system" means (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightning and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne weather detection system" shall also include any device that performs the same function in the same manner as the King Radio products designated KGR 356 and KGR 358 for display on the products, defined in D(1) and D(2) above.

(E) "Piece Parts" are components and raw materials purchased or made by King Radio for use in manufacturing, producing or repairing the King Weather Radar Line or spare parts. "Kits" are all Piece Parts required to assemble a specific quantity of the King Weather Radar Line.

I

It is Ordered that: (A) Within eight (8) months from the date this Order becomes final, Allied shall divest, absolutely and in good faith all of the assets described below, so as to transfer the King Weather Radar Line as a viable product line such that a purchaser could compete as a manufacturer and seller or airborne weather detection systems:

(1) All inventories, including Piece Parts, Work-In-Process, finished goods and kits solely dedicated to the King Weather Radar Line, as determined pursuant to a physical inventory to be taken approximately seven (7) days in advance of the closing of the sale, except that Allied may retain, at its

[1] Copies of the Complaint are filed with the original document.

discretion, sufficient quantities of Finished Goods and spare parts as to be able to service, maintain and repair its products in the field and fulfill those contracts not assignable to the purchaser.

(2) All tooling, whether or not in the custody of vendors, and test equipment, including fixtures thereof, solely dedicated to the King Weather Radar Line.

(3) All know-how, and trade secrets, if any, solely dedicated to the King Weather Radar Line, including one patent (no. 3973145) and one patent application (no. 412913).

(4) All engineering and design drawings, including but not limited to all documentation for software contained in or used in the manufacture of the King Weather Radar Line; all documentation related to a new weather radar antenna/receiver/transmitter unit that is in the early development stage; all documentation related to a design for a test adapter to enable the testing of the KGR 356 and KGR 358 graphics interface units utilizing an Apple Computer; and all other documentation, design and development studies, inventory, models and all other data related to the King Weather Radar Line.

(5) All processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the King Weather Radar Line; vendor and distribution lists; and documentation related to a sales history and marketing of the King Weather Radar Line to the extent that such documentation is separable from other confidential information not related to the King Weather Radar Line.

(6) All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the King Weather Radar Line, all customer lists for King Weather Radar Line products and all contracts for the sale of King Weather Radar Line to the extent that they are assignable.

(B) Divestiture of the King Weather Radar Line shall be made to Narco Avionics, Inc. pursuant to the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or to such other purchaser or purchasers that receive(s) the prior approval of the Commission and only in a manner that receives prior approval of the Commissions.

(C) For a period of ninety (90) days following the divestiture of the King Weather Radar Line, or such longer period (not to exceed six (6) months) as agreed between the purchaser and Allied, Allied shall assist the purchaser in the start-up and manufacturing process of the King Weather Radar Line by making personnel available to train and educate employees of the purchaser selected by it in all facets of the start-up, manufacture, production and repaid of the King Weather Radar Line. Allied shall name a single technical coordinator to serve as the focal point for such technical assistance. For such technical assistance, Allied may assess the purchaser an amount in accord with the terms of the Agreement of Purchase and Sale attached hereto as Exhibit A, or may charge the purchaser an amount not to exceed its cost for the time and materials (plus a reasonable material burden rate) involved, plus its reasonable travel, lodging and subsistence costs, if any.

(D) Pending the divestiture of the King Weather Radar Line required by this Order, Allied shall use its best efforts to advertise, promote, manufacture and sell the King Weather Radar Line at substantial present levels. Allied shall also continue to fund all ongoing research and development projects with regard to the King Weather Radar Line at 1984 levels. Allied shall be required to designate an appropriate King Radio employee to be responsible for managing the King Weather Radar Line pending its divestiture.

(E) Pending the divestiture of the King Weather Radar Line required by this Order, Allied and King shall maintain the viability, integrity and marketability of the properties described in Paragraph I (A) and shall not use or permit the destruction, removal or impairment of any assets to be divested except in the ordinary course of business and except for ordinary wear and tear.

II

It is further Ordered, that, for a period of ten (10) years from the date this Order becomes final, Allied shall not, without the prior approval of the Commission, directly or indirectly, acquire any stock, share capital or equity interest in any concern engaged in, or any assets used in the manufacture and sale in or to the United States, of airborne weather detection systems designed for use in general aviation aircraft; provided, however, that nothing in this Order shall prohibit Allied from (i) acquiring, for investment purposes only, an interest of not more than one (1) percent of the stock, share capital or equity of any such concern; or (ii) making purchases, in the ordinary course of business, of components and equipment used to manufacture airborne weather detection systems (*e.g.*, tools, test equipment and components). For the purposes of this Paragraph, the term "general aviation aircraft" means those aircraft predominantly used for private purposes rather than (i) for military purchases or (ii) for the transport of people or cargo for a fee.

III

It is further Ordered, that if Allied has not accomplished the divestiture required by Paragraph I of this Order within the eight-month period, Allied shall consent to the appointment of a trustee who shall have the power and authority to accomplish the divestiture at the most favorable price and terms available consistent with this Order's unconditional obligation to divest. The trustee shall be a person with experience and expertise in acquisitions and divestitures and shall be selected by the Commission subject to Allied's consent, which shall not be unreasonably withheld. The trustee shall serve at the cost and expense of Allied based on reasonable and customary terms. The trustee's compensation shall be based on reasonable and customary terms. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee divesting the trust assets. The trustee shall have the cooperation of Allied in accomplishing the divestiture within a reasonable period not to exceed ten (10) months and subject to the prior approval of the Federal Trade Commission. The appointment of a trustee shall not preclude the Commission from seeking civil penalties and other relief available to it for any failure by Allied to comply with Paragraphs I through VI of this Order.

IV

It is further Ordered, that within sixty (60) days from the date on which this Order becomes final and the first two sixty (60) day periods thereafter and every ninety (90) days thereafter until Allied has fully complied with the provisions of Paragraph I of this Order, Allied shall submit in writing to the Commission a verified report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with that provision of this Order. All such compliance reports shall include a summary of all discussions and negotiations with any persons who are potential purchasers of the assets to be divested as specified in Paragraph I of this Order, including the identity of all such persons, copies of all written communications to and from such persons, and all internal memoranda, reports and recommendations concerning divestiture.

V

It is further Ordered, that for a period of ten (10) years from the date on which this Order becomes final, Allied shall notify the Commission at least thirty (30) days prior to any proposed corporate changes that may affect compliance obligations arising out of this Order, such as dissolution, assignment or sale resulting in the emergence of successor corporations and the creation or dissolution of subsidiaries.

VI

On the first anniversary of the date this Order becomes final and on every anniversary date thereafter for the following nine (9) years, Allied shall submit to the Commission a verified written report setting forth the manner and form in which it has complied or is complying with this Order.

Issued: June 17, 1985.

By the Commission.

Agreement of Purchase and Sale

This Agreement made and entered on this 23d day of January, 1985 (the "Agreement") by and between Narco Avionics, Inc., a Delaware corporation, with its principal offices at 270 Commerce Drive, Fort Washington, Pennsylvania 19034 ("Buyer") and King Radio Corporation, a Kansas corporation, with its principal offices at 400 North Rodgers Road, Olathe, Kansas 66062 ("Seller").

Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, on the terms and conditions set forth herein, a portion of the assets used in the business and operations of Seller set forth in paragraph 1 below, which has been generally identified by Seller as its Weather Radar Product Line and Graphics Interface Product Line, more particularly described as:

(a) All Airborne Weather Detection Systems currently manufactured, sold or owned by Seller, including but not limited to:

(1) The KWX 56 Weather Radar System consisting of the KA 126 Antenna/Receiver/Transmitter and the KI 244 Control/Indicator;

(2) The KWX 58 Weather Radar System consisting of the KA 128 Antenna/Receiver/Transmitter and the KI 248 Control/Indicator;

(3) The KGR 356 Graphics Interface Unit; and

(4) The KGR 358 Graphics Interface Unit;

(b) All Airborne Weather Detection Systems that Seller has under development, including but not limited to the KWX 57 and KWX 460, and improvements or modifications to the KWX 56 or KWX 58 sytems; and

(c) Any other plans or research related to Airborne Weather Detection Systems.

All of which to be sometimes hereinafter referred to individually as the "Products", and collectively (including the items set forth in paragraph 1) as the "Product Lines".

In consideration of the mutual covenants, agreements, representations and warranties hereinafter contained, the parties agree as follows:

1. Purchase and Sale

At the closing (the "Closing") as hereinafter defined in paragraph 3.1(a), Seller shall sell, transfer and convey to Buyer, and Buyer shall purchase and accept:

(a) *Inventories.* All inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits solely dedicated to the Product Lines subject to the provisions of paragraph 1.1 and 1.2.

(b) *Tooling and Test Equipment.* All tooling, whether or not in the custody of vendors and test equipment including fixtures thereof, solely dedicated to the Product Lines, as set forth in *Exhibit 1(b).*

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicated to the Product Lines, one patent (no. 3973145), one patent application (no. 412913). Copies of the assignment of the patent and patent application are annexed to this Agreement as *Exhibit 1(c).*

(d) *Documents, Lists and Design Data.* All engineering and design drawings including but not limited to processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and brochures solely dedicated to the Product Lines; vendor and distribution lists; all documentation for software contained in or used in the manufacture of the Products; all documentation related to a new weather radar antenna/receiver/ transmitter unit that is in the [* * *] developmental stage; all documentation related to a design for a test adapter to enable testing of the KGR 356 and KGR 358 graphics interface units utilizing [designated equipment]; all other documentation, design and development studies, inventory, models and other data related to the Products; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts on order to the extent that they are assignable and solely dedicated to the Product Lines, all customer lists for the Product Lines and all contracts for the sale of Products to the extent that they are assignable, as set forth in *Exhibit 1(e)* to be provided at the Closing.

1.1 *Limitation on Inventory.*— Anything to the contrary notwithstanding, Buyer, at its election, shall not be obligated to purchase, accept and pay for Piece Parts in excess of those necessary to manufacture more than a cumulative total of [* * *] Weather Radar Products and, in addition thereto, a cumulative total of [* * *] Graphics Interface Products.

1.2 *Retention by Seller.*— (a) Anything to the contrary notwithstanding, Seller shall retain and not convey to Buyer all Piece Parts, purchase orders for Piece Parts not solely dedicated to the Product Lines, and purchase orders for Piece Parts solely dedicated to the Product Lines that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer. Seller shall also retain and not convey to Buyer contracts for the sale of spare parts, and for Products that are not assignable after efforts are made to request such vendors to permit such assignment from Seller to Buyer.

Seller shall also retain the right to continue to conduct business with vendors and distributors set forth on the vendor and distributor lists. Seller shall also retain and not convey to Buyer a sufficient quantity of Finished Goods and spare parts, in Seller's discretion, as to be able to service, maintain and repair its Products in the field and fulfill any contracts not assignable to Buyer.

(b) Buyer shall grant to Seller a nonexclusive, irrevocable, royalty free license (including the right to grant sublicenses) (i) under the patent and patent application to be conveyed herein, to make, have made, use, and sell Piece Parts and (ii) to utilize the tooling (in the custody of vendors) to be conveyed herein, only as necessary for Seller to service, maintain and repair the Products sold by Seller to third parties prior to the Closing. Such license shall be for the duration of any patents that are in existence or may be issued that are conveyed herein, and for the life of the tooling. The license to be used is set forth as *Exhibit 1(c),* annexed to this Agreement.

1.3 *Definitions.*—As used herein the following terms apply:

(a) "Finished Goods" shall mean each completed Product.

(b) "Piece Parts" shall mean components and raw material

purchased or made by Seller for use in manufacturing, producing, maintaining or repairing the Products or spare parts.

(c) "Kits" shall mean all required Piece Parts to assemble a specific quantity of the Products.

(d) "Work-In-Process" shall mean Products in various stages of manufacture or production.

(e) The phrase "solely dedicated to the Product Lines" in connection with assets to be conveyed herein, shall mean those assets which have no use or value to Seller in connection with its business other than for the Product Lines.

(f) "Weather Radar Products" shall mean the KWX 56 and KWX 58 weather radar systems.

(g) "Graphics Interface Products" shall mean the KGR 356 and KGR 358 Graphics Interface units.

(h) "Airborne Weather Detection System" shall mean (1) a product, consisting of a display, a sensor device and an antenna, that uses radio waves to detect and display weather conditions and is designed to enable a pilot to evaluate and avoid adverse weather conditions and is designed for use in aircraft; or (2) a receiver system designed for use in aircraft that detects lightening and is designed to enable a pilot to evaluate and avoid adverse weather conditions. "Airborne Weather Detection System" shall also include any device that performs the same function in the same manner as the Seller's products designated KGR 356 and KGR 358 for display on the products defined in (h)(1) and (h)(2) above.

2. Purchase Price

The purchase price shall consist of a payment made at the Closing as set forth in paragraph 2.1 below, payments or credits as set forth in paragraph 2.2 below, and payments made over a period of seven years as set forth in paragraph 2.3 below.

2.1 *Current Payment.*—At the Closing, Buyer shall pay to Seller as part of the puchase price, [* * *]. Such payment shall be made by certified check or wire transfer at the election of the Seller.

2.2 *Payments and Credits.*—(a) Buyer shall also pay to Seller, as part of the purchase price, a sum [* * *] for Finished Goods on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [* * *] of such costs for variance factors, and a sum [* * *] for its Kits, Piece Parts and Work-In-Process on hand at the Closing (and in the production process) to be conveyed to Buyer, plus [* * *] of such costs as a material burden rate.

(b) The Buyer shall receive a credit of [* * *] which credit shall be deducted from sums due Seller under paragraph 2.2(a). The net amount due Seller after deduction of the credit shall be payable in accordance with the terms of paragraph 2.2(c).

(c) Such sums due Seller pursuant to paragraph 2.2(b) shall be payable in principal increments of [* * *] ninetieth (90th) day following the Closing Date, and on each ninetieth (90th) day thereafter, until fully paid, in accordance with a promissory note bearing a rate of interest of [* * *] per annum in the form set forth as *Exhibit 2.2(c)* annexed to this Agreement. If less than [* * *] is due Seller, the full sum shall be paid to Seller on the ninetieth (90th) day following the Closing Date, plus interest due. In the event an adjustment in the cost of inventory that was in production is necessary, such an adjustment shall be made pursuant to paragraph 4.7.

2.3 *Additional Payments.*—(a) In addition, Buyer will pay, as part of the purchase price, the sum of [* * *] with interest at [* * *] per annum, payable in 27 equal installments of [* * *] and a final installment of [* * *] in accordance with an unsecured promissory note set forth in *Exhibit 2.3(a).* Payments shall commence on the ninetieth (90th) day following the final payment due under the promissory note set forth in *Exhibit 2.2(c),* and shall continue on each ninetieth (90th) day thereafter, until fully paid.

3. The Closing

3.1 *Closing.*—The purchase and sale of the Product Lines contemplated by this Agreement and the assignment, conveyance and transfer thereof by Seller to Buyer, and payment, delivery of a promissory note, execution of a license agreement, guarantees, security interests, and performance of other obligations as set forth in this Agreement, which are considered conditions of Closing, shall take place at: The offices of Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, Virgina 22209, at such time and date to be mutually agreed upon after appropriate approvals are obtained from the FTC pursuant to the FTC investigation, or at such other time and place as the parties may agree to in writing ("Closing Date").

3.2 *Instruments of Transfer.*—At the Closing, Seller will deliver to Buyer an Assignment and Bill of Sale, passing all right, title and interest in and to the Product Lines free and clear of all liens, security interests and other encumbrances in the form set forth in *Exhibit 3.2,* annexed to this Agreement.

4. Standard Costs, Physical Inventory Count and Transfer of Inventory

4.1 The inventories, including Finished Goods, Kits, Piece Parts and Work-In-Process have been valued at [* * *] in accordance with Seller's accounting practices.

4.2 Within approximately seven days prior to the Closing, Seller and Buyer together, will count the inventory on hand, not committed to production, (including test counts and sample counts, where total counting is impractical), and establish an agreed upon quantity which will be valued at Seller's cost plus [* * *]. Seller and Buyer will supervise the packaging and sealing of the cartons of such inventory. The quantities as established will not be subject to adjustment, since Buyer will have partaken in the inventories count and sealing of such cartons.

4.3 Seller will continue production until approximately one day prior to Closing. An estimated amount of inventory in production will be established and valued at Seller's cost plus [* * *].

4.4 At the Closing, the cost of inventory on hand (plus [* * *]) and the cost of the estimated inventory in production (plus [* * *]) will serve as the basis of payment pursuant to the promissory note described in paragraph *2.2(c).*

4.5 As soon as practicable after the Closing Date, per agreement of the parties, the inventory on hand (not in production) will be shipped to Buyer on a carrier designated by Buyer, f.o.b. Seller's plant.

4.6 Within thirty (30) days after the Closing, as soon as practicable, Seller will gather up the inventory that was in production (possibly in three plants) and place it in a central location at Seller's plant. Seller and Buyer will count the inventory that was in production and will supervise the packaging and sealing of the cartons of such inventory, which will be valued at Seller's cost (plus [* * *]). The quantities established will not be subject to adjustment.

4.7 An adjustment between the estimated quantity of inventory that was in production given at the Closing by Seller, and the actual quantity of such inventory will be made, if required, and such adjustment in terms of costs will be reflected in a new promissory note to be executed by Buyer containing the same terms as set forth in *Exhibit 2.2(c)* (except for the adjustment in principal), which new promissory note shall bear interest at [* * *] from the Closing Date, and the original note will be destroyed.

4.8 The inventory in production will be shipped to Buyer as soon as practicable after packaging it, on a common carrier designated by Buyer, f.o.b. Seller's plant.

4.9 Buyer will, in its discretion, within forty-five days from the Closing Date, examine the valuation of the inventory at Seller's cost (plus [* * *]) to determine whether Seller accurately and consistently applied its standard costs to the inventory. Adjustments, if necessary, in terms of costs will be reflected in the new promissory note. The new promissory note will be substituted for the original promissory note as set forth in *Exhibit 2.2(c)* and delivered to Seller within sixty days after the Closing Date.

4.10 Seller will take reasonable steps to secure the inventory while it is in Seller's custody. The risk of loss shall pass from Seller to Buyer in accordance with the terms set forth in paragraph 11.14.

4.11 In the event Buyer and Seller do not agree on the quantity of the inventories or the consistency or accuracy of the application of the valuation of such inventories, then the issues involved in the dispute shall be referred to an auditor to be mutually agreed upon, and such auditor shall perform an independent review of the facts in order to resolve specific issues. The determination of such auditor shall be final with respect to the matters in dispute. All costs associated with such auditor shall be shared equally by Buyer and Seller.

4.12 Any payments received by Seller in error for pruchases made from Buyer by Buyer's customers after the Closing Date, will be endorsed over to Buyer or remitted to Buyer.

5. Representations and Warranties of Seller

5.1 *Organization.*—Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Kansas and has all necessary corporate power and authority to own, lease and operate its properties and to carry on its business and the business of the Product Lines as now being conducted. No party, other than Seller, has any right, title or interest, or to the knowledge of Seller, has asserted any such right, title, or interest, in and to the Product Lines.

5.2 *Authority.*—(a) At the Closing Seller will have the full corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby, and all proceedings required to be taken by Seller to authorize the execution, delivery and performance of this Agreement have been properly taken and this Agreement constitutes a valid and binding obligation of Seller enforceable in accordance with its terms. Other than an investigation of the Federal Trade Commission ("FTC") regarding the acquisition by The Bendix Corporation ("Bendix") of Seller's voting stock, which investigation may determine that Seller be required to dispose of the Product Lines that are the subject of this Agreement to a Buyer to be approved by the FTC (hereinafter referred to as the "FTC Investigation"), there is no litigation, proceeding, or investigation pending, or to the best of Seller's knowledge threatened, which questions the validity or enforceability of this Agreement or seeks to enjoin the consummation of any of the transactions contemplated hereby.

(b) Other than the FTC Investigation and agreements between the FTC, Bendix and/or Seller that may have been entered into pursuant to such investigation, neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Seller with any of the provisions hereof will (1) conflict with or result in a breach of or default under any of the terms, conditions or provisions of any agreement, instrument or obligation to which Seller is a party, related to the Product Lines, or by which it or its properties and assets may be bound or affected or (2) result in violation of any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or the Product Lines.

5.3 *Inventories, etc.*—The inventories of Seller regarding the Product Lines on the Closing Date will consist of items of a quality and quantity usable and salable in the ordinary course of business as it was conducted by Seller during the past year. Such inventories have been valued at [* * *] in accordance with the normal inventory valuation practices of the Seller for the Product Lines. The market value of the tooling and test equipment, cumulatively to be conveyed herein equals or exceeds [* * *]. The value of the inventories to be conveyed to Buyer will exceed [* * *].

5.4 *Brokers and Finders.*—Seller has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

5.5 *Manufacturing Capability.*—The assets of the Product Lines conveyed by Seller herein contain sufficient information, data and other assets for Seller to be able to manufacture the Products. Seller does not guarantee that Piece Parts conveyed herein (exclusive of the Kits) are sufficient to allow full assembly of individual Products.

5.6 *Gross Margin.*—The Gross Margin on Weather Radar Products, in accordance with Seller's standard accounting practices over the past year, on average, has not been less than [* * *], as reported in Seller's monthly Cost of Sales Reports.

5.7 *Product Values.*—Except as stated in this subparagraph Seller has no knowledge of any circumstances which would make the Product Lines obsolete or diminish the market for the Product Lines taken as a whole. The parties understand, however, that the KWX 58 Product may diminish the sales of the KWX 56 Product and the KGR 358 Product may diminish the sales of the KGR 356 Product, and the parties further understand that the markets may naturally diminish by virtue of Buyer being a new entrant into the marketplace.

5.8 *Disclosure.*—No representation or warranty by Seller in this Agreement, and no statement, certificate or other document furnished, or to be furnished, by or on behalf of Seller under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

6. Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

6.1 *Organization.*—Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all necessary corporate power and authority to conduct its business as such business is now being conducted, and to own its property and the Product Lines.

6.2 *Authority.*—At the Closing Buyer will have full corporate power and authority to enter into this Agreement and carry out the transactions contemplated hereby; all proceedings required to be taken by it to authorize the execution, delivery and performance of this Agreement have been properly taken; and this Agreement constitutes a valid and binding obligation of Buyer enforceable in accordance with its terms.

6.3 *Brokers and Finders.*—Buyer has not retained any broker or finder or paid or agreed to pay any broker's or finder's fee or commission for or on account of the transactions contemplated by this Agreement.

6.4 *Litigation or Proceedings.*—(a) Other than the FTC investigation, there is no litigation, proceedings, or investigation pending, or to the best of Buyer's knowledge threatened, which questions the validity or endorsement of this Agreement or seeks to enjoin the consummation of any of the transactions contemplated hereby.

(b) Neither the execution and delivery hereof, nor the consummation of the transactions contemplated hereby, nor compliance by Buyer with any of the provisions hereof, will result in violation of any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer.

6.5 *Collateral.*—The collateral given to secure payment of sums due under paragraph 2.2 herein is valued at approximately $1,200,000.00, and other than Seller's lien to be placed thereon, is and will contain only one prior lien, to wit, a first mortgage held by The Crocker Bank in a sum not to exceed $650,000.00, there being sufficient remaining equity to secure payments under paragraph 2.2 herein. Buyer will offer to Seller a second mortgage on the collateral set forth in paragraph 11.3 to secure such payments.

6.6 *Disclosure.*—No representation or warranty by Buyer in this Agreement, and no statement, certificate or other document furnished or to be furnished by or on behalf of Buyer under this Agreement, and the Exhibits hereto, contains or will contain any untrue statement of material fact or intentionally omits any material fact necessary to make the statements contained herein or therein not misleading.

7. Conditions Precedent to Buyer's Performance

All obligations of Buyer to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to Closing (unless waived in writing by Buyer):

7.1 All representations and warranties of Seller contained herein, and in any document delivered pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

7.2 All obligations required by the terms of this Agreement to be performed by Seller shall have been duly and properly performed in all material respects and Buyer shall have received a certificate, dated the Closing Date, signed by an officer of Seller to such effect.

7.3 Seller shall have delivered to Buyer a certified copy of a resolution adopted by the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement.

7.4 There shall have been no change in the Product Lines, except changes in the ordinary course of business none of which shall have been materially adverse to any Product.

7.5 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

7.6 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

7.7 The FTC shall have approved Buyer as a party to this transaction.

7.8 Buyer shall have received from counsel for Seller a written opinion dated as of the Closing Date, addressed to Buyer, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

8. Conditions Precedent to Seller's Performance

All obligations of Seller to consummate the transactions as contemplated by this Agreement are subject to the fulfillment of each of the following conditions at or prior to the Closing (unless waived in writing by Seller):

8.1 All representations and warranties of Buyer contained herein, and in any document delivered pursuant hereto, shall be true and correct in all material respects when made and as of the Closing.

8.2 All obligations required by the terms of this Agreement to be performed by Buyer shall have been duly and properly performed in all material respects and Seller shall have received a certificate, dated the Closing Date, signed by an officer of Buyer to such effect.

8.3 Buyer shall have delivered to Seller a certified copy of the resolution adopted by the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement.

8.4 There shall not have been any legal action or other proceedings brought by third parties to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or to obtain other relief in connection with this Agreement, or the transactions contemplated hereby, nor shall any such actions be pending or threatened.

8.5 The FTC shall have approved this transaction in a final order of a consent decree and shall have permitted the acquisition by Bendix of Seller's voting stock, or in the alternative, the FTC shall have affirmatively indicated that no consent decree is required.

8.6 The FTC shall have approved Buyer as a party to this transaction.

8.7 Seller shall have received from counsel for Buyer a written opinion dated as of the Closing Date, addressed to Seller, in a form and substance to be mutually agreed upon by Buyer's and Seller's counsel.

9. Indemnification

9.1 *Seller's Indemnity.*—(a) Seller shall indemnify and hold harmless Buyer, for a period of one year from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or result from (a) the incorrectness or breach of any of the representations or warranties of Seller contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of Seller to perform any covenants or agreements on its part to be performed.

(b) Buyer shall give Seller prompt written notice of any matter which may give rise to Buyer's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Buyer's rights to indemnity may arise. Prior to the settlement of any claim, or the defense of any litigation with a third party which may give rise to indemnity hereunder, Seller shall be given the opportunity to participate in negotiation and settlement discussions or assume the defense of such litigation, as the case may be. Any claim of indemnification made hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Buyer, for which indemnification is claimed hereunder.

9.2 *Buyer's Indemnity.*—(a) Buyer shall indemnify and hold harmless Seller, for a period of one year (except for the payments due under this Agreement, which period of indemnification shall be seven years) from the Closing Date, against any damage, loss, cost, liability or expense (including reasonable attorneys' fees), which arise out of or results from (a) the incorrectness or breach of any of the

representations or warranties of Buyer contained in this Agreement, or given in writing on the Closing Date, and (b) the failure on the part of the Buyer to perform any covenants or agreements on its part to be performed.

(b) Seller shall give Buyer prompt written notice of any matter which may give rise to Seller's right to indemnity hereunder. Such notice shall identify the nature of the matter and, if appropriate, the persons making the claim from which Seller's rights to indemnity may arise. Prior to the settlement of any claim or the defense of any litigation with a third party which may give rise to indemnity hereunder, Buyer shall be given the opportunity to participate in negotiation and settlement discussions or assume the defense of such litigation, as the case may be. Any claim of indemnification made hereunder shall include a statement specifying the nature and amount of the damages, losses, costs, liabilities and expenses incurred by Seller, its successors or assigns, for which indemnification is claimed hereunder.

10. Nature and Survival of Representations and Warranties

All statements contained in this Agreement and in any certificate, instrument, or document delivered by or on behalf of either of the parties pursuant hereto shall be deemed representations and warranties by the respective parties hereunder. All representations and warranties made hereunder shall survive the Closing for a period of one year from the Closing Date.

11. General Provisions

11.1 *Guarantees.*—At the Closing, Buyer shall have obtained and delivered to Seller, a Guarantee by Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of Narco, that Edward M. Zimmer, Jr. shall be and remain primarily liable as a guarantor of any payments due Seller under this Agreement. Such Guarantee shall be in the form annexed to the promissory notes.

11.2 *Accelerated Schedule.*—On a best efforts basis, Seller, on the signing of this Agreement up to the Closing Date, shall accelerate its schedule of manufacturing Products and Kits to a reasonable rate as determined by Seller in excess of its current rate of production.

11.3 *Collateral.*—Buyer shall offer the following collateral as security to secure all sums due Seller under the promissory note set forth in paragraph 2.2(c), and shall execute at the Closing all documents reasonably required by Seller to enable Seller to perfect its security interest in the collateral.

Collateral: A commercial building owned by Edward M. Zimmer, Jr., Trust, located on Monroe Avenue, Houston, Texas valued at approximately $1.2 million, the appraisal to be supplied at Closing.

11.4 *Allocation of Payments.*—Seller and Buyer agree that the purchase price shall be allocated in accordance with *Exhibit 11.4.*

11.5 *Product Support, Product Liability.*—(a) Buyer shall be responsible for supporting all Products and spare parts sold by it to Buyer's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Buyer to its customers.

(b) Seller shall be responsible for supporting all Products and spare parts sold by it to Seller's customers, including repairs to Products and spare parts, whether or not under warranty, and shall be responsible for and, upon the Closing, automatically assume the costs and expenses, including expenses affiliated with the defense of lawsuits and claims, that arise in connection with Products and spare parts sold by Seller to its customers. Sales of Products and spare parts by Seller to Buyer, in connection with this transaction shall not be deemed a sale to Seller's "customer", and accordingly, Buyer and not Seller shall be responsible for and, upon the Closing, shall automatically assume the Product support, repairs, costs, and expenses, including the expenses affiliated with lawsuits and claims, that arise in connection with Products and spare parts, if any, sold by Seller to Buyer as part of this transaction. Sales of Products from Seller to Buyer as part of this transaction shall be serialized and identified at the Closing in *Exhibit 11.5(b).* Anything to the contrary notwithstanding, after consummation of this transaction, in the event Seller purchases Products or spare parts from Buyer to support Seller's Products in the field, or for systems installations, Buyer shall extend to Seller the same warranty it offers to its other customers.

11.7 *Technical Assistance.*—Seller shall assist Buyer in the start-up and manufacturing process of the Product Lines by making personnel available to train and educate employees of Buyer in all facets of the start-up, manufacture, production and repair of the Products and the transfer of Seller's research and development concerning the Products. The individual employees of Seller and the number of such employees made available for such technical assistance shall be determined by the Seller. A single technical coordinator shall be named by Seller to serve as the focal point for such technical assistance. Such technical assistance shall be made available, as may be required by Buyer, for a period of [* * *] following the Closing (but may be extended by mutual consent of the parties). Such technical assistance for [* * *] following the Closing shall be made available as part of the purchase price and is valued by the parties at [* * *]. Any technical assistance rendered by Seller to Buyer, per agreement of the parties, after such [* * *] period shall be paid for by Buyer on a time and material basis, for the costs incurred by Seller, [* * *] for each labor hour expended by Seller's personnel in rendering technical assistance. In addition, for technical assistance rendered after the [* * *] the Buyer shall pay to Seller the cost of material paid for or expended by Seller [* * *] related to the technical assistance. Such technical assistance may be rendered at Seller's or Buyer's plant or at other places to be mutually agreed upon. Buyer shall pay all reasonable costs expended for transportation, lodging and subsistence of Buyer's and Seller's personnel involved in the technical assistance program when travel away from home is required. Seller shall invoice Buyer for such technical assistance, costs and expenses and such invoices shall be due and payable within thirty days after receipt thereof.

11.8 [* * *]

11.9 *Sale Made "As Is, Where Is".*—The sale of the Product Lines is made on an "as is, where is" basis which shall be reflected in the Assignment and Bill of Sale.

11.10 *"King" Name.*—(a) The Buyer shall not utilize the "King" name and logo in the manufacture, marketing, distribution and sale of products, except to indicate in its advertising literature and brochures, for a period not to exceed three years from the Closing Date, that the Products were "formerly manufactured by King Radio Corporation". Buyer shall have the exclusive use of the nomenclature KWX 56, KWX 58, KGR 356, KGR 358, KA 128, KI 244 and KI 248 for the Product Lines acquired hereunder. All tooling shall be modified by Buyer to remove the King name and logo, and such name and logo shall be removed by Buyer from all Products and Piece Parts manufactured

by Buyer. With respect to Products manufactured by Seller and sold to Buyer, as part of this transaction for subsequent resale to Buyer's customers, Buyer shall place a permanently affixed label on such products indicating that they were sold by Buyer.

(b) The "King" name and logo shall not be placed on the front panel of Airborne Weather Detection Systems for a period of seven years from the Closing Date. Anything to the contrary notwithstanding, Seller will be permitted to advertise "Bendix" weather radar equipment together and in connection with Seller's non-weather radar equipment, provided further that Seller will not identify "King" as the source of manufacture of any weather radar except as required by law.

11.11 *Further Assurances and Cooperation.*—In connection with the transactions contemplated by this Agreement, the parties agree to execute such additional documents and papers, and perform and do such additional acts and things as may be reasonably necessary or proper to effectuate and carry out all of the provisions and the intent of this Agreement.

11.12 *Notices.*—All notices to be given by either party to this Agreement to the other party hereto shall be in writing and shall be given in person or by depositing such notice in the United States mail, registered or certified, postage prepaid addressed as follows (unless either party designates a different address in writing to the other party for communicating notices):

To Buyer: Narco Avionics, Inc., 270 Commerce Drive, Fort Washington, PA 19304, Attention: President

With a carbon copy to: Edward M. Zimmer, Jr., Post Office Box 277, Laguna Beach, CA 92652

To Seller: King Radio Corporation, 400 North Rodgers Road, Olathe, KS 66062, Attention: President

With a carbon copy to: Allied Bendix Aerospace, 1000 Wilson Boulevard, Arlington, VA 22209, Attention: General Counsel.

11.13 *Payment of Expenses, Taxes and Closing Costs.*—Each of the parties shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated hereby. All sales taxes and like taxes payable in connection with the sale, conveyances, assignments, transfers and deliveries to be made to Buyer hereunder, shall be borne by the Buyer.

11.14 *Deliveries and Risk of Loss.*—The Product Lines to be conveyed by Seller to Buyer pursuant to the Agreement shall be delivered f.o.b. Seller's factory, 400 North Rodgers Road, Olathe, Kansas to Buyer, or to a private or common carrier acceptable to Buyer, for delivery to premises designated by Buyer, as soon after the Closing as practicable. Irrespective of the date upon which such Product Lines are delivered to Buyer, or to a private or common carrier, and notwithstanding any agreement, express or implied, that Seller and Buyer may enter into for Seller to hold or store such Product Lines on a temporary basis for Buyer after the Closing, the risk of loss, damage or destruction of such Product Lines shall pass from Seller to Buyer on the Closing Date, immediately after consummation of such Closing.

11.15 *Announcements.*—No public or other announcement, including any press releases regarding this Agreement, or the transactions contemplated hereby, shall be made by either Seller or Buyer without advance notice to and prior approval by the other party which notice shall include the text of such announcement or release.

11.16 *Entire Agreement.*—This writing constitutes the entire Agreement of the parties with respect to the subject matter hereof and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement and signed by the parties hereto.

11.17 *Waiver.*—No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

11.18 *Successors and Assigns.*—This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their successors and assigns.

11.19 *Severability.*—If any clause or provision of this Agreement shall be held invalid or unenforceable by the final determination of a court of competent jurisdiction, and all appeals therefrom shall have failed or the time for such appeals shall have expired, such clause or provisions shall be deemed eliminated from this Agreement but the remaining provisions shall nevertheless be given full force and effect.

11.20 *Captions.*—The paragraph headings contained herein are for the purpose of convenience and are not intended to define or limit the contents of said paragraphs.

11.21 *Choice of Law.*—This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Kansas.

In witness whereof, the parties have duly executed this Agreement as of the day, month and year first above written.

King Radio Corporation.

Louis J. Giuliano,

Vice President & Group Exe. Bendix Aerospace Sector.

Narco Avionics, Inc.

Edward M. Zimmer, Jr.,

President.

Radar Tooling

[This is confidential material]

Exhibit 1(b)

Assignment

Exhibit 1(c)

Whereas, King Radio Corporation, a Kansas corporation, located at 400 North Rodgers Road, Olathe, Kansas, hereinafter "Assignor," is sole owner of and desires to formally assign to Assignee the U.S. Letters Patent and Patent Application listed below; and having conveyed certain tooling in an Assignment and Bill of Sale dated, ————, to Assignee; and

Whereas, Narco Avionics, Inc., a Delaware corporation located at 270 Commerce Drive, Fort Washington, Pennsylvania 19034, hereinafter "Assignee", desires to acquire the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, subject to the grant to the Assignor of certain license rights therein; and desires to acquire the right, title and interest to tooling set forth in an Assignment and Bill of Sale dated ———— from Assignor to Assignee, subject to the grant, to the Assignor of certain license rights in such tooling;

UNITED STATES PATENT

Patent No.	Issue date	Title	Inventor
3973145	Aug. 3, 1976	Weather Radar Transistorized Pulse Modulator	Jerry C. Schmitt, Terry K. Michie.

UNITED STATES PATENT APPLICATION

Serial No.	Filing date	Title	Inventor
412913	Aug. 30, 1982	Apparatus and Method for the Correction of Attenuation Induced Errors In a Weather Radar Receiver.	James Lyall.

Now, therefore, this deed witnesseth: that for and in consideration of One Dollar ($1.00) to Assignor in hand paid and other good and valuable consideration, the receipt of which is hereby acknowledged, that Assignor has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over unto the said Assignee, the entire right, title and interest in and to said U.S. Letters Patent and Patent Application, and any reissues or extensions thereof, together with all rights to recover for past infringements thereof, subject to the grant to the Assignor of a non-exclusive, irrevocable, royalty-free, license, with rights to sublicense, to make, have made, use and sell Piece Parts under said U.S. Letters Patent and Patent Application and any reissues or extensions thereof, for the life of the patent and any patent issued under the Patent Application listed herein, the same to be held and enjoyed by Assignee, for its own use and benefit and for the use and benefit of its successors, assigns and legal representatives, subject to the license granted herein.

Furthermore, Assignee grants to Assignor the license and right to use tooling in the custody of vendors to make, have made, use and sell for itself and its successors and assigns, certain Piece Parts from said tooling in the custody of vendors, for the life of such tooling, which tooling was conveyed to Assignee pursuant to an Assignment and Bill of Sale dated ———, from Assignor to Assignee.

In witness whereof, the Assignor and Assignee hereunto set their respective hands and affixed their respective seals, this ——— day of ———, 1985, by their duly authorized representatives.

Attest:

Title:

(Seal)

King Radio Corporation, Assignor

By: ———

Title: ———

Attest:

Title:

(Seal)

Narco Avionics, Inc., Assignee

By: ———

Title: ———

Attestation for Assignor

County of ———

State of ———

On this ——— day of ———, 1985, before me personally appeared ———, to me personally known, who being by me duly sworn, did say that he is ——— of King Radio Corporation, the Assignor above-named and acknowledged that he executed the foregoing instrument on behalf of said Assignor and pursuant to authority duly received.

Notary Public

My Commission Expires: ———

(Seal)

Attestation for Assignee

County of ———

State of ———

On this ——— day of ———, 1985, before me personally appeared ———, to me personally known, who being by me duly sworn, did say that he is ——— of Narco Avionics, Inc., the Assignee above-named and acknowledged that he executed the foregoing instrument on behalf of said Assignee and pursuant to authority duly received.

Notary Public

My Commission Expires: ———

(Seal)

Promissory Note

Exhibit 2.2(c)

$ ———

Date: ———

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation, ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of $——— payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in ——— equal installments of [* * *] and one final installment of the principal balance due, with such installment payments commencing on the ninetieth (90th) day from the date hereof, and each following installment due ninety (90) days following the previous payment date, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date hereof at the rate of [* * *] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have the right to prepay all or any part of this Note without penalty.

Any amounts not paid as herein provided shall bear interest at the rate of [* * *] percent per annum. Default in the payment of any part of the principal or interest, when due, shall, at the option of the holder hereof, at once mature the whole of the principal and interest due under this Note, without notice to the maker, endorsors, or guarantors, if any.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be entitled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have ten (10) days from the receipt of such notice to cure the default and nonpayment.

Narco Avionics, Inc.

By ———

Authorized Officer.

Guarantee

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further

agrees to remain primarily liable in the event the terms of payment of principal or interest are extended under the Note. Edward M. Zimmer, Jr. shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpayment.

Edward M. Zimmer, Jr.,
Individually.

Promissory Note

Exhibit 2.3(a)

[* * *]
Date: ————

For value received, the undersigned, Narco Avionics, Inc., a Delaware corporation, ("Narco") promises to pay to the order of King Radio Corporation, a Kansas corporation, ("King") the principal sum of [* * *] payable with interest as hereinafter provided at the offices of King Radio Corporation, 400 North Rodgers Road, Olathe, Kansas 66062, Attention: Chief Financial Officer, or at such other place as the holder may designate in writing. The principal of this Note is payable in 27 equal installments of [* * *] each, and one final installment of [* * *] with such installment payments commencing on the ninetieth (90th) day from the date following the final payment due under a promissory note of same date as herein from Narco to King given pursuant to an Agreement of Purchase and Sale dated ————, and each following installment due ninety (90) days following the previous payment date, until fully paid.

Interest on the unpaid principal balance of this Note shall accrue from the date hereof at the rate of [* * *] percent per annum. Accrued interest shall be payable from time to time on the dates for payments of installments of principal as herein provided. The undersigned shall have no right to prepay all or any part of this Note without the written consent of King.

Any amounts not paid as herein provided shall bear interest at the rate of [* * *] percent per annum.

It is expressly agreed that if suit is brought on this Note, or if collected through bankruptcy, insolvency, or other judicial proceedings, the holder hereof shall be entitled to recover all reasonable expenses incurred in connection with such collection, suit or proceedings, including reasonable attorney's fees and legal expenses.

The undersigned and all endorsers and guarantors hereby waive presentation for payments, notice of payment extensions, protest, notice of protest, and diligence in bringing suit against any maker, endorser or guarantor, hereof. The endorsers shall also waive notice of default and nonpayment, but Narco and any guarantors shall be entitled to a notice of default and nonpayment, in writing, and shall have ten (10) days from the receipt of such notice to cure the default and nonpayment.

Narco Avionics, Inc.

By ————
Authorized Officer.

Guarantee

The undersigned, Edward M. Zimmer, Jr., in his personal capacity, and not as an officer of the maker of the above Note, shall be primarily liable for payments due under the above Note, and hereby guarantees to the holder of the above Note, prompt payment of all sums which shall become due to the holder pursuant to the foregoing Promissory Note whether or not extended by the parties to the above Note, and hereby waives, with respect to the above Note, notice of payment extensions, protest, notice of protest, and diligence in bringing any suit against any maker, endorser or guarantor of the above Note, and further agrees to remain primarily liable in the event the terms of payment of principal or interest are extended under the Note. Edward M. Zimmer, Jr., shall be entitled to notice of default and nonpayment in writing and shall have ten (10) days from receipt of such notice to cure such default and nonpayment.

Edward M. Zimmer, Jr.,
Individually.

Assignment and Bill of Sale

Exhibit 3.2

Know All Men by these Presents:

That, King Radio Corporation, a Kansas corporation ("Transferor"), for good and valuable consideration paid to Transferor by Narco Avionics, Inc., a Delaware corporation ("Transferee"), receipt of which is hereby acknowledged, and in accordance with the terms of an Agreement of Purchase and Sale, dated as of ————, 1985 between Transferor and Transferee (the "Purchase Agreement"), by these presents does hereby sell, convey, transfer and assign unto Transferee, its successors and assigns, the following assets of Transferor on an "as is, where is" basis:

(a) *Inventories.* Inventories, including Piece Parts, Work-In-Process, Finished Goods and Kits set forth in an inventory list annexed hereto, subject to adjustment within thirty (30) days after the Closing Date in accordance with an Agreement of Purchase and Sale dated ————, between Transferor and Transferee.

(b) *Tooling and Test Equipment.* Tooling, and test equipment including fixtures thereof, as set forth in *Exhibit 1(b)* annexed hereto, subject to a license and right by Transferor to make, use and have made Piece Parts utilizing the tooling in the custody of vendors, for the life of such tooling.

(c) *Industrial Property Rights.* All know-how, and trade secrets, if any, solely dedicated to the Product Lines, and one patent (no. 3973145), one patent application (no. 412913) pursuant to an Assignment of such patent and patent application (subject to a license to Seller) set forth in *Exhibit 1(c)* annexed hereto.

(d) *Documents, Lists and Design Data.* All engineering and design drawings in reproducible form, including processes, bills of material, maintenance manuals, pilots' guides, TSO reports, advertising literature and borchures solely dedicated to the Product Lines; vendor and distribution lists; applicable documentation for software contained or related to the manufacture of the Weather Radar Products; documentation as it exists related to a new antenna/receiver/transmitter unit that is in the [* * *] developmental stage; documentation related to a design for a test adapter to enable testing the Graphics Interface Products utilizing [designated equipment], other design and development studies and documentation related to the Products; studies, documentation, inventory, models and all other data related to weather radar units under development if any, including but not limited to the KWX 57 and KWX 460 projects; and documentation related to a sales history and marketing of the Product Lines to the extent that such documentation is separable from other confidential information not related to the Product Lines.

(e) *Purchase Orders and Contracts.* All purchase orders for Piece Parts and all contracts for the sale of Products as set forth in *Exhibit 1(e)* annexed hereto.

To have and to hold the same to Transferee, its successors and assigns, forever.

1. Transferor does for itself and for its successors and assigns, convenant to Transferee, its successors and assigns that Transferor is the sole owner of all of the assets which are to be sold and conveyed to Transferee hereunder and Transferor has all necessary power and authority to sell and convey such assets to Transferee, and that such assets are free and clear of all mortgages, liens,

and encumbrances of any nature which are not of record.

2. Transferor agrees that, at any time and from time to time after the date hereof, it will, upon the request of Transferee, execute and deliver all such further documents and take all such further action as may be required for the better conveyance, transfer and assignment of the assets, properties and rights intended to be conveyed, transferred and assigned hereby.

3. This instrument and the covenants and agreements contained herein shall be binding upon Transferor, its successors and assigns and shall inure to the benefit of Transferee, its successors and assigns.

In witness whereof, King Radio Corporation has executed this instrument in its corporate name by its duly authorized officer as of ————, 1985.

Seal.

King Radio Corporation.

By ————————

Purchase Price Allocation [This is Confidential Material]

Exhibit 11.4

Emily H. Rock,

Secretary.

[FR Doc. 85-16605 Filed 7-11-85; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-22209]

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is amending its Rules of Practice to delegate authority to the Director of the Division of Market Regulation to grant exemptions from Rule 3b-9 under the Securities Exchange Act of 1934 pursuant to paragraph (c) of that Rule.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Edward L. Pittman, Esq., (202-272-2848), Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced an amendment to its Rules of Practice governing delegation of authority to the Director of the Division of Market Regulation (17 CFR 200.30-3). The amendment authorizes the Director of the Division of Market Regulation to grant exemptions where appropriate pursuant to new Rule 3b-9(c) under the Securities Exchange Act of 1934, which the Commission adopted on July 1, 1985.[1]

Rule 3b-9, which will become effective on January 1, 1986, requires banks that engage in certain securities activities to conduct these activities through registered broker-dealers. Paragraph (c) of the Rule provides that the Commission, upon written request or on its own motion, may exempt banks either unconditionally or on specific terms and conditions where the Commission determines that the bank's activities are not within the intended meaning and purpose of the Rule. The Commission believes that it would facilitate the timely and efficient review of many exemptive requests if the authority to grant exemptions from Rule 3b-9 were delegated to the Director of the Division of Market Regulation.[2] Moreover, the Commission finds that there will be no burden on competition imposed by the amendment not necessary or appropriate in furtherance of the Act. The Commission also finds that the foregoing action relates solely to agency management and personnel, and accordingly, that notice and prior publication for comment under the Administrative Procedure Act (5 U.S.C. 553) are not necessary. This action, taken pursuant to 15 U.S.C. 78d-1, as amended, becomes effective on publication in the **Federal Register.**

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, Securities.

The Securities and Exchange Commission, pursuant to the Act, and particularly sections 2, 3, 15 and 23 thereof (15 U.S.C. 78b, 78c, 78o and 78w), and the Delegation of Functions Act, 15 U.S.C. 78d-1, hereby adopts an amendment to § 200.30-3(a).

Text of Amendment

The Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

[1] Securities Exchange Act Release No. 34-22205 (July 1, 1985).

[2] The staff will process requests for exemptive relief before the effective date of the Rule.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a-37, 80b-11 * * *.

2. By adding paragraph (a)(45) to § 200.30-3 to read as follows:

§ 200.30-3 Delegation of Authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(45) To grant exemptions from Rule 3b-9 under the Act. (§ 240.3b-9(c) of this chapter).

By the Commission.

Dated: July 2, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16396 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

17 CFR Part 240

[Release No. 34-22205; File No. S7-1000]

Applicability of Broker-Dealer Registration to Banks

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting Rule 3b-9 under the Securities Exchange Act of 1934 ("Exchange Act"). The Rule requires a bank to conduct certain securities activities through a broker-dealer registered under the Exchange Act. These activities are (1) public solicitation of brokerage business for transaction-related compensation, (2) receipt of transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice or (3) dealing in or underwriting securities. The Rule also contains several exceptions for banks that conduct only limited securities activities. The Commission believes that Rule 3b-9 is necessary to assure investor protection and to satisfy other regulatory concerns raised by the recent expansion of bank securities activities.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mary Chamberlin, Esq., Chief Counsel, (202) 272-2844; Colleen Curran Harvey, Esq., Deputy Chief Counsel, (202) 272-2848; or Amy Natterson Kroll, Esq.,

Attorney-Advisor, (202) 272–2848, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission today announced the adoption of Rule 3b–9 (17 CFR 240.3b–9) under the Exchange Act.[1] The Rule was published for comment in November, 1983.[2] In some respects, the Rule has been adopted substantially as proposed. In response to comments received on the proposal, however, several new exceptions and additional modifications have been included in the final Rule.

As adopted, the Rule provides that the term "bank" as used in the definitions of "broker" and "dealer" in sections 3(a)(4) and 3(a)(5) of the Exchange Act does not include a bank which (1) publicly solicits brokerage business for transaction-related compensation, (2) received transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advices, or (3) deals in or underwrites securities.[3] A major exception to Rule 3b–9 will be for a bank which enters into arrangements with a registered broker-dealer pursuant to which the broker-dealer will provide brokerage services. As discussed more fully below, the Rule will permit banks to engage in so-called "networking" arrangements with a registered broker-dealers without themselves registering as broker-dealers (or registering an affiliate or subsidiary). The permissible scope of such arrangements has been the subject of numerous no-action letters issued to various savings and loan associations by the staff of the Commission's Division of Market Regulation.[4]

The other exceptions to the Rule are for banks that (1) effect transactions in exempted securities or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills, (2) effect no more than 1,000 transactions each year in securities other than exempted or municipal securities or commercial paper, bankers' acceptances or commercial bills, (3) effect transactions for the investment portfolio of affiliated companies, (4) effect transactions as part of a program for the investment or reinvestment of bank deposit account funds into certain investment companies registered pursuant to the Investment Company Act of 1940, (5) effect transactions as part of a variety of employee and shareholder plans, (6) effect transactions pursuant to sections 3(b), 4(2) or 4(6) of the Securities Act of 1933 and rules and regulations thereunder, or (7) are subject to Section 15(e) of the Exchange Act. In addition, the Rule provides that the Commission may exempt a bank, either unconditionally or on specific terms and conditions, if the Commission determines that the bank's activities are not within the intended meaning and purpose of the Rule.

II. Background

In 1977, the Commission submitted its reports on bank securities activities to Congress.[5] In those reports, the Commission recognized that banks were providing brokerage services and engaging in other securities activities. The Commission refrained, however, from taking the position at that time that banks should be required to register as broker-dealers, but explicitly stated that changes in the markets might affect the conclusions expressed in the Bank Study.[6] The Commission noted in the Bank Study that banks handled a relatively low average number of orders and that banks did not engage in any substantial advertising effort to solicit customers from the general public.[7]

Bank brokerage activites and related promotional efforts have changed substantially since 1977. Orders are taken and forwarded by bank employees to clearing brokers for execution in exchange for part of the commission paid by the customer. Members of the public are solicited through extensive and aggressive advertising campaigns to become "brokerage" customers of the bank. Rather than merely providing accommodation services to existing customers, the services now promoted by banks, particularly those for which banks receive transaction-related compensation, are functionally indistinguishable from those offered by registered broker-dealers. Moreover, the number of banks engaging in these securities activities has increased substantially. Sixty-one of the hundred and eighty-six banks commenting on proposed Rule 3b–9 indicated that they engaged in securities brokerage to some extent. Moreover, the American Bankers Association estimated in excess of 1,000 banks were engaged in securities activities.[8]

Over the past few years, the banking regulators have approved proposals permitting banks to engage in securities activities through registered broker-dealer affiliates or subsidiaries. For example, 1983, the Board of Governors of the Federal Reserve System ("Board") amended its Regulation Y to include discount securities brokerage and securities credit lending as permissible nonbank activities for bank holding companies.[9] This action followed its approval of the application of BankAmerica Corporation to acquire Charles Schwab Corporation.[10] The Commission did not object to either of these actions by the Board to the extent they permitted a bank holding company or its nonbank subsidiary to engage in discount brokerage activities as a broker-dealer registered with the Commission fully subject to the federal securities laws.[11]

The Office of the Comptroller of the Currency ("OCC") has also approved the creation of registered broker-dealer subsidiaries of national banks.[12] In addition, the OCC proposed a rule in April 1984 that would require national banks to place certain securities brokerage activities in subsidiaries.[13]

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[1] 15 U.S.C. 78 *et seq.*

[2] Securities Exchange Act Release No. 20357 (November 8, 1983) 48 FR 51930 (November 15, 1983).

[3] The Commission expresses no opinion as to the legality of these activities under the Glass-Steagall Act or other banking laws. *See, e.g.*, 12 U.S.C. 24, 78, 377, and 378.

[4] See text and nn. 32–39, *infra.*

[5] Reports on Bank Securities Activities (1977) ("Bank Study"). The Commission submitted an Initial Report on January 3, 1977, a Second Report on February 3, 1977, and a Final Report on June 30, 1977.

[6] Bank Study, Final Report at 43.

[7] *Id.* at 21.

[8] *See* comment letter of the American Bankers Association (December 19, 1983).

[9] 12 CFR 225.25(b)(15) (1984).

[10] *Order of the Federal Reserve System Approving the Acquisition of Charles Schwab & Co., Inc., by BankAmerica Corporation*, 69 Fed. Res. Bull. 105 (1983). The Board's action was challenged by the Securities Industry Association and was ultimately upheld under banking law by the Supreme Court. *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 104 S. Ct. 3003 (1984).

[11] Letters dated May 13, 1982 and April 11, 1983 from George A. Fitzsimmons, Secretary, Securities and Exchange Commission, to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System.

[12] *See, e.g., Decision of the Comptroller of the Currency Establishing an Operating Subsidiary to be Known as Security Pacific Discount Brokerage Services, Inc.* [1982 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶99,284 (August 26, 1982). The Comptroller's decision was upheld by the District Court for the District of Columbia. *Securities Industry Association* v. *Comptroller of the Currency*, 577 F. Supp. 252 (D.D.C. 1983).

[13] Notice of Proposed Rulemaking, 49 FR 15,089 (April 17, 1984) (to be codified at 12 CFR 5.52 and 12.6). The OCC's proposal generally would require securities brokerage activities to be conducted in a subsidiary if the bank publicly solicits such

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The subsidiaries would have to register with the Commission as broker-dealers. The OCC's proposal is similar to, but narrower than, Rule 3b–9. In its comment letter, the Commission was generally supportive of the OCC's proposal, but stated that it did not go far enough to achieve the goal of functional regulations because, among other things, it would permit substantial brokerage activities to be conducted from within the bank.[14]

In addition, the FDIC has announced that insured, nonmember banks may acquire or establish securities subsidiaries to engage in the underwriting of and dealing in certain securities.[15] The FDIC has adopted a rule which limits, however, certain aspects of permissible underwriting and dealing activities.[16] In addition, the FDIC has condoned internal brokerage activity in insured, nonmember banks.[17]

III. Determination to Adopt Rule 3b–9

The Commission received 272 comment letters on proposed Rule 3b–9. Over 200 of those letters were submitted by members of the banking industry who, quite uniformly, were critical of the Rule for a variety of reasons. The Rule generally was supported by members of the securities industry. The commentators who opposed the Rule argued that it is unnecessary in light of the lack of demonstrated abuses in the area of bank securities activities, overly broad, and would duplicate regulation by the banking authorities. Many of these commentators questioned the Commission's legal authority to adopt the Rule.[18]

The Commission believes that, consistent with the statutory objective of ensuring fair competition among securities participants, all institutions providing brokerage services should be subject to the same regulatory scheme that the Congress set up for broker-dealers and charged the Commission with administering.[19] The Commission also believes that without Rule 3b–9, the increase in bank securities activities raises substantial investor protection concerns.

The federal securities laws as administered by the Commission provide for a comprehensive and coordinated system of regulation of securities activities specifically and uniquely designed to assure the protection fo investors through full disclosure concerning securities sold and the prevention of unfair and inequitable practices in the securities markets. The securities laws are also designed to assure fair competition among all participants in the securities markets. Broker-dealer registration is an important element of this regulatory system. Absent broker-dealer registration, bank securities activities are regulated under federal banking law, which has as its primary purposes the protection of depositors and the preservation of the financial soundness of the banks. Thus, such bank regulation would take place outside of the coordinated system of securities regulation and lead to regulatory disparities.

In its Bank Study, the Commission identified a number of areas where bank regulation of securities activities differed from regulation of the same activities performed by registered broker-dealers. Although the federal banking agencies adopted some of the Commission's recommendations to address these differences, there continues to exist a disparity in the regulation of functionally equivalent activities performed by banks and broker-dealers.

For example, all persons associated with a broker-dealer (other than employees with purely clerical and ministerial duties) are required to pass a qualifications examination covering substantive aspects of the securities business in order to become licensed to sell securities.[20] The self-regulatory organizations also require that persons involved in the management of the broker-dealer pass additional examinations relating to supervisory

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activities and either made margin loans or held customer securities, or receives a transaction-related fee for brokerage activities conducted on behalf of any trust, managing agency or other accounts to which the bank provides investment advice.

[14] *See* letter dated December 20, 1984, from John Wheeler, Secretary, Securities and Exchange Commission, to Ms. Lynnette Carter, Office of the Comptroller of the Currency.

[15] *See* Statement of Policy on Applicability of Glass-Steagall Act to Securities Activities of Subsidiaries of Insured Nonmember Banks, 47 FR 38984 (September 3, 1982).

[16] *See* Unsafe and Unsound Banking Practices, 49 FR 46709 (to be codified at 12 CFR Part 337) (1984). This rule permits acquisition or establishment of a bona fide securities subsidiary, but limits the securities in which the subsidiary may do business. A bona fide subsidiary could underwrite any security in the top four rating categories including debt and equity (both common and marketable preferred), and investment companies meeting certain conditions. The rule places several restrictions on the relationship between the bank, the issuer and the bona fide subsidiary. For example, the rule limits extensions of credit by the bank to its securities subsidiary. The rule also prohibits the insured nonmember bank from purchasing in a fiduciary capacity any security currently distributed, underwritten or issued by the subsidiary unless expressly authorized to do so by the trust documents, court order, local law or all beneficiaries, the purchase is consistent with the fiduciary obligation, or the purchase is permissible under state or federal statute or regulation. The rule also prohibits business transactions between the insured nonmember bank's trust department and its subsidiary unless the transactions are at least comparable to transactions with an unaffiliated securities company. The rule does allow an insured nonmember bank to affiliate with a securities company which deals in or underwrites securities as long as the bank's operations are physically separate from the affiliate's, there is no overlap of officers, name or logo, no joint employee of the bank and affiliate conducts securities activities on the bank's premises which involve customer contact, customers are informed of the separateness of the affiliate, and investments the affiliate recommends, offers or sells are not FDIC or bank guaranteed nor are they obligations of the bank. The rule was recently upheld in *Investment Company Institute* v. *Federal Deposit Insurance Corporation* [Current Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 92,006 (April 23, 1985).

[17] *See* General Counsel's Opinion No. 6—The Legality of Discount Brokerage Services When Offered By Insured Nonmember Banks, 48 FR 22969 (May 23, 1983). *See also* Notice of Proposed Rulemaking, Powers Inconsistent with the Purposes of Federal Deposit Insurance Law, 49 FR 48552 (to be codified at 12 CFR Part 332) (December 13, 1984), which would generally have restricted the manner in which an insured, nonmember bank could provide brokerage services in four ways. First, the bank would only have been permitted to extend credit for securities purchases if the terms and conditions of the extension of credit were consistent with safe and sound banking practice. Second, any compensation received by bank directors, officers or employees acting as broker would have to have been remitted to the bank. Third, the bank would have been required to make customers availing themselves of the brokerage services fully aware that the bank and its representatives were acting in a brokerage capacity and the extension of credit or other financial service provided by the bank would not have been tied to the utilization of the brokerage services. Fourth, the bank would have been expected to comply with any applicable state or federal statute or regulation and meet any applicable state or federal training, education, or other requirements. *But see* Notice of Proposed Rulemaking, Powers Inconsistent with the Purposes of Federal Deposit Insurance Law, 50 FR 23964 (to be codified at 12 CFR Part 332 (June 7, 1985) in which the FDIC has eliminated from its proposed rule all reference to restrictions on brokerage activities (including securities by implication) and has also concluded that, presently, "these activities pose only minimal safety and soundness concerns and that these concerns may be adequately addressed during the examination process or otherwise where the need arises." 50 FR 23988.

[18] *See* Section V, *infra*.

[19] Section 11A(a)(1)(C)(ii). The Commission believes that its statutory mandate to ensure "fair competition among brokers and dealers" should be read broadly to encompass all securities participants engaged in a broker or dealer function. Regulation by function, rather than by outmoded industry classifications, has been endorsed most recently by the Task Group on Regulation of Financial Services. *See Blue Print for Reform: Report of the Task Group on Regulation of Financial Services* at 12, 91 (1984) ("Bush Report"). *See also* Securities Activities of Depository Institutions: Hearings on S. 1220 Before the Subcommittee on Securities of the Senate Committee on Banking, Housing and Urban Affairs, 97th Cong., 2nd Sess. 25 (1982) (Statement of John S.R. Shad, Chairman, Securities and Exchange Commission).

[20] *See, e.g.*, NASD By-Laws, Schedule C, NASD Manual (CCH) ¶ 1102A (1983).

procedures and requirements. These qualifications requirements are supplemented by the broker-dealer's affirmative duty to adequately supervise its employees in order to prevent violations of the federal securities laws,[21] and the specific supervisory procedures imposed by the SROs.[22] The Commission's recent case involving Charles Schwab & Company demonstrates the need for adequate supervisory systems even with respect to the limited securities activities of a discount broker.[23] In addition, the Commission's rules and those of the SROs specifically address potential sales practice abuses.[24] By contrast, bank personnel generally are not subject to any licensing or other regulations designed to test their knowledge of the securities business.

Another area where banking and securities regulation are different is advertising. Broker-dealers must comply with specific guidelines concerning the content and review of advertisements.[25] With certain limited exceptions,[26] there are no equivalent rules governing the advertisement of bank securities activities.

Finally, broker-dealers are subject to examinations by the securities self-regulatory organizations with Commission oversight. These examinations are designed to ensure compliance with the federal securities laws, in particular sales practices and financial responsibility regulations.[27] Banks are subject to examinations by the banking agencies.[28] However, while bank examiners may review for violations of the banking agencies' securities regulations, the primary focus is ensuring the safety and soundness of the bank.

Rule 3b–9 will bring banks within the structure of rules and regulations designed by the Commission and self-regulatory organizations to assure investor protection, as well as reasonably complete and effective regulation of the securities markets, and the maintenance of fair and orderly markets.[29] While the Commission continues to support Congressional review of the financial regulatory system, it remains responsible for assuring that the public policy purposes of the federal securities laws are satisfied. The Commission believes that adoption of Rule 3b–9 is consistent with that responsibility.

IV. Scope of Rule 3b–9

A. General

This section of the release discusses the activities which would render the bank exclusion from broker-dealer registration unavailable and the various exceptions to Rule 34b–9. The Rule as adopted is significantly narrower than the Rule as proposed. The vast majority of the commentators that addressed the scope of Rule 3b–9 focused on the first two prongs: the public solicitation of brokerage business and the receipt of transaction-related compensation for providing brokerage services for trust and other accounts to which the bank provides investment advice. The Commission believes that, as redrafted, the Rule should meet substantially all of the commentators' specific concerns. For the most part, the Rule will not disturb existing arrangements between banks and broker-dealers whereby the bank advertises the broker's services, the broker-dealer performs all brokerage functions, and the bank and broker-dealer share the customer's commissions.[30] In that context, the Commission agrees that the presence of the registered broker-dealer, fully subject to the securities laws, adequately addresses any regulatory concerns. The Commission continues to believe, however, that substantial regulatory concerns are raised where the bank has, in effect, "internalized" the brokerage service function and its employees take orders from customers and handle customer funds and securities. Most bank securities activities requiring broker-dealer registration under Rule 3b–9 would appear to fall within one of the three distinct types of activities identified in the Rule. Nevertheless, there may be some bank securities activities which may arguably fall within more than one of the three categories. For this reason, bank securities activities should be analyzed under all parts of Rule 3b–9 in order to determine whether they are required to be conducted through registered broker-dealers.

B. Public Solicitation of Brokerage Business

The first activity that is covered by Rule 3b–9 is the public solicitation of brokerage business. Under the public solicitation standard, a bank that publicly promotes the availability of internalized brokerage services and receives transaction-related compensation for brokerage trades effected as a result of that promotion would be required either to register as a broker-dealer, or to conduct that activity through a subsidiary or an affiliate registered with the Commission as a registered broker-dealer.[31]

Many of the commentators on the proposed Rule suggested that the Commission define the term "public solicitation." As discussed below, this prong of the Rule has been narrowed substantially to except most banks that enter into contractual or other arrangements with registered broker-dealers which contemplate that the bank will mail out literature promoting the availability of brokerage services.

Under those circumstances, the Commission has determined not to define the term "public solicitation." The Commission believes that it is relatively clear that a bank which does not fit within the "networking" exception, and which sends out literature to its customers promoting the availability of its brokerage services or otherwise advertises those services through newspaper or magazine advertisements, would be publicly soliciting brokerage business. In addition, a bank that actively solicits customers to participate in self-directed IRA accounts or other accounts maintained at the bank over which the bank does not exercise investment discretion or to which it does not render investment advice, and receives transaction-related

[21] Exchange Act section 15(b)(4)(E).

[22] *See, e.g.*, NASD Rules of Fair Practice, Art. III, Section 27, NASD Manual (CCH) ¶ 2177 (1983); NYSE Rules 342.18, 405(2), 2 NYSE Guide (CCH) ¶¶ 2342.18, 2405(2) (1983).

[23] *In re Charles Schwab & Co. Inc.*, Admin Pro. File 3–6222 (Dec. 28, 1983), Fed. Sec. L. Rep. [1983–84] (CCH) ¶ 83,469; Notice that Initial Decision has become Final: Securities Exchange Act Release No. 20595 (Jan. 26, 1984). In this case Charles Schwab was found to have inadequately supervised an assistant branch manager who, in clear view of other employees, including supervisory personnel, openly conducted a fraudulent securities business, inducing clients to pay cash for allegedly "discount" securities which, in fact, did not exist. The assistant branch manager deposited the funds he collected in hiw own account, and used Schwab stationery and checks to carry out the scheme, without the Charles Schwab organization noticing any suspicious activity.

[24] *See* text and nn. 43–44, *infra*.

[25] *See e.g.*, NASD Rules of Fair Practice, Art. III, Section 35, NASD Manual (CCH) ¶ 2195 (1983).

[26] 12 CFR 9.18(b)(5) (1983) (Comptroller: Advertising of Common Trust Funds); 12 CFR 225.125(1) (1983) (Federal Reserve Board Advisory Services for Investment Companies).

[27] *See* Sections 6(b)(1) and 15A(b)(2) of the Exchange Act.

[28] *See, e.g.*, 12 U.S.C. 481, 12 CFR 4.11, 5.34.

[29] *See* Section 2 of the Exchange Act.

[30] These arrangements often resemble networking arrangements which the Commission has approved for savings and loan institutions. *See* text and nn. 32–39, *infra*.

[31] As discussed at text and nn. 46–47, *infra*, the Commission has defined "transaction-related compensation" in paragraph (d) of the Rule as "monetary profit above cost recovery for brokerage execution services."

compensation for the trades it executed where the bank as a matter of course provides execution as well as custodial services, would be engaged in the public solicitation of brokerage business. However, the Commission would consider exercising its exemptive authority if customers are permitted to independently choose the entity, either a broker-dealer or the bank's internal trading facility, through which the self-directed trades are executed.

As adopted, paragraph (a)(1) of the Rule would not require registration if the bank enters into a contractual or other arrangement with a registered broker-dealer pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, provided that (i) the broker-dealer is clearly identified as the person performing the brokerage services; (ii) bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless they are qualified as registered representatives pursuant to the requirements of the securities self-regulatory organizations, ("SROs"), such as the National Association of Securities Dealers, Inc.; (iii) banks employees do not receive compensation either directly or indirectly related to the volume of securities transactions they effect, unless they are qualified as registered representatives pursuant to the SRO's requirements,[32] and (iv) the broker-dealer performs clearing services for the bank on a fully disclosed basis.[33]

In general, this proviso to the Rule is intended to permit banks to continue to engage in so-called "networking" arrangements with registered broker-dealers. These arrangements have been the subject of numerous no-action letters issued to savings and loan associations proposing to engage in brokerage activities.[34] In addition, the OCC has recently expressed the view that national banks may engage in the so-called "INVEST" program, whereby brokerage services provided by a registered broker-dealer would be offered on the bank's premises.[35]

Under the Rule, the arrangements between the bank and the broker-dealer (which can be an independent broker-dealer, or a subsidiary or affiliate of the bank) may contemplate that the brokerage services will be offered on or off the premises of the bank. For example, a bank may contract to advertise the availability of the registered broker-dealer services through promotional literature that provides a toll-free or other telephone number for the placement of orders by customers directly with the broker. Similarly, a bank might provide space in one or more of its offices for registered representatives of a registered broker-dealer to accept orders.[36] If the requirements of paragraphs (a)(1) (i)–(iv) are met, no separate broker-dealer registration requirement would apply.

Under paragraph (a)(1)(i), the bank may work with the broker-dealer in developing the advertisements and other literature promoting the brokerage services, but such literature must be approved by the broker-dealer. For purposes of the advertising and promotional provisions of the NASD's Rules of Fair Practice, the literature will be viewed as that of the broker-dealer.[37] The sales literature should clearly inform prospective customers that the registered broker-dealer rather than the bank will be performing the brokerage function.

Under paragraph (a)(1)(ii), bank employees may perform only clerical and ministerial functions in connection with brokerage transactions, unless they are qualified as registered representatives.[38] For example, bank employees may hand out advertising material to prospective customers and assist them in filling out basic information on account opening forms (*e.g.*, name, address, social security number). In general, the Commission would not consider the handling of customer funds or securities to be clerical or ministerial in nature.[39] The Commission would also take the position that the bank employee's handling of customer orders, even if the orders are immediately forwarded to a broker-dealer for execution, is not clerical or ministerial. The staff of the Commission's Division of Market Regulation will provide interpretive assistance in particular situations concerning whether a bank employee's activities should be considered to be clerical and ministerial in nature.

Under paragraph (a)(1)(iii), bank employees may not receive compensation for brokerage related activities unless such employees are qualified as registered representatives. Thus, if the bank chooses to have its employees perform activities that are more than clerical and ministerial in nature in connection with brokerage transactions, or permits them to receive compensation related directly or indirectly to the volume of securities transactions, such employees must be qualified as registered representatives pursuant to the SRO's requirements. These persons would be duly employees of the broker-dealer and bank, supervised by the broker-dealer in connection with their brokerage activities as "associated persons" of the broker-dealer within the meaning of Section 3(a)(18) of the Exchange Act. A bank involved in a "networking" arrangement would be an associated person of the broker-dealer.

Paragraph (a)(1)(iv) will require the broker-dealer to perform services on a basis in which all customers are fully disclosed. This will ensure that the Commission has access to all customer records to facilitate its ability to examine the broker-dealer and detect any potential violations of the securities laws regarding bank-related accounts.

Increasingly, banks are making available, or selling, to their customers shares of bank sponsored or independent registered investment companies. In this regard, some banks have entered into agreements with fund principal underwriters to split the sales load on the sale of fund shares to bank customers, while others receive fees for a variety of services under Rule 12b–1 distribution plans adopted by registered investment companies.[40]

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[32] A portion of the commissions generated by brokerage transactions of the bank's customers could, however, be paid to the bank.

[33] In a "fully disclosed" arrangement, the clearing broker-dealer holds all accounts in the individual customer's name. In an "omnibus" arrangement, the clearing broker-dealer would hold the account in the name of the bank, which would, in turn, hold the individual customers' accounts.

[34] The Commission has taken the position that savings and loan associations are not "banks" within the definition contained in Section 3(a)(6) and therefore cannot rely on the bank exclusion from broker-dealer registration. *Cf.* letter to Thomas A. Russo, Esq. [1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶77,228.

[35] *See* letter to Thomas A. Russo, Esq. (June 4, 1985) (from Richard V. Fitzgerald, Chief Counsel, Office of the Comptroller of the Currency).

[36] In this situation, the registered representaitves of the registered broker-dealer could also be employees of the bank.

[37] *See* NASD Rules of Fair Practice, Article III, Section 35, NASD Manual (CCH) ¶2195 (1983)

[38] *See* NASD Certificate of Incorporation and By-laws, Article I, Schedule C, NASD Manual (CCH) ¶1102A (1983).

[39] Bank employees could, however, debit and credit bank customers' accounts through electronic transfer systems, unless the customer directs otherwise. *See, e.g.*, letters to Michael L. Seabolt, Esq., (November 15, 1983), Edward J. McAniff, Esq., (April 27, 1983), Evelyn N. Howard-Hand (February 28, 1983), Robert C. Pozen, Esq. (December 1, 1982).

[40] Rule 12b–1 under the Investment Company Act of 1940 permits open-end investment companies which distribute their own securities other than through an underwriter to compensate investment advisers or others for assisting in the distribution of the company's securities, so long as each company's board of directors approves a written plan describing the financing of the distribution.

Where fees paid under 12b–1 plans are used for the payment of bona fide administrative services[41], such activities would generally appear unlikely to be considered either transaction-related charges[42] or underwriting under the federal securities laws. Nevertheless, a bank that publicly solicits the purchase of fund shares and receives Rule 12b–1 plan fees in the form of transaction-related compensation would be engaged in the kind of activity covered under the first prong of the Rule. Similarly, if the bank receives transaction-related compensation from transactions for advised acounts, the activity would be covered under the second prong of Rule 3b–9. In addition, the nature and extent of the bank's promotion of fund shares and the fees received may suggest that the bank is acting as an underwriter and that the activity is covered by the third prong of the Rule.

Of course, the networking exception to paragraph (a)(1) would be available to the extent these arrangements would otherwise be covered by paragraph (a)(1). In addition, as discussed in Section IV.E., the Commission has adopted a specific exception for transactions in connection with so-called "sweep" arrangements with no-load funds that attempt to maintain a constant net asset value which might be applicable.

Finally, to the extent that the Commission determines that these arrangements are not within the intended meaning and purpose of the Rule, it may grant exemptions from the Rule. Banks involved in selling shares of investment companies to their customers should analyze the applicability of the Rule to their specific arrangements. The Commission's staff will provide interpretive advice where necessary.

C. Receipt of Transaction-Related Compensation in Connection with Execution for Advised Accounts

Paragraph (a)(2) of Rule 3b–9 would cause the bank exclusion in Sections 3(a)(4) and 3(a)(5) to be unavailable to a bank that receives transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides investment advice ("covered accounts"). For the purposes of this provision, the Commission interprets "investment advice" to include individualized advice as well as investment seminars and research on particular securities or groups of securities that is disseminated generally to covered accounts. The Commission received a substantial number of comments on this provision of the Rule. The primary concerns of the commentators were that the Rule should not interfere with traditional bank trust department activities, and that the Commission should define what would constitute "transaction-related compensation."

Banks that exercise investment discretion or provide investment advice to accounts from which the bank also generates profits from the execution of transactions are performing activities that are not any different from those of full-service broker-dealers.

The Commission's experience in administering the federal securities laws has been that such transaction-related compensation can provide the inducement for a variety of illegal conduct, including churning[43] and unsuitable recommendations.[44] The Commission believes that its rules and those of the self-regulatory organizations will meaningfully supplement banking regulation in the context of these transactions. For example, it is well-recognized that the antifraud provisions of the Exchange Act prohibit broker-dealers from engaging in a variety of illegal practices in the securities industry, including churning customer accounts, and recommending securities transactions that are not suitable for the customer.

The Commission does not believe that paragraph (a)(2) of the Rule will significantly affect traditional bank trust department activity. The Commission understands that the receipt of transaction-related compensation from covered accounts presently occurs on a limited basis because of applicable fiduciary standards. These standards generally prevent a bank from profiting on a transaction entered into on behalf of a trust account apart from the fees it receives for discharging its fiduciary responsibilities. The staff of the Board of Governors of the Federal Reserve System has expressed the view that:

> the receipt of commission income for securities brokerage transactions entered into on behalf of a trust account, in addition to the fee received for account administration, raises conflict of interest considerations to which traditional prohibitions of fiduciary law are directed.[45]

Under the standards articulated by the Board's staff, in the absence of authorization under state law, the bank would be required to obtain clearly expressed written consent from the account's beneficiaries after disclosure of the fee arrangement before imposing such fees.[46] Depending on the type of account, such consent may be difficult to obtain. Nevertheless, where that consent is obtained, or is not required, applicability of the broker-dealer regulatory requirements is appropriate.

In response to the concerns raised by the commentators, the Commission has defined the term "transaction-related compensation" in paragraph (d) of the Rule as "monetary profit above cost recovery for brokerage execution services." Thus, assuming that the other requirements of paragraph (a)(2) applied, broker-dealer registration would be required if a bank executed trades through a registered broker-dealer which received commissions from the covered account and then shared a percentage of the commissions with the bank, or if a bank executing transactions internally required that covered accounts pay brokerage fees which exceeded the cost of execution.[47]

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[41] *See, e.g.*, Banks May Execute Customers' Instructions to Buy and Sell Shares in Tax-Exempt Mutual Funds, (letter from Peter Liebesman, Legal Advisory Services Division, Office of the Comptroller of the Currency) (March 8, 1985), [Current Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,502.

[42] The registration statements filed with the Commission by those banks which are currently offering pooled IRA funds to their IRA trust customers show that such banks currently receive fees covering, *inter alia*, investment advisory, transfer agent, custodial and administrative costs. Accordingly, receipt of such fees would not appear to constitute transaction-related compensation.

[43] The term "churning" in the context of the securities laws "denotes a course of excessive trading through which a broker advances his own interests (*e.g.*, commission based on volume) over those of his customer." *Costello* v. *Oppenheimer & Co., Inc.*, [1982–83 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 99,254 (7th Cir. 1983).

[44] *See Clark* v. *John Lamula Investors, Inc.*, 583 F.2d 594 (2d Cir. 1978); *In the Matter of Michael Batterman, et al.*, 46 SEC 304 (1976). *See generally, L. Loss, Fundamentals of Securities Regulation* 968–77 (1983). *See also* NASD Rules of Fair Practice, Art. III, Section 2, NASD Manual (CCH) ¶ 2152. NYSE Rule 405.

[45] Banking Practices-Trust Departments' Use of Discount Brokerage Services, Staff Opinion, Federal Reserve Regulatory Service, § 347.11 (September 19, 1983), and authorities cited therein. *See also* OCC, Trust Banking Circular 23 (October 4, 1983). The OCC stated that banks must be able to demonstrate that their charges are limited to an amount necessary to recover transaction costs. While both of these opinions chiefly are addressed to the propriety of banks' executing transactions for covered accounts through an affiliated broker-dealer, the Commission understands that the same fiduciary principles would apply in the context of transactions effected through an unaffiliated broker.

[46] *Id.*

[47] The Commission preliminarily believes that cost recovery for brokerage execution services should be limited to the incremental costs directly attributable to providing that service. The Division of Market Regulation will respond to interpretive questions relative to cost recovery.

The Commission recognizes, however, that it may be appropriate for banks to impose management or administrative fees on covered accounts based, at least in part, on the anticipated volume of securities trading the bank engages in on behalf of the account. The Commission believes that accounts which are more active may require more attention from managers, and that the bank may be compensated accordingly without such compensation being considered "transaction-related" and therefore requiring registration as a broker-dealer. The Commission is concerned, however, that these administrative fees not be used to circumvent the Rule. Therefore, a bank must demonstrate that any such differential administrative fee is reasonably related to the increased costs of handling a high volume account.[48]

If the bank does receive transaction-related compensation, directly or indirectly, for providing brokerage services to covered accounts, and none of the exceptions to the Rule are available,[49] it will be required to either register as a broker-dealer, or to place the investment advice and execution function in a registered broker-dealer affiliate or subsidiary. The Commission believes that where a bank has linked investment advice and execution services both functions must be carried out in a registered broker-dealer in order to meet the purposes of the Exchange Act.[50] While some commentators suggested that it would be appropriate to leave the investment advisory service in the bank, the Commission believes that advisory activities when combined with transaction-related compensation raise many of the churning, customer suitability and other sales practice concerns addressed by the Exchange Act and the rules of the SROs.

At the same time the Commission does not wish to unnecessarily impinge on traditional trust activity. In this connection, the Commission recognizes that rather than inextricably linking these two services, some banks may permit their covered accounts to independently choose the broker-dealer through whom the bank would execute transactions. Paragraph (a)(2) of Rule 3b-9 will not apply to any bank which permits such choice under certain circumstances. Specifically, paragraph (a)(2) will not apply if: (1) The customer is free to choose the executing broker-dealer and such choice is affirmative, with no provision that sends trades automatically to the bank's affiliate or subsidiary broker-dealer if a customer makes no choice; (2) the bank's personnel do not receive any transaction-related compensation for the trades executed for covered accounts or compensation related to the number of accounts choosing to use the broker/dealer[51] and (3) the executing broker-dealer carries the accounts on a fully disclosed basis.

The Commission also recognizes that there may be instances where the bank receives transaction-related compensation from a small number of covered accounts and that it would be an inefficient division of the bank's business to require those accounts to be placed in a broker-dealer. The Commission expects to employ the general exemptive authority provided in the Rule, however, to give relief in such cases where the costs of registration outweigh any potential investor protection concerns.

D. Dealing in and Underwriting of Securities.

Paragraph (a)(3) of Rule 3b-9 provides that the bank exclusions in Sections 3(a)(4) and 3(a)(5) are unavailable to a bank that deals in or underwrites securities.[52] For purposes of the Rule, the Commission interprets "underwrite" consistent with the definition of the term "underwriter" in Section 2(11) of the Securities Act of 1933.[53] Accordingly, a bank would be required to conduct both "best efforts" and "firm commitment" underwriting in a registered broker-dealer subsidiary of affiliate.[54]

E. Exceptions and Exemptions

Paragraph (b) of Rule 3b-9 excepts from its scope banks which effect transactions in certain securities or under certain circumstances. In addition, in paragraph (c) of the Rule the Commission has reserved authority to exempt from Rule 3b-9, when necessary, other bank securities activities which the Commission deems not within the intended meaning and purpose of Rule 3b-9. These paragraphs will permit banks to continue certain present securities activities without registering as broker-dealers.

Under paragraph (b)(1), a bank may effect transactions in exempted securities, as defined in the Exchange Act, or in commercial paper, bankers' acceptances, or commercial bills only, without broker-dealer registration. Section 15(a) of the Exchange Act explicitly exempts brokers and dealers of these securities from the registration requirement. Paragraph (b)(1) also excepts from broker-dealer registration banks effecting transactions in municipal securities. This exception reflects the Commission's intent to avoid any disruption of the existing statutory scheme. Presently, banks that deal in municipal securities are required to register as municipal securities dealers.[55] Because the municipal securities regulatory scheme enacted by Congress in 1975 requires only municipal securities dealers to register, the Commission does not intend to impose registration on bank municipal

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[48] In the OCC Trust Banking Circular, *supra*, n. 45, the OCC stated that if a fee were imposed to cover the cost of execution, the bank would be expected to include in its records a justification demonstrating through a detailed cost analysis that the amount of fee charged was justified by the cost. The OCC emphasized that such transactions should under no circumstances result in a profit for the bank or a bank's broker-dealer affiliate or subsidiary.

[49] As discussed *infra* at Part IV.E., the Rule contains seven exceptions, including an exception for banks that effect no more than 1,000 transaction per year.

[50] The Commission has revised paragraph (a)(2) of the Rule to provide that banks engaging "directly or indirectly" in any of the activities in subparagraphs (i)-(iii) will not be included in the statutory exception in order to clarify that a bank cannot create a subsidiary or affiliate for only its execution services if it links those services with its investment advisory services.

[51] Personnel of affiliates or subsidiaries of the bank involved in the execution of transactions in covered accounts would not be prohibited from receiving transaction-related compensation.

[52] In determining whether particular bank securities activities would constitute "underwriting" for purposes of Rule 3b-9, the Commission is not expressing any view on whether those activities would constitute "underwriting" for purposes of the Glass-Steagall Act.

[53] Section 2(11) provides that "underwriter": means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributors' or sellers' commission.

[54] In a firm commitment underwriting, one or more investment banking firms agree to purchase the securities from the issuer for resale at a specified offering price. In a best efforts underwriting, broker-dealers do not purchase the securities from the issuer but instead agree for an agent's commission to use their best efforts to sell the securities on behalf of the issuer at the offering price.

[55] A municipal securities dealer is defined in section 3(a)(30) of the Exchange Act as: any person (including a separately identifiable department or division of a bank) engaged in the business of buying and selling municipal securities for his own account . . . but does not include— (B) a bank, unless the bank is engaged in the business of buying and selling municipal securities for its own account other than in a fiduciary capacity . . . *Provided, however,* that if the bank is engaged in such business through a separately identifiable department or division . . ., the department or division and not the bank itself shall be deemed to be the municipal securities dealer.

securities brokers[56] and therefore this exception has been included in the Rule.

Paragraph (b)(2) incorporates a *de minimis* exception into the Rule. The exception permits banks to engage in 1,000 securities transactions each year without registering as a broker-dealer. Many commentators suggested that such an exception is essential in order to permit banks to continue providing traditional accommodation services to their banking customers. In addition, the *de minimis* exception may be available to small or rural banks that engage in limited securities activities. This exception will allow banks to effect an average of five trades per business day, regardless of the size of the trade. A bank may exclude exempted and municipal securities in calculating the 1,000 transactions. In order to prevent abuse of this exception, however, banks will not be able to carry unused trades into the next year's permissible number.

Under paragraph (b)(3), banks which effect transactions for the investment portfolio of affiliated *companies* only would be excepted from the registration requirement of Rule 3b–9. These transactions are a logical outgrowth of the investment purchases a bank is permitted to make for its own investment portfolio and therefore the Commission believes that this exception is appropriate.

Paragraph (b)(4) provides an exception for banks that operate certain sweep accounts. Specifically, the exception permits a bank to direct its customers' deposit funds into investment companies registered pursuant to the Investment Company Act of 1940 which do not charge a sales load and attempt to maintain a constant net asset value. Given the automatic nature of these transactions, the constant net asset value of the shares, and the absence of a sales load, the Commission does not believe that there is any serious risk of abuse in this area.

Under paragraph (b)(5), the Commission provides an exception from broker-dealer registration for banks that effect transactions as part of a variety of shareholder and employee plans.[57] This exception recognizes that banks have been engaging in such securities activities for many years without raising significant investor protection concerns.

In response to comments received, the Commission has also excepted in paragraph (b)(6) transactions effected in reliance upon sections 3(b), 4(2) and 4(6) of the Securities Act of 1933 and the rules and regulations thereunder.[58]

Paragraph (b)(7) provides an exemption for banks which are subject to Section 15(e) of the Exchange Act.[59] This exception, like paragraph (b)(1), reflects the Commission's intent to avoid disruption of the existing statutory scheme which permits persons that are not brokers or dealers to retain membership on a national securities exchange if such persons were members or member firms of a national securities exchange on the date of enactment of the Securities Act Amendments of 1975, and permits natural persons who become associated persons of the members or member firms to obtain membership on a national securities exchange.[60]

Under paragraph (c), the Commission has reserved exemptive authority in order to insure that Rule 3b–9 is not applied inappropriately to banks that provide services that appear to come within the letter of the Rule, but are not within the intended meaning and purpose of Rule 3b–9. The Commission will evaluate written requests for exemptive relief on a case-by-case basis. The Commission may grant an exemption unconditionally or with specific conditions designed to further the purposes of the Rule.

V. Statutory Authority

Section 15 of the Exchage Act requires all brokers and dealers to register with the Commission unless an exemption is available. As defined in section 3(a)(4) and 3(a)(5), the terms "broker" and "dealer" exclude a "bank" as defined in section 3(a)(6). All of the Exchange Act definitions, however, are preceded by the phrase "unless the context otherwise requires." In addition, under section 3(b) of the Exchange Act, the Commission has the authority to define terms.[61] Rule 3b–9 defines activities that the Commission believes to be outside the bank exclusion.

The context in which the bank exclusion was enacted in 1934 has changed significantly. Although the legislative history of the bank exclusion is not extensive, the hearings on the predecessor bills to the Exchange Act contain references to the limited nature of bank securities activities permitted at that time.[62] Testimony during hearings on predecessor bills to the Exchange Act presumed that banks were limited to accommodation transactions as a convenience to customers.[63]

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[56] Section 15B(a)(1) makes it ulawful for any municipal securities dealer (other than one registered as a broker-dealer under section 15) to effect transactions in municipal securities without registering as a municipal securities dealer.

[57] See text at n. 67, *infra*.

[58] The Commission wishes to emphasize, however, that the determination of those transactions which do not involve a public offering in which banks may participate must be made by reference to the federal securities laws. On June 4, 1985 the Federal Reserve Board issued a statement concerning the commercial paper activities of Bankers Trust Company of New York which the Supreme Court considered in *Securities Industry Association* v. *Board of Governors of the Federal Reserve System*, 104 S.CT. 2979 (1984). Statement Concerning Applicability of the Glass-Steagall Act to the Commercial Paper Placement Activities of Bankers Trust Company ("Statement"). The Board concluded that Bankers Trust's activities as agent in placing commercial paper with institutional investors constituted a private offering, and hence, were not "underwriting" or "distributing" for purposes of the Glass-Steagall Act. It is the Commission's view, however, that the fact that an offering is exempt from registration pursuant to one of the exemptions specified in paragraph (b)(6) does not necessarily mean that no "distribution" has occurred, as that term is used in the definition of "underwriter" in section 2(11) of the Securities Act of 1933. In addition, as the Federal Reserve Board recognized, the factors that are relevant to a determination of what constitutes a private offering for purposes of the federal securities laws are not necessarily the same factors as those that are relevant for the purposes of determining whether there has been an underwriting or distribution under the Glass-Steagall Act. For example, the Federal Reserve Board noted that a bank may publicize its status as agent-adviser for commercial paper issues in business publications without violating the Glass-Steagall Act's prohibition against underwriting based on the assumption that such statements may not constitute offers since that do not promote the securities of a particular issuer. *See* Statement at 29 n.31. By contrast, the exception contained in paragraph (b)(6) might not be available under such circumstances, if the business publication or other communications to potential purchasers constituted a general solicitation.

[59] Section 15(e) of the Exchange Act authorizes the Commission to require any member of a national securities exchange not required to register under section 15, and its associated persons, to comply with any provision of the Exchange Act, except section 15(a) or the rules and regulations thereunder, which regulates or prohibits acts, practices or courses of business by borkers, dealers, registered brokers or dealers, or associated persons of brokers and dealers.

[60] *See* Securities Exchange Act of 1934 Section 6(c)(4), 15 U.S.C. 78f(c)(4); Securities Acts Amendments of 1975, section 31(a).

[61] Section 3(b) of the Exchange Act, in relevant part, provides that "The Commission shall have the power by rules and regulations to define technical, trade, accounting, and other terms used in this [Act], consistently with the provisions and purposes of the [Act]." The Commission disagrees with the suggestions of some commentators that this section should be read narrowly. The language of this section explicitly includes "other terms" as a catch all for any needed definitions. By the addition of "other terms" Congress intended "to broaden the authority of the Commission . . . to make clear that [it] may define any terms used in the Exchange Act, whether or not it is already defined in the title." S. Rep. No. 70, 94th Cong., 1st Sess. 94 (1975).

[62] National Securities Exchange Act of 1934: Hearing on H.R. 7852 and H.R. 8720 Before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2d Sess. 85–86, 686–87 (1934); Hearings on Stock Exchange Practices Before the Senate Committee on Banking and Currency, Pts. 15–17, 73rd Cong., 1st Sess. 6470–71 (1933).

[63] *See, e.g.*, Stock Exchange Practices: Hearings before the Senate Committee on Banking and Currency on S. R. 84, 56, 97, Pts. 15–17, 73rd Cong., 1st Sess. 6470 (1933) (Testimony of Thomas G. Corcoran, Counsel with the Reconstruction Finance

Continued

Many of the commentators that addressed the Commission's authority to adopt Rule 3b–9 suggested that the "context" language contained in the Exchange Act was unavailable because recent bank regulatory decisions under the Glass-Steagall Act permit banks to engage in substantial securities activities. The Commission believes that any analysis of whether bank securities activities have materially changed must initially focus on the environment in 1934.

Congress granted the national banking regulators the authority to set guidelines as to permissible bank securities activities under the Glass-Steagall Act.[64] It appears, however, that at the time the Congress enacted sections 3(a)(4) and 3(a)(5), banks were limited almost exclusively to accommodate services. For example, in 1934 and 1935, both the OCC and the Federal Reserve Board issued interpretations as to whether the Glass-Steagall Act permitted national banks and state member banks to "purchase corporate stock solely upon the order and for the account of others."[65] Both the OCC and the Board held that such purchases were permissible. The OCC specifically stated that:

> national banks have the right to purchase and sell stocks solely upon the order and for the account of customers. *This does not mean that national banks may do a brokerage business and any charge must not exceed the actual cost of servicing.* [emphasis supplied][66]

In its Bank Study, the Commission found that, with the exception of their presence in the administration of dividend reinvestment plans, banks provided limited brokerage services to customers.[67] Even in the case of accommodation trading for customers (referred to in the Bank Study as "customer transaction service"), the Commission found that:

> the service is a distinctly informal service provided as an accommodation to bank customers. As an accommodation, it is not marketed to bank customers, is rarely mentioned in bank literature, and, viewed separately, is uniformly unprofitable to the bank.[68]

In fact, the Bank Study cited only one bank that was providing a formalized customer transaction service which it advertised and for which it charged brokerage fees.[69]

In its Final Report on bank securities activities, the Commission concluded that it was not necessary to require bank officers and employees to pass special qualifications examinations in connection with their occasional contact with investors in accommodation trades.[70] The Commission stated that this conclusion should be understood to be applicable only to the traditional informal accommodation service provided by banks to their customers. The Commission indicated that experience with the mass merchandising of such services was scant, and that:

> in terms of the need for personnel competency standards, as well as for other aspects of broker-dealer regulation, the possibility that banks may begin offering services of that type presents public policy considerations that may differ significantly from those presented by customer transaction service.[71]

By contrast, the Commission believes that a thousand or more banks are now actively promoting brokerage services to the public. In exchange for promotional and order-handling services, the banks receive a portion of the customer's commissions paid to the entity that executes the securities transactions. These activities substantially change the nature of brokerage services offered by banks. Rather than merely providing accommodation services to existing customers, services are provided that are functionally the same as those offered by registered broker-dealers. While the Commission is not aware of any comprehensive statistical studies in this area, a representative study was conducted by the Office of the Comptroller of the Currency, the result of which it published in its proposal in April 1984.[72] The OCC surveyed 500 national banks and found that 55 percent were offering discount brokerage services. For the reasons discussed above, the Commission believes these profound developments cause Rule 3b–9 to be consistent with the statutory goals of ensuring the protection of investors and fair competition among brokers and dealers. The Commission also believes that those public policy concerns expressed in the Bank Study have indeed changed, and that it is appropriate for the Commission to adopt Rule 3b–9 to address them.

Use of the context analysis to reach judgments as to the scope of definitions in the securities laws is not without precedent. In *Marine Bank* v. *Weaver*,[73] the Supreme Court decided that the introductory language in Section 3(a) of the Exchange Act mandates an analysis of the context of a securities transaction in order to determine whether a certificate of deposit falls within the definition of a "security" under the antifraud provisions of the federal securities laws. A similar approach was used by Justice Brennan in his concurring opinion in *Securities and Exchange Commission* v. *Variable Annuity Life Insurance Company of America*.[74] Justice Brennan concluded that the scope of the exclusions in the federal securities laws must be examined in view of their regulatory purposes.[75]

VI. Coordinated Regulatory Action

Several commentators expressed concern about the possibility of duplicative regulation of banks by the federal banking regulators and the Commission. The Commission expects to work closely with the federal banking regulators in all areas of mutual concern to eliminate duplicative regulation to the greatest extent possible. The Commission and the federal banking regulators presently cooperate with considerable success with respect to

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Corporation). *See also*, National Securities Exchange Act of 1934: Hearing on H.R. 7852 and H.R. 8720 Before the House Committee on Insterstate and Foreign Commerce, 73rd Cong., 2nd Sess. 86; *Bank Allowed to Continue Stock Service*, The Bankers Magazine 699 (June 1934).

[64] *See* Section 16 of the Glass-Steagall Act (12 U.S.C. Section 24 (Seventh)) which directs the OCC to determine securities that a bank may own and handle.

[65] *See, e.g.*, 20 Fed. Res. Bull. 609 (1934); 1 *Bulletin of the Comptroller of the Currency*, No. 2, October 26, 1935, at 2–3, *cited in New York Stock Exchange* v. *Smith*, 404 F.Supp. 1091, 1097 (D.D.C. 1975); *Banks Allowed to Continue Stock Service*, *supra*.

[66] 1 *Bulletin of the Comptroller of the Currency*, No. 2, October 26, 1935 at 2–3, *cited in New York Stock Exchange* v. *Smith*, 404 F. Supp. 1091, 1097 (D.D.C. 1975).

[67] Bank Study, Initial Report at 11.

[68] *Id.* at 78.

[69] *Id.* at 89. The data relied upon by the Commission consisted of responses to a questionnaire mailed to: (1) The largest 100 commercial banks ranked by market value of trust assets as of year-end 1974; (2) the eight largest non-depository trust companies; (3) every 15th bank from 101 through 1,000 ranked by total assets; (4) every 200th bank from 1,001 through the remainder of insured banks ranked by total bank assets; and (5) all other banks known to offer a dividend reinvestment plan or automatic investment service. *Id.* at Appendix B.

[70] Bank Study, Final Report at 22.

[71] *Id. See also* Securities Act Release No. 5491 (April 30, 1974) announcing the Commission's inquiry concerning bank securities activities in which the Commission stated that: the . . . definition of the terms . . . broker, dealer, and bank are not, however, to be construed in an inflexible or rigid manner. As is made clear in the definitional section of the federal securities laws, the foregoing definitions may be modified, altered, or even inapplicable "if the context otherwise requires."

[72] See text and nn. 13–14, *supra*.

[73] 455 U.S. 551 (1982).

[74] 359 U.S. 65 (1959). *See also Gary Plastic Packaging, Inc.* v. *Merrill Lynch, Pierce, Fenner and Smith* [Current Transfer Binder] Fed. Sec. L. Rep. (CCH ¶91,951 (2d Cir. 1985); *Prudential Insurance Co. of America* v. *Securities and Exchange Commission*, 326 F.2d 383 (3d Cir. 1964).

[75] *Id.*

regulation of municipal securities dealers[76] and transfer agents and clearing agencies.[77] Such continued coordinated regulation is essential for successful functional regulation. The Commission therefore intends to consult and coordinate with the federal banking regulators, particularly regarding examinations and inspections, where there is shared jurisdiction over a registered broker-dealer subsidiary or affiliate of a bank.[78] The Commission anticipates that close inter-agency coordination will be an effective method of regulation of bank securities activities.

VII. Certain Findings, Effective Date and Statutory Basis

Section 23(a)(2) of the Exchange Act[79] requires the Commission, in adopting rules under that Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Exchange Act. The Commission has considered proposed Rule 3b–9 in light of the standards cited in Section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b), interested persons were given an opportunity to submit written views on proposed Rule 3b–9. After consideration of the relevant matters presented, the Rule is adopted substantially as proposed with certain exceptions added as suggested by the commentators. In response to commentators' suggestions, the Rule has been amended to not require banks to register as broker-dealers if they engage in certain "networking" activities. In addition, the Rule has been amended pursuant to commentators' suggestions to include a *de minimis* exception as well as several other exceptions.

The effective date for Rule 3b–9 is January 1, 1986.

VIII. Summary of Final Regulatory Flexibility Analysis

The Commission has prepared a Final Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding Rule 3b–9. The Analysis notes that Rule 3b–9 is necessary to protect investors, to maintain fair and orderly markets, and to assure reasonably complete and effective regulation of the securities markets. The Analysis states that only two commentators referred to the Initial Regulatory Flexibility Analysis in discussing the additional regulatory and recordkeeping requirements which Rule 3b–9 would impose on banks. The Analysis points out that in response to commentators' concerns about the costs involved in compliance with Rule 3b–9, the Commission adopted exceptions which should eliminate the cost burden on most small banks.

A copy of the Final Regulatory Flexibility Analysis may be obtained by contacting Amy Natterson Kroll, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, (202) 272–2848.

IX. Statutory Basis

The Securities and Exchange Commission, acting pursuant to the Exchange Act, particularly sections 2, 3, 15, and 23(a) (15 U.S.C. 78b, 78c, 78*o*, 78w(a)), hereby amends Chapter II, Title 17 of the Code of Federal Regulations by adding § 240.3b–9 thereto.

Lists of Subjects in 17 CFR Part 240

Securities, Banks, Brokers.

Text of Rule 3b–9

Chapter II, Title 17 of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following cite:

Authority: Sec. 23, 48 Stat. 901, as amended (15 U.S.C. 78w) * * * Section 240.3b–9 also issued under secs. 2, 3 and 15, 89 Stat. 97, as amended, 89 Stat. 121, as amended (15 U.S.C. 78b, 78c, 78o) * * *.

2. In Part 240, § 240.3b–9 is added to read as follows:

§ 240.3b–9 Definition of "bank" for purposes of sections 3(a) (4) and (5) of the Act.

(a) The term "bank" as used in the definition of "broker" and "dealer" in sections 3(a) (4) and (5) of the Act does not include a bank that:

(1) Publicly solicits brokerage business for which it receives transaction-related compensation, unless the bank enters into a contractual or other arrangement with a broker-dealer registered under the Act pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, provided that:

(i) Such broker-dealer is clearly identified as the person performing the brokerage services;

(ii) Bank employees perform only clerical and ministerial functions in connection with brokerage transactions unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations;

(iii) Bank employees do not receive, directly or indirectly, compensation for any brokerage activities unless such employees are qualified as registered representatives pursuant to the requirements of the self-regulatory organizations; and

(iv) Such services are provided by the broker-dealer on a basis in which all customers are fully disclosed.

(2) Directly or indirectly receives transaction-related compensation for providing brokerage services for trust, managing agency or other accounts to which the bank provides advice, provided, however, that this subsection shall not apply if the bank executes transactions through a registered broker-dealer and:

(i) Each account independently chooses the broker-dealer through which execution is effected;

(ii) The bank's personnel do not receive, directly or indirectly, transaction-related compensation or compensation based upon the number of accounts choosing to use the registered broker-dealer; and

(iii) The brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed; or

(3) Deals in or underwrites securities.

(b) This rule shall not apply to any bank that engages in one or more of the following activities only:

(1) Effects transactions in exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(2) Effects no more than 1,000 transactions each year in securities

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[76] *See* section 15B of the Exchange Act.

[77] *See* section 17A of the Exchange Act.

[78] For example, pursuant to 12 CFR 5.34(d)(3), operating subsidiaries of national banks are within the OCC's jurisdiction. A number of commentators also raised concerns regarding potential conflicts between the Commission's financial responsibility requirements and those requirements presently imposed by bank regulators. The Commission anticipates that most banks engaging in activities covered by Rule 3b–9 will choose to place those activities in a subsidiary or a subsidiary of their bank holding company. Should some banks determine to directly register as broker-dealers, the Commission would anticipate using its exemptive authority under the financial responsibility rules to address any resulting conflict between bank and securities regulation. (*See e.g.*, Rule 15c3–1(b)(3) and Rule 15c3–3(k).)

[79] 15 U.S.C. 78w(a)(2).

other than exempted or municipal securities as defined in the Act or in commercial paper, bankers' acceptances or commercial bills;

(3) Effects transactions for the investment portfolio of affiliated companies;

(4) Effects transactions as part of a program for the investment or reinvestment of bank deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80% of its assets in debt securities maturing in thirteen months or less;

(5) Effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment or similar plan for employees or shareholders of an issuer or its subsidiaries;

(6) Effects transactions pursuant to sections 3(b), 4(2) and 4(6) of the Securities Act of 1933 and the rules and regulations thereunder; or

(7) Is subject to section 15(e) of the Act.

(c) The Commission, upon written request, or upon its own motion, may exempt a bank, either unconditionally or on specific terms and conditions, where the Commisison determines that the bank's activities are not within the intended meaning and purpose of this rule.

(d) For purposes of this section, the term "transaction-related compensation" shall mean monetary profit to the bank in excess of cost recovery for providing brokerage execution services.

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16417 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address; AMI, Inc.

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for AMI, Inc.

EFFECTIVE DATE: July 12, 1985.

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

SUPPLEMENTARY INFORMATION: AMI, Inc., 2667 West Dual, Baton Rouge, LA 70814, has advised the Center for Veterinary Medicine of a change in sponsor address. The address change is an administrative action which does not otherwise affect current manufacturing procedures, controls or personnel. The NADA's and files affected are amended to reflect the new address. The regulations are amended in 21 CFR 510.600 accordingly.

List of Subjects in 21 CFR Part 510

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) for the entry "AMI, Inc." and in paragraph (c)(2) for the entry "015563" by revising the sponsor's address to read "2667 West Dual, Baton Rouge, LA 70814."

Dated: July 3, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-16553 Filed 7-11-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Address; Bristol Laboratories

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the current mailing address of Bristol Laboratories, Division of Bristol-Myers Co.

EFFECTIVE DATE: July 12, 1985.

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

SUPPLEMENTARY INFORMATION: Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755, has informed FDA of its new mailing address. The agency is amending the files and the animal drug regulations to reflect the change of address.

List of Subjects in 21 CFR Part 510

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a), 52 Stat. 1055, 82 Stat. 343-351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Bristol Laboratories" and in paragraph (c)(2) in the entry "000015" by revising the sponsor's address to read "P.O. Box 4755, Syracuse, NY 13221-4755."

Dated: July 3, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-16554 Filed 7-11-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Temporary Placement of 3, 4-Methylenedioxymethamphetamine (MDMA) Into Schedule I

Correction

In FR Doc. 85-13171 beginning on page

23118 in the issue of Friday, May 31, 1985, make the following correction:

§ 1308.11 [Corrected]

On page 23119, third column, § 1308.11 (g)(2), first line, "3,4-methylenedioxyethamphetamine" should read "3,4-methylenedioxymethamphetamine".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3282

[Docket No. N-85-1542; FR-1767]

Manufactured Home Procedural and Enforcement Regulations

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

ACTION: Notice of manufactured homes inspection fee amount.

SUMMARY: This Notice announces that the monitoring inspection fee for each transportable section of each manufactured housing unit shall be $16 as of September 12, 1985.

FOR FURTHER INFORMATION CONTACT: James C. McCollom, Director, Manufactured Housing Standards Division, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6920. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 3282.454, the Secretary is authorized to establish by notice in the **Federal Register** a monitoring inspection fee for each manufactured home manufactured in nonapproved and conditionally approved States as described in § 3282.210. The fee amount is established in accordance with the criteria set out in § 3282.454, and is currently $19 per manufactured home.

The Department has adopted a final rule, published elsewhere in today's issue of the **Federal Register** amending § 3282.454 so that the monitoring inspection fee shall be paid for each transportable section of each manufactured home. That final rule will become effective on September 12, 1985. As of that same date, and until further notice, the monitoring inspection fee shall be $16 per transportable section of each manufactured home.

Authority: National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 3419); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: July 3, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-16600 Filed 7-11-85; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 3282

[Docket No. R-85-1147; FR-1767]

Manufactured Home Procedural and Enforcement Regulations; Monitoring Inspection Fees

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

ACTION: Final rule.

SUMMARY: This final rule revises the manner in which HUD assesses fees for inspections of manufactured homes. Under the rule, a fee will be charged for each section of a manufactured home inspected, rather than on a complete unit basis. Elsewhere in today's issue of the **Federal Register**, the Department has published a notice announcing a new fee amount that will apply to transportable sections of homes once this final rule becomes effective.

EFFECTIVE DATE: September 12, 1985.

FOR FURTHER INFORMATION CONTACT: James C. McCollom, Director, Manufactured Housing Standards Division, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone (202) 755-6920. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

A. Background

HUD published a proposed rule on August 23, 1984 that would revise the way in which it imposes monitoring inspection fees on manufacturers of manufactured homes (49 FR 33456). The Department's existing rule, at 24 CFR 3282.454, requires a manufacturer to pay an inspection fee for each complete unit manufactured, regardless of how many sections comprise the unit. Under the Department's proposal, an inspection fee would be assessed for each transportable section of a home, because each section is sufficiently complex in design to warrant its own thorough inspection. HUD also indicated in the proposed rule preamble that the rule revision would result in reduced costs and recordkeeping for manufacturers, and would assure fairness in assessing fees on manufacturers.

B. Comments and Discussion

In response to the notice of proposed rule making, comments were submitted to HUD by the California Department of Housing and Community Development (California), the National Manufactured Housing Federation (NMHF), and the Manufactured Housing Institute (MHI).

California agrees with the Department's determination that multiple section homes are more complex than single section homes, and that inspection fees should be assessed for each transportable section. However, it recommends that § 3282.307(b) be amended so that the Secretary would also adopt the practice of distributing inspection monitoring fee collections to the States based on the number of transportable sections manufactured, rather than on complete units. California's argument appears to be based on its statement that consumer complaints involving multiple section homes are generally more difficult to investigate and resolve. (About three-fourths of the manufactured homes manufactured in California are multiple section homes.)

The Department did not propose to revise § 3282.307(b) because States respond to complaints only after the purchase of a complete unit. The proposed rule relates to HUD's method for assessing fees for inspections performed in advance of unit sales. Thus, California's recommendation goes beyond the scope of this particular rule making. The Department believes that California's comment warrants further consideration and, accordingly, is treating the comment as a petition for rule making under 24 CFR 10.20. In the future, it is possible that HUD will seek public comment on a proposed revision to § 3282.307(b).

NMHF opposes adoption of the proposed rule on grounds that HUD has not demonstrated a need for increased funding under the inspection program. NMHF argues that the proposed rule would result in an overall increase in the amount of fees paid by manufacturers of multiple section homes and a decrease for manufacturers of

single section homes. It also points out geographical variations in consumer demand for single- and multi-section units, with the latter units most popular in the Pacific States region.

The rule revision is not intended to benefit or penalize manufacturers at different locations, or on the basis that they manufacture different kinds of homes. The rule stems strictly from HUD's determination that each section of a home is sufficiently complex to warrant a thorough inspection, and, accordingly, that inspection costs should be allocated on a per-section rather than a per-unit basis. NMHF does not argue that this constitutes a faulty premise for revising the current rule. Similarly, NMHF's contention that the rule would result in unwarranted increased amounts being collected by HUD is without merit. At issue here is how fees should be assessed among transportable units, and not what the amount of the fee should be in light of HUD's inspection costs. HUD has already stated, in the proposed rule preamble, that the amount of the inspection fee will correspond to the Department's costs associated with the performance of inspections. Essentially, the fee is arrived at by dividing the Department's estimated aggregate costs for conducting the inspection program by the total number of sections inspected. Accordingly, the fee charged reflects the Department's costs and industry production figures. See 49 FR 26576 (June 24, 1984). The Department's aggregate costs will not change as a result of this rule revision, nor will its fee collections increase. What changes are the proportions of costs that each manufacturer bears. The rule revision assures equity, in that manufacturers will be required to pay fees that better reflect the expenses of the Department related to individual inspections of their single- or multi-section units. Thus, if HUD's expenses remain constant, a manufacturer of a single-section unit would pay a lower fee than that assessed under the current system, whereas the manufacturer of a multi-section unit would pay more. This is appropriate, since the inspection of the latter manufacturer's unit involves more sections, more work and more expense.

MHI also opposes the proposed rule change. Initially, it reiterates its opposition of HUD's recently published final rule that allows the Secretary to establish new inspection fees by notice in the **Federal Register**, without employing public notice and comment procedures. It challenges that final rule, as well as this rule making, on grounds that in each case the Department has failed to provide adequate documentation to justify revising the fee level.

MHI also recommends that inspection fee payments allocated by HUD to States should reflect individual State needs. For example, States with very large production figures for manufactured homes, particularly multiple-section units, might be authorized a lower percentage of the monitoring inspection fee per unit or per section than States with limited production or primarily single-section production.

This proceeding is not the appropriate forum for addressing the Department's rule that allows the Secretary to establish new fee amounts by Notice in the **Federal Register** (49 FR 26576, published on June 28, 1984 and effective on September 17, 1984). That rule revision involved a separate and distinct issue and was the subject of notice and comment rule making (and comments reviewed by HUD included one submitted by MHI).

MHI's comments related to fee levels are, in our view, without merit for the reasons stated in response to NMHF's similar allegation.

Finally, MHI has commented, as did California, on how fees collected might be allocated among States. For the same reasons discussed in response to California's comment, we will defer any action to a future date.

C. Other Matters

The fee amount for each transportable section of a manufactured home is being revised in light of this final rule. The new fee amount is announced elsewhere in today's edition of the **Federal Register** and will take effect on the same date that this rule becomes effective.

An incorrect reference to § 3282.362(c) in § 3282.210(b) has been changed to § 3282.365.

Finally, the Department is making a technical amendment to the rule at § 3282.454 to note that in calculating the fee amount it will estimate its inspection-related costs and home productivity for a forseeable future time period. The time period selected will not necessarily be the same each time the fee is revised. This is because time periods for which the Department may be capable of obtaining reliable underlying data may vary. However, any projected time period selected will be of reasonable duration and (as is the case with projected expenses and unit productivity data) will be subject to public scrutiny, upon request under the Freedom of Information Act. (See 49 FR 26578.) Also, the reference in the fee amount formula to HUD's maintenance of a "reserve fund" is being revised and clarified to indicate that the use of such funds is limited to offsetting short-term fluctuations in costs that do not warrant revisions in the fee amount.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, at the above address.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 of Federal Regulation issued February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million of more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it has been certified that a regulatory flexibility analysis is not required because reductions in administrative costs and recordkeeping requirements resulting from the rule are not of such economic significance as to warrant an analysis.

This rule was listed as item number 141 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.804.

List of Subjects in 24 CFR Part 3282

Administrative practice and procedures, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Mobile homes.

Accordingly, the Department amends 24 CFR Part 3282 as follows:

PART 3282—MOBILE HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

1. The authority citation for 24 CFR Part 3282 is revised to read as set forth below, and any authority citation following any section in Part 3282 is removed:

Authority: Sec. 620, National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 3282.210 is revised to read as follows:

§ 3282.210 Payment of monitoring fee.

(a) Each manufacturer shall pay the monitoring fee established under §§ 3282.307 and 3282.454 for each transportable section of each manufactured housing unit that it manufactures under the Federal standards.

(b) The monitoring fee shall be paid in the form of a check made payable to the Secretary or the Secretary's agent. The manufacturer shall give to the IPIA (or to any other person or agency designated in writing by the Secretary) the required check in the amount of the number of labels, as required by § 3282.365, multiplied by the amount of the fee per transportable section of each manufactured housing unit.

3. Section 3282.307 is revised to read as follows:

§ 3282.307 Monitoring inspection fee-establishment and distribution.

(a) Each approved State shall establish a monitoring inspection fee in an amount required by the Secretary. This fee shall be an amount paid by each manufactured home manufacturer in the State for each transportable section of each manufactured housing unit produced by the manufacturer in that State. In non-approved and conditionally-approved States, the fee shall be set by the Secretary.

(b) The monitoring inspection fee shall be paid by the manufacturer to the Secretary or the Secretary's agent, who shall distribute the fees collected from all manufactured home manufacturers among the approved and conditionally-approved States based on the number of new manufactured housing units whose first location after leaving the manufacturing plant is on the premises of a distributor, dealer, or purchaser in that State, and the extent of participation of the State in the joint team monitoring program set out in § 3282.308.

4. Section 3282.454 is revised to read as follows:

§ 3282.454 Monitoring inspection fee.

(a) The Secretary may establish by notice in the **Federal Register** a monitoring inspection fee which is to be paid by manufacturers for each transportable section of each manufactured housing unit manufactured in nonapproved and conditionally approved States as described in § 3282.210. To determine the amount of the inspection fee to be paid for each transportable section of each manufactured home, the Secretary shall divide the (estimated) number of transportable sections of manufactured homes (based on recent industry production figures) into the anticipated aggregate cost of conducting the inspection program in the foreseeable feature. The time period selected for projecting the Department's inspection-related costs and number of transportable sections need not always be the same, but must be for a period of sufficient duration to provide for access to reasonable underlying data. To determine the aggregate cost of conducting the inspection program, the Secretary shall calculate the sum necessary to support (1) inspection-related activities of State Administrative Agencies; (2) inspection-related activities performed by the Department of Housing and Urban Development; (3) inspection-related activities performed by monitoring inspection contractors; (4) miscellaneous activities involving the performance of inspection-related activities by the Department, including on-site inspections on an ad hoc basis; and (5) maintenance of adequate funds to offset short-term fluctuations in costs that do not warrant revising the fee under the authority of this section.

(b) The monitoring inspection fee to be established by approved States under § 3282.307(a) shall be in an amount required by the Secretary.

(c) The Secretary may at any time revise the amount of the fees established under paragraph (a) or (b) of this section by placing a notice of the amount of the revised fee in the **Federal Register.**

Dated: July 3, 1985.

Janet Hale,

Acting General Deputy, Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-16599 Filed 7-11-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval submarines. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), requiring that the stern light show an unbroken light over an arc of the horizon of 135 degrees and be so fixed as to show the light 67.5 degrees from right aft on each side of the vessel; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the side lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of these ships. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733) are members of the SSN 726 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS ALASKA (SSBN 732) and USS NEVADA (SSBN 733).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ships' abilities to perform their military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: Executive Order 11964; 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following naval ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Sec. 2(a)(i), Annex I
USS ALASKA	SSBN 732	3.70
USS NEVADA	SSBN 733	3.70

3. Table Three of § 706.2 is amended by adding the following naval ships to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side light, distance inboard of ship's sides in meters; section 3(b), Annex I	Side light distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; sec. 2(k), Annex I	Anchor lights relationship of aft light to forward light in meters; sec. 2(k), Annex I
USS ALASKA	SSBN 732			209°	5.3	9.0	3.8	4.0 below.
USS NEVADA	SSBN 733			209°	5.3	9.0	3.8	4.0 below.

Dated: June 20, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-16617 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS CONOLLY (DD 979) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval destroyer. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS CONOLLY (DD 979) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the placement of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval destroyer. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 is revised to read:

Authority: Executive Order 11964; 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following Navy ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b),	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS CONOLLY	DD 979						×	×	46.4

Dated: June 20, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-16618 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendement

AGENCY: Deparment of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS VALLEY FORGE (CG 50) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS without interfering with its special function as a naval cruiser. This intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 20, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandiria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS VALLEY FORGE (CG 50) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and Annex I, section 3(a), pertaining to the horizontal distance between the forward and aft masthead lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendement for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 is revised to read as follows:

Authority: Executive Order 11964 and 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certifications issued by the Secretary of the Navy:

Vessel	Number	Forward masthead light less than the required height above the hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light not less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS VALLEY FORGE	CG 50						×	×	38

Dated: June 20, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-16620 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Secretary of the Navy has determined that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS

without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in water where 72 COLREGS apply.

EFFECTIVE DATE: June 21, 1985.

FOR FURTHER INFORMATION CONTACT: Captain Richard J. McCarthy, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605 and Executive Order 11964, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Secretary of the Navy has certified that USS PROVIDENCE (SSN 719) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), requiring that the stern light show an unbroken light over an arc of the a horizon of 135 degrees and be so fixed as to show the light 67.5 degrees from right aft on each side of the vessel; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the locations of the side lights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the ship. The Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS PROVIDENCE (SSN 719) is a member of the SSN 688 class of ships for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of section 706.3, are equally applicable to USS PROVIDENCE (SSN 719).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the ship's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for Part 706 is revised to read as follows:

Authority: Executive Order 11964 and 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the cetifications issued by the Secretary of the Navy:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. Sec. 2(a)(i), Annex I
USS PROVIDENCE	SSN 719	3.5

3. Table Three of § 706.2 is amended by adding the following naval ship to the list of vessels therein to indicate the certification issued by the Secretary of the Navy:

Vessel	Number	Masthead light, arc of visibility; rule 21(a)	Side lights, arc of visibility; rule 21(b)	Stern light, arc of visibility; rule 21(c)	Side lights, distance inboard of ship's sides in meters; sec. 3(b), Annex I	Stern light distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; sec. 2(k), Annex I	Anchor lights relationship of aft light to forward light in meters; sec. 2(k), Annex I
USS PROVIDENCE	SSN719			209°	4.2	6.1	3.4	1.7 below.

Dated: June 21, 1985.

James F. Goodrich,

Acting Secretary of the Navy.

[FR Doc. 85-16619 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 726

Payments of Amounts Due Mentally Incompetent Members of the Naval Service

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its regulations concerning the payment of moneys due to mentally incompetent members of the naval service to reflect changes to Chapter XV of the Manual of the Judge Advocate General.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mrs. Valeria Childress, Civil Affairs Division, Office of the Judge Advocate General, Department of the Navy, 200 Stovall Street, Alexandria, Virginia 22332-2400, Telephone number: (202) 325-9752.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 726, which is derived from Chapter XV of the Manual of the Judge Advocate General, to reflect changes in that regulation. The amendment relates to internal naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR Parts 296 and 701. It has also been determined that this final rule is not a "major rule" within the criteria specified in section 1(b) of Executive Order 12291, and does not have substantial impact on the public.

List of Subjects in 32 CFR Part 726

Mental health programs, Military personnel, Administrative practice and procedure, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, 32 CFR Part 726 is amended as follows:

1. The authority citation for Part 726 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 37 U.S.C. 601–604, and 1001; 32 CFR 700.206 and 700.1202.

2. Section 726.10 is revised to read as follows:

§ 726.10 Reports and Supervision of Trustees

(a) *Annual accounting report.* The trustee designated under this chapter shall submit accounting reports annually or at such times as the Judge Advocate General or DAJAG(CA) directs. The report shall account for all funds received from the Navy or Marine Corps on behalf of the servicemember. NAVJAG Forms 5800/13 (Rev. 8–76) and 5800/13A (Rev. 8–76) will be provided for these reports. When requested by the Judge Advocate General or DAJAG(CA), bank records, receipts, canceled checks, or vouchers shall be attached to the report. Report Control Symbols JAG 5800–5 and 5800–5A have been assigned to the reports.

(b) *Failure to submit a report.* If an accounting is not received by the date designated by the Judge Advocate General or DAJAG(CA), or an accounting is forwarded which is unsatisfactory, the Judge Advocate General or DAJAG(CA) shall notify the trustee in writing. The notice shall inform the trustee that he or she is in violation of the regulations concerning trustees promulgated pursuant to 37 U.S.C 601–604. The notice shall further state that if a satisfactory accounting is not received by the Judge Advocate General or DAJAG(CA) within an appropriate number of days from the date of receipt of the notification, the trustee will be declared in default of the trustee agreement and shall become liable for any unaccounted for monies.

(c) *Declaration in default.* If the trustee fails to submit a satisfactory accounting within the time designated by the JAG or DAJAG(CA), the trustee shall be declared by the JAG or DAJAG(CA) to be in default of the trustee agreement.

(d) *Termination of payments.* If a trustee is declared to be in default of the trustee agreement, the Judge Advocate General or DAJAG(CA) shall request the appropriate Finance Center to terminate payments to the trustee and if necessary appoint a successor trustee.

(e) *Demand for payment.* At the time of the declaration of such default, the Judge Advocate General of DAJAG(CA) shall notify the defaulting trustee that he or she is in default of the trustee agreement. The surety for the trustee shall also be notified at this time concerning the account. The notifications to the trustee and surety shall state the reasons for default, the amount of indebtedness to the Government and shall demand payment. The notifications shall also state that if payment, in full, of the monies due the Government is not received by the Office of the Judge Advocate General, or satisfactory arrangements for repayment have not been made with an appropriate number of days from the date of receipt of the notifications, the account may be forwarded, as the Judge Advocate General or DAJAG(CA) may direct, to the Department of Justice for recovery of the monies through appropriate civil action.

(f) *Final accounting.* When payments under this chapter are terminated due to the death of the member, his or her restoration to capacity, the replacement of the trustee, or for any other reason, other than default of the trustee agreement, the trustee shall submit a final accounting to the Judge Advocate General or DAJAG(CA), as appropriate. Upon approval of the report, the trustee and the surety will be discharged from liability. In the event of death or disability of a trustee, the final accounting shall be filed by the legal representative of the trustee.

(g) *Finance Centers.* The Commanding Officer, Navy Finance Center, Commanding officer, Marine Corps Finance Center, or the cognizant disbursing officer shall notify the Judge Advocate General or DAJAG(CA) of any fact affecting the pay of a member who is not mentally capable of managing his/her affairs. This includes waiver of retired pay in favor of Veterans Administration compensation; death of the member; death of the trustee; or notice of appointment of a legal representative by the court of competent jurisdiction. At the request of the Judge Advocate General or DAJAG(CA), the cognizant disbursing officer shall report all disbursements from the service member's account.

Dated: July 9, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85–16622 Filed 7–11–85; 8:45 am]

BILLING CODE 3810-AE-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–4

[FPRM Amdt. A–38]

Patents

AGENCY: Office of Acquisitions Policy, GSA.

ACTION: Final rule.

SUMMARY: This regulation removes from 41 CFR Part 101–4 provisions concerning the licensing of Government-owned inventions which were superseded by regulations at 37 CFR Part 404.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Emily C. Karam, Office of Federal Acquisition and Regulatory Policy (VR), Office of Acquisition Policy, telephone (202) 566–1177 or FTS 566–1177.

SUPPLEMENTARY INFORMATION: Pub. L. 98–620 amended 35 U.S.C. 208 to shift authority to promulgate regulations concerning the licensing of Government-owned inventions from the Administrator of General Services to the Secretary of Commerce. The Secretary of Commerce issued regulations at 37 CFR Part 404 (50 FR 9801, March 12, 1985), which were identical in substance to and which superseded GSA regulations at 41 CFR Part 101–4.

List of Subjects in 41 CFR Part 101–4

Inventions and patents.

PART 101–4—[REMOVED]

In 41 CFR Chapter 101, Subchapter A—General, Part 101–4 is removed and reserved.

(35 U.S.C. 208)

Dated: June 10, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–16644 Filed 7–11–85; 8:45 am]

BILLING CODE 6820-61-M

41 CFR Part 101–47

[FPMR Amdt. H–154]

Holding Agency

AGENCY: Federal Property Resources Service, GSA.

ACTION: Final rule.

SUMMARY: This rule amends the regulation covering property for which the holding agency is designated the disposal agency. The list is amended to include underground water.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: James H. Pitts, Office of Real Property (202–535–7067).

SUPPLEMENTARY INFORMATION: GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or

others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–47

Surplus Government property, Government property management.

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for Part 101–47 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

Subpart 101–47.3—Surplus Real Property Disposal

2. Section 101–47.302–2 is amended by revising paragraph (a)(3) to read as follows:

§ 101–47.302–2 Holding agency.

(a) * * *

* * * * *

(3) Standing timber and embedded gravel, sand, stone, and underground water to be disposed of without the underlying land.

* * * * *

Dated: June 19, 1985.

Dwight Ink,

Acting Administrator of General Services.

[FR Doc. 85–16645 Filed 7–11–85; 8:45 am]

BILLING CODE 6820–96–M

Proposed Rules

Federal Register
Vol. 50, No. 134
Friday, July 12, 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

Agricultural Marketing Service

7 CFR Part 1240

[Docket No. F&V HRPCIA-1]

Honey Research, Promotion, and Consumer Information Act; Hearing on Proposed Order

Correction

In FR Doc. 85-15654 beginning on page 26942 in the issue of Friday, June 28, 1985, the docket number in the heading should have appeared as it does above.

BILLING CODE 1505-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6593; 34-22196; IC-14609; File No. S7-32-85]

Filing Fees for Tender Offers, Mergers and Similar Transactions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("the Commission") is publishing for comment proposed amendments to its rules relating to the imposition and collection of filing fees for certain Exchange Act acquisition and business combination transactions. The proposals relate to legislation that requires payment to the Commission of a filing fee calculated on a percentage basis of the transaction's value for tender offers, proxy and information statements involving an acquisition, merger, consolidation or sale or other disposition of substantially all the assets of a company and certain other filings.

DATE: Comments should be received on or before September 10, 1985.

ADDRESS: Comments should be submitted in triplicate to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comment letters should refer to File No. S7-32-85. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Sarah A. Miller or JoAnn L. Zuercher, (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment new Rule 0-11 [1] under the Securities Exchange Act of 1934 ("Exchange Act")[2]. The Commission also is proposing for comment corresponding amendments to Rule 457 [3] under the Securities Act of 1933 ("Securities Act")[4] and Rules 0-9 [5] and 13e [6] and Schedules 13E-3 [7], 13E-4 [8], and 14D-1 [9] under the Exchange Act. These proposals are intended to provide guidance to persons now required, as a result of amendments to the Exchange Act, to pay statutory filing fees incurred in connection with certain acquisition and business combination transactions.

I. Executive Summary

In June 1983, Congress amended the Exchange Act to require transaction-related filing fees for the filing of documents in connection with certain acquisitions, dispositions, business combinations and consolidations.[10] That legislation added Sections 13(e)(3)[11] and 14(g)[12] to require persons filing specified documents [13] to pay, at the time of filing with the Commission, a fee of one-fiftieth of one percent of the value of the transaction. The amendments were intended to equalize the fees assessed for various types of equivalent business transactions involving tender offers, mergers and consolidations, whether the transaction involves a filing under the Securities Act or the Exchange Act.[14]

Having gained experience in administering the new Exchange Act fee provisions, the Commission has determined to propose rule provisions which would codify the administrative practice under the statute. That practice generally has been to apply the interpretations concerning Securities Act fee determinations to the Exchange Act business combination context. The proposed amendments would codify and clarify the administrative practice and provide additional guidance on the method of valuation of the securities sought, depending on whether the securities are to be purchased for cash or other consideration. The amendments also would specify: (1) That the fee is to be paid by the person making the filing, except that in the case of proxy or information statements involving two or more companies subject to the Commission's proxy or information statement rules, each person shall pay a proportionate share of such fee; (2) that where a transaction involves more than one filing requirement or the registration provisions of the Securities Act, the payment of the fee with the initial filing

[1] 17 CFR 240.0-11.

[2] 15 U.S.C. 78a-78kk (1982), *as amended by* Act of June 6, 1983, Pub. L. No., 98-38, 97 Stat. 205 (1983).

[3] 17 CFR 230.457.

[4] 15 U.S.C. 77a-77aa (1982).

[5] 17 CFR 240.0-9.

[6] 17 CFR 240.13e-1.

[7] 17 CFR 240.13e-100.

[8] 17 CFR 240.13e.101.

[9] 17 CFR 240.14d-100.

[10] Act of June 6, 1983, Pub. L. 98-38, 97 Stat. 205 (1983). The Commission announced the enactment and effectiveness of this legislation in Rel. No. 34-19870 (June 13, 1983) (48 FR 27524).

[11] 15 U.S.C. 78m(e)(3).

[12] 15 U.S.C. 78n(g).

[13] The filings subject to the new filing fee are: (a) Schedule 13E-4 filed pursuant to Rule 13e-4 (17 CFR 240.13e-4); (b) Schedule 14D-1 filed pursuant to Rule 14d-3 (17 CFR 240.14d-3); (c) preliminary proxy material filed pursuant to Rule 14a-6 (17 CFR 240.14a-6) relating to a proposed acquisition, merger, consolidation or sale or other disposition of substantially all the assets of the issuer; (d) preliminary information statements filed pursuant to Rule 14c-5 (17 CFR 240.14c-5) relating to such transactions; (e) Schedule 13E-3 filed pursuant to Rule 13e-3 (17 CFR 240.13e-3 in connection with the acquisition of securities; and (f) a disclosure statement filed pursuant to Rule 13e-1.

[14] H. Rep. No. 98-106, 98th Cong., 1st Sess. 1-2, 5-6 (1983) (hereinafter H. Rep. No. 98-106). Under the Securities Act, a fee of one-fiftieth of one percent is required to be paid in connection with exchange offers and proxy solicitations for mergers with securities offered as consideration. Under the Exchange Act prior to the amendments, no fees were required in connection with cash tender offers and fees of $125 and $1,000 were assessed in connection with proxies for the sale of assets and cash merger proxies, respectively. H. Rep. No. 98-106, *supra* at 5.

will offset any subsequent filing fee obligation; and (3) that any increase in consideration offered will require an additional fee to be paid.

Since the proposals are generally similar to the present method of administering the new fee provisions, parties filing Exchange Act documents subject to these fees may look to the rule proposals for guidance until final action is taken on the proposals.

II. Discussion of Proposals

A. Proposed Exchange Act Rule for Filing Fees for Certain Acquisitions, Dispositions and Similar Transactions

Proposed Rule 0–11 sets forth the basic requirements with respect to fees for all Exchange Act filings subject to the new filing fee. The proposed rule is divided into four paragraphs. Proposed Rule 0–11(a) conntains the general requirements for every transaction subject to the rule. Paragraph (a)(1) sets forth the general fee requirement. Paragraph (a)(2) would specify that only one fee per transaction is required and would make explicit that: (1) Any required fee is to be reduced in an amount equal to any fee paid under section 6(b) of the Securities Act [15] or any other provision of the proposed rule; and (2) fees required to be paid under section 6(b) of the Securities Act shall be reduced by the amount already paid under this rule. Thus, in a multi-step transaction, the fee would be calculated with respect to each step. Where, however, any or all of the fee in connection with a step has already been paid in connection with the filing for a prior step, there is an offset provision. For example, a tender offer for any and all shares of a target company would necessitate a fee related to the price of acquiring 100% of the target; if less than all shares are tendered and a subsequent merger occurs, the fee paid in connection with the initial tender offer would be applied against the fee required in connection with the merger. The offset provision generally would not come into play in the case of a tender offer for less than all of the shares of the target followed by a merger, since the fee paid for the first step of the transaction would cover only a portion of the target's outstanding shares.

Paragraph (a)(3) of proposed Rule 0–11 would provide that increases in the aggregate consideration offered would trigger an additional filing fee based upon the amount of the increased consideration. This additional fee would be applicable whether the increased consideration is the result of increasing the amount of securities sought or of raising the per share consideration.[16]

Paragraph (a)(4) of proposed Rule 0–11 would indicate the method of determining the value of the securities upon which to base the filing fee. The proposed rule provides a valuation method that generally parallels the provisions of existing Rule 457(e) under the Securities Act relating to the computation of the filing fee for registered exchange offers. In general, where securities are to be acquired in exchange for securities or other non-cash consideration, the value of the securities proposed to be purchased for such consideration would be based upon the market value of the securities to be acquired by the filing person. In determining the market value of the securities, the valuation would be based upon the average bid asked or high and low price of such securities as of a specified date within 5 business days prior to filing.[17] In view of the rapid pace of current securities markets, the 5 business day period provides the appropriate measure for the fee calculation by more closely matching the fee calculation to market conditions. Where there is no market for the securities being acquired by the filing person, then the book value of the securities computed as of the latest practicable date prior to the date of filing would be used to value the securities. If, however, the acquired person is in bankruptcy or receivership or has an accumulated capital deficit, the filing fee would be one-third of the principal amount, par value or stated value of the securities.

Finally, paragraph (a)(5) would require that filings subject to the rule which are not required to contain a table showing the calculation of the filing fee be accompanied by a transmittal letter giving the equivalent information. As noted in Part B and footnote 27 below, amendments are being proposed to add a fee calculation table to the facing pages of Schedules 13E–3, 13E–4, and 14D–1. The transmittal letter requirement thus would apply only to other filings.

Paragraphs (b) through (d) of proposed Rule 0–11 would relate to specific Exchange Act filings and would carry over the valuation method and other relevant fee provisions contained in Rule 457 under the Securities Act. Under proposed Rule 0–11(b), a fee of one-fiftieth of one percent of the value of the securities proposed to be acquired is to be paid when a statement required by section 13(e)(1) of the Exchange Act is filed.[18] Proposed paragraphs (b) (1) and (2) would specify the method of valuation of the securities sought. Where the securities are to be purchased for cash, the securities are to be valued at the cash price to be paid for the securities. Where the payment for the securitries includes consideration other than cash, the proposed rules provides that the value of the securities to be received by the acquiring person, determined in accordance with paragraph (a)(4) of the proposed rule, would be used as the basis for calculating the fee.

Proposed Rule 0–11(c) would govern the calculation of the fee required when a preliminary proxy statement pursuant to Rule 14a–6 or preliminary informaion statement pursuant to Rule 14c–5 is filed concerning an acquisition, merger, consolidation or proposed sale or other disposition of substantially all the assets of the company.[19] As required by the legislation, the calculation of the fee would vary depending upon the nature of the transaction. In the case of an acquisition, merger or consolidation, the

[15] Section 6(b) of the Securities Act requires at the time of filing the registration statement a fee of one-fiftieth of one percent of the maximum aggregate offering price but in no case a fee of less than $100. The Commission is also proposing a corresponding amendment to Rule 457 under the Securities Act to add proposed paragraph (b) to provide that any required fee is to be reduced in an amount equal to any fee paid under sections 13(e) and 14(g) of the Exchange Act. Thus, if the entire fee is paid pursuant to section 13(e) or 14(g) of the Exchange Act, no fee, including the $100 minimum fee under section 6(b) of the Securities Act, need be paid with the Securities Act registration statement.

[16] This provision would be consistent with existing interpretations of Rule 457(a) and (e), whereby an increase in the consideration offered by means of an increase in the exchange ratio and therefore the number of securities to be offered would necessitate an additional filing fee. If the increase in consideration involves cash rather than additional securities, however, the proposed Exchange Act fee treatment would differ from that of the Securities Act because section 6(b) of the Securities Act ties the fee to the securities, not to the value of the cash portion of an offer.

[17] At present, Rule 457 requires that the market price be determined within fifteen days prior to filing. A corresponding amendment is being proposed to update Rule 457 and to provide that market price determinations would be made within 5 business days prior to filing regardless of which Act required the fee payment. In addition, Rule 457 would be amended to include the same language as proposed Rule 0–11(a)(4) concerning the method of determining the market value of securities.

[18] These statements include a statement concerning the purchase of securities by the issuer required by Rule 13e–1, a Rule 13e–3 transaction statement (Schedule 13E–3) and a Rule 13e–4 issuer tender offer statement (Schedule 13E–4).

[19] The Commission today also is proposing comprehensive proxy rule revisions which include amendments to Rules 14a–6 and 14c–5 to refer specifically to proposed Rule 0–11. *See* Release No. 33–6592 (July 1, 1985) [50 FR]. In this connection, the word "registrant" is used in paragraph (c) of the rule to have the same meaning it would have if the proxy rule propsoals are adopted, i.e., the issuer of the securities in respect of which proxies are to be solicited (or an information statement furnished).

fee payable would be one-fiftieth of one percent of any proposed cash payment, or the value of securities or other property proposed to be transferred to security holders.[20] In the case of a filing relating to a proposed sale or other disposition of substantially all the assets of an issuer, the proposed rule would provide that the one-fiftieth of one percent fee be based upon the aggregate of any proposed cash payment and the value of the securities or other property proposed to be received by the issuer upon such sale or disposition. Where the issuer is not to receive consideration for such disposition, *e.g.* in a spin-off or liquidation, the fee would be based on the value of the securities and other property distributed to security holders.

It should be noted that proposed Rule 0–11(c)(1) and (2) would apply to proxy or information statements involving a vote on certain matters, including proxy or information statements involving a vote which indirectly serves as the equivalent of a vote on one of the matters specified. For example, if a proxy statement is filed with respect to as vote to approve the authorization of additional securities which are to be used to acquire another specified company, and the registrant's shareholders will not have a separate opportunity to vote upon the transaction, the vote to authorize the securities is also a vote with respect to the acquisition. The fee called for by Rule 0–11 therefore would be required.[21]

An exception from the fee equalization requirements of proposed Rule 0–11(c) pertains to mergers, consolidations or similar transactions where the sole purpose of the transaction is to change the company's domicile.[22] The fee applicable to these filings would be $125. This provision is based on the conclusion that such transactions are not the type intended to be subject to fee equalization. The Commission specifically requests comment as to whether there are other transactions that should be expected as not comparable to the business combinations, exchange offers, acquisitions of securities and dispositions which the fee equalization legislation was designed to address.

The last section of proposed Rule 0–11(c) exempts from the fee requirement any proxy statement filed by a company registered under the Investment Company Act of 1940,[23] as provided by section 14(g) of the Exchange Act. Investment companies filing proxy statements which would otherwise come within this rule should continue to pay the fee currently required.[24]

Proposed Rule 0–11(d) relates to tender offer filings on Schedule 14D–1. A filing fee of one-fiftieth of one percent of the amount of cash or the value of securities or other property proposed to be offered by the bidder must accompany the initial Schedule 14D–1 filing. The same calculation methodology and valuation criteria as proposed to be used in proposed Rule 0–11(b) and (c) generally would apply to Schedule 14D–1 filings.[25]

B. Corresponding Amendments

In addition to proposing Rule 0–11 relating to the Exchange Act fee requirement for cash tender offers and the proxy and information statements involving certain business combinations, the Commission is proposing corresponding amendments: (1) To amend Rule 0–9[26] to require that the fee called for by Rule 0–11 be paid by cash, a certified check or the equivalent;[27] (2) to reflect proposed Rule 0–11 in Rule 13e–1;[28] (3) to add to the facing pages of Schedules 13E–3, 13E–4 and 14D–1 a table showing the calculation of the filing fee similar to that required on Securities Act registration statement form;[29] (4) to reflect in instruction number 2 of the Special Instuctions for Complying with Schedule 14D–1 that a filing fee is required to be filed in accordance with proposed Rule 0–11; and (5) to amended Rule 457, as noted above, to be consistent with the new fee structure and to update the language on calculating the market value of securities to be consistent with that in proposed Rule 0–11.

III. Request for Comment

Any interested persons wishing to submit written comments on the proposed revisions to the rules, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so.

The commission also requests comment on whether the proposed revisions, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.[30]

IV. Statutory Basis and Text of Proposed Amendments Authority

The amendments to the Commission's rules and forms are being proposed by the Commission pursuant to sections 6, 7 and 19(a) of the Securities Act of 1933 and sections 12, 13, 14 and 23(a) of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 230 and 240

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

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[20] When the consideration does not consist entirely of cash, its value would be determined by reference to the value of the securities or property being received by the acquiring person.

[21] This is consistent with the Commission's position on disclosure in such proxy statements, which is reflected in Note A to Schedule 14A, 17 CFR 240.14a–101, as proposed to be amended (Release No. 33–6582).

[22] In determining whether a merger, consolidation or other transaction falls within this exception, the Commission would apply the same interpretation of such provision as to a similar provision in Rule 145 (a)(2) under the Securities Act, 17 CFR 230.145(a)(2).

[23] 15 U.S.C. 80a–1—80a–64, *as amended by* Act of October 21, 1960, Pub. L. No. 96–477, 94 Stat. 2275 (1980).

[24] *See* Rule 20a–1 (17 CFR 270.20a–1).

[25] When the transaction is an unsolicited exchange offer for securities for which there is no market, and the fee therefore is to be based upon the book value of the securities to be received by the bidder, the bidder may not be in a position to require the target to compute its book value as of the latest practicable date. In this event, the staff will not object if the bidder calculates the fee based upon the book value of the securities as of the most recent date for which such information is publicly available.

[26] This rule specifies the method of payment of Exchange Act fees, and states that all such fees should be paid in accordance with 17 CFR 202.3a, which permits payment directly to the Commission or to a U.S. Treasury designated lockbox.

[27] This would be consistent with the treatment of such fees under the Securities Act, which are not permitted to be paid by personal check.

[28] Proposed new paragraph (b) to Rule 13e-1 would provide that the initial statement is to be accompained by a fee payable to the Commission in accordance with Rule 0–11. This proposed addition requires a redesignation of the remaining paragraph.

[29] The proposed table calls for the amount of the fee and the value of the securities used in its computation. Where a filing fee is not required to accompany the Schedule being filed, the table would require the identification of the document with which the fee has been filed and the date of its filing. This information is necessary to assist the Commission's Office of Applications and Report Services in processing the filing. In this regard, proposed Rule 0–11(a)(5) requires that a filing not calling for a fee calculation table (i.e., a Rule 13e-1 disclosure statement or a proxy or information statement) be accompanied by a letter of transmittal with the equivalent information.

[30] 15 U.S.C. 78w(a)(2).

Authority: General * * * Sec. 230.100 to 230.174 issued under sec. 19, 48 Stat. 85, as amended; 15 U.S.C. 77s * * *

2. By redesignating paragraphs (b)–(m) as paragraphs (c)–(n); by redesignating the reference to "(e)(1) or (2)" in redesignated paragraph (f)(3) to read "paragraph (f)(1) or (2)"; and by adding a new paragraph (b) to § 230.457 and revising the paragraphs redesignated (c), (f)(1), (g)(3) (in the second sentence of paragraph (g)), and (h) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(b) A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to sections 13(e) and 14(g) of the Securities Exchange Act of 1934 or any applicable provision of this section; the fee requirements under sections 13(e) and 14(g) shall be reduced in an amount equal to the fee paid the Commission with respect to a transaction under this section. No part of a filing fee is refundable.

(c) Where securities are to be offered at prices computed upon the basis of fluctuating market prices, the registration fee is to be calculated upon the basis of the price of securities of the same class, as follows: either the average of the high and low last sale reported price (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of filing the registration statement.

* * * * *

(f) * * *

(1) Upon the basis of the market value of the securities to be received by the registrant or cancelled in the exchange or transaction as established by the price of securities of the same class, as determined in accordance with paragraph (c) of this section.

* * * * *

(g) * * * (3) the price of securities of the same class, as determined in accordance with paragraph (c) of this section. * * *

(h) Where securities are to be offered to employees pursuant to an employee stock purchase, savings, or similar plan, the aggregate offering price and the amount of the registration fee shall be computed only with respect to the aggregate contributions of employees, except that if employees may choose the medium in which the employer's contributions are to be invested the aggregate offering price shall include the employer's contributions. Where stock is to be offered to employees pursuant to an employee stock option plan, the aggregate offering price and the amount of the fee shall be computed upon the basis of the price at which the option may be exercised or, if such price is not known, upon the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. Where securities are to be offered to employees pursuant to a bonus plan or similar noncontributory plan, the aggregate offering price and amount of the fee shall be computed on the basis of the price of securities of the same class, as determined in accordance with paragraph (c) of this section. If there is no market for the securities to be offered, the book value of such securities computed as of the latest practicable date prior to the date of filing the registration statement shall be used.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: Sec. 23, 48 Stat. 901, as amended; 15 U.S.C. 78w unless otherwise noted. §§ 240.12b–1 to 240.12b–36 also issued under secs. 3, 12, 13, 15, 48 Stat. 892, as amended; 894, 895, as amended; 15 U.S.C. 78c, 78*l*, 78m, 78*o*. §§ 240.14c–1 to 240.14c–101 also issued under sec. 14, 48 Stat. 895; 15 U.S.C. 78n. §§ 240.15b10–1 to 240.15b10–9 also issued under secs. 15, 17, 48 Stat. 895, 897, sec. 203, 49 Stat. 704 secs. 4, 8, 49 Stat. 1379, sec. 5, 52 Stat. 1076, sec. 6, 78 Stat. 570; 15 U.S.C. 78p, 78q, 12 U.S.C. 241 nt., * * *

4. By revising § 240.0–9 to read as follows:

§ 240.0–9 Payment of fees.

All payment of fees except those required by § 240.0–11 of this chapter shall be made in cash, certified check, personal check, or by United States postal money order, bank cashier's check or bank money order payable to the Securities and Exchange Commission, omitting the name or title of any official of the Commission. Payment of fees required by § 240.0–11 shall be made in the same manner except that payment by personal check shall not be permitted. Payment of fees required by this section shall be made in accordance with the directions set forth in § 202.3a of this chapter.

5. By adding § 240.0–11 to read as follows:

§ 240.0–11 Filing fees for certain acquisitions, dispositions and similar transactions.

(a) *General.* (1) At the time of filing a disclosure document described in paragraphs (b) through (d) of this section relating to certain acquisitions, dispositions, business combinations, consolidations or similar transactions, the person filing the specified document shall pay a fee payable to the Commission to be calculated as set forth in paragraphs (b) through (d) of this Section.

(2) Only one fee per transaction is required to be paid. A required fee shall be reduced in an amount equal to any fee paid with respect to such transaction pursuant to either Section 6(b) of the Securities Act of 1933 or any applicable provision of this rule; The fee requirements under Section 6(b) shall be reduced in an amount equal to the fee paid the Commission with respect to transaction under this regulation. No part of a filing fee is refundable.

(3) If at any time after the initial payment the aggregate consideration offered is increased, an additional filing fee based upon such increase shall be paid with the required amending filing.

(4) When the fee is based upon the market value of securities, such market value shall be established by either the average of the high and low last sale reported price (for exchange traded securities and last sale reported over-the-counter securities) or the average of the bid and asked price (for other over-the-counter securities) as of a specified date within 5 business days prior to the date of the filing. If there is no market for the securities, the value shall be based upon the book value of the securities computed as of the latest practicable date prior to the date of the filing, unless the issuer of the securities is in bankruptcy or receivership or has an accumulated capital deficit, in which case one-third of the principal amount, par value or stated value of the securities shall be used.

(5) If the filing requiring the payment of the fees does not require a facing sheet showing the calculation of the fee, the filing shall be acccompanied by the latter of transmittal stating the amount of the filing fee and how it was determined, as well as the amount offset by a previous filing and the identification of such filing, if applicable.

(b) *Section 13(e)(1) Filings.* At the time of filing such statement as the Commission may require pursuant to section 13(e)(1) of the Exchange Act, a fee of one-fiftieth of one percent of the value of the securities proposed to be

acquired by the acquiring person. The value of the securities proposed to be acquired shall be determined as follows:

(1) The value of the securities to be acquired solely for cash shall be the amount of cash to be paid for them;

(2) The value of the securities to be acquired with securities or other non-cash consideration, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(c) *Proxy and information statement filings.* At the time of filing a preliminary proxy statement pursuant to Rule 14a–6(a) or preliminary information statement pursuant to Rule 14c–5(a) that concerns a merger, consolidation, acquisition of a company, or proposed sale or other disposition of substantially all the assets of the registrant (including a liquidation), the following fee:

(1) For preliminary or acquisition of a company, a fee of one-fiftieth of one percent of the proposed cash payment or of the value of the securities and other property to be transferred to security holders in the transaction. The fee is payable whether the registrant is acquiring another company or being acquired.

(i) The value of securities or other property to be transferred to security holders, whether or not in combination with a cash payment for the same securities, shall be based upon the market value of the securities to be received by the acquiring person as established in accordance with paragraph (a)(4) of this section.

(ii) Notwithstanding the above, where the acquisition, merger or consolidation is for the sole purpose of changing the registrant's domicile, the filing fee shall be $125.

(2) For preliminary material involving a vote upon a proposed sale or other disposition of substantially all the assets of the registrant, a fee of one-fiftieth of one percent of the aggregate of the cash and the value of the securities (other than its own) and other property to be received by the registrant. In the case of a disposition in which the registrant will not receive any property, such as a liquidation or spin-off, the fee shall be one-fiftieth of one percent of the aggregate of the cash and the value of the securities and other property to be distributed to security holders.

(i) The value of the securities to be received (or distributed in the case of a spin-off or liquidation) shall be based upon the market value of such securities as established in accordance with paragraph (a)(4) of this section.

(ii) The value of other property shall be a bona fide estimate of the fair market value of such property.

(3) Where two or more companies are involved in the transaction, each shall pay a proportionate share of such fee, determined by the persons involved.

(4) Notwithstanding the above, the fee required by this paragraph (c) shall not be payable for a proxy statement filed by a company registered under the Investment Company Act of 1940.

(d) *Schedule 14D–1 filings.* At the time of filing a Schedule 14D–1, a fee of one-fiftieth of one percent of the aggregate of the cash or of the value of the securities or other property offered by the bidder. Where the bidder is offering securities or other non-cash consisderation for some or all of the securities to be acquired, whether or not in combination with a cash payment for the same securities, the value of the consideration to be offered for such securities shall be based upon the market value of the securities to be received by the bidder as established in accordance with paragraph (a)(4) of this section.

6. By redesignating paragraph (b) as paragraph (c) and adding a new paragraph (b) to § 240.13e–1 to read as follows:

§ 240.13e–1 Purchase of securities by issuer thereof.

* * * * *

(b) The initial statement shall be accompanied by a fee payable to the Commission as required by § 240.0–11.

* * * * *

7. By adding the "Calculation of Filing Fee" schedule to § 240.13e–100 to read as follows:

§ 240.13e–100 Schedule 13E–3 [§ 240.13e–3], Rule 13e–3 transaction statement pursuant to section 13(e) of the Securities Exchange Act of 1934 and rule 13e–3 [§ 240.13e–3] thereunder.

* * * * *

Check the following box if the solicting materials or information statement referred to in checking box (a) are preliminary copies: ☐

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: ———
Form or Registration No.: ———
Filing Party: ———
Date Filed: ———

* * * * *

8. By adding the "Calculation of Filing Fee" schedule to § 240.13e–101 to read as follows:

§ 240.13e–101 Schedule 13E–4. Tender offer statement pursuant to section 13(e)(1) of the Securities Exchange Act of 1934 and § 240.13e–4 thereunder.

Securities and Exchange Commission
Washington, D.C.

Issuer Tender Offer Statement

Pursuant to Section 13(e)(1) of the Securities Exchange Act of 1934

(Amendment No. ———)

Name of Issuer ———
Name of person(s) filing statement ———
Title of class of securities ———
CUSIP number of class of securities ———
Name, address and telephone number of person authorized to receive notices and communications on behalf of the person(s) filing statement ———
Date tender offer first published, sent or given to security holders ———

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

*Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0–11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: ———
Form or Registration No.: ———
Filing Party: ———
Date Filed: ———

* * * * *

9. By inserting a line, adding the "Calculation of Filing Fee" schedule and revising Instruction 2 to the Special Instruction for complying with Schedule 14D–1 of § 240.14d–100 to read as follows:

§ 240.14d-100 Schedule 14D-1. Tender offer statement pursuant to section 14(d)(1) of the Securities Exchange Act of 1934.

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-1

* * * * *

(CUSIP Number of Class of Securities)

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices and Communications on Behalf of Bidder)

Calculation of Filing Fee

Transaction valuation*	Amount of filing fee

* Set forth the amount on which the filing fee is calculated and state how it was determined.

[ ] Check box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the fling with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: _____
Form or Registration No.: _____
Filing Part: _____
Date Filed: _____

* * * * *

Special Instructions for Complying with Schedule 14D-1

* * * * *

Instructions. 1. * * *

2. This statement shall be accompanied by a fee payable to the Commission as required by § 240.0-11.

* * * * *

By the Commission.

John Wheeler,

Secretary.

July 1, 1985.

[FR Doc. 85-16578 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-14-81]

Deduction for Certain Foreign Deferred Compensation 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 limitations on deductions and adjustments to earnings and profits (or accumulated profits) with respect to certain foreign deferred compensation plans.

DATES: The public hearing will be held on Friday, September 20, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Friday, September 6, 1985.

ADDRESS: The public hearing will be held in the I.R.S. 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-14-81), 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 404A of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Monday, April 8, 1985 (50 FR 13821).

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 have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Friday, September 6, 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 the direction of the Commissioner of Internal Revenue.

Jonathan P. Marget,

Assistant Director, Employee Plans and Exempt Organizations Division.

[FR Doc. 85-16661 Filed 7-11-85; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 567]

Lodi Viticultural Area; Proposed Establishment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area in California, in the counties of Sacramento and San Joaquin, to be known as "Lodi." This proposal is the result of a petition submitted by a representative of the Lodi District Vintners Association. The establishment of viticultural areas and the subsequent use of viticultural area names in wine labeling and advertising will allow wineries to better designate the specific grape-growing area where their wines come from and will enable consumers to better identify wines they purchase.

DATE: Written comments must be received by August 26, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044-0385, (Notice No. 567)

Copies of the petition, the proposed regulations, the appropriate maps, and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4407, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Roger Arnold, 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 establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF has received a petition submitted by a representative of the Lodi District Vintners Association, proposing an area in Sacramento and San Joaquin Counties, California, as a viticultural area to be known as "Lodi." The proposed Lodi viticultural area is bounded on the east by the Sacramento and San Joaquin County lines, on the south by the Calaveras River and Eightmile Road, and on the west by Interstate Highway 5, Hood-Franklin Road, and Franklin Boulevard. The northern boundary includes the section line running due east from Franklin Boulevard and connecting to the western end of Sheldon Road, Sheldon Road, the Central California Traction Co. Railroad, Grant Line Road, California State Highway 16, and Deer Creek. The proposed area of close to 458,000 acres includes approximately 39,900 acres of vineyards and 15 bonded wine cellars.

Viticultural Area Name

The petitioner submitted many newspaper articles dating from 1956 which show that this proposed area has been known as Lodi for many years. Wine writers such as Leon D. Adams, in his definitive book, *The Wines of America*, (McGraw-Hill Book Company, New York, NY, 1978, Second Edition) describe the wines and climate of the Lodi region. The equally authoritative Hugh Johnson, *The World Atlas of Wine*, (Simon and Schuster, New York, 1971), refers to Lodi as the heart of the northern Central Valley vineyards benefiting from the cooling effects of air from San Francisco Bay. Alexis Lichine, in his *New Encyclopedia of Wines and Spirits* (Alfered A. Knopf, New York, NY, 1978), described the Sacramento Valley as a region somewhat affected by the moderating influence of San Francisco Bay air, with the Lodi-Sacramento district as the dominate wine-growing area. All these authors, plus many more in various other books, wine-related magazines, and news columns have long recognized the Lodi wine district.

Historical/Current Boundaries

The petitioner believes that there is good evidence that the proposed boundaries are well defined and geographically distinctive from surrounding areas.

(a) The eastern terminus of the currently proposed southern boundary is its point of intersection with the eastern boundary of San Joaquin County.

A small segment of southwestern Calaveras County has been omitted from the proposed viticultural area in consideration of the total absence of current viticultural activity, and in the belief any future viticulturalists in the segment would not desire to be identified with Lodi.

(b) The petitioner has used part of Interstate Highway 5, which is roughly parallel to Thornton Road, and runs from one-quarter to, at most, two miles west of Thornton Road as the western boundary. The petitioner believes that this is a well defined border. At the intersection of Interstate Highway 5 and Hood-Franklin Road the boundary jogs to the east approximately one-half mile to the intersection with Franklin Boulevard which it follows northeast to the meeting point with the section line running east which extends to Sheldon Road.

(c) The northern boundary starts from the point where Franklin Boulevard meets the section line extending due east to the western end of Sheldon Road, then continuing east along Sheldon Road to its intersection with the Central California Traction Co. Railroad, then southeast along the Central California Traction Co. Railroad to its intersection with Grant Line Road, and then extending northeast along Grant Line Road parallel to the Cosumnes River.

At the point where Grant Line Road intersects California State Highway 16 the boundary follows Highway 16 southeast to Deer Creek, where it proceeds east along Deer Creek until it intersects the eastern boundary of Sacramento County.

(d) The eastern boundary excluded a small area of southwest Calaveras County including the principal community, Valley Springs. The proposed boundary will follow the eastern boundaries for Sacramento and San Joaquin Counties from Deer Creek in the north to the Calaveras River in the south.

Geographical/Viticultural Features

The petitioner claims the proposed viticultural area is distinguished from the surrounding areas by climatic variances and by soil differences. The petitioner bases these claims on the following:

(a) The proposed Lodi viticultural area is an inland area that is comprised mainly of alluvial fan, flood plain lands, and lower and higher terrace lands.

(b) Although the land both north and south of the area has some similar soil structures, it is the combination of these soils with the climatically moderating effect of air from San Franciso Bay that makes this area distinctive. Any northern boundary proposed for the Lodi viticultural area located significantly closer to Sacrameto, and any other southern boundary located significantly closer to Stockton, would include land which experiences annual degree days more comparable to Sacremento and Stockton than to Lodi. To quote the United States Department of Agriculture (USDA) 1937 Soil Survey of the Lodi Area, "Owing to its location opposite the wind gap leading inland from the Golden Gate, the range in temperature is narrower than in more northerly and southerly parts of the great valley. Summer fogs are more common." Temperature data covering the period 1973 through 1982 compiled by the University of California Agricultural Extension Station at Sacramento, and the United States Department of Interior, Stockton, show a mean of 3570 degree days for Lodi, 4185 for Sacramento, and 4386 for Stockton.

(c) The primary difference on the eastern boundary is the change into the Sierra-Nevada foothills and the more upland soils. Also, an increase of rainfall is associated with an increase in elevation. To quote the same USDA 1937 Soil Survey, "Lodi, representative of valley plain, has 18.26 inches (of annual

rainfall); and Valley Springs, about eight miles east of the area, and more or less representative of the foothill country, has 24.03 inches."

(d) The area west of Interstate Highway 5 and Franklin Boulevard is flood-prone, poorly drained, delta land consisting of Ryde soils and peat. The segment of Highway 5 proposed as the western boundary of the Lodi viticultural area is primarily located on the first firm soil east of the Sacramento River system.

(e) Soils in the proposed Lodi viticultural area are primarily Hanford, Delhi, or Dinuba in the alluvial fan soils; or San Joaquin, Madera, Ramona, or Redding in the lower and upper terrace soils as shown in, "Soils of San Joaquin County, California" and "Soils of Sacramento County, California," University of California, Berkley, California, 1952 and 1954.

Proposed Boundaries

The boundaries of the proposed Lodi viticultural area may be found on 16 U.S.G.S. 7.5 minute series maps. The names of the maps and the specific description of the boundaries of the proposed viticultural area can be found in the proposed regulations which immediately follow the preamble to this notice of proposed rulemaking.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

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

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

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

Regultory 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 proposal because the notice of proposed rulemaking, 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 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.

Public Participation—Written Comments

ATF requests comments concerning this proposed viticultural area from all interested persons. Within the context of the identifying designation, Lodi, there may be geographical features which more accurately distinguish the boundaries of the proposed viticultural area. Therefore, alternative boundary proposals for defining a Lodi viticultural area are solicited. Comments received before the closing date will be carefully considered. Comments received after the closing date, and too late for consideration, will be treated as possible suggestions for future ATF action. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her request, in writing, to the Director within the 45-day comment period. The request should include reasons why the commenter feels that a public hearing is necessary. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing will be held.

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 requirement to collect information is proposed.

Drafting Information

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

List of Subjects in 27 CFR Part 9

Administration practice and procedure, Consumer protection, Viticultural area, and Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: August 29, 1935, Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Par. 2. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.107 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.107 Lodi.

Par. 3. Subpart C is amended to add § 9.107 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.107 Lodi.

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

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Lodi viticultural area are 16 U.S.G.S. 7.5 minute series maps. The maps are listed in the order in which the boundaries are described and are titled as follows:

(1) "Valley Springs SW Quadrangle, California—San Joaquin Co." (1962, photoinspected 1973);

(2) "Linden Quadrangle, California—San Joaquin Co." (1968);

(3) "Waterloo Quadrangle, California—San Joaquin Co." (1968, photoinspected 1978);

(4) "Lodi South Quadrangle, California—San Joaquin Co." (1968, photorevised 1976);

(5) "Terminous Quadrangle, California—San Joaquin Co." (1978);

(6) "Thornton Quadrangle, California" (1978);

(7) "Bruceville Quadrangle, California" (1968), photorevised 1980);

(8) "Florin Quadrangle, California" (1968, photorevised 1980);

(9) "Elk Grove Quadrangle, California—Sacramento Co." (1968, photorevised 1979);

(10) "Sloughouse Quadrangle, California—Sacramento Co." (1968, photorevised 1980);

(11) "Buffalo Creek Quadrangle, California" (1967, photorevised 1980);

(12) "Folsom SE Quadrangle, California" (1954, photorevised 1980);

(13) "Carbondale Quadrangle, California" (1968, photorevised 1980);

(14) "Goose Creek Quadrangle, California" (1968, photorevised 1980);

(15) "Clements Quadrangle, California" (1968); and

(16) "Wallace Quadrangle, California" (1962).

(c) *Boundaries.* The Lodi viticultural area is located in California in the counties of Sacramento and San Joaquin. The beginning point is located in the southeast corner of the viticultural area where the Calaveras River intersects the eastern boundary of San Joaquin County.

(1) The Boundary proceeds west along the Calaveras River to the point of intersection with Eightmile Road;

(2) Thence west along Eightmile Road to the point of intersection with Interstate Highway 5;

(3) Thence north and then northwest along Interstate Highway 5 to its intersection with Hood-Franklin Road;

(4) Thence east along Hood-Franklin Road to its intersection with Franklin Boulevard;

(5) Thence northeast along Franklin Boulevard to its meeting point with the section line running due east and connecting to the western end of Sheldon Road;

(6) Thence due east along the section line connecting to the western end of Sheldon Road;

(7) Thence east along Sheldon Road to its intersection with the Central California Traction Co. Railroad;

(8) Thence southeast along the Central California Traction Co. Railroad to its point of intersection with Grant Line Road;

(9) Thence northeast along Grant Line Road to the point of intersection with California State Highway 16;

(10) Thence southeast along California State Highway 16 to the point of intersection with Deer Creek;

(11) Thence northeast along Deer Creek to the point of intersection with the eastern boundary of Sacramento County;

(12) Thence southeast along the eastern boundary of Sacramento County and then along the eastern boundary of San Joaquin County to the point of intersection with the Calaveras River, the point of beginning.

Signed: June 28, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-16558 Filed 7-11-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Parts 369 and 376

Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to issue regulations for the program under section 311(c) of the Rehabilitation Act of 1973, as amended. This program provides grants to State and other public and nonprofit agencies and organizations for transitional rehabilitation service projects that provide job training for handicapped youths and prepare them for entry into the labor force, including competitive or supported employment. No funds are available for this program in FY 85.

These proposed regulations include information about the kinds of projects supported under this program, the application requirements, and the selection criteria for evaluating applications.

DATE: Comments must be received on or before September 10, 1985.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Albert Rotundo, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3038), Washington, D.C. 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Telephone: (202) 732-1299.

SUPPLEMENTARY INFORMATION: The Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth is authorized by section 311(c) of the Rehabilitation Act of 1973. Section 311(c) was added to the Act by the Rehabilitation Amendments of 1984, Pub. L. 98-221, enacted on February 22, 1984. This program supports special projects and demonstrations to provide job training for handicapped youths and prepare them for entry into the labor force. A summary of the proposed regulations follows:

Part 369—Vocational Rehabilitation Service Projects

Part 369 is amended to include appropriate references to the new Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth under 34 CFR Part 376.

Part 376—Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

Subpart A—General

Section 376.1 describes the purpose of the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth

Section 376.2 identifies the parties that are eligible to receive grants under this program.

Section 376.3 identifies the regulations that apply to this program, including the Education Department General Administrative Regulations.

Section 376.4 provides definitions of terms applicable to this program. Section 376.4(b)(1) and (2) sets out the same definitions of "handicapped youth" and "supported employment" that are included in final regulations for the Secondary Education and Transitional Services for Handicapped Youth Program under Section 626 of the Education of the Handicapped Act published in the **Federal Register** on July 11, 1984 at 49 FR 28380.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Section 376.10 identifies various types of activities that may be supported under this program.

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Section 376.30 authorizes the Secretary, for any fiscal year, to give priority to one or more areas of project activity. This provision is necessary to ensure that the Secretary can meet program needs as they change from year to year. The proposed funding priorities for this program include the following: (1) Community-Based Transitional Rehabilitation Service Delivery; (2) Statewide Transitional Rehabilitation Service Delivery; (3) Transitional Rehabilitation Services for Handicapped Youth with Special Needs; (4) Transitional Rehabilitation Services for Institutionalized Persons; (5) Transitional Rehabilitation Services for

Unemployed Handicapped Youth; and (6) Home-Based Transitional Rehabilitation Services.

Section 376.31 contains the selection criteria that the Secretary proposes to use to evaluate applications and award new grants under this program. The Secretary proposes weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected.

Subpart E—What Conditions Must Be Met by a Grantee?

Section 376.40 establishes matching requirements for grantees.

Section 376.41 reflects a statutory requirements for cooperation between grantees and other agencies and organizations.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291.

They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

States and State agencies are not regarded as small entities under the Act. In addition, the application procedures and matching requirements in the proposed regulations are not burdensome and should not have a significant economic impact on small entities submitting applications and participating in this program.

Paperwork Reduction Act of 1980

Section 376.31 contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, D.C. 20503; Attention: Joseph F. Lackey, Jr.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3315, Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 369

Grant programs—Social programs, Vocational rehabilitation.

34 CFR Part 376

Vocational rehabilitation, Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.128, Vocational Rehabilitation Service Projects)

Dated: July 9, 1985.

Wiliam J. Bennett,

Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Part 369 and adding a new Part 376 as follows:

PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

1. In § 369.1, a new paragraph (b)(7) is added to read as follows and the current paragraphs (b)(7) and (b)(8) are redesignated as (b)(8) and (b)(9) respectively:

§ 369.1 What are the Vocational Rehabilitation Service Projects?

* * * * *

(b) * * *

(7) Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth (34 CFR Part 376).

* * * * *

2. In § 369.2, a new paragraph (i) is added to read as follows:

§ 369.2 Who is eligible for assistance under these programs?

* * * * *

(i) *Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth.* State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c) of the Act; 29 U.S.C. 777a(c)).

3. Section 369.3 is revised to read as follows:

§ 369.3 What regulations apply to these programs?

The following regulations apply to the programs listed in § 369.1(b):

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), and Part 78 (Education Appeal Board).

(b) The regulations in this Part 369.

(c) The regulations in 34 CFR Parts 370, 371, 372, 373, 374, 375, 376, 378, and 379, as appropriate.

(Sec. 12(c) of the Act; 29 U.S.C. 711(c))

4. In § 369.30, paragraph (a) is revised to read as follows:

§ 369.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application on the basis of general selection criteria in § 369.31 and specific selection criteria in 34 CFR Parts 370, 371, 372, 373, 374, 375, 376, 378, and 379. The maximum possible score for each complete criterion under each Vocational Rehabilitation Service Project category is stated in parentheses in §§ 370.30, 371.30, 372.30, 373.30, 374.30, 375.30, 376.31, 378.30, and 379.30. The number of points awarded under each criterion depends on how well the application meets all the elements under that criterion.

* * * * *

5. In § 369.32, the introductory paragraph is revised to read as follows:

§ 369.32 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 369.31 and 34 CFR Parts 370, 371, 372, 373, 374, 375, 376, 378, and 379,

the Secretary, in making awards under these programs, considers such factors as—

* * * * *

6. A new Part 376 is added to read as follows:

PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO HANDICAPPED YOUTH

Subpart A—General

Sec.

376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?
376.2 Who is eligible for assistance under this program?
376.3 What regulations apply to this program?
376.4 What definitions apply to this program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

376.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How does the Secretary Make a Grant?

376.30 What priorities are considered for support by the Secretary under this part?
376.31 What selection criteria does the Secretary use under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

376.40 What are the matching requirements?
376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Authority: Sec. 311(c) of the Rehabilitation Act of 1973, Pub. L. 93-112, as added by sec. 136(c) of Pub. L. 98-221, 98 Stat. 26 (29 U.S.C. 777a(c)), unless otherwise noted.

Subpart A—General

§ 376.1 What is the Program of Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Handicapped Youth?

This program is designed to provide job training for handicapped youths to prepare them for entry into the labor force, including competitive or supported employment.

(Sec. 311(c); 29 U.S.C., 777a(c))

§ 376.2 Who is eligible for assistance under this program?

State and other public and nonprofit agencies and organizations are eligible for assistance under this program.

(Sec. 311(c); 29 U.S.C., 777a(c))

§ 376.3 What regulations apply to this program?

The following regulations apply to this program:

(a) The regulations in 34 CFR Part 369.

(b) The regulations in this Part 376.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.4 What definitions apply to this program?

(a) The definitions in 34 CFR Part 369 apply to this program.

(b) The following definitions also apply to this program:

(1) "Handicapped youth" means any handicapped child who is between the ages of twelve and 26.

(2) "Supported employment" means paid work in a variety of settings, particularly regular work sites, especially designed for handicapped persons—

(i) For whom competitive employment at or above the minimum wage is not immediately obtainable; and

(ii) Who, because of their disability, need intensive ongoing support to perform in a work setting.

(3) "Transitional rehabilitation services" means any vocational rehabilitation services available under the State plan for vocational rehabilitation services under 34 CFR Part 361 or the State plan for independent living services under 34 CFR Part 365 and may also include—

(i) Jobs search assistance;

(ii) On-the-job training;

(iii) Job development, including worksite modification and use of advanced learning technology for skills training; and

(iv) Follow-up services for individuals placed in employment.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 376.10 What types of projects are authorized under this program?

(a) This program supports special projects and demonstrations, including research and evaluation, for the following purposes:

(1) To demonstrate effective ways in which to provide job training, placement, and other transitional rehabilitation services to handicapped youth to prepare them for entry in the labor force, including competitive or supported employment.

(2) To demonstrate service programs for handicapped youth reflecting cooperative efforts between local educational agencies, business and industry, vocational rehabilitation agencies, facilities, parent groups, public or other nonprofit developmental disabilities agencies, and organizations responsible for promoting or assisting in local economic development.

(3) To develop and implement new patterns or practices of transitional rehabilitation service delivery and to conduct the field-testing and evaluation of these patterns or practices to determine the efficacy of their being replicated in other settings.

(b) Research and evaluation activities carried out under this program must be specifically related to a transitional rehabilitation service model under which direct services are provided.

(c) Projects funded under this part must serve handicapped youths.

(d) A project funded under this part may include dissemination of information on project activities to business and industry.

(Sec. 12(c) and 311(c), 29 U.S.C. 711a(c) and 777(c))

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 376.30 What priorities are considered for support by the Secretary under this part?

The Secretary may select annually in a Notice published in the **Federal Register**, one or more of the following priority areas for funding under this program:

(a) *Community-based transitional rehabilitation service delivery.* This priority supports projects that demonstrate exemplary models for developing and establishing community-based transitional rehabilitation service programs that result directly in competitive or supported employment for handicapped youth within the labor force.

(b) *Statewide transitional rehabilitation service delivery.* This priority supports projects that demonsrtate effective Statewide approaches to transitional rehabilitation service delivery for handicapped youth and demonstrate cooperative efforts between State agencies responsible for service to handicapped youth, including but not limited to, special education, vocational rehabilitation, and day services for adults with developmental disabilities.

(c) *Transitional rehabilitation services for handicapped youth with special needs.* This priority supports projects that demonstrate transitional rehabilitation service programs focused

on meeting the special job training and placement needs of one or more groups of individuals with physical or mental disabilities which present unusual and difficult rehabilitation problems including, but not limited to, blindness, cerebral palsy, deafness, epilepsy, mental illness, mental retardation, and learning disability.

(d) *Transitional rehabilitation services for institutionalized persons.* This priority supports projects that demonstrate effective ways to assist youths and young adults who are institutionalized, including those residing in skilled nursing or intermediate care facilities, to return to community living and competitive or supported employment.

(e) *Transitional rehabilitation services for unemployed handicapped youth.* This priority supports projects that demonstrate ways to train and place in competitive or supported employment handicapped youth who were unable to participate in special education programs or who recently graduated from those programs but have been unable to secure and maintain employment.

(f) *Home-based transitional rehabilitation services.* This priority supports projects that demonstrate ways in which handicapped youth, particularly those residing in rural areas, who because of the severity of their disabilities are precluded from employment in the community, could be gainfully employed in home settings.

(Sec. 311(c); 29 U.S.C. 777(a), (c))

§ 376.31 What selection criteria does the Secretary use under this program?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Plan of operation* (20 points). The Secretary reviews each application in accordance with the criterion in § 369.31(a).

(b) *Quality of key personnel* (10 points). The Secretary reviews each application in accordance with the criterion in § 369.31(b).

(c) *Budget and cost effectiveness* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(c).

(d) *Evaluation plan* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(d).

(e) *Adequacy of resources* (5 points). The Secretary reviews each application in accordance with the criterion in § 369.31(e).

(f) *Impact* (20 points).

(1) The Secretary reviews each application for information that describes the probable impact of the proposed project on rehabilitation programs for handicapped youth.

(2) The Secretary looks for information that shows—

(i) The contribution that the project findings will make to current rehabilitation practice; and

(ii) The extent to which findings and products can be used for the benefit of other groups of handicapped youth.

(g) *Innovativeness* (20 points).

(1) The Secretary reviews each application for information that shows the innovativeness of the proposed project.

(2) The Secretary looks for information that shows—

(i) The approach to be used in the proposed project in providing transitional rehabilitation services is innovative and appropriate to the special needs of the groups of handicapped youth being served; and

(ii) The approach can be replicated in other service settings.

(h) *Likelihood of sustaining the program* (15 points).

(1) The Secretary reviews each application for information that shows the likelihood of the service program being sustained after the termination of Federal grant support.

(2) The Secretary looks for information that shows—

(i) The applicant agency intends to continue to operate the service program after the termination of the project;

(ii) There is a sufficient base of service programs and work opportunities to ensure a lasting change in the way transitional rehabilitation services are provided to handicapped youths in the project area; and

(iii) Agencies in the project area with responsibilities which relate to the purpose of the project are actively collaborating in service delivery and project management.

(Sec. 311(c); 29 U.S.C. 777a(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 376.40 What are the matching requirements?

The Secretary may pay all or part of the costs of activities funded under this program. Where part of the costs is to be borne by a grantee, the amount of grantee participation is determined at the time of the grant award and is generally not less than 10 percent of the total cost of the project.

(Sec. 12(c) and 311(c); 29 U.S.C. 711(c) and 777a(c))

§ 376.41 What are the requirements for cooperation between grantees and other agencies and organizations?

Each project must be designed to demonstrate a cooperative effort between local educational agencies, business and industry, vocational rehabilitation programs, organizations representing labor, and organizations responsible for promoting or assisting in local economic development.

(Sec. 311(c); 29 U.S.C. 777a(c))

[FR Doc. 85-16597 Filed 7-11-85; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL-2862-6]

Approval and Promulgation of State Implementation Plans; Revisions to Colorado Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: On April 18, 1983, Colorado submitted its newly promulgated Prevention of Significant Deterioration (PSD) regulation. The regulation was developed to meet the requirements in 40 CFR 51.24, as published on August 7, 1980. EPA today is proposing to approve this PSD revision to the Colorado State Implementation Plan with some exceptions. These disapprovals should not affect the ability of Colorado to assume the major portion of the PSD permitting responsibility. If any source is not required to obtain a PSD permit from the State because of these differences in the State regulation and the approved SIP, the source will be required to obtain a permit from EPA in accordance with EPA's PSD regulations. EPA's PSD regulations will also remain in effect for sources locating on Indian Reservations and for sources that have received PSD permits from EPA.

EPA is proposing disapproval for the sources because the state program was found to be less stringent than required by 40 CFR Part 51.24 for those sources. EPA is delaying action on the stack height guidelines because EPA's guidelines have been remanded by the Court of Appeals for the District of Columbia.

DATES: Comments due August 12, 1985.

ADDRESSES: Written comments should be addressed to: Robert R. DeSpain, Chief, Air Programs Branch,

Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295.

Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Steven Frey, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 293–1753 or FTS–564–1753.

SUPPLEMENTARY INFORMATION: On August 7, 1980, EPA revised 40 CFR 51.24 which contains requirements States must follow in submitting a plan to Prevent Significant Deterioration of air quality (PSD). States were given nine months to revise their State Implementation Plans (SIP). Colorado undertook a rulemaking effort of more than two years and conducted an extensive public hearing in developing this regulation. The regulation reflects the involvement of many groups, including industry, environmental groups, regional councils of government and local governments. The State has gone beyond the federal regulation in some areas to address some of the special concerns in Colorado. Colorado has 12 Class I areas and the State is especially concerned that the Air Quality Related Values (AQRV) are protected in these pristine areas. They have established a procedure to require an applicant to conduct pre-construction and post-construction monitoring of up to three AQRV in an impacted Class I area. During the State PSD hearings, extensive interest was expressed in protecting the State's water resources from acid rain. This was addressed in the PSD regulation by requiring an applicant to include an evaluation of the proposed source's air emission impact on water resources in an additional impact analysis.

Summary of PSD Requirements

Section 110(a)(2)(D) and Part C, Subpart 1, of the Clean Air Act (Act) establish specific requirements for the prevention of significant deterioration of air quality in areas where ambient concentrations of sulfur dioxide and particulate matter are less than the national standards. The Act defines the amount of deterioration that can be authorized in an area in terms of maximum allowable increases in ambient air quality concentrations (increments). These increments vary and are a function of the classification of an area. There are three applicable classifications under this program: (a) Class I where the increments are very stringent and practically no deterioration is allowed, (b) Class II where moderate, well-controlled growth is allowed, and (c) Class III where a considerable amount of growth is allowed. While the Act established several mandatory Class I areas, most of the nation is now Class II. The Act gives redesignation authority to State Governors and to the governing bodies of Indian tribes.

The principal means of protecting the increments are the review and regulation of major new stationary sources and modifications, the tracking of minor source growth and the periodic review of increment consumption. At present, EPA is administring the PSD program in Colorado in accordance with 40 CFR Part 52.21. In that program, operators of major new sources and major modifications must obtain a permit before commencing construction. A permit is granted only if, among other things: (a) The increments for the area are protected, and (b) best available control technology will be employed.

Summarized Submittal

The State submitted their regulation for Prevention of Significant Deterioration to EPA on April 18, 1983. The submittal included the revised Regulation 3 and a revised Common Provisions Regulation. The Colorado Regulation included some differences in wording and organization and other deviations from 40 CFR 51.24. On July 8, 1983, EPA requested clarification from the State on many of the above differences. In a response, dated July 29, 1983, the Colorado Air Pollution Control Division satisfactorily addressed EPA's concerns and provided assurance that the State intended to interpret and apply the PSD regulation consistently with the federal requirements and that the State program would be at least equivalent to, and in places, more stringent than the federal program. EPA subsequently requested the State to clarify their intent on a number of additional issues and they did so by a letter dated December 29, 1983. EPA's review and analysis of all the information results in this proposal to approve most of the State program. EPA's letter and the State letters, which are a part of the SIP submittal, are available for public review at the addresses listed above.

There are two issues in the State regulation that appear to make the State program somewhat inconsistent with the EPA requirements. The Agency has evaluated these items and does not believe that they will adversely affect the PSD program, if handled as recommended.

The first issue relates to the State's inclusion of only 11 source categories for which fugitive emissions are included in determining whether or not a source is a major source or major modification. EPA regulations include 26 source categories. During the development of their PSD regulation, the State concurred with the industry petitioners' arguments which formed the basis for part of the settlement agreement between EPA and industry petitioners in a challenge to the 1980 PSD regulations (i.e., that case-by-case rulemaking procedures should be used to identify each source category for which fugitive emissions are a significant contributor to overall emissions and, therefore, would be quantified and included in determining if a source is a major). The State opted to undergo its own rulemaking for 11 source categories for which they found fugitive emissions were significant and quantifiable.

The Agency is proposing to approve the State PSD regulation except for the 15 categories that the State regulation has omitted from their PSD regulation. At this time, only one of these categories, sulfur recovery plants, exists in the State. The sulfur plants in Colorado are generally associated with refineries and, therefore, are likely to be included in that category for purposes of fugitive emissions. The Agency recognizes this dual responsibility for the program has the potential to confuse the regulated industries. However, the Agency does not believe that it is likely that any of the 15 exempted source categories would locate in Colorado and that even if they do, it should be easy to identify the source and direct them to the proper agency (EPA) for the PSD permit. The following is the list of source categories for which the Agency is proposing to disapprove the Colorado PSD regulation, and for which 40 CFR 52.21 and 52.343 will remain in effect:

Kraft Pulp Mills
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric, Sulfuric and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (furnace process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

The second major issue is the State's treatment of "fugitive dust." The Agency's PSD regulation contains no exemption for "fugitive dust" but, there

are numerous places throughout the State regulation where "fugitive dust" is exempt from a number of different requirements. The major inconsistency appears to be in Regulation 3, Section XI.A.4., which exempts "fugitive dust" from increment consumption. The reason the State exempts "fugitive dust" in the PSD regulations is that the authorizing legislation (C.R.S. 1973, 25-7-202(4), -202(5), -204(1)(b) and -204(2)(c) prohibits them from regulating "fugitive dust." The definition for "fugitive dust" in the State regulation is as follows:

> For purposes of Regulation No. 3 and the definitions of "Major Stationary Source" and "Major Modification," "fugitive dust " means soil or other airborne particulate matter (excluding particulates produced directly during combustion) resulting from natural forces or form surface use or disturbance, including but not limited to, all dust from agriculture, construction, forestry, unpaved roads, mining, exploration, or similar activities in which earth is either moved, stored, transported, or redistributed; except that fugitive dust shall not include any fraction of such soil or other airborne particulate matter which is of a size or substance to adversely affect public health or welfare.

Whether or not any particulate matter may be excluded because it is fugitive dust would be dependent on that particulate not having an adverse effect on health or welfare. The State expands on this in the "Statement of Basis and Purpose" which is incorporated into the PSD regulation. In this section the State explains that the information they have leads them to find that all size fractions of suspended particulate matter can adversely affect welfare through impacts of soiling and nuisance. The statement also explains that the State would only determine, on a case specific basis, if some of a proposed source's particulate matter was fugitive dust. The source would need "clear and convincing evidence" to show that some of their suspended particulate matter qualified as "fugitive dust." The Agency believes that the combination of the presumption that no fraction of particulate matter is "fugitive dust" and that "clear and convincing evidence" must be supplied by the source to back a claim that a fraction of their particulate matter is "fugitive dust" will lead to very few, if any, exemptions of suspended particulate matter from the requirements of this regulation. However, the Agency also believes that the use of the "fugitive dust" clause to exempt a source from PSD review would be inconsistent with the Agency's PSD regulations. Consequently, EPA proposes to disapprove the State's program for sources that would avoid any of its requirements based upon the "fugitive dust" exemptions wherever they appear throughout the regulation. These sources would have to obtain a permit from EPA. This disapproval should not significantly disrupt the State's program, since as discussed above the exemptions will rarely be used.

EPA is also proposing to disapprove the state program for sources qualifying for several other minor exemption provisions. These sources would also have to obtain permits from EPA. Again, these disapprovals should not significantly disrupt the state program because it is not anticipated that many sources would qualify for these exemptions.

Under this program, Colorado will be issuing permits and establishing emission limitations that may be affected by required revisions to the stack height regulations. For this reason, EPA has requested that the State include the following caveat in all potentially affected permit approvals until the stack height regulations are revised by EPA:

> In approving this permit, the Colorado Air Quality Control Commission has determined that the application complies with EPA's proposed amended stack height regulations published on November 9, 1984 (49 FR 44878). Once EPA promulgates final amended stack height regulations pursuant to the court remand in Sierra Club v. EPA, 719 F.2d 436 (D.C. Cir., 1983), this permit may be subject to modification. This may result in revised emission limitations or may affect other actions taken by the source owners or operators.

Colorado made a commitment to include this type of caveat in all affected permits by letter dated August 8, 1984. This letter is part of the SIP EPA is proposing to approve today.

Proposed Action

EPA is proposing to approve Regulation 3 and the Common Provision Regulations as amended for the PSD program, except as follows:

1. This plan is disapproved for the following industrial source categories:

Kraft Pulp Mills
Primary Zinc Smelters
Primary Aluminum Ore Reduction Plants
Primary Copper Smelters
Municipal Incinerators (capable of charging more than 250 tons of refuse per day)
Hydrofluoric, Sulfuric and Nitric Acid Plants
Phosphate Rock Processing Plants
Sulfur Recovery Plants
Carbon Black Plants (furnace process)
Primary Lead Smelters
Secondary Metal Production Plants
Chemical Process Plants
Taconite Ore Processing Plants
Glass Fiber Processing Plants
Charcoal Production Plants

2. The plan is disapproved for sources that would avoid any requirements of the Colorado program based upon any regulatory exemptions to the extent that they apply on the basis of fugitive dust.

3. The plan is disapproved for sources that would not need a Colorado permit due to the exemption listed in Regulation 3.I.B.2.c.viii.

4. The plan is disapproved for sources that would not need a Colorado permit due to the following portion of the definition of Stationary Source (Common Provisions) . . ." except that properties which are or will be used only for right-of-way, transmissions, gathering, transportation, communication, pipeline, or similar purposes shall not be considered contiguous or adjacent."

5. The plan is disapproved for sources that would avoid compliance with their permits due to that portion of the regulation found in Regulation 3.IV.H.4 which allows an administrative waiver of up to six months to a new source which violates a term of its permit.

6. The plan is disapproved for sources that would receive a Colorado permit based upon the provision covering Time Constraints on Division Action found in Regulation 3.IV.F.

7. EPA proposes to delay action on Regulation 3.XII.D pertaining to stack heights until EPA promulgates new stack height regulations.

The Federal PSD regulation will remain in effect for the following sources.

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

Under Executive Order 12291, this action is not Major. It has been submitted to the Office of Management and Budget for review. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the Public Information Reference Unit.

Dated: July 5, 1985.

John G. Welles,

Regional Administrator.

[FR Doc. 85-16481 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 85-204; RM-4796; FCC 85-332]

Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from RCA Global Communications and Western Union International, the Commission issues a Notice of Proposed Rulemaking to consider the implementation and scope of the uniform settlements policy for parallel routes in international telecommunications. The Commission tentatively concludes that the policy will apply to voice as well as to record services and that it will apply to transit routing under certain limited circumstances. The Commission also tentatively concludes that the policy should not apply to enhanced services. The Commission suggests that the policy does apply to the conversion of financial terms of operating agreements from Gold Francs, dollars, or other currencies into special drawing rights (SDRs), and that such conversion is to be encouraged. Finally, the Commission suggests a modified, streamlined review process designed to increase the efficiency and usefulness of the uniform settlements policy. The Commission expects that its proposed modifications will result in increased competition and the lowering of the rates charged to customers for international telecommunications services.

DATES: Comments must be received on or before August 30, 1985, and Reply Comments must be received on or before September 20, 1985.

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

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, International Policy Division, Common Carrier Bureau—Room 534, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

In the Matter of Implementation and Scope of the Uniform Settlements Policy for Parallel International Communications Routes; CC Docket No. 85-204, Rm-4796.

Adopted: June 21, 1985.
Released: July 3, 1985.

By the Commission.

I. Introduction

1. RCA Global Communications, Inc. (RCAGC) and Western Union International, Inc. (WUI)[1] have jointly filed a petition for rulemaking requesting that the Commission consider strengthening its policy regarding uniform settlement rates on parallel international communications routes. This policy, which developed in the 1930's and has its roots in antitrust law, has evolved through case law and Commission policy statements. Upon review of the filings and the history of accounting rate trends, we believe that the commencement of a rulemaking to review the uniform settlements policy and to determine the means of its future implementation would be in the public interest. In this Notice of Proposed Rulemaking (Notice) we examine the arguments raised, along with related issues and items, and tentatively conclude that the policy should be affirmed and that some modification of procedure in its implementation is required.

2. The policy of uniform settlement rates arose in response to the unique situation in the international telecommunications arena which places single governmental or quasi-governmental entities from other nations in direct negotiation with multiple private American entities for the formation or operating agreements to arrange international services.[2] The uniform settlements policy requires all carriers providing the same service to the same foreign point to have the same accounting, settlement and division of tolls arrangements with the foreign administration. Specifically, the operating agreements must stipulate: (a) Uniform accounting rates (a negotiated rate of reimbursement for service, which is then shared by the initiating and terminating entities); (b) the sharing of tolls (the percentage of the accounting rate to be allowed each entity, generally 50-50); and (c) uniform settlement rates (the currency conversion rate used to arrive at the currency stipulated in the operating agreement, usually Gold Francs (GF), U.S. dollars, or special drawing rights (SDRs)). We emphasize that the policy does not require or encourage uniform collection (tariff) rates for international services.

3. These requirements of uniformity are meant to assure that the operating agreements achieve their purpose of allowing both service providers fair compensation for the costs of service. Because the American carriers are private and competitive, the foreign telecommunications entities (hereinafter PTTs, for postal, telegraph and telephone administrations), which are monopolistic, enjoy an advantageous bargaining position. The result of this situation is that the monopolist PTT has the ability, as well as the incentive, to manipulate the multiple U.S. entities by playing them against one another in order to gain favorable terms and conditions. This manipulation is referred to as "whipsawing." The most frequent concession sought is a modification of the accounting rate in such a manner as to decrease the revenues paid by the PTT to the U.S. carrier for effectuating delivery in the United States or to increase the revenues paid by U.S. carriers to the PTT to effectuate delivery in the foreign country. While traditionally tied to costs, accounting rates now also reflect the relative negotiating positions of the carriers and administrations.

4. We have previously found that whipsawing is harmful to the U.S. public interest because, in allowing the PTTs to dictate the terms of international services, whipsawing reduces the total revenues of U.S. carriers, and, most importantly, decreases the ability of U.S. carriers to lower the collection rates they charge their customers. The seriousness of the problem is compounded by the fact that the terms favorable to the PTT and agreed to by one U.S. carrier, insofar as they differ from terms in effect for other carriers, create substantial pressure on the other U.S. carriers to make identical concessions in order to retain or expand their business.[3] Thus, the foreign PTT, through negotiation with a single U.S. entity and control over the routing of return flow traffic, may succeed in dictating terms to all U.S. carriers. Further, the development of consortia of

[1] The petition was filed on April 24, 1984. Comments were filed by The Western Union Telegraph Company, the American Telephone and Telegraph Company and ITT World Communications Inc. Reply Comments were filed by RCAGC.

[2] The operating agreement provides the technical details of interconnection as well as the terms for the settlement of accounts between the U.S. carrier and the foreign administration. All U.S. carriers use the same generic settlements procedure for switched services. When a U.S. carrier transmits a message to a foreign country, the U.S. carrier pays the foreign correspondent for terminating/delivering the message. Similarly, if a foreign correspondent transmits a message to the U.S., the U.S. carrier will receive payment to compensate it for effectuating delivery.

[3] We emphasize that control by a PTT over the routing of traffic destined for the United States gives the PTT significant leverage in acounting rate negotiations. Promises of greater or lesser traffic (and therefore greater or lesser revenue) may induce one or more carriers to file waiver petitions or acquiesce to accounting rate modifications.

foreign PTTs, such as CEPT and COMTELCA,[4] only increases the negotiating strength of the PTTs in their negotiations with U.S. carriers.[5] This situation is frequently exacerbated by the fact that for some services, like telex, the PTT is in the payor position and has the ability to effect lower accounting rates unilaterally.[6] In an attempt to approach parity in the positions of U.S. carriers vis-a-vis the PTTs, and to prevent whipsawing, the Commission has developed requirements of uniform terms and conditions in international operating agreements.

5. As we have frequently stated, our primary responsibility is to U.S. users, not U.S. carriers. Thus, while we prefer to see U.S. carriers rather than foreign administrations maximize their revenues through accounting rate actions, our goal is to facilitate the development of a competitive marketplace characterized by lower rates and greater service/carrier options for users. Our existing policy explicitly recognizes that nonuniformity can be in the public interest as it may increase competition, lead to lower rates or result in improved services.[7] In particular, nonuniformity may increase a U.S. carrier's flexibility in negotiating with a foreign administration and thus provide that administration with a greater incentive to enter into an operating agreement. That is, in response to PTT arguments that interconnection with an additional U.S. carrier increases costs but not revenues and that demand is generally inelastic, a U.S. carrier may offer more favorable accounting rate terms to offset these costs in order to obtain an operating agreement.

6. In recent years, accounting rates have increasingly become the target of the PTTs's goal of minimizing costs and maximizing revenues. For example, between 1955 (the inception of telex service between the U.S. and the U.K.) and July of 1977, there was only one telex accounting rate change.[8] In July 1977, the accounting rate dropped from $2.55 to $1.85 per minute; in January 1980, it dropped to $1.20 per minute, the current rate. This represented a decline of 46.7% in two and a half years. FTOC recently proposed a decrease in accounting rates to .76 SDRs ($.77). We rejected this decrease, which would have represented a 33.3% reduction from the current rate, and a 64.4% reduction from the 1977 rate. Rates to CEPT countries have shown a similar, though less extreme, pattern. These rates were initially set at $3.00, declined in 1970 to $2.25, and have been in more rapid decline since 1977.[9] U.S. carriers receive more telex traffic than they originate with the U.K. and CEPT, and are thus in a payee position for this service. The PTTs, as payors, seek decreases in the accounting rates in order to reduce their payments. The reductions in accounting rates with CEPT and the U.K. have had a substantial negative impact on U.S. carriers' revenues, specifically those of the international record carriers (IRCs), curtailing the IRCs' ability to lower collection rates to U.S. users. That is, if the U.S. carriers' revenues are adversely affected by changes in accounting rates, U.S. users are less likely to pay lower rates.[10]

7. The situation in international telephone service (Message Telecommunications Service, or MTS) is quite dissimilar. First, the U.S. originates more traffic than it terminates. U.S. carriers are thus the debtor in U.S.-U.K. and U.S.-CEPT MTS traffic. Second, until very recently, AT&T was, for all practical purposes, the sole U.S. provider of international MTS. It may very well be that these two factors—outbound balance of traffic and sole service provider—enabled the U.S. service carrier for international switched voice service, AT&T, to negotiate with a PTT from a position at least of equality, if not of strength.[11] In fact, because there were never before competitors to AT&T in the market, we have never actually had a case presented to us which required a clear statement of whether our uniform settlement policy applies to voice services.[12]

8. Below we review the development of the uniform settlements policy, describe the manner by which it is now implemented, summarize the rulemaking petition filed by RCAGC and WUI, and identify accounting rate issues now pending before (or recently resolved by) the Commission. We then analyze the uniform settlement policy and reach certain tentative conclusions as to its future implementation.

II. Background

9. One of the first decisions taken by this Commission involved the uniform settlement policy.[13] In a 1936 decision we denied the Mackay Radio and Telegraph Company authorization under Section 214 of the Communications Act for a radio circuit to Oslo, Norway because we objected to the settlement terms in Mackay's proposed operating agreement with the Norwegian PTT. We found the agreement objectionable because it would have permitted the Norwegian PTT to play two U.S. entities against each other, manipulate traffic flows and retain a greater percentage of the accounting rate at the expense of a U.S. carrier. We stated that this attempt by the PTT to maximize its revenues by whipsawing the American companies was the normal consequence of the

[4] For example, CEPT is a consortium of 28 European PTTs and COMTELCA includes five Central American PTTs.

[5] The applicable share of the accounting rate negotiated between the originating and terminating countries is paid by the originating (collecting) entity to the terminating entity. For those services where the PTT is more often the originating entity than the terminating entity, such as telex, the PTT is in a payor position, and seeks to keep accounting rates low. For services where the flow is in the opposite direction and the PTT is the terminating entity/payee, such as telegram service, the PTT seeks to raise the accounting rate.

[6] Such a unilateral departure from the agreed accounting rate may be effected simply upon notice to the carriers that, as of a given date, a given rate will be paid. Any carrier unwilling to accept that rate receives no (or less traffic. *See* discussion of COMTELCA telegram infra. Approach parity in the positions of U.S. carriers vis-a-vis the PTTs, and to prevent whipsawing, the Commission has developed requirements of unform terms and conditions in international operating agreements.

[7] Uniform Settlement Rates, 84 FCC 2d 121 (1980).

[8] The accounting rate dropped from $2.70 to $2.25 in 1970; both rates applied a 50-50 divisions.

[9] The January 1977 CEPT accounting rate was 5.70 GF, which translated then to $2.24, almost precisely the contemporary $2.25 U.K. accounting rate. The CEPT rate then declined as follows: July 1977, 5.35 GF ($2.10); July 1978, 5.00 GF ($1.97); January 1981 3.50 GF ($1.38). FTC Communications, Inc. applied for a waiver of the Commission's uniform settlements policy in order to establish a new telex accounting rate of .76 SDR with the U.K. and CEPT. This request was denied by the Commission in a Memorandum Opinion and Order, FCC 85-249, released May 14, 1985. Approval of the reduction requested by FTCC would have resulted in a projected revenue loss to the IRCs of over $21 million.

[10] In a simplified fashion, the "profitability" of any country-by-country route depends on collection rates, payments from the PTT for effectuating domestic delivery, expenses and costs, and payments to the PTT for effectuating foreign delivery. Thus, while accounting rate calculations directly affect net revenues, they are only one of several factors which affect a carrier's ability to reduce a collection rate. The exact impact of a particular accounting rate on net revenues and "profitability" would depend on the actual accounting rate, the division of the accounting rate, the currency used for settlements, and the size and direction (inbound or outbound) of the balance of traffic.

[11] We note that there have been relatively few changes in international MTS accounting rates.

[12] The issues was raised in MCI Telecommunications Corporation, *et al.*, CC Mimeo No. 3874, released April 16, 1985, discussed *infra*.

[13] *Mackay Radio and Telegraph Co.*, 2 FCC 592 (Telegraph Committee 1936), *Aff'd by the Commission en banc*, 4 FCC 150 (1937), *aff'd sub nom, Mackay v. FCC*, 97 F. 2d 641 (D.C. Cir. 1938).

situation, [14] and that the protection of American non-monopolist entities therefore rests with the Commission, falling within its general powers mandate to protect the public convenience and necessity.

10. Further development and application of the uniform settlements policy again involved the Mackay Radio and Telegraph Company.[15] In this decision we expressed concern about the whipsawing of U.S. carriers by foreign PTTs (the application was to add a fifth carrier providing service to Portugal and the Netherlands), but because the terms of the proposed operating agreement were identical to the terms of the agreements already in effect, our concern was assuaged and the application to place another competitor into the market was granted. The policy was applied again in *TRT Telecommunications Corporation*, 46 FCC 2d 1042 (1974), when TRT applied to provide service to the U.K. upon terms more favorable to the British entity than the terms then in effect between the U.K. and other U.S. carriers. The Commission granted TRT's application contingent upon the operating agreement being brought into conformity with existing agreements.

11. The uniform settlements policy was again considered in a 1980 Commission policy statement which resulted from a request by TRT to decrease its U.S.-U.K. accounting rate.[16] In that statement we reaffirmed the need for and viability of the uniformity policy, but announced also that we would entertain requests for waivers of the policy in appropriate cases. We found that the public interest requires a uniform settlements policy and that:

> Absent our policy of uniformity it would be less difficult for a foreign correspondent to negotiate a more advantageous settlement. . . . In such instances more money would flow to the foreign correspondent. In some cases this could lead U.S. carriers to raise the collection rate at the expense of the U.S. ratepayers.

84 FCC 2d at 123. We also noted, however, that situations might occasionally arise in which "public interest benefits would warrant grant of a waiver of the policy . . . ." *Id.* While citing factors to be considered in the analysis of waiver requests,[17] we declined to specify rules or a *prima facie* test to govern the grant of waivers. We also declined to establish a particular procedure or timetable for waiver applications.

12. The trend of accounting rate changes contrary to U.S. carrier interests also prompted the Commission in early 1981 to review a number of accounting rate changes which had occurred in the late 1970's. In view of the possibility of PTT whipsawing, and the potential for substantial revenue diversion from U.S. carriers, we established a process by which Commission staff and the carriers would periodically meet to consider accounting rate requests. This atypical process of closed meetings between the staff and business competitors was viewed as a reasonable response to the unique realities of the international marketplace. It was intended to provide a method for the carriers to develop a "unified front" to respond to the PTTs' monopoly status in their negotiations with competitive U.S. carriers. The carriers have since met with the staff in closed sessions on a regular basis. The meetings have proved somewhat effective in offsetting PTT pressures. As questions of confidentiality, scope and unanimity have arisen, the ability of the carriers, with their differing business interests, to reach consensus on accounting rate changes has decreased.

13. Under the present process, a U.S. carrier wishing to change the accounting rate, settlement rate or division of tolls of a particular service to a particular overseas jurisdiction must apply to the Commission for a waiver of the uniform settlements policy to allow it to operate under conditions departing from the established terms employed by other U.S. carriers providing the same service to the same overseas jurisdiction.[18] Although a single waiver application will be evaluated on an *ad hoc* basis to determine whether its grant would serve the public interest, in practice a single waiver request is frequently followed virtually immediately by identical waiver requests from each of the other U.S. carriers serving the same point.[19] At that juncture uniformity, the ostensible end of the policy, is achieved.[20] Because a PTT will typically discuss proposed accounting rate and return flow modifications with the affected carriers, any whipsawing involved takes place prior to (or sometimes shortly after) the submission of waiver requests, and is never fully addressed by the Commission. This approach to waiver requests has also resulted in a lack of clarity regarding certain other issues which arise, such as the definition of parallel routes (to which the policy applies), and the determination of which services are, and which are not, covered by this policy. It is this situation which has given rise to not only a number of waiver applications, but also the present petition for rulemaking and comments.

III. Petition for Rulemaking

14. Petitioners RCAGC and WUI, citing various waiver applications and complaints pending before the Commission, state that various issues demand resolution. These are as follows:

(a) Does the definition of parallel routes include those which traverse the telecommunications system of a third State en route to their destination?

(b) If (a) is answered negatively, should the rule still be applied if a carrier arranges rates different from those applying to direct service to the same point?

(c) If (a) is answered negatively, should routes on which the third State is a member of the same geographic group (*e.g.*, CEPT or COMTELCA) be considered direct, and therefore parallel, for purposes of the uniformity policy?

(d) Should calls *to* the U.S. via a third country be treated differently than such calls *from* the U.S.?

15. Petitioners also raise procedural issues such as unanimity, Commission prescriptive authority, and confidentiality. They also seek clarification on the placement of the burden of proof for waiver applications and of the standard of proof required.

16. Comments submitted by other carriers in response to the joint petition suggest that the petition may be too broad in some respects,[21] too narrow in

[14] We said in that Order: To expect the telegraph administration to play the competing companies against each other is simply to expect that the administration will be headed by good businessmen, loyal to their national interests. To rely upon companies which are bitter competitors not to make concessions to the administration which controls all outgoing radio-telegraph traffic is to provide an exceedingly tenuous basis upon which to rest the public interest. 2 FCC 599.

[15] *Mackay Radio and Telegraph Co.*, 25 FCC 690 (1951), *rev'd on other grounds sub nom. RCA Communications, Inc., v. FCC*, 201 F. 2d 694 (D.C. Cir. 1950), *vacated and remanded*, 346 U.S. 86 (1953).

[16] *Uniform Settlement Rates*, 84 FCC 2d 121 (1980).

[17] The factors include lower collection rates, improved services, and increased competition.

[18] Of course, if only one carrier is providing a particular service with a PTT, then no waiver petition is filed.

[19] *See Uniform Settlement Rates, supra;* the policy statement stipulates *ad hoc* review and some factors to be considered. *See also* FTCC Waiver Application, *infra*.

[20] In some instances the U.S. carriers (the IRCs) submit joint notification of an accounting rate change. No waiver petition is filed, no Commission review is initiated, and the change goes into effect.

[21] It is suggested, for example, that the issue of the application of the policy of uniformity to transit routes be constrained to a prescriptive statement only.

others,[22] and that the further major issue of what services are susceptible to regulation under the uniformity policy ought to be added.[23]

IV. Relevant Items Presently Pending or Recently Resolved

17. The Commission has pending before it, or has recently acted upon, a number of petitions, complaints and applications which concern various aspects of the uniform settlements policy. Briefly, these items are: (a) Requests by a number of IRCs for waiver of the uniform settlements policy with respect to an increase in the accounting rate for public message telegraph service (PMS) between the United States and the Central American countries comprising COMTELCA, and a joint IRC telex announcing their agreement to the increased rate; (b) similar requests for increases in the PMS accounting rate to 13 CEPT countries; (c) a letter from ITT noting the renegotiations of FTCC and The Western Union Telegraph Company (Western Union) with West Germany to allow accounting and settlement in SDRs; (d) a complaint by RCAGC against Western Union alleging that Western Union's arrangements with Costa Rica and Guatemala to transit telex traffic destined to El Salvador, Honduras and Nicaragua, constitute a violation of the uniform policy;[24] (e) a Bureau order in which the applicants for authority to provide international MTS to Canada (MCI, GTE Sprint and SBS), AT&T and other filers raised the issue as to whether the uniform settlements policy applies to international MTS; and (f) a waiver request by FTC Communications to decrease from $1.20 to .76 SDRs (77 cents) per minute the accounting rate for telex service between the United States and the CEPT nations.[25] All of these matters raise serious questions regarding the implementation and scope of our policy.

A. COMTELCA Telegram

18. A recent case involving accounting rates for PMS service with Central American nations provides an example of whipsawing and of the inadequacy of our present procedures to combat it. The foreign correspondents had apparently been negotiating for higher accounting rates with the U.S. carriers for some time without success. Finally, the foreign administrations announced that on a given date they would put the new, higher rates into effect, and would thereafter deal only with those carriers who agreed to this new term. On September 9, 1983, WUI filed a petition for waiver of the uniform settlements policy to increase the accounting rate applicable to PMS service between the United States and the COMTELCA countries.[26] Similar waiver requests were immediatey filed by Western Union and FTCC. Subsequently, FTCC, ITTWC, MCII, RCAGC, TRT and WUI sent the COMTELCA administrations a joint telex informing them that the signatories had agreed to the changed accounting rate effective November 1, 1983.[27] The signatories, all the carriers providing telegram service to and from the COMTELCA countries, notified the Commission of their action solely by filing with it a copy of the joint telex. None of the parties filed either in support of or against the waiver requests.[28]

19. The COMTELCA telegram case indicates that the Commission's existing review process is easily circumvented. Commission review was curtailed, and neither a formal indication of the carrier-COMTELCA agreement nor requests for dismissals of the petitions were ever filed. This matter also is an example of the whipsawing that the uniform settlements policy was intended to prevent. Because of different commercial interests among the carriers, the IRC/FCC meeting mechanism was inadequate to formulate a response to the COMTELCA proposal. The result was that one after another of the IRCs agreed to the increased divisions and sought a waiver of the uniform settlements policy.[29]

B. CEPT Telegram

20. On August 19, 1983, RCAGC filed a request for waiver of the uniform settlements policy in order to raise the accounting rate for PMS traffic between the United States and 13 CEPT countries from .90 to 1.20 Gold France (GF) per word, to be divided 50/50.[30] (The current accounting rate is .90 GF or $.3547 per word, which is divided approximately 55/45 in favor of the U.S carrier, and requires the U.S carrier to pay out approximately $.1596 per word. The proposed arrangement would require the U.S carrier to pay out $.2365 per word). PMS traffic between the U.S. and these CEPT administrations is predominantly outbound from the U.S., putting U.S PMS carriers in a net debtor (payment) position at settlement. Again, a higher PMS accounting rate and a 50–50 division increase CEPT revenues and decrease the revenues retained by U.S. carriers. Other IRCs filed comments and similar waiver requests.[31] While

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[22] Questions regarding attendance at and notice of the industry group meetings mentioned above, and of the scope of subject matter of those meetings, are raised in the comments.

[23] Switched voice services and enhanced services are specifically suggested. The addition of this issue is firmly opposed by another commenter.

[24] The agreements maintained the established accounting rate, but changed the division of tolls to result in the PTT's retaining more money on transiting traffic than they did from direct circuit traffic.

[25] Items (d) and (f) (RCAGC's complaint and the FTCC waiver request) have been recently considered and acted upon by the Commission, as discussed *infra*.

[26] COMTELCA is an association of the telecommunications administrations of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Although it is not a member of COMTELCA, Panama will also assume the accounting rate discussed here. The waiver request specified a new accounting rate of 1.2 Gold Francs (GF) per word, divided 50/50 ($.2365 per word). Under the prior arrangements, U.S. carriers received .40 GF per word for northbound (to the USA) traffic and paid to COMTELCA .45 GF per word for southbound traffic. Since the balance of telegram traffic between the United States and the COMTELCA nations is southbound, an increased accounting rate increases revenues flowing to COMTELCA and decreases revenues retained by U.S. carriers.

[27] In support of the change, the petitioners noted that COMTELCA had requested the change since 1981, but that the IRCs could not reach agreement. The petitioners state that COMTELCA claimed it needed the increase because of rising costs in delivery of telegrams in the various member countries (they effect hand delivery rather than the telephone delivery generally used in the United States) and that the claim was meritorious. WUI noted in its petition that its *average* (emphasis in WUI's petition) per-word revenue share will increase notwithstanding the increased payout to COMTELCA. FTCC noted that the change would bring COMTELCA's arrangements with the United States into agreement with their arrangements with other countries in the Caribbean basin.

[28] The Chief, Common Carrier Bureau, sent the signatories of the joint telex a letter acknowledging their action and allowing the change to become effective without Commission action. The letter also notified the signatories that the Commission does not view the telex as disposing of the waiver requests or as official notification to the Commission of their agreement. It directed the filing carriers to file for dismissal of their waiver requests and to file a formal notification of the new rate. No carrier has filed a dismissal or formal notification.

[29] The carriers who formally sought waiver, FTCC, Western Union and WUI, are either the carriers with the smallest volumes of traffic or those seeking to enter the COMTELCA sevice for the first time. The applicants, in other words, were those carriers who had little or nothing to lose from agreement to the increased divisions, and much to gain if they could pick up the traffic formerly carried by the larger carriers. While it is certainly not our policy to assure or protect market shares, the circumvention of our policy obviated any opportunity for an analysis of whether the proposed change would be in the public interest.

[30] The countries in question are Austria, Belgium, Finland, France, Germany, Ireland, Luxembourg, Netherlands, Norway, Spain, Sweden, Switzerland and Yugoslavia.

[31] FTCC filed comments supporting RCAGC's proposal to raise the accounting rate, but recommended that settlement be made in SDRs. (SDR accounting rates, converted to dollars, would result in an increase from $.3547 to $.4700). TRT filed comments supporting RCAGC proposal to increase the CEPT/U.S. accounting rate, but proposing that the rate be set at .392 SDR (or about $.4729) per word. Subsequently, WUI, FTCC and

Continued

proponents of the change argued that the question had been pending for some time, that no whipsawing was involved, and that the current rate was agreed upon only as an interim standard, they also noted that CEPT has threatened to "reconsider" the operating agreements of any U.S carrier which did not agree to the proposed increase.[32] The carriers agreed to let the increased rate go into effect on January 1, 1984. The carriers have not withdrawn their requests, nor have they filed any "joint telex" or other indication of their willingness to acquiesce in the increase.[33]

21. The size of the CEPT market increases the harmful impact of this whipsawing maneuver. Furthermore, the consequences of such an arrangement go far beyond these thirteen PTTs, as it is all but inevitable that other CEPT administrations and the U.K. will follow this initiative.[34] As with the COMTELCA example discussed above, the problem has two parts: the inability of the established process to permit Commission review and the continued efforts by PTTs maximize revenues by whipsawing U.S. carriers.

C. Conversion to SDRs

22. The U.S., along with several other ITU member nations, agreed in 1979 to establish SDRs as the monetary unit for all international telecommunications operating agreements by 1988. The proposed conversion has been a point of discussion among the IRCs for several years, but little or no agreement has emerged. The underlying problem is that the costs and revenues of the IRCs and the PTTs will be affected by the currency exchange rate at the time of conversion. Conversion from Gold Francs or dollars to SDRs will affect debtor carriers in one way, and creditor carriers in the opposite way. Thus, although various methods of conversion have been suggested, the IRCs cannot agree among themselves or with the PTTs to adopt any one methodology.

23. A second issue involving conversion to SDRs is raised by a February 13, 1985 letter from ITT to this Commission. ITT states that FTCC and Western Union modified their operating agreements with the West German PTT to use SDRs rather than Gold Francs, the standard for U.S.-CEPT traffic. ITT states that this change is a modification of a basic term of the operating agreement and is thus prohibited by the uniform settlements policy. FTCC responds that the actual terms of the agreement are still in Gold Francs, and that the accounting and billing are being expressed in SRSs simply for convenience.[35] FTCC also notes that the conversion results in no change in the actual amount paid.

D. RCAGC Complaint Against Western Union

24. In complaint filed in September 1983, RCAGC charged Western Union with an attempted "end run" around the uniform settlements policy in that Western Union established indirect telex routes to various COMTELCA destinations (by transiting via Costa Rica's or Guatemala's communications facilities) solely to avoid the Commission's requirements of uniformity. RCAGC contended in its complaint that these routes were parallel to the direct routes for which they shared origination and termination points, and that the policy should therefore apply to those new routes. Western Union argued in its answer that the policy does not apply to transit traffic. (Even if the policy did apply, Western Union stated, the uniformity required would be among indirect arrangements, not between indirect and direct arrangements.) Upon consideration, we determined that where transit routing is clearly designed, as evidenced by the accounting rate arrangements, to circumvent our uniform settlements policy the route will be considered parallel to direct routes and therefore subject to the policy. We therefore ordered Western Union to bring its accounting rate divisions into conformity.[36]

E. Telephone Service to Canada

25. In April 1985, the Bureau granted the applications of MCI, GTE Sprint and SBS to provide telephone service between the U.S. and Canada.[37] AT&T filed comments noting that the terms of MCI's agreement with the TransCanada Telecommunications System (TCTS) were different from its own. Other filings by MCI, SBS and other indicated that there was no unanimity as to whether the uniform settlements policy applied or should apply to voice services. The Bureau declined to resolve that question, relying instead on the use of waivers "as necessary." It noted that:

> [t]here may be no distinction between telegram, telex or switched voice services in considering the scope of the Commission's uniform settlements policy; in this view, more than one U.S. carrier is providing a particular service to an overseas point, the potential for whipsawing exists, and therefore, the policy applies.

Id. at para. 12, footnotes omitted. The Bureau also pointed out, however, that an argument could be made rejecting the application of the policy to voice services. It then indicated that the issue would be more appropriately clarified in a general proceeding.

F. FTCC Telex Accounting Rate Waiver Request

26. We have recently considered a request by FTCC for a waiver of the uniform settlements policy to allow a decrease in telex accounting rates between the U.S. and the U.K., and between the U.S. and CEPT. We denied FTCC's request on the basis that the situation represented an examle of whipsawing and that the proposed decrease in the accounting rates would have disserved the public interest.[38] Lowered collection rates is one of the factors we agreed might justify waiver. FTCC's proposal appeared to offer a direct benefit to the public. Because a reduction of accounting rates by one IRC creates pressures for identical reductions by the others,[39] and because the balance of telex traffic between Europe and the U.S. is so heavily westbound, the overall effect of FTCC's proposal would have been a loss to the industry of over twenty million dollars. This substantial loss would have been reflected in the decreased ability of the carriers to lower their customer charges. We concluded that the waiver request, if

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Western Union filed for similar waivers. Finally, RCAGC filed comments on TRT's proposal to switch to SDR accounting, in which it did not oppose TRT's preference for SDR settlements, but did note that the benefits TRT claims for such accounting are overstated.

[32] The pertinent language, in a message from the President of the Telegraph and Telematics Group of CEPT, is as follows: If . . . your agreement cannot be obtained, we will be forced . . . to reconsider the agreement reached by us up to the present time and we will take measures for a new breakdown of the traffic and therefore a radical change in the infrastructure. Those filing waiver requests made it clear that it was the prospect of loss of traffic which prompted their decision.

[33] The carriers stated at one of the IRC meetings that they had reached accord on the matter, and that the waiver requests could therefore be withdrawn.

[34] Based on figures in the IRCs' Section 43.61 Reports for 1982, the countries covered by the CEPT request represent 50.3 per cent of the carriers' total European PMS traffic and 12.8 per cent of their total world PMS traffic.

[35] Western Union did not respond to ITT's letter.

[36] RCA Global Communications, Inc. v. The Western Union Telegraph Company, File No. E-83-24, FCC 85-286, released June 28, 1985.

[37] MCI Telecommunications Corporation, *et al.*, CC Mimeo No. 3874, released April 16, 1985.

[38] Because FTCC's balance of telex traffic is eastbound, it is in a payor position, in contrast to the industry as a whole, and would therefore profit from a reduction in the accounting rate.

[39] The foreign correspondent, seeking the best deal for itself, would be expected to shift traffic to the IRS offering the accounting rate most favorable to the PTT. In order to retain their own traffic shares, and revenues, then, the other IRCs would be under pressure to accede to the new rate.

granted, would likely lead to a lower accounting rate for all carriers, to the benefit of the PTT and to the detriment of the U.S. public. We emphasized that the IRCs' ability to lower collection rates would be adversely affected as their payments from the PTTs declined. We therefore denied FTCC's request.

V. Discussion

27. The policy of maintaining uniform accounting and settlement rates and a 50–50 division of accounting rates exists to protect the U.S. public interest by "protect[ing] U.S. carriers from making concessions which may ultimately be detrimental to U.S. ratepayers." [40] The uniform settlements policy does not hamper domestic rate and service competition. Rather, the application of the policy is designed to make it difficult for a foreign corresponden to negotiate or impose a more advantageous settlement arrangement. Absent this policy, settlement arrangements would more accurately reflect the advantageous negotiating positions of the PTTs, and the result would be a loss of revenues to the U.S. industry. The consequence of this revenue loss is a diminished ability on the part of the carriers to decrease the collection rates they charge their customers. To allow whipsawing by the foreign PTTs would be to allow those entities to claim for themselves and their customers, to the detriment of the U.S. public, the benefits of the competition among U.S. carriers.

28. On the other hand, we are aware that a rigid application of the policy would not serve the public interest. The waiver policy that we enunciated in 1980 recognizes that nonuniformity may further the interests of U.S. users by resulting in additional carrier entry, lower prices and improved services. As we indicated in paragraph 5, *supra*, our policy of considering waiver requests allows us to make the balanced and informed determinations which will assure that the public interest is served. As the Common Carrier Bureau recently stated:

> The uniform settlement rates policy represents the Commission's attempt to strike a balance between its interest in fostering international competition and its desire to counteract pressure from foreign administrations to obtain more favorable accounting rates in negotiations with competing U.S. carriers, which could ultimately increase the flow of U.S. revenues abroad and raise domestic costs to the detriment of the U.S. customer. [41]

Because of the need to offset the negotiating power of the foreign administrations, we tentatively conclude that the uniform settlements policy and the existing waiver policy should be continued. [42] We solicit comments, however, on the possible negative effects of our policy on competition, and on the desirable balance between competition and uniformity in furtherance of the public interest.

29. While we have tentatively concluded that the continuation of the uniform settlements policy will serve the public interest, we are mindful that a new environment in the provision of international services may be fast approaching. We therefore believe it appropriate here to solicit comments on other approaches to this situation, particularly those that might resolve the problems which underlie the need for our policy. While it may be that adherence to the existing policy, with the clarifications and modifications we propose here, is the best current course, it may be that other policies would serve the public interest. [43] Several possibilities exist which might encourage the efficient operation of facilities, lead to lower rates for users, and encourage the development of new services. First, the policy could simply end. Perhaps competition among PTTs for refiled or transiting traffic, and competition for traffic by carriers within some countries, would best accomplish our goals. Second a sender-keep-all methodology in which the originating carrier keeps whatever it collects from its customers could be adopted. [44] This method could be expected to encourage carriers to operate with greater efficiency and to more effectively market their products, and could perhaps lead to lower rates. This method might be opposed by those entities (U.S. carriers or foreign administrations) which terminate more traffic than they originate. In cases where an inbalance was great, a sender-keep-all methodology could also impose substantial hardships. Depending on the cause of the imbalance, policy adjustments might be warranted. Third, if accounting rates could be tied directly to costs (rather than to relative negotiating positions), efficient operation would be rewarded by greater net revenues (profits), and rates could be lowered. Under such an approach the determination of an entity's costs would have to be determined or assigned in a manner which did not reward an entity with obsolete (high cost) equipment or penalize an entity with new (lost cost) equipment. This methodology would also require costs to be assigned without whipsawing. Fourth, if accounting rates were to be maintained substantially as they exist today, perhaps greater oversight or responsibility for negotiating the terms should be vested in the Commission.

30. We solicit comments regarding our tentative conclusion and other alternatives, asking that commenters suggest modes by which we can safeguard the public interest while pursuing our goals of encouraging competition, minimizing regulation, and benefiting users.

31. While we thus affirm the validity of and need for the uniform settlements policy, we also recognize that its current implementation does not totally preclude the whipsawing of U.S. carriers by foreign entities, and that "[i]ncreased competition among U.S. suppliers of international telecommunications services [may] result in a reduction in the U.S.'s share of the benefits from such services unless the U.S. government takes appropriate countermeasures." [45] We are therefore proposing a procedural modification designed to insure full and complete examination by the Commission of all proposed changes of the terms of operating agreements that are subject to our policy. We also propose to clarify the scope of the policy in terms of routing, currency changes and services. We believe that these changes will strengthen the policy so that the benefits of our pro-competitive policies accrue to U.S. users rather than to foreign PTTs. At the same time, we recognize that the implementation of the policy will require a careful analysis of benefits and detriments to users.

32. The issues presently before us, then, are as follows: (a) Under what circumstances will transiting arrangements be subject to the uniform settlements policy? (b) how broadly (i.e., to what services) does the policy apply? (c) does a change from dollars or other national currency to SDRs invoke the uniform settlements policy? How can this change to SDRs be most smoothly and efficiently managed? (d) does the

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[40] Uniform Settlement Rates, 84 FCC 2d 121, 128 (1980).

[41] MCI Telecommunications Corporation *et al.*, *supra*, at 6.

[42] In addition to finding that the policy and waiver procedures continue to serve the public interest, we note that no entity has argued for its termination.

[43] Because the provision of international service involves bilateral agreement and cannot be accomplished by unilateral fiat, the initiation of any new method would require negotiation with the PTTs. This does not mean that new approaches should not be pursued, but only that they cannot be unilaterally implemented.

[44] We note that this approach was the original agreed accounting method for telex service with Canada.

[45] Kwerel, "Promoting Competition Piecemeal in International Telecommunications," OPP Working Paper No. 13, December 1984 (OPP WP 13).

meaningful enforcement of the uniform settlements policy require new or additional procedures or participation on the part of the Commission?

A. Parallel Routes

33. We recently acted on a complaint filed by RCAGA against Western Union[46] in which we stated that our anti-whipsawing policy would be extended to transiting routes under certain circumstances. We stated in that decision that:

> [w]hen * * * a carrier enters into a transiting arrangement which results in a terminating/originating administration's receiving greater revenues than it would under a direct service arrangement, a legitimate question arises as to the consistency of such an arrangement with our anti-whipsawing policy. The fact that a line of communications makes use of third-party facilities en route to a given destination cannot excuse that line from conforming with the Commission's anti-whipsawing policy if abuses can be demonstrated. If * * * the intent of the contract is to accomplish indirectly what the carrier could not do directly (that is, establish nonuniform rates), than the distinction between transit and direct traffic is an insignificant technicality, and cannot be the basis of exclusion from our established policy against whipsawing.

Id., footnotes omited. We held that the purpose of the uniform settlements policy, the discouraging of whipsawing, would be served by requiring Western Union to bring its operating agreement into conformance. While direct routes involve only the terminating and originating countries, transiting routes traverse the telecommunications system of at least one additional state en route to their destination. On a direct route, applicability of and compliance with the uniform settlements policy is relatively clear. However, for transiting routes, the situation is much more complex. Transit routes are frequently used as a means of offering service where direct routes are not yet available, and as a means of entry by a new or not-yet-established carrier. They may also be used during the period of negotiations to establish direct routes. Several transiting routes may be used by the originating and terminating administrations, different facilities may be employed by the intermediary state for similar traffic between the same originating and terminating states, and compensation may be made pursuant to contract or tariff. Therefore, settlement rates for transiting traffic are not ordinarily required to conform with the settlement rates for direct traffic routes in all respects. However, where a transiting arrangement has no real purpose other than to enrich a PTT or group of PTTs at the expense of a U.S. carrier and U.S. ratepayers, we shall stike down that arrangement as contrary to our uniformity policy. Thus, while we recognize the uniqueness of transiting arrangements and the settlements therefore, our action on the RCAGC complaint should make it clear that we will, under our existing policy, monitor such arrangements, on an *ad hoc* basis, for consistency with similar arrangements and indications of whipsawing. Our action on the complaint did not necessitate an exact definition of transiting routes. If a party believes that the development or implementation of the uniform settlements policy would be enhanced thereby, it may propose definitions of direct and transiting traffic routes.

B. Services Covered by the Uniform Settlement Policy

34. As noted above, the Bureau recently acted on several applications in which the question arose as to whether the uniform settlements policy applies to the provision of voice services. [47] In that case, the Bureau noted the pros and cons of applying the policy but declined to resolve the issue, stating that the question was more appropriately reserved for a more general proceeding, and that in view of the facts and circumstances presented, it would grant waivers *sua sponte* as necessary.

35. Until recently there was only one international voice carrier (AT&T) and there was no reason to consider whether the policy should apply to voice services. Certainly our attention has been on the IRCs and the provision of international telex service. However, the focus of the uniform settlements policy has been not on a specific service but rather on the assurance of bargaining parity and fairness as well as the protection of U.S. ratepayers. We believe that the conditions considered in formulating the policy (*i.e.*, conditions conducive to whipsawing) may be present in the voice as well as record services markets: multiple service carriers in the U.S. negotiate with single PTT entities overseas who can be expected to attempt to maximize their revenues via accounting rate manipulation. [48] With the entry of additional carriers into the MTS market and the development of parallel routes, there may be a need to protect domestic ratepayers from the long-term effects of pro-PTT accounting rates. [49] We note that commenters in the *MCI* case were split on the question. [50]

36. One persuasive factor supporting the extension of the uniform settlements policy to MTS is that AT&T's existing agreements with foreign entities would ordinarily become the standard for entering carriers. [51] Because AT&T negotiated these agreements as a monopolist, holding a market position virtually identical to that of the PTTs with which it bargained, the agreements are presumably equitable. By applying the uniform settlements policy to applications for markets already served by AT&T, we would permit new competitors to operate on terms similar to those established by AT&T in the absence of whipsawing, thus arguably benefiting the American ratepayer. We believe that as competition develops in the provision of voice services the potential for whipsawing will increase. Therefore, we tentatively conclude that the uniform settlements policy should be extended to include international voice services, [52] and we solicit comments on this issue. [53]

37. The question arises whether enhanced services come within the ambit of the uniform settlements policy.[54] We first note that as a matter of law our formulation of the uniform settlements policy is grounded in Title I

[46] *Supra*, note 36.

[47] *Supra*, note 37.

[48] In the international MTS market, where traffic is heavily outbound from the U.S., PTTs have an incentive to maintain high accounting rates in order to maximize revenues.

[49] Operating agreements in the MTS market generally provide for the same accounting/settlement rate system used in the record market.

[50] The International Communications Association and Satellite Business Systems suggested that the policy does apply, while MCI and AT&T suggested that it does not.

[51] Under the uniform settlements policy, a new entrant conforms to the terms of the operating agreement of an established service provider, or applies for a waiver allowing departure from those terms.

[52] To the extent that competition develops in the provision of international services in foreign markets (*e.g.*, the entry of Mercury as an international switched service provider in the U.K.), it may be appropriate to relax the application of our policy to those markets. However, this relaxation or liberal granting of waivers would be considered on a case-by-case approach, taking into account all relevant factors and conditions.

[53] As the Bureau noted in the *MCI* case, "[a] narrow view of the definition of a service could negate our policy by encouraging a PTT to manipulate a service's characteristics." *MCI, supra*, at n. 8. We would therefore propose generally to take a broad view as to what services are the same.

[54] Second Computer Inquiry, 77 FCC 2d 384 (1979) (Final Decision), *aff'd sub nom.* CCIA v. FCC, 693 F. 2d 198 (D.C. Cir. 1982), *cert. den. sub. nom.* Louisana v. United States, 103 S. Ct. 2109 (1983) (hereinafter *Computer II*).

and Title III as well as in Title II of the Communications Act.[55] Thus, we have the ability, under certain circumstances, to bring these services under the protection of the policy.[56] Although it may be argued that, in view of the conclusions drawn in *Computer II*, we ought not apply the policy to enhanced services, it is also true that to leave enhanced services outside of the policy could invite PTTs to pressure U.S. carriers to add the necessary computer processing functions to a service to transform a basic service into an enhanced service. Thereafter, the PTTs could play one enhanced service provider off against another and perhaps even off against a basic service carrier. Although we tentatively propose not to apply the uniform settlements policy to enhanced services internationally, we do solicit comments, especially from providers of enhanced services, on which policy option would best serve the public interest,[57] and the appropriate jurisdictional basis for any option we may adopt.

C. Conversion to SDRs

38. Two sub-issues arise with regard to the conversion from national-based monetary units such as the dollar or the Gold Franc to special drawing rights (SDRs), the monetary unit adopted by the International Monetary Fund (IMF) and by the ITU Plenipotentiary Conference. First, how can the conversion best be accomplished? And second, is the conversion to SDRs by one carrier a changing of terms such as is prohibited (absent waiver) by the uniform settlements policy?

(1) *Conversion to Uniform Use of SDRs.* The ITU's recommendation [58] is that account balances in Gold Francs be converted to SDRs using a linking coefficient of 3.061 GF=1 SDR.[59] Account balances in dollars or currencies other than Gold Francs would be converted to SDRs at whatever rates exist at the time of carrier agreements. Because of currency fluctuations, this method of conversion creates strong disagreement among U.S. carriers. Those in a net-debtor position feel they would pay out less using the linking coefficient, and so support this method, while those in a net-creditor position reject it as causing a decline in their revenues. The issue hinges on the value of the dollar vis-a-vis the Gold Franc and SDR at the time of conversion. Not only will the immediate loss or gain to each carrier be determined by the rate at the time of conversion: revenue gains and losses will continue to reflect this. We need not reach any tentative conclusion on this issue. Our obligation is to employ SDRs by 1988. We trust that our carriers can successfully negotiate with their foreign correspondents the SDR changeover in a timely fashion.

(2) *Conversion and the Uniform Settlements Policy.* Because the uniform settlements policy requires uniformity of terms, rates, and toll divisions between and among carriers offering like services between the same points, it seems clear that a unilateral conversion by one carrier of the monetary unit is a change in terms and rates such as the policy prohibits. We are particularly sensitive to changes which have the potential of being employed by a PTT to whipsaw U.S. carriers. Thus, while we are committed to conversion to SDRs, we tentatively conclude that all carriers must convert at the same time for a particular service to a particular country. Any carrier desiring to change at a different time or to employ a different linking coefficient or exchange rate would be required to file a waiver petition.

D. Implementation of the Uniform Settlements Policy

39. The history of accounting rate changes, the limited success of the staff/carrier meetings, and pleadings in this proceeding lead us tentatively to conclude that the Commission must more thoroughly review accounting rate modifications in order to assure that our carriers and service providers are not whipsawed and that the benefits of competition accrue to U.S. ratepayers rather than to the PTTs.[60] The changes to existing accounting rates for telex and telegram services agreed to by U.S. carriers indicate that whipsawing continues to occur and that PTT whipsawing tactics have become more sophisticated. The strategy of holding monthly meetings of representatives of the IRCs together with representatives from the FCC was an attempt to balance the bargaining positions of the parties in negotiations regarding international service agreements. It was hoped that by increasing coordination and cooperation among the IRCs, we could avoid or at least minimize their whipsawing by the foreign entities. However, the IRCs do not all have the same commercial interests, and thus positions on accounting rate proposals are usually not unanimous.

40. In order to further the goals of the uniform settlements policy, we propose to assure early, complete and informed Commission review of any request for waiver of the policy. We propose that each and every proposed modification of the terms, rates, or toll divisions of operating agreements for services where more than one carrier or service provider provides a particular service to a particular foreign jurisdiction be reviewed. We therefore proposed the following procedural requirements, which we believe will not be burdensome or impose delay. We propose that each waiver petition submitted to this Commission be initially placed on a sixty-day timetable. Specifically, waiver applications will be placed on Public Notice when filed. This notice will start a twenty-one day filing period for objections or comments. Thereafter, reply comments may be filed within ten days. In the remaining twenty-nine day period to staff shall review the waiver application.[61] The staff may raise objections or questions either *sua sponte* or in response to the submitted filings. This initial review of each application for waiver on its merits may result in: (a) no formal staff action, in wihch case the petition will be deemed granted on the sixtieth day;[62] (b) a staff letter requiring additional information;[63] or (c) a staff letter indicating that the waiver petition raises complex issues or is opposed, and thus must await Commission action. In the last situation the automatic grant provision does not operate. We are confident that this new procedure will provide for more complete Commission review and help assure that U.S. entities

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[55] *See e.g.*, Sections 1 and 2, 313 and 314.

[56] In formulating our *Computer II* requirements, we left unresolved the extent of our jurisdiction over enhanced services provided by firms not affiliated with common carriers. *See Computer II Reconsideration*, 84 FCC 2d at 92.

[57] Of course, in many instances an enhanced service provider may employ the facilities of another (underlying) carrier which are the subject of an operating agreement within the ambit of our policy. In such circumstances there may not be a separate and distinct accounting rate negotiated by the enhanced service provider and the PTT. In these cases, the policy does not apply.

[58] CCITT Recommendation D. 195.

[59] A linking coefficient is a conversion rate. A different linking coefficient can be used if all concerned entities agree.

[60] *See generally* OPP WO 13, *supra*.

[61] The Commission will delegate authority for this procedure to its Common Carrier Bureau.

[62] We note that this procedural device of automatic grants of authority is already successfully used in the consideration of applications to extend facilities under § 63.03(d) of our Rules.

[63] The staff may extend the review period in order to analyze a carrier's response or other interested parties' comments.

negotiate on as nearly equal a footing as possible with foreign entities. Where this can be accomplished by careful review alone, that approach will be preferred. Where a more active role is required, however, the Commission will act to safeguard the public interest. We propose, for example, that if the accounting rates for one or more services with one foreign PTT or group of PTTs have been unilaterally imposed, then we may, after appropriated review, consultation and analysis, prescribe similar unilateral action by our carriers.

41. We do not intend by these proposals to modify the waiver standards we enunciated in 1980. A carrier requesting a waiver would file a petition and would have the burden of proof to support its request.[64] Additionally, we do not propose to end the staff/carrier meetings. While the usefulness of these meetings may be questioned by some, it is clear that they do permit an exchange of views and provide the staff with relevent information.

VI. Conclusion

42. The Commission's concern in this proceeding is to assure that the public interest is served through our procedures regarding the provision of international telecomunications services. In order to do this, we propose to modify the manner by which the uniform settlements policy is implemented as well as the scope of the policy. These changes will fully complement our pro-competitive policies by maximizing the revenues retained or received by U.S. carriers and augmenting their ability to lower collection rates. The information and comments solicited in this proceeding will be analyzed and incorporated in our final determinations, and we encourage interested parties to submit comments on all the above proposals.[65]

43. Accordingly it is ordered that pursuant to the provisions of 47 U.S.C. sections 154(j), 303, 307 and 403, this Notice of Proposed Rulemaking is adopted.

44. It is further ordered that the petition of RCA Global Communications and Western Union International for a rulemaking on the implementation and scope of the uniform settlements policy is granted.

45. It is further ordered that interested persons may file comments on matters raised herein on or before August 30, 1985, and reply comments on or before September 20, 1985.

46. It is further ordered that, in accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, 47 CFR 1.419 (1984), all participants in the proceeding ordered herein shall file with the Commission an original and five (5) copies of all comments and reply comments. In reaching a decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. Copies of comments and reply comments filed in this proceeding shall be available for public inspection during regulatory business hours in the Commission's reference room at its headquarters at 1919 M Street, NW., Washington, D.C.

47. For purposes of this non-restricted, informal inquiry and rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time of issuance of a notice of inquiry and proposed rulemaking until the time a draft order proposing a substantive disposition of such proceeding is placed on the Commission's Sunshine Agenda. In general, an *ex parte* presentation is any written or oral communication (other then formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceedings. 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 filed. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any written comments previously filed in the proceeding must prepare a written summary of that presentation. On the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation discussed 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.

48. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), it is certified, that section 603 and 604 of the Act do not apply because this proposed rule or policy will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 503, 604(b) (1984).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-16292 Filed 7-11-85; 8:45 am]

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[64] Uniform Settlement Rates, *supra*, para. 14.

[65] It is foreseeable that the anticipation of retaliation by foreign correspondents may prompt some commenters to request confidential treatment for their filings. Such requests will be honored. Comments so treated will be considered in the formation of a final determination in this matter only to the extent that their substance, separated from any identifying characteristics, can be revealed and discussed.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-09; Notice 1]

Federal Motor Vehicle Safety Standards; New Pneumatic Tires—Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Grant of petition and notice of proposed rulemaking.

SUMMARY: This notice grants a petition for rulemaking submitted by the European Tyre and Rim Technical Organisation (ETRTO), requesting that Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires—Passenger Cars*, be amended to delete or revise paragraph S4.2.2.2(b) of that standard. Paragraph S4.2.2.2(b) imposes a size factor dimensional requirement on tires. The agency has tentatively determined that the size factor requirement provides no safety benefits, and is therefore proposing to delete those requirements.

DATES: Comments must be received by August 26, 1985. If adopted, the proposed amendments would become effective upon publication of the final rule in the **Federal Register.**

ADDRESS: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket Room hours are 8:00 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Arturo Casanova, Office of Vehicle Safety Standards, National Highway

Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone (202) 426–1714.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New Pneumatic Tires—Passenger Cars*, 49 CFR 571.109, specifies the requirements for all tires manufactured for use on passenger cars manufactured after 1948. This standard requires that the tires meet specified dimensional, strength, resistance to bead unseating, endurance, and high speed requirements, and be labeled with certain safety information.

The European Tyre and Rim Technical Organisation (ETRTO) petitioned this agency to amend No. 109 to delete the size factor requirement found in paragraph S4.2.2.2(b). The basis for this request was that size factor provides no safety benefits and should be deleted for the same reasons that minimum size factor was deleted. The agency has tentatively determined that ETRTO's petition has merit. The petition is therefore granted.

On December 17, 1981, the agency published a final rule, effective June 15, 1982, which amended FMVSS No. 109 to delete Table I from Appendix A of the standard (46 FR 61473). Standard No. 109 had required that before introducing and selling a new tire size, a manufacturer had to submit load and dimensional information to NHTSA and await the inclusion of the tire size in Table I. NHTSA determined that Table I should be deleted from the standard because this procedure was an unnecessary burden on the tire manufacturers for several reasons.

The agency believed that submission to NHTSA of the load and dimensional data, which is needed for conducting compliance tests, was unnecessary because no safety-related justifications for retaining Table I were found to exist. First, the specifications could be determined from the information labeled on the sidewall of the tires. Alternatively, the data could be obtained directly from various tire standardization organizations. The agency's procedure was simply to check the submitted data against that published for the tire size in a standardization organization yearbook. There was no independent validation by NHTSA of the submitted data. Second, Table I was deleted because the agency had determined that the administrative process of incorporating the variable factors in the table had, on occasion, created significant delays in the introduction and sale of new tire sizes. Third, NHTSA had determined that tire tables appeared to be dispensable since Standard No. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, has functioned well without tire tables since its issuance in 1973. A fourth reason was that the table had served the purpose for which it was originally created, i.e., standardization of the tire load ratings.

Table I had included a category specifying minimum size factor for all tires. "Minimum size factor" specified the smallest physical dimensions a tire could have and still be designated as a particular tire size. The "size factor" for a particular tire is calculated by adding the section width and the tire's diameter. The size factor for a tire size listed in the standardization organization yearbooks is actually the design goal, which makes no allowance for manufacturing variations.

Each tire size had a calculated minimum size factor, and a tire could meet the minimum size factor dimensional requirement of Standard No. 109 when its size factor was equal to or greater than the minimum size factor specified for that size designation. Minimum size factor thus functioned to provide tolerances in the manufacture of tire sizes. The minimum size factor for a particular tire size was always less than the size factor of that tire. (For example, according to data from the 1982 Tire and Rim Association Yearbook, the size factor for the tire listed as P195/75R14 is 33.23 inches, while its minimum size factor is calculated as 32.64 inches.) Those tolerances did not pose a safety problem and tire sizes falling within those ranges were wholly acceptable.

Minimum size factor was included in Standard No. 109 to ensure that tires would not be undersized and therefore unable to carry safely the assigned maximum load labeled on the tire. Undersized tires on cars are considered a serious safety problem, because undersizing increases the chances of tire failure. However, the endurance test procedures in S5.4 of Standard No. 109 require tire manufacturers to certify that their tire can carry 100 percent of its maximum load at a speed of 50 miles per hour for 24 hours. This test requirement would alert both tire manufacturers and NHTSA to any undersized tires, because those undersized tires would be overloaded and predictably have a high failure rate during this test. Therefore, even without a minimum size factor requirement, Standard No. 109 effectively precludes tire manufacturers from producing undersized tires.

When Table I was deleted from the standard, reference from that table was transferred to the standardization organization's yearbooks. The final rule which deleted Table I specified that the maximum load rating, section width, overall width, and size factor of a tire can be specified in a submission made by an individual manufacturer to the agency pursuant to S4.4.1(a) of Standard No. 109, or in one of the standardization organization's publications described in S4.4.1(b). By providing that a tire's size factor can be determined by reference to those yearbooks, a table specifying the minimum size factor was no longer required. Accordingly, the minimum size factor requirement was removed.

NHTSA justified its deletion of the minimum size factor requirement on the ground that the requirement no longer provided any safety benefits (47 FR 361880). In their petitions for reconsideration of the final rule, several commenters objected to the removal of the minimum size factor requirement. The essence of these objections was that absent a minimum size factor, it would be possible for manufacturers to undersize their tire, and that this undersizing could lead to increased incidents of tire failure.

NHTSA did not agreed that manufacurers will undersize their tires absent a minimum size factor requirement. The agency explained its decision in the following manner:

> The size factor of a tire cannot change after the mold is set up to begin producing that size of tire. With all of the engineering and quality control effort involved in designing and producing new tire sizes it is simply implausible that a tire manufacturer would either intentionally or inadvertently undersize the molds. The undersized tires that would be produced might save the manufacturers a few dollars per tire, but the savings would be more than offset by product liability awards and negative publicity generated. Since automobile manufacturers design cars to a tire's rated load, undersized tires would be overloaded on those cars, and would predictably exhibit higher failure rates than properly sized tires made by other manufacturers. This appears to be a very compelling disincentive to undersizing tires. Hence, the agency concludes that the minimm size factor is not needed in Standard No. 109. 47 FR at 36181; August 19, 1982.

When Table I was deleted from Standard No. 109, the minimum size factor requirement was removed, and the agency referenced size factor in its place. At the time the final rule was issued, the agency did not properly distinguish between the terms "minimum size factor" and "size factor." As explained below, this oversight resulted in an unintended revision to the requirements of FMVSS No. 109 which NHTSA believes can be corrected by the changes proposed by this notice.

Size Factor

Paragraph S4.2.2.2(b) of FMVSS No. 109 specifies the size factor requirement. "Size factor" is defined in FMVSS No. 109 as the sum of the section width and outer diameter of a tire determined on the test rim. After Table I was removed from Standard No. 109, paragraph S4.2.2.2(b) specified that size factor shall be "at least as large" as that specified in the manner described above (i.e., in a submission made by an individual manufacturer to NHTSA (pursuant to S4.4.1(a) of the standard), or in one of the standardization organization publications described in S4.4.1(b) for its size designation and type).

Since size factor is simply the sum of a tire's section width and outer diameter, the effect of substituting "size factor" for "minimum size factor" was to remove the dimensional tolerances permitted by the latter term. (As stated above, minimum size factor is a calculated value which takes into account acceptable variations in tire manufacture.) Standard No. 109 was thus made more stringent. The agency did not intend this result.

NHTSA tentatively agrees with ETRTO's suggestion that size factor should be deleted for the same reasons that minimum size factor was removed. Additionally, the agency is unaware of any safety benefits provided by the size factor requirement. The size factor of a tire cannot be changed after the mold is set up to produce that tire size. Because of engineering and quality control efforts involved in designing and producing new tire sizes, the agency believes it is implausible that a tire manufacturer would intentionally or inadvertently undersize its molds.

Accordingly, this notice proposes that the requirement be deleted. Removing size factor would not only relieve an unnecessary restriction on tire manufacturers but also recognize that mass-produced products have some minor product-to-product variations, and that these variations can be perfectly acceptable.

Proposed Effective Date.

It is proposed that the changes to S4.2.2.2, if adopted, be effective upon publication of the final rule in the **Federal Register.**

The changes proposed by this notice relieve a restriction on tire manufacture which the agency has tenatively determined to be unnecesary. They do not specify different test procedures or additional requirements, nor do they require any leadtime for preparation by tire or vehicle manufacturers. Therefore, the agency believes that good cause exists for making these changes, if adopted, effective upon publication of the final rule.

Analyses of Regulatory Impacts

The agency believes that the changes proposed by this notice would remove an unnecessary requirement from Standard No. 109. The elimination of unnecessary regulation is a useful step for the industry, the general public, and this agency.

NHTSA has examined the effect of this rulemaking action and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures.

The agency has also determined that the economic and other impacts of this rulemaking action are so minimal that a full regulatory evaluation is not required. NHTSA believes that the implementation of this proposal would not increase the costs or burdens for any party.

Regulatory Flexibility Act

NHTSA has also considered the economic impacts of this rulemaking action under the Regulatory Flexibility Act. The agency believes that few of the tire manufacturers would qualify as small businesses. Any tire manufacturers that do qualify as small businesses might benefit to a small extent by the changes proposed in this notice since removing size factor allows manufacturers the leeway to produce tires of sizes which are within acceptable industry standards.

Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new motor vehicles and new motor vehicle equipment. However, these entities will not be affected by the proposed changes since the changes will not significantly affect the price of tires. For the reasons stated above, I hereby certify that it will not have a significant economic impact on a substantial number of small entities, and that a regulatory flexibility analysis is, therefore, not required.

Environmental Effects

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act of 1969. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. (49 CFR 553.21) Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

PART 571—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.109 Standard No. 109, New Pneumatic Tires—Passenger Cars. [Amended]

2. Section S3 would be amended by removing the following paragraph:

"Size Factor" means the sum of the section width and the outer diameter of a tire determined on the test rim.

3. Section S4.2.2.2 would be revised to read as follows:

S4.2.2.2 *Physical Dimensions.* The actual section width and overall width for each tire measured in accordance with S5.1, shall not exceed the section width specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1(b) for its size designation and type by more than:

(1) (For tires with a maximum permissible inflation pressure of 32, 36, or 40 psi) 7 percent, or

(2) (For tires with a maximum permissible inflation pressure of 60 psi or 240, 280, or 300 kPa) 7 percent or 0.4 inch, whichever is larger.

Issued on July 8, 1985

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-16583 Filed 7-9-85; 2:18 pm]

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Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Marketing Agreement 146]

Peanuts; 1985 Crop; Incoming and Outgoing Quality Regulations and Indemnification

Pursuant to the provisions of sections 5, 31, 32, 34 and 36 of the marketing agreement regulating the quality of domestically produced peanuts heretofore entered into between the Secretary of Agriculture and various handlers of peanuts (30 FR 9402) and upon recommendation of the Peanut Administrative Committee established pursuant to such agreement and other information, it is hereby found that the appended "Incoming Quality Regulation—1985 Crop Peanuts," "Outgoing Quality Regulation—1985 Crop Peanuts," and the "Terms and Conditions of Indemnification—1985 Crop Peanuts," which modify or are in addition to the provisions of sections 5, 31, 32 and 36 of said agreement will tend to effectuate the objectives of the Agricultural Marketing Agreement Act of 1937, as amended, and of such agreement and should be issued.

The Peanut Administrative Committee has recommended that the appended regulations and the Terms and Conditions of Indemnification be issued to implement and effectuate the provisions of the aforementioned sections of the marketing agreement. The peanut crop year begins July 1 and procedures and regulations for operations under the agreement should be established thereby affording handlers maximum time to plan their operations accordingly. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing the issuance hereof, they are represented on the Committee which has prepared and recommended these quality regulations and terms and conditions of indemnification for approval.

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

Information collection requirements contained in these regulations and terms and conditions of indemnification have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0067.

The 1985 Incoming Quality Regulation differs in two ways from the 1984 regulation. Paragraph (d)(1) is modified to increase the size of the screens used by handlers in differentiating those loose shelled kernels which may be milled for human consumption from those which must be disposed of for inedible use. The change is intended to improve the quality of lots of peanuts milled for human consumption by decreasing the quantity of loose shelled kernels in such lots. Research data indicates that there is a higher incidence of aflatoxin in loose shelled kernels than in other components of farmers stock peanuts.

The second change in the 1985 Incoming Quality Regulation modifies paragraph (h) to require handlers to correct to the satisfaction of the Committee any conditions conducive to the growth of *Aspergillus flavus* mold found in equipment which they use to transport farmers stock peanuts. This change is intended to ensure that such equipment is properly ventilated.

The 1985 Outgoing Quality Regulation is the same as last year except that the screen sizes in paragraph (g)(1) for determining loose shelled kernels which must be disposed of for inedible use are changed to conform with the Incoming Quality Regulation.

Two changes are made in the Terms and Conditions of Indemnification for 1985 crop peanuts. The indemnification payment on any lot of "quota peanuts" which is wholly indemnified is changed from three to five cents per pound less than the applicable indemnification value for the lot. This change is intended to encourage handlers to remill or blanch lots of peanuts with excessive aflatoxin rather than have such lots crushed for oil. It costs the Committee less to indemnify lots which are remilled or blanched rather than crushed.

The second change in the 1985 Terms and Conditions of Indemnification provides an exception to the current provision that lots of custom blanched peanuts will not be indemnified if they are sold at a price lower than the indemnification value on the original red skin lot at the time the indemnification claim was filed with the Committee. This exception allows indemnification payments on lots of peanuts that are originally reported as "quota peanuts" but are subsequently substituted to "additional" status upon blanching.

Agricultural Stabilization and Conservation Service (ASCS) provisions allow lots of peanuts to be switched from "quota" status to "additional" status under certain circumstances, and the Committee does not want to penalize handlers who utilize those provisions even though "additional peanuts" are normally sold at prices considerably below corresponding indemnification values for "quota peanuts." However, ASCS does not permit peanuts with excessive aflatoxin to be substituted. Therefore, under the change, reject peanuts removed when a lot is blanched will retain their "quota" status and will be indemnified based on the applicable indemnification value for "quota peanuts."

Upon consideration of the Committee recommendation and other available information, the appended "Incoming Quality Regulation—1985 Crop Peanuts," "Outgoing Quality Regulation—1985 Crop Peanuts," and the "Terms and Conditions of Indemnification—1985 Crop Peanuts," are hereby approved.

Dated: July 8, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

Incoming Quality Regulation—1985 Crop Peanuts

The following modify section 5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

a. *Modification of section 5, paragraphs (b), (c), and (d).* Paragraphs (b), (c), and (d) of section 5 of the peanut marketing agreement are modified as to farmers stock peanuts to read respectively as follows:

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus*.

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers stock peanuts with visible *Aspergullus flavus*.

b. *Moisture.* Except as provided under paragraph (e) *Seed peanuts*, no handler shall receive or acquire peanuts containing more than 10 percent moisture: *Provided*, That peanuts of a higher moisture content may be received and dried to not more than 10 percent moisture prior to storing or milling. On farmers stock, such moisture determinations shall be rounded to the nearest whole number; on shelled peanuts, the determinations shall be carried to the hundreds place and shall not be rounded to the nearest whole number.

c. *Damage.* For the purpose of determining damage, other than concealed damage, on farmers stock peanuts, all percentage determination shall be rounded to the nearest whole number.

d. *Loose shelled kernels.*

(1) Handlers may separate from the loose shelled kernels received with farmers stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—$^{13}/_{64} \times {}^{3}/_{4}$ inch; Spanish and Valencia—$^{13}/_{64} \times {}^{3}/_{4}$ inch; Virginia—$^{13}/_{64} \times 1$ inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided*, That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the Outgoing Quality Regulation. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers stock peanuts and shall be sold so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers stock peanuts.

(2) Each handler shall be required to submit to the Committee a flow chart for each plant operation diagraming the procedures and equipment used in the removal of loose shelled kernels and in the processing of splits. Upon any subsequent changes in such flow, procedures, or equipment, the handler shall submit to the Committee a revised flow chart reflecting those changes.

e. *Seed peanuts.* a hander may acquire and deliver for seed purposes farmers stock peanuts which meet the requirements of Segregation 1 peanuts. If the peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus*, and, in addition, the following moisture content, as applicable:

(1) for seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 11 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 12 percent moisture; and (2) for seed peanuts produced in the Southwestern area, they may contain up to 10 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee as requested the weight of each lot of farmers stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers stock) seed peanuts or from another sheller or produced who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets, and any portion not meeting human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation.

f. *Oilstock.* Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of section 31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation which failed to meet the requirements for human consumption pursuant to paragraph (a) of the Outgoing Quality Regulation: *Provided*, That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep them separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation. Further disposition or commingling of such peanuts shall be only as provided in paragraph (l) of the Outgoing Quality Regulation. Handlers who acquire farmers stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisitions as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 and 3 farmers stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

g. *Segregation 2 and 3 control.* To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform

each employee, country buyer, commission buyer, or like person through whom he receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the Committee which shall be used only for information purposes.

h. *Farmers stock storage and handling facilities.* Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers stock peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers stock storage and handling facilities and farmers stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

i. *Shelled peanuts.* Handlers may acquire from other handlers for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation. Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors, an aflatoxin assay certificate, and must be positive lot indentified. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts acquired pursuant to this paragraph shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by paragraph (b)(1) of the Outgoing Quality Regulation.

Outgoing Quality Regulation—1985 Crop Peanuts

The following modify or are in addition to the peanut marketing agreement restrictions of section 32 on handler disposition of peanuts:

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this regulation, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than (1) a total of 1.50 percent unshelled peanuts and damaged kernels; (2) a total of 3.00 percent unshelled peanuts and damaged kernels and minor defects; (3) 9.00 percent moisture; or (4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that in peanuts other than "No. Two Virginia" fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits". The term "fall through" as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follows:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	[1]$^{13}/_{64}$ inch round	[1]$^{13}/_{64}$ x $^{3}/_{4}$ inch slot.
Spanish and Valencia	[1]$^{15}/_{64}$ inch round	[1]$^{15}/_{64}$ x $^{3}/_{4}$ inch slot.
Virginia except "No. 2 Virginia"	[1]$^{15}/_{64}$ inch round	[1]$^{15}/_{64}$ x 1 inch slot.
"No. 2 Virginia"	[1]$^{13}/_{64}$ inch round only for split, broken and whole kernels.	

("No. Two Virginia" means Virginia type peanuts that meet requirements of U.S. No. 2 Virginia grade peanuts except for tolerances for: (1) damage or unshelled peanuts and minor defects; and (2) sound peanuts and portions of peanuts which pass through the prescribed screen. Such tolerances shall be the same as those listed heretofore in this paragraph. Runners, Spanish or Virginia "with splits" means shelled peanuts which do not contain more than (a) 15 percent splits; (b) Spanish, 2.00 percent whole kernels which will pass through $^{15}/_{64}$ x $^{3}/_{4}$ slot screen; for Runners, 3.00 percent whole kernels which will pass through $^{13}/_{64}$ x $^{3}/_{4}$ inch slot screen; and for Virginias, 3.00 percent whole kernels which will pass through $^{15}/_{64}$ x 1 inch slot screen; and (c) otherwise meet specification of U.S. No. 1 grade).

(b) *Cleaned inshell peanuts.* No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatoxin; (2) with more than 2.00 percent peanuts with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign material. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) *Pretesting shelled peanuts.* Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection

Service as "Sample #1", "Sample #2", and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1–CD". Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill". The resultant ground Subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB". Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill". The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB". Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at his expense. The cost of assay on Subsample 1–AB and a portion of the cost (specified by the Committee) of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB to the laboratory shall be for the account of the buyer. However, if the handler elects to pay for these costs, he shall charge the buyer the amount specified by the Committee when he invoices the peanuts and, if more than one buyer, on a pro rata basis. Any remaining costs of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB shall be for the account of the handler and shall be shown on the grade analysis certificate covering the lot. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler who shall promptly cause notice to be given to the buyer, of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(d) *Identification.* Each lot of shelled or cleaned inshell peanuts shipped or otherwise disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection.* Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant transfer.* Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose shelled kernels, fall through and pickouts.*

(1) Loose shelled kernels which do not ride screens with the following slot openings: Runner—$^{15}/_{64}$ x $^{3}/_{4}$ inch; Spanish and Valencia–$^{15}/_{64}$ x $^{3}/_{4}$ inch; Virginia—$^{15}/_{64}$ x $^{3}/_{4}$ 1 inch; and fall through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph (g)(3) hereinafter. For the purpose of this regulation: the term "non-edible quality peanuts" described in this paragraph means loose shelled kernels, fall through, and pickouts; the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers stock peanuts or those which fail to ride the screens prescribed in paragraph (d)(1) of the Incoming Quality Regulation; the term "fall through" has the same meaning as in paragraph (a) of this regulation; and the term "pickouts" means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled

peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new bags or clean, used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3) In addition to disposition outlets specified in paragraph (g)(1), fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Each category of non-edible quality peanuts described in paragraph (g)(1) and identified as prescribed in paragraph (g)(2) may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this regulation or they may be moved to another handler for such disposition. Sales or transfer of such peanuts, to exporters who are not handlers under the marketing agreement, shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(1) of this regulation to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing but may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (l)(2). Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) are exported or crushed in commingle with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing of all categories of peanuts included in the commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Such meal may also be used for research purposes, subject to the approval of the Executive Subcommittee. However, loose shelled kernels, fall through and pickouts and meal from such peanuts, in specifically identified lots not exceeding 200,000 pounds may be sampled by the Federal or Federal-State Inspection Service or by the Area Association if authorized by the Committee, and tested for aflatoxin in laboratories approved by the Committee or by a USDA laboratory, at handler's or crusher's expense, and if such meet Committee standards, the meal may be disposed of for feed use.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation, a handler may transfer non-edible quality peanuts described in paragraph (g)(1) to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts failing quality requirements.*

(1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a). Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched positive identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this regulation because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided*, That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Handlers who move such peanuts to a blancher shall report, to the Committee on a form furnished by the Committee, movement of each such lot and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption outlets, such peanuts after blanching, must meet specifications for shelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this regulation and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation; *OR*, in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or a Committee approved exporter. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation: (a) To domestic crushing, (b) to export to countries other than Canada and Mexico, provided they meet fragmented requirements, (c) to crushers who are

not handlers but are approved by the Committee, or (d) to other handlers for crushing or fragmenting and exportation. Sales or transfers of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Each lot of such peanuts shall have been positive lot identified as prescribed in paragraph (d). Handlers may dispose of such peanuts as "unrestricted": *Provided*, That each lot has been sampled and assayed for aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)(1) of this regulation. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted." Therefore, the disposition of such peanuts to export or domestic crushing shall be as "restricted." However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2). Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and a part from peanuts of which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with the Committee approved remillers for remilling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation: *Provided*, That such lots of peanuts contained not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and an aflatoxin assay certificate and must be positive lot identified. Handlers who move such peanuts to an approved remiller shall report to the Committee, on a form furnished by the Committee, the movement of each such lot. The title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled sperate and apart from all other peanuts. The residual peanuts resultings from remilling under these provisions shall be bagged and red-tagged and disposed of to domestic crushing by the approved remiller or they may be returned to the handler for disposition under the provisons of paragraphy (g)(3) of the Outgoing Quality Regulation. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Residuals from seed peanuts.* Handlers who receive and custom shell for seed purposes farmers stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers Stock. Likewise, any such residuals received or acquired from a handler of non-handler, shall be held and milled separate and part in the same manner. Residuals that meet requirements of the Outgoing Quality Regulation may be disposed of by sale to human comsumption outlets or to another handler and any portion in positive identified lots not meeting such requirements: (1) May be handled and disposed of pursuant to the provisions of paragraph (h) of this regulation; or (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g).

(j) *Segregation 2 and 3 farmers stock disposition.*

(1) Handlers who have acquired Segregation 2 and 3 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers stock peanuts or commingled Segregation 2 and 3 farmers stock peanuts may be moved or disposed of in bags or bulk: (a) To other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shall such peanuts and move or dispose of the shelled peanuts in bulk or bags: (a) To other handlers for fragmenting or crushing, or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter in paragraph (l)(2) for "restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by a Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (l)(1) and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the Area Association and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingling and domestic crushing. All movement and disposition of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers stock with Segregation 1 farmers stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers stock peanuts or commingled Segregation 1 and 2 farmers stock peanuts may be moved or disposed of in

bulk or bags: (a) To other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: (a) To another handler for fragmenting or crushing; or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in paragraph (l)(1) of this regulation. Prior to exportation the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (l)(1). If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(k) *Segregation 1 farmers stock disposition.*

(1) In addition to milling (shelling, cleaning, etc.) Segregation 1 farmers stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers stock peanuts to export or to other handlers for such disposition. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), handlers may dispose of Segregation 1 farmers stock peanuts in bags or bulk to other handlers for shelling, fragmenting, or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers stock peanuts with Segregation 2 farmers stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to other handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting, and disposition of such Segregation 1 farmers stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing, shall be milled and disposed of pursuant to paragraph (j)(2) in lieu of the provisions specified in paragraph (a), (b), (c), (d), (g), (h), and (i) of this regulation. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as precribed by the Committee.

(l) *Handling, commingling, and disposition of shelled peanuts not meeting quality requirements for human consumption.* (1) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "unrestricted";

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock pursuant to paragraph (k)(2).

(b) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) Positive Lot Identified lots of shelled "peanuts failing quality requirements" determined negative as to aflatoxin pursuant to paragraph (h)(3).

(d) Positive Lot Identified lots of loose shelled kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraphs (g)(1), (2), and (3).

(e) Positive Lot Identified lots of loose shelled kernels, fall through, and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g)(2), and (3).

(f) Positive Lot Identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i).

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: (1) With any other category of peanuts described in this paragraph, and (2) with any category of "unrestricted" shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term "fragmented" means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish $^{15}/_{64}$ x $^{3}/_{4}$ inch slot; Runner $^{15}/_{64}$ x $^{3}/_{4}$ inch slot; and Virginia $^{15}/_{64}$ x 1 inch slot. Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher: (1) With any other category of peanuts described in this paragraph, and (2) with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted disposition (crushing or export), such peanuts, before commingling and after commingling shall be kept separate and apart from all "restricted" peanuts. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts describe heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "restricted":

(a) The entire mill production of shelled peanuts from Segregation 1 farmers stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation.

(b) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers stock pursuant to paragraph (j)(2).

(c) The entire mill production of shelled peanuts from Segregation 3 or

commingled Segregation 2 and 3 farmers stock pursuant to paragraph (j)(1).

(d) Positive Lot Identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3).

(e) Positive Lot Identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g) (1), (2), and (3).

(f) Positive Lot Identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g) (2), and (3).

(g) Positive Lot Identified lots of seed peanut residuals pursuant to paragraph (i).

Handlers who acquire, from other handlers, or from their own operations, any of the categories of shelled peanuts decribed heretofore in this paragraph (l)(2) may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted". Prior to such exportation, the peanuts shall be certified as meeting the fragmented requirements and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin". Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (l)(2) and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "restricted" domestic crushing. Meal produced from peanuts disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use, pursuant to the provisions of paragraph (g)(3). Shelling, fragmenting, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segregation 1 peanuts handled pursuant to paragraph (k), shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

Terms and Conditions of Indemnification—1985 Crop Peanuts

For the purpose of paying indemnities on a uniform basis pursuant to section 36 of the peanut marketing agreement effective July 12, 1965, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled to the outgoing quality requirements and into one of the categories listed in the final paragraph of these terms and conditions, on which the handler has withheld shipment or storage or the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the results of chemical assay.

If the chemical assay results on samples drawn prior to shipment pursuant to paragraph (c) of the Outgoing Quality Regulation are so high in aflatoxin content that a lot of peanuts should be handled pursuant to these Terms and Conditions, the handler shall certify to the Committee within ten (10) days of the date shown on the aflatoxin certificate whether the milling of the peanuts in the lot was supervised by the Area Association as "additional peanuts". For the purposes herein, the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

To be eligible for indeminification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements of the agreement, shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the Outgoing Quality Regulation and the lot identification shall have been maintained. If the Committee concludes, based on assays to date or further assays, that the lot is so high in aflatoxin that it should be handled pursuant to these Terms and Conditions, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indentification. If the lot is covered by a sales contract, the lot may be rejected to the handler.

In an effort to make such eligible peanuts suitable for human consumption, and to minimize indemnification costs, the Committee and the Agricultural Marketing Service shall, prior to disposition for crushing cause all suitable lots to be remilled or custom blanched or both.

"Custom blanching" means the process which involves blanching peanuts, and the subsequent removal of damaged peanuts for the purpose of eliminating aflatoxin from the lot. The process may be applied to either an original lot or the new lot which results from remilling. Custom blanching shall be performed only by those firms determined by the Committee to have the capability to remove the aflatoxin and who agree to such terms, conditions, and rates of payment as the Committee may find to be acceptable.

If the Committee and the Agricultural Marketing Service conclude that such lot is not suitable for remilling or custom blancing, the lot shall be declared to crushing and shall be disposed of by delivery to the Committee at such point as it may designate. The indemnification payment for peanuts in such a lot shall be the indemnification value of the peanuts, as hereinafter provided, less five cents per pound if the lot is "quota peanuts" and less three cents per pound it the lot is "additional peanuts." Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection ocurred and from such point to a delivery point specified by the Committee shall be included in the indemnification paymet if the lot is found by the Committee to be unwholesome as to aflotoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. Payment shall be made to the handler as soon as practicable after delivery of the peanuts to the Committee. The salvage value for peanuts declared for crushing shall be paid to, and retained by, the Committee to offset indemnification expenses.

If it is concluded that the lot should be remilled or custom blanched, expenses shall be paid by the Committee on those lots which, on the basis of the inspection

occurring prior to shipment, contained not more than 1.00 percent damaged kernels other than minor defects. Lots with damage in excess of 1.00 percent on such inspection shall be remilled without reimbursement from the Committee for milling or freight, but otherwise shall be indemnifiable the same as lots with not more than 1.00 percent damage.

The indemnification value of peanuts delivered to the Committee for indemnification shall be as listed in the third from the last paragraph of these terms and conditions.

The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall be the indeminification value referable to the weights of peanuts lost in the remilling process and not cleared for human consumption, plus an allowance for remilling of two and one-half cents per pound on the original weight. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indeminification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plus the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and the applicable indemnification value of the weight of reject peanuts removed from the lot. On lots which are custom blanched without remilling, the indemnification payment shall be determined in the same manner. However, no indemnification payments shall be paid on any lot of peanuts where the Committee determines that the custom blanched peanuts from such a lot have been sold at a price lower than the applicable indemnification value on the original red skin lot at the time the indemnification claim was filed with the Committee: *Provided*, That this condition shall not prohibit indemnification payments on lots of peanuts that were originally reported as "quota peanuts" but are subsequently substituted to "additional" status upon blanching. In this case, the indemnification payment on the weight of reject peanuts removed shall be based on the applicable indemnification value for "quota peanuts."

Claims for indemnification on current crop year peanuts may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay, to the extent of the raw peanut equivalent value of the peanuts used in the product so withheld, such claims as it determines to be valid.

Payment shall be made to the handler claiming indemnification or receiving the rejected lot as soon as practicable after receipt by the Committee of such evidence of remilling or custom blanching and clearance of the lot for human consumption as the Committee may require and the delivery of the peanuts not cleared for human consumption to the delivery point designated by the Committee. If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched or both, the Committee shall declare the entire lot for indemnification, and the indemnification payment on such lot shall be the indemnification value of the peanuts in the original lot, less five cents per pound if the lot is "quota peanuts" or less three cents per pound if the lot is "additional peanuts", plus other applicable costs authorized heretofore. However, the Committee shall refuse to pay indemnification on any lot(s) where it has reason to believe that the rejection of the peanuts arises from failure of the handler to use reasonable measures to receive and withhold from milling for edible use those Segregation 3 peanuts tendered to him either directly by a producer or by a country buyer, commission buyer or other like person. Furthermore, any misrepresentation by a handler in reporting acquisition, composition or disposition of any lot or lots of peanuts by such handler shall cause indemnification payments with respect to any such claim filed with the Committee by the handler on current crop year peanuts to be withheld unless the Committee finds that such action was inadvertent.

Remilling may occur on the premises of any hanlder signatory to the marketing agreement or at such other plant as the Committee may determine. However, if the Committee orders remilling of a lot which has been found to contain aflatoxin prior to shipment from the locality of orignial milling, the Committee shall not pay freight costs should the handler move said lot to another locality for remilling.

Notice of claims for indemnification on peanuts of the current crop year shall be received by the Committee no later than November 1, following the end of the current crop year.

Each handler shall include, directly or by reference, in his sales contract the following provisions:

Buyer shall give the Peanut Administrative Committee [Committee] office notice of any request made to the Federal or Federal-State Inspection Service for an "appeal" inspection for aflatoxin. Results of the "appeal" inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the "appeal" sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller, and such peanuts shall be reoffered to the buyer to satisfy the covering contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot if he elects to do so. Buyer must return the rejected lot to the seller within 45 days of the date of which Committee management informs buyer of the "appeal" sample test results, otherwise the buyer agrees that he forfeits the right to reject the lot and return it to the seller.

If the buyer's or receiver's name is shown on the certificates covering a lot which, upon the pretesting sampling procedure prescribed in paragraph (c) of the Outgoing Quality Regulation, exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot, if he elects to do so.

Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the

assay to the buyer. The laboratory costs shall be for the account of the buyer and buyer agrees to pay them when invoiced by the laboratory or, in the event the seller has paid them, by the seller.

Any handler who fails to include such provisions in his sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

In addition, should any handler enter into any oral or written sales contract which fixes the level of aflatoxin at which rejection may be made and hence conflicts with these terms and conditions, the handler doing so will not be eligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts on or after the filing date of a claim under such contract, except upon the Committee's finding that acceptance of such contract was inadvertent; and for purposes of this provision a claim shall be deemed to be filed when notice of possible rejection is first given to the Committee.

Any handler who fails to conform to the requirements of paragraph (h) of the Incoming Quality Regulation shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

Any handler who fails to cause positive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant (d) of the Outgoing Quality Regulation, shall be ineligible for any indemification payments until such violation is corected to the satisfaction of the Committee.

Any handler who fails to remove, hold, or dispose of loose shelled kernels pursuant to paragraph (d)(1) of the 1985 Incoming Quality Regulation or paragraph (g) of the 1985 Outgoing Quality Regulation shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee and/or any complaints of violations made by the Committee to the Secretary are resolved.

Categories eligible for indemnification are as follows:

Cleaned inshell peanuts—
(1) U.S. Jumbos.
(2) U.S. Fancy Handpicks.
(3) Valencia—Roasting Stock.[1]

[1] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

U.S. Grade shelled peanuts—
(1) U.S. No. 1.
(2) U.S. Splits.
(3) U.S. Virginia Extra-Large.
(4) U.S. Virginia Medium.
Shelled peanuts "with splits"—
(1) Runners with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a $^{18}/_{64}$ x $^{3}/_{4}$ slot screen.
(2) Spanish with splits which do not contain more than 15 percent splits or 2 perent whole kernels which will pass through a $^{13}/_{64}$ x $^{3}/_{4}$ slot screen.
(3) Virginias with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a $^{13}/_{64}$ x 1 slot screen.
Shelled Spanish jumbos—Spanish having not more than 5 percent kernels which fall through an $^{18}/_{64} \times {}^{3}/_{4}$ slot screen and which otherwise meet the grade requirements of U.S. No. 1 Spanish.

However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) Were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation and paragraph (i) of the Outgoing Quality Regulation; (2) failed the Outgoing Quality Regulation due to excessive damage and minor defects and such peanuts were subsequently blanched to remove such excess damage and minor defects pursuant to paragraph (h) of such regulation; (3) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects; and (4) were received or acquired from another handler pursuant to paragraph (i) of the Incoming Quality Regulation and were milled to meet requirements of the Outgoing Quality Regulation pursuant to paragraph (h) of such regulation.

For the purpose of paying indemnification beginning August 1, of the current crop year, the domestic market price for each category of peanuts shall be determined by averaging the price(s) listed in the Peanut Market News, per category, during the most recent four week period. Such weekly price calculations shall extend to May 31, of the current crop year and the average price per category as of May 31, 1986, shall be applied during the remainder of the crop year.

For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA–ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

The indemnification value for each category of "quota peanuts" eligible for indemnification, expect U.S Splits of all types, shall be the domestic market price established during hte averaging period less two cents per pound (on the pounds indemnified) of the most recent price category listed in the Peanut Markets News, whichever is lower. The indemnification values of U.S. Splits categories shall be the domestic market price established during the averaging period less three cents per pound.

The indemnification value for "additional peanuts" shall be equal to 60 percent of the established indemnification value, per category, of "quota peanuts".

The grade categories to which the indemnification values shall be applied are as follows:

Runners [1]	Virginias	Spanish
Jumbo	U.S. Extra Large	Spanish Jumbo
Medium	U.S. Medium	U.S. No. 1.
Select	U.S. No. 1	Spanish with splits.
No. 1 (–18+16 screens).	Virginias with splits.	U.S. Splits.
Mill run with or without Splits.	U.S. Splits	
U.S. Splits		

[1] Southeastern Peanut Association grades.

[FR Doc. 85–16586 Filed 7–11–85; 8:45 am]
BILLING CODE 3410-02-M

Forest Service

Montana: Bitterroot National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Bitterroot National Forest Plan Draft Environmental Impact Statement and legislative report and DEIS for two Montana Wilderness Study Act (Pub L. 95–150) areas, the Blue Joint and Sapphire roadless areas.

SUMMARY: The period of public review for the Bitterroot National Forest Plan Draft Environmental Impact Statement has been extended until August 15, 1985.

ADDRESSES: Requests for further information should be addressed to: Robert S. Morgan; Bitterroot National Forest; 316 North 3rd Street; Hamilton, MT 59840

James E. Reid,
Acting Regional Forester.

[FR Doc. 85–16052 Filed 7–11–85; 8:45 am]
BILLING CODE 3410-11-M

Idaho; Clearwater National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Clearwater National Forest Plan Draft Environmental Impact Statement.

SUMMARY: The period of public review for the Clearwater National Forest Plan Draft Environmental Impact Statement has been extended until September 15, 1985.

ADDRESSES: Requests for further information should be addressed to: Jim Bates, Supervisor; Clearwater National Forest; 12730 Highway 12; Orofino, ID 83544

James E. Reid,

Acting Regional Forester.

[FR Doc. 85-15979 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-11-M

Idaho; Idaho Panhandle National Forest Plan Draft Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Extension of public review period for the Idaho Panhandle National Forest plan draft environmental impact statement.

SUMMARY: The period of public review for the Idaho Panhandle National Forest draft environmental impact statement has been extended until September 1, 1985.

ADDRESSES: Requests for further information should be addressed to: Bill Morden, Supervisor; Idaho Panhandle National Forest; 1201 Ironwood Drive; Coeur d'Alene, ID 83814

James E. Reid,

Acting Regional Forester.

[FR Doc. 85-15975 Filed 7-11-85; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Alaska Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alaska Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on August 12, 1985, at the Federal Building, 701 C Street, Room C-114, Anchorage, Alaska. The purpose of the meeting is to provide an orientation for new members and plan programs for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Daniel Alex or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16550 Filed 7-11-85; 8:45 am]

BILLING CODE 6335-01-M

Nebraska Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:30 p.m. on August 8, 1985, at the University of Nebraska, College of Law, Room 122, Lincoln, Nebraska. The purpose of the meeting is to continue program planning for projects in FY 85-86, including a community forum to be held in Lincoln.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Richard Duncan or Melvin Jenkins, Director of the Central States Regional Office, at (816) 374-5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16551 Filed 7-11-85; 8:45 am]

BILLING CODE 6335-01-M

Oregon Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Oregon Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on August 2, 1985, at the Portland Building, 1120 SW. Fifth Avenue, Room A, Portland, Oregon. The purpose of the meeting is to provide orientation for new members and plan programs for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Huffman or Susan McDuffie, Director of the Northwestern Regional Office at (206) 442-1246.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 8, 1985.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 85-16549 Filed 7-11-85; 8:45 am]

BILLING CODE 6335-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Public Hearing Concerning Hazards Associated With All Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Consumer Product Safety Commission will hold a public hearing in Concord, New Hampshire, on July 25, 1985, to obtain safety related information on All Terrain Vehicles (ATVs). This will be the third of five hearings on the hazards associated with ATVs the Commission plans to hold across the United States. Hearings were held in Jackson, Mississippi, on May 30, 1985 and in Dallas, Texas on June 17, 1985. The Commission also plans to hold hearings in Milwaukee, Wisconsin and Los Angeles, California during the next several months.

The Commission is aware of at least 161 deaths associated with ATVs occurring between January, 1982 through April, 1985. Estimates on the number of hospital emergency room treated injuries associated with ATVs in 1984 were 66,956. This is almost two and one half times the number of injuries in 1983 and more than seven times the number in 1982. The Commission also estimates that 28,000 ATV related injuries were treated in hospital emergency rooms in the first four months of 1985. This is approximately 80 percent higher than the estimated injuries treated during the same time period in 1984. The Commission is primarily concerned about accidents which result from : (1) Loss of control of the ATV; (2) the ATV overturning by flipping over backward, tipping over forward, or rolling over sideways; and (3) the rider being thrown from the vehicle.

The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in participation from owners

and users of ATVs; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials or organizations involed with ATV safety and training or state legislation or local ordinances; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs. The hearing will specifically focus on the hazards associated with ATVs and ways the industry, the Commission, state and local governments or voluntary standards organizations can address these hazards.

DATE AND ADDRESS: The hearing will be held on Thursday, July 25, 1985, beginning at 8:30 a.m. at the House Chamber, Second Floor, State House, Concord, New Hampshire. Requests from persons who wish to make presentations must be received by the Office of the Secretary no later than July 19, 1985. Persons who wish to testify must submit a written copy or summary of their testimony to the Office of the Secretary not later than July 23, 1985. Presentations at the hearing should be limited to approximately 5 minutes.

FOR FURTHER INFORMATION CONTACT: For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; or call Mr. Butts on the Commission's toll free hotline number at 800–638–2772 or the Commission's commercial number at 301–492–6800.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is holding a series of five public hearings across the United States to assist it in obtaining safety-related information on ATVs and in deciding what, if any, regulatory or voluntary action is warranted. The Consumer Product Safety Commission is concerned about whether the performance characteristics of ATVs, including dynamic stability and handling, are adequately safe. To address this concern, the Commission has issued an advance notice of proposed rulemaking (ANPR), which formally commences a rulemaking proceeding. 50 **Federal Register** 23139 (May 31, 1985). In the ANPR, the Commission discusses methods by which any unreasonable risks of injury which might be associated with ATVs could be adequately reduced or eliminated. These methods include the promulgation of a performance standard, a labeling or warning standard, a ban of ATVs, the development of a voluntary standard, an adminstrative recall proceeding under section 15 of the CPSA, an imminent hazard action under section 12 of the CPSA or the dissemination of safety related information.

An ATV is a motorized machine intended to be ridden by one person and designed for off-road use. The majority of ATVs have three wheels in a tricycle configuration, although there has been a large increase in the available number of ATVs with four wheels. (The Commission's inquiry at this time is focused only on three and four wheel ATVs.) ATVs typically have gasoline-powered engines of between 50 and 250 cubic centimeters displacement. Currently, ATVs use large, soft, low pressure tires. Most ATVs have no rear axle differential and limited suspension systems.

Sales of all terrain vehicles have increased substantially since the mid-1970s. From 1980 to 1983 sales more than tripled with an average rate of growth over this period of 55% per year. While the number of sales increased sharply in 1984, the percentage rate of growth slowed somewhat to 24%.

The Commission staff estimates that by the end of 1985, 2,480,000 to 2,540,000 ATVs will be available for use, based on an average product life expectancy of 7 to 8 years and on a normally distributed rate of product survival.

The Commission's National Electronic Injury Surveillance System (NEISS) estimates that the number of hospital emergency room treated injuries associated with ATVs in 1984 was 66,956. This is almost two and one half times the number of injuries in the previous year and more than seven times the number in 1982. The Commission estimates that the number of ATV related injuries treated in hospital emergency rooms during the first four months of 1985 was 28,000. This is approximately 80 percent higher than the estimated injuries treated during the same time period in 1984.

At least 161 ATV associated fatalities are known to the Commission to have occurred from January, 1982 through April, 1985. Reports of deaths for 1983, 1984, and 1985 are still being received. The Commission staff review of these 161 reported deaths revealed that 73 victims were under 16 years of age and 39 were under 12 years of age. Almost three-fourths of the victims of ATV-related injuries were between the ages of 5 and 24 years.

The Commission staff believes that the basic configuration of ATVs, and their unique performance characteristics including dynamic stability and handling, appear to play a major role in accidents involving ATVs. Many serious injuries and deaths reported in in-depth investigations conducted by the Commission staff resulted from loss of control of the ATV following an abrupt change in the equilibrium of the vehicle. A number of different factors, such as a change in terrain, or a sudden change in direction can contribute to the change in equilibrium. The subsequent loss of control follows a pattern in which the machine overturns or the rider is thrown off. In many of these accidents, other factors such as drinking, riding with passengers, or operating the vehicle illegally on paved roads, may obscure the pattern of loss of control as the critical element in the incident.

B. Request for Public Participation At Hearing

The Commission requests the public to provide it with information on ATVs and on what action, if any, it should take to adequately reduce or eliminate hazards associated with ATVs. The Commission is particularly interested in the views of persons who own or use ATVs in recreational and occupational applications and who have specific observations about ATV handling characteristics; persons who belong to ATV clubs and/or racing associations; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials such as police officers, health and safety officials and legislators who are involved with ATV safety, training or legislation concerning ATVs; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs.

The hearing will focus on the following areas:

(1) Information which identifies the degree, if any, to which the general design of ATVs as well as specific design and operational features of individual models of ATVs influence the performance characteristics of ATVs and contribute to the risk of injury;

(2) Information identifying any changes in general or specific design characteristics of ATVs, including the costs of these changes, that would reduce or eliminate the risks of injury;

(3) Information concerning the handling characteristics of ATVs and the ability of users at various ages and levels of experience to maintain control of ATVs under various conditions of terrain and speed;

(4) Information relating to techniques of evaluating and testing the performance of ATVs;

(5) Information on current activities to educate or train users of ATVs, including children, in the proper method of operation and ways these efforts could be improved;

(6) Information on any accidents involving ATVs, including information on specific injuries sustained in ATV accidents and the nature, degree, duration, treatment and outcome of such injuries. Copies of physicians' and hospital records are sought;

(7) Information identifying any voluntary standard applicable or adaptable to ATVs which could reduce or eliminate the risk of injury;

(8) Information concerning any state or local licensing requirement, restriction or legislation involving ATVs;

(9) Information concerning the development of the three and four wheel ATVs including information relating to design features which take into account the hazards of overturning, and loss of control and

(10) Information on the sale, marketing and distribution of ATVs, particularly for use by children.

Presentations should be limited to approximately 5 minutes. The Commission reserves the right to impose further time limitations on all presentations and to impose further restrictions to avoid duplication of presentations.

Persons unable to attend the hearing may submit their comments in writing, for the record. Written comments for the record must be received in the Office of the Secretary no later than July 25, 1985. Also, persons who cannot attend the hearing or make a presentation should be aware that they can submit written comments in response to the ANPR.

Sheldon D. Butts,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 85-16988 Filed 7-11-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: Friday, 9 August 1985.

Time: 1300-1400.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup—TRADOC Operations Research Activity (TORA) will meet to discuss operations research activities. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-16576 Filed 7-11-85; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday and Tuesday, 5 and 6 August 1985.

Time: 0830-1630.

Place: Science Applications International Corporation, McLean, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for the Detection of Soviet Theater Nuclear Forces will meet for briefings by intelligence agencies and government laboratories. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-16577 Filed 7-11-85; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Privacy Act of 1974; Amended System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Amendment to Systems of Records.

SUMMARY: The Department of the Navy proposes to amend four systems of records in its inventory of systems of records subject to the Privacy Act of 1974.

DATE: The proposed action will be effective without further notice August 12, 1985, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the system manager identified in the system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Aitken, Privacy Act Coordinator, Office of the Chief of Naval Operations (Op-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000. Telephone: (202) 694-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a) Pub. L. 93-579 were published in the Federal Register as follows: FR Doc. 85-10237 (50 FR 22735) May 29, 1985.

The proposed amendments are not within the purview of the provision of 5 U.S.C. 552a(o) which requires the submission of an altered system report.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

July 9, 1985.

N01754-1

System name:

Navy Family Support Program (50 FR 22768) May 29, 1985.

Changes:

Categories of records in the system:

In line two, delete the phrase "* * * social security number * * *" and insert "* * * case number * * *"

System manager(s) and address:

Delete the entire entry and substitute with the following: "Head, Family Support Program Division (NMPC-66), Human Resources Management Department, Naval Military Personnel Command, Washington, DC 20370."

N01754-1

SYSTEM NAME:

Navy Family Support Program.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

File could contain personal information such as name, case number, home address, telephone number, marriage counseling information, parent-child relationship information, family relations, financial data, developmental disability information.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Head, Family Support Program Division (NMPC-66), Human Resources Management Department, Naval

Military Personnel Command, Washington, DC 20370.

* * * * *

N04385–1

System name:

Investigatory (Fraud) System (48 FR 6967) February 24, 1984.

Changes:

System name:

Change the title to read: "IG Investigatory System".

Categories of records in the system:

At the end of the entry, add the following: "* * * 5. Synopsis of the allegation of wrongdoing."

Authority for maintenance of the system:

Add the following paragraph at the end of the entry: "10 U.S.C. 5088, Naval Inspector General: Detail; duties; Department of Defense directive 5106.1 of March 14, 1983, entitled, "Inspector General of the Department of Defense; "Secretary of the Navy Instruction 5430.57D of December 9, 1980, entitled, "The Naval Inspector General; mission and functions of; Secretary of the Navy Instruction 5430.92, April 17, 1981, entitled, "Assignment of Responsibilities to Counteract Fraud, Waste and Related Improprieties within the Department of the Navy."

Purpose:

After line 7, add the following sentence: "* * * To monitor the progress of criminal or administrative actions taken regarding naval active duty officers in pay grade 0–5 or higher and civil service employees (GS–13 or GM–13 and above), and any other DOD individual (military or civilian) who have been named in allegations of wrongdoing which apparently warrant criminal prosecution or adverse personnel actions* * *"

System manager(s) and address:

At the end of the entry, add a new paragraph: "* * * For tracking systems, the Head, Investigations Division, Naval Inspector General (Code 81), Office of the Naval Inspector General, Bldg 200, Washington Navy Yard, Washington, DC 20374–20001."

N04385–1

SYSTEM NAME:

IG Investigatory System.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Administrative memoranda.

2. Investigative reports and other investigative/intelligence information.

3. Reports of disciplinary action taken.

4. Public court records.

5. Synopsis of the allegation of wrongdoing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978 (10 U.S.C. 987 app. (1982)), 10 U.S.C. 5088, Naval Inspector General: Detail; duties; Department of Defense directive 5106.1 of March 14, 1983, entitled, "Inspector General of the Department of Defense; "Secretary of the Navy Instruction 5430.57D of December 9, 1980, entitled, "The Naval Inspector General; mission and functions of; Secretary of the Navy Instruction 56430.92, April 17, 1981, entitled, "Assignment of Responsibilities to Counteract Fraud, Waste and Related Improprieties within the Department of the Navy.

PURPOSE(S):

To conduct and to coordinate official investigations and inquiries of audits and to monitor final actions taken thereon. To disseminate information on misconduct, procurement fraud and related matters to other components within the Department of Defense. To monitor the progress of criminal or administrative actions taken regarding naval active duty officers in pay grade 0–5 or higher and civil service employees (GS–13 or GM–13 and above), and any other DOD individuals (military and civilian) who have been named in allegations of wrongdoing which apparently warrant criminal prosecution or adverse personnel actions. Internal users are Department of the Navy and Department of Defense component officials engaged in audit, investigative, inspection and management functions.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

The Inspector General of the command in question. See the director of Navy activities mailing addresses.

For tracking system, the Head, Investigations Division, Naval Inspector General (Code 81), Office of the Naval Inspector General, Bldg 200, Washington Navy Yard, Washington, DC 20374–2001.

* * * * *

N05521–1

System Name:

Access Control System (48 FR 26099) June 6, 1983.

Changes:

Categories of individuals covered by the system:

At the end of the entry, add the phrase: "* * * or contractor facility."

Categories of records in the system:

In line four, after the phrase "* * * naval base/activity * * *", add the words: "* * * or contractor facility, * * *"

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

At the beginning of the entry, add the following: "To designated contractors when Navy member is visiting that contractor's facility."

N05521–1

SYSTEM NAME:

Access Control System.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals considered or seeking consideration for access to space under the control of the Department of the Navy and any visitor (military, civilian, contractor) requiring access to a naval base/activity or contractor facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a naval base/activity or contractor facility; barring lists and letters of exclusion, and badge/pass issuance records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To designated contractors when Navy member is visiting that contractor's facility.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

* * * * *

N12930–1

System name:

Industrial Relations Personnel Records (50 FR 22862) May 29, 1985.

Changes:

Routine uses of records maintained in the system, including categories of users and the pruposes of such uses:

Delete the second paragraph in its entirety.

N12930-1

SYSTEM NAME:

Industrial Relations Personnel Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To appeals officers and complaints examiners of the Equal Employment Opportunity Commission for the purpose of conducting hearings in connection with employees' appeals from adverse actions and formal discrimination complaints.

To a federal agency in response to its request in connection with the hiring or retention of an employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary.

To the National Archives and Records Service (GSA) in records management inspection conducted under authority of 5 U.S.C. 2904 and 2906.

In response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in the pending judicial or administrative proceeding.

To officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices and matters affecting working conditions.

The Blanket Routine Uses that appear at the beginning of the Department of the Navy's compilation also apply to this system.

* * * * *

[FR Doc. 85-16564 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-01-M

Chief of Naval Operations Executive Panel Advisory Committee National Energy Security Policy Task Force; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee National Energy Security Policy Task Force will meet July 30-31, 1985, from 9 a.m. to 5 p.m. each day, at 2000 North Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to clearly understand the policy implications of the energy security problem facing the United States. The entire agenda for the meeting will consist of discussions of key issues regarding the parameters of national energy security policy, their implications for U.S. Navy operations, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Thomas E. Arnold, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (703) 756-1205.

Dated: July 9, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-16623 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

National Environmental Policy Act; Record of Decision To Designate a Supersonic Operations Area (SOA) and Implement Other Actions at Naval Air Station, Fallon, NV

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR Part 1500), the U.S. Navy announces its decision to designate a Supersonic Operations Area (SOA) over land which lies beneath portions of several existing Military Operations Areas (MOAs) near Naval Air Station (NAS) Fallon, Nevada. This designation will supplement existing training operations and allow aircraft to fly at supersonic speeds (greater than the speed of sound). The Navy will also establish a Strike Warfare Center (SWC) and implement other actions which are intended to support various aspects of its existing and planned aircrew training mission.

All of the actions are directly related to the Navy's overall objective of providing specialized training to achieve and maintain the highest degree of combat readiness for its forces, including tactical aircraft and associated aircrews.

NAS Fallon is an air warfare training complex which serves all Navy and Marine Corps air bases in the western United States and provides training for carrier airwings. A broad spectrum of training operations are conducted on the station and in conjunction with the various nearby aerial weapons ranges. These activities include real and simulated air-to-ground attacks, and simulated ground-to-air and air-to-air attacks. Most training activity at NAS Fallon occurs when aviation squadrons or carrier airwings visit the station for intensive training and practice, usually just prior to deployment at sea.

The airspace above NAS Fallon, its associated ranges, and the surrounding area is controlled in accordance with Federal Aviation Administration (FAA) designations. These designations are for Military Operations Areas (MOAs) and restricted airspace areas. NAS Fallon has air access control of the restricted airspace and accordingly deploys a variety of aircraft on a daily basis. Private and commercial aircraft are allowed to fly through the area but are encouraged to contact NAS Fallon to avoid potential conflict. Airspace above the weapons ranges have been designated restricted areas.

The SOA will use an area of airspace within which airwings and squadrons can train at subsonic and supersonic speeds to simulate realistic combat conditions. The SOA is to be located east of NAS Fallon, over lands which already lie beneath existing MOAs and restricted airspace. The SOA will overlie about 5,500 square miles and have a lower boundary, or floor, at an elevation of 11,000 feet above mean sea level (MSL) and extend to an upper boundary, or ceiling, of 58,000 feet MSL. Supersonic operations will not begin until completion of the installation of three optimumly placed noise monitors, on or about August 1985. Additional monitoring sites will be established and instrumented as equipment becomes available.

The Navy will purchase up to 12,100± acres of land and improvements in Dixie and Fairview valleys subject to Congressional authorization and appropriations. This land will primarily include residential and potentially residential property.

If an individual decides not to sell his property he will not be forced to sell. This individual will be required to sign appropriate hold harmless and release documents. If within a reasonable period of time this individual determines it is not possible to live under the SOA, the Navy will purchase his property and improvements.

The Navy will not fly supersonic over the Dixie Valley for a period of one year.

Additionally, concerning the establishment of the SOA, the Navy will also undertake some other actions to mitigate the expected impact. Specifically, the Navy will cooperate with the State of Nevada to develop means to mitigate the presumed airspace accessibility problem. The Navy will work with the Nevada State Department of Highways to develop criteria for a meaningful study of the timing of supersonic operations as affecting local traffic patterns. The Navy will cooperate with the State of Nevada on various wildlife preservation programs as applicable to the range-lands in question and specifically as related to the Stillwater Wildlife Refuge and possible impacts on nearby Carson Lake. Finally the Navy will request the Office of Economic Adjustment, Department of Defense, to conduct a fiscal impact analysis of the Navy establishment of the SOA and other actions at NAS Fallon.

The Navy will operate a Strike Warfare Center (SWC) and conduct an associated training program. The program will involve the administration of courses of study and require the permanent assignment of about 100 military personnel. Transient students will complete several courses per year. Due to the operation of the SWC, air operations are expected to increase about four percent over present activity.

The Navy will assign about 16 F/A–18 and several additional subsonic support aircraft to NAS Fallon. This action will cause the temporary build-up of about 100 military personnel during the transition period while the F/A–18 squadron replaces an existing A–7 squadron currently detached to NAS Fallon.

The Navy will permanently assign a 12 aircraft adversary squadron to NAS Fallon. This will result in about 175 additional military personnel. An adversary squadron is already flying on a periodic basis at Fallon so no net change in the number of air operations is anticipated.

As the result of additional personnel assignment, the Navy will conduct a market analysis on available housing in the Fallon area.

Finally, various station improvements are required, primarily to correct existing deficiencies and to modernize basic facilities, and they will be implemented. Also Range improvements to complement and upgrade existing systems as well as support the proposed SOA will be accomplished. None of these latter actions are expected to have a significant impact on the environment.

The Draft and Final Environmental Impact Statements addressing the Navy actions described were filed with the Environmental Protection Agency (EPA) and the public in December 1984 and May 1985 respectively. Comments were received over a 90 day period and public hearings were held on the issues.

Key issues included noise, human health and safety, and possible impacts on civil aviation. Impacts were identified, especially the production of sonic booms as the expected result of SOA designation, and noted as to their adverse effects on people and animals residing and occurring beneath and adjacent to the area described.

A detailed analysis of the alternative assessment process for the SOA and the SWC was conducted in the environmental documentation previously identified. Candidate sites, other than NAS Fallon were evaluated with regard to operational criteria, availability of support facilities and services and environmental considerations. Results of this analysis identified NAS Fallon as the only suitable site for the proposed SOA and SWC.

John Lehman,

Secretary of the Navy.

June 24, 1985.

[FR Doc. 85–16621 Filed 7–11–85; 8:45 am]

BILLING CODE 3810–01–M

Performance of Commercial Activities: Announcement of Program Cost Studies

The Department of the Navy intends to conduct OMB Circular A–76 (48 FR 37110, August 16, 1983) cost studies of various functions at the listed activities commencing August 19, 1985. The cost study process is a rigorous, time-consuming procedure and, depending upon the size of the functions involved, can take several months to several years to complete. Since the studies have not yet begun, specifications have not yet been prepared. When bids/proposals are desired, appropriate advertisements will be placed. No consolidated bidders' list is being maintained since the solicitations will be processed by various contracting offices throughout the U.S.

Naval Hospital, Camp Pendleton, CA
Other Health Services

Naval Hospital Branch, Twentynine Palms, CA
Other Health Services

Naval Weapons Station, Concord, CA
Storage and Warehousing

Naval Clinic Branch, Naval Hospital, Oakland, CA
Dispensaries

Naval Clinic Branch, Naval Support Activity, Mare Island, Vallejo, CA
Dispensaries

Naval Hospital, San Diego, CA
Other Health Services

Fleet Anti-Submarine Warfare Training Center, Pacific, San Diego, CA
Administrative Support Services

Naval Technical Training Center, Treasure Island, San Francisco, CA
Storage and Warehousing
Training Development and Support (Administrative)
Administrative Support Services

Naval Weapons Station, Seal Beach, CA
Storage and Warehousing

Naval Submarine Medical Research Laboratory, Naval Submarine Base, New London, Groton, CT
Medical and Dental Equipment

Naval Hospital, Jacksonville, FL
Alcohol Rehabilitation

Naval Administrative Command, Orlando, FL
Grounds and Surfaced Areas

Naval Technical Training Center, Corry Station, Pensacola, FL
Logistics/Supply
Electronic Maintenance

Navy Public Works Center, Pearl Harbor, HI
Electrical Plants and Systems

Naval Data Automation Facility, Pearl Harbor, HI
Central Administrative Support Services
Systems Software Development and Maintenance
Applications Software New Development
Applications Software Maintenance

Naval Shipyard, Pearl Harbor, HI
Central Mail/File Services

Naval Hospital, Great Lakes, IL
Alcohol Rehabilitation

Naval Dental Clinic Branch, Naval Air Station, Brunswick, ME
Medical and Dental Equipment

Naval Air Station, Meridian, MS
Aircraft Engines
Other Test, Measurement and Diagnostic Equipment
Aeronautical Equipment
Audiovisual Services

Training Squadron SEVEN, Naval Air Station, Meridian, MS
Organizational Level Maintenance

Philadelphia Naval Shipyard, Philadelphia, PA
ADP Tape Library

Charleston Naval Shipyard, Charleston, SC
Central Reference Library
Waterways and Waterfront Facilities
Naval Air Station, Chase Field, Beeville, TX
Aeronautical Support Equipment
Flight Training/Academic Instruction
Aircraft
Aircraft Engines
Training Squadron TWENTY-FOUR, Naval Air Station, Chase Field, Beeville, TX
Training Support (Aircraft Maintenance)
Training Squadron TWENTY-FIVE, Naval Air Station, Chase Field, Beeville, TX
Training Support (Aircraft Maintenance)
Naval Air Station, Corpus Christi, TX
Other Test, Measurement and Diagnostic Equipment
Aeronautical Support Equipment
Training Squadron TWENTY-ONE, Naval Air Station, Kingsville, TX
Training Development and Support
Training Squadron TWENTY-TWO, Naval Air Station, Kingsville, TX
Training Development and Support
Naval Air Station, Kingsville, TX
Aircraft
Undergraduate Pilot Training, Naval Air Station, Kingsville, TX
Aircraft
Aircraft Engines
Armament
Aeronautical Support Equipment
Aircraft Squadron Operational Detachment, Naval Air Station, Kingsville, TX
Aircraft Engines
Naval Surface Weapons Center, Dahlgren, VA
Air Transportation Services
Naval Medical Clinic, Norfolk, VA
Alcohol Rehabilitation
Naval Opthalmic Support and Training Activity, Yorktown, VA
Medical and Dental Equipment
Naval Hospital, Bremerton, WA
Dispensaries

Dated: July 5, 1985.

T.H. Upton,

Capt., SC, USN, Head, Commercial/Retail Activities Branch, Chief of Naval Operations.

[FR Doc. 85-16616 Filed 7-11-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Mission Plan for the Civilian Radioactive Waste Management Program

AGENCY: Office of Civilian Radioactive Waste Management, DOE.

ACTION: Notice of Availability of the Mission Plan and Response to Government Agency Objections.

SUMMARY: The purpose of this notice is to announce that the *Mission Plan for the Civilian Radioactive Waste Management Program* required by the Nuclear Waste Policy Act of 1982 (Act), Pub. L. 97-425, has been published by the Office of Civilian Radioactive Waste Management in the Department of Energy and transmitted to Congress. The Mission Plan will be forwarded to Congress on July 9, 1985.

Copies of the Mission Plan are also being mailed directly to program participants including Federal agencies, States, Indian Tribes, industry representatives, public interest groups, the media, and members of the public.

Compliance With the Act

As required by the Act, the Department submitted a draft of the Mission Plan to the States, the affected Indian Tribes, the Nuclear Regulatory Commission (NRC), other Government agencies and the public for their comments. The availability of the draft Mission Plan was announced in the **Federal Register** (49 FR 19696) on May 9, 1984. The Department received 102 sets of comments, containing approximately 2500 individual comments. As required by the Act, the Department announced the availability of the comments for public inspection in the **Federal Register** (49 FR 35038) on September 5, 1984.

The Act required that Federal Government agencies "shall specify with precision any objections that they may have" on the draft Mission Plan. The Act further stated that "if the Secretary does not revise the Mission Plan to meet objections specified in such comments, the Secretary shall publish in the **Federal Register** a detailed statement for not so revising the Mission Plan."

Responses were received from the following Government agencies: Department of the Treasury, Environmental Protection Agency, Nuclear Regulatory Commission, Department of the Interior, and Department of Transportation. The Nuclear Regulatory Commission was the only Government agency to specify objections in their comments to the draft Mission Plan. The Department's response to all the NRC objections and the corresponding changes made in the Mission Plan are included below in this **Federal Register** notice. DOE did not revise the Mission Plan to meet the NRC objection concerning the timing of the preliminary determination, objection number five. A detailed statement for not so revising the Mission Plan is included below in the response to that objection.

The Department took the significant additional step of responding to all comments received (approximately 2500) on the draft Mission Plan as well as modifying the Mission Plan as appropriate. The responses to all these comments are documented in the companion volume to the Mission Plan entitled "Record of Responses to Public Comments on the Draft Mission Plan for the Civilian Radioactive Waste Management Program," which also includes an index to indicate where each comment is answered. A third volume in this set contains a reprint of all incoming comments. This volume is entitled "Public Comments on the Draft Mission Plan for the Civilian Radioactive Waste Management Program."

Copies Of The Mission Plan

Copies of the Mission Plan are available for inspection at most Department of Energy Facilities including the: Public Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585.

Copies of the Mission Plan can be obtained by writing: Mission Plan, Request Services, Technical Information Center, P.O. Box 62, Oak Ridge, Tennessee 37831.

Issued in Washington, DC, July 8, 1985.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

Federal Agency Objections

Section 301(b)(2) of the Nuclear Waste Policy Act of 1982 (the Act) provides the following direction for handling comments from the Nuclear Regulatory Commission (NRC) and other Federal Government agencies on the draft Mission Plan:

"In preparing any comments on the mission plan, such agencies shall specify with precision any objections that they may have. Upon submission of the mission plan to such agencies, the Secretary shall publish a notice in the Federal Register of the submissiosn of the mission plan and of its availability for public inspection, and, upon receipt of any comments of such agencies respecting the mission plan, the Secretary shall publish a

notice in the Federal Register of the receipt of comments and of the availability of the comments for public inspection. If the Secretary does not revise the mission plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the mission plan."

The NRC was the only Federal agency to submit objections to the draft Mission Plan. Each of its 22 objections are quoted below, followed by the DOE response.

NRC Objection 1

Statement of Objection

"There is a need for the Mission Plan to demonstrate that all aspects of the geologic repository program and other activities that might be referenced in licensing are covered by an acceptable quality assurance program. It is important to include early NRC involvement in the quality assurance development.

"NRC staff comments provided to DOE in February noted that the preliminary draft of the Mission Plan did not address a quality assurance program for either DOE's internal needs or the requirements in support of the adjudicatory hearings at the time of license application or waste emplacement. We remain concerned that unless the necessary QA is demonstrably factored into the program plans early, the necessary pedigree will not be available to support regulatory decisions.

"The Mission Plan discussion of quality assurance states (p. 3–A–19) that the description of the QA program for design will not be furnished until the license application. Because design activities, including performance assessment and computer modeling, will be performed during the site characterization phase, it is important that a description of the overall QA program, including that for design, be provided well before licensing. Not obtaining early resolution of quality assurance program issues that would arise under Subpart G of 10 CFR Part 60 risks repeating problems associated with reactor licensing; i.e., developing information for licensing without sufficient assurance that it will be acceptable for use in licensing. In addition to information on the application of QA programs to data collection, which 10 CFR 60.11 requires be provided in the Site Characterization Plans, we believe the application of QA to the related programs of design development also needs to be addressed. The Mission Plan should identify specifically where this information will be provided if not in the Site Characterization Plan.

"Regarding application of the QA program to site characterization activities, DOE states that QA to be applied to data collection will be described in the SCP. The scope of the QA program for the Waste Management Program needs to encompass all activities and issues which may be referenced in licensing. Historical site characterization data, for example, which have already been collected will have to be qualified and demonstrated to be of adequate quality for their intended use.

"The NRC staff recently published a major study for Congress of quality-related problems in nuclear power plants. The results are published in a report entitled 'Improving Quality and the Assurance of Quality in the Design and Construction of Nuclear Power Plants' (NUREG–1055). This information may be useful to DOE in developing and implementing a QA program. This report will be forwarded to the DOE under separate covers."

Response

A formal quality-assurance program that addresses the 18 criteria of the NRC's regulations in Appendix B to 10 CFR Part 50 and the national consensus standard developed by the American National Standards Institute and the American Society of Mechanical Engineers (ANSI/ASME NQA–1) has been implemented by the DOE and its contractors. It will be used throughout site characterization to provide assurance that the data collected for siting decisions and the license application are accurate, verifiable, and retrievable.

A quality-assurance plan for siting and site characterization was issued by the Office of Geologic Repositories (OGR) of the DOE's Office of Civilian Radioactive Waste Management (OCRWM) in September 1984. The OCRWM program-wide quality assurance management policies and requirements will be issued in the Spring of 1985. Quality-assurance plans and implementing procedures are under development by the Project Offices and are scheduled to be in place before the submittal of each Project Office's site-characterization plan (SCP). Similar quality-assurance plans and procedures are under development for storage and transportation systems and will be issued consistent with the DOE schedules for these systems.

The quality-assurance program that was applied during site exploration and that will be applied during the site-characterization program, including design activities, will be described in the site-characterization plan for each site to be characterized, as required by 10 CFR Part 60. The DOE will provide appropriate qualification of historical data if they are used to establish site suitability or licensability.

As a part of the license application, the DOE will submit to the NRC a detailed description of the quality-assurance program for the design, fabrication, inspection, construction, testing, and operation of the repository systems, structures, and components important to safety and the barriers important to waste isolation (Q-list). An initial Q-list will be provided in the site-characterization plan.

The section in the Mission Plan on the DOE's quality-assurance program (Section 5.6 in Part I of Volume I) has been expanded to describe in greater detail ongoing and future activities.

NRC objection 2

Statement of Objection

"The repository design process described in the Mission Plan does not provide assurance that an adequate level of information will be available to support each stage of the repository development and licensing process.

"In our February 8, 1984, comments on the preliminary draft of the Mission Plan, we noted that the sequence for developing repository design information did not appear to be consistent with what will be needed to make findings under 10 CFR Part 60. Although some language has been changed, there is still some ambiguity on this point.

"Sufficient repository design information is needed to demonstrate compliance with 10 CFR Part 60 performance objectives and requirements at the time of submittal of a license application. See in particular 10 CFR 60.12(c) (2) and (3) concerning design information which must be included in the safety analysis report, and 10 CFR 60.31(a) on the findings that must be made prior to construction authorization. The Mission Plan (3–A–22) states that a repository construction authorization application will be submitted to NRC 'based on Title I design of the repository and on the preliminary (Title I) waste package design.' Title I is equated with a 'preliminary' level of design information both here and in Vol. II (2–26). Furthermore, the Mission Plan states that '[t]he repository design (Title II) will be finalized during the Nuclear Regulatory Commission's review of the construction authorization application' (3–A–23). Title I/Title II design information may or may not be sufficient for licensing purposes; however, based on the discussion presented in the draft Mission Plan, NRC is not in a position to conclude that the content of Title I/Title II would satisfy 10 CFR Part 60 requirements.

"We recognize that even after the license application is submitted, refinements on design in some areas will continue to be developed. However, all design information that is necessary to make findings on compliance with 10 CFR Part 60 performance objectives and requirements must be provided at the time of submittal of a license application. We note that the Congressionally-mandated evaluation by NCR of recent reactor construction and licensing experience (*Improving Quality and the Assurance of Quality in the Design and Construction of Nuclear Power Plants*, NUREG–1055) points to incomplete design at the construction permit stage as an important root cause of the serious problems and delays which have been encountered. We are concerned that use of 'preliminary designs' of the repository and waste package for licensing reviews would result in similar problems.

"The Mission Plan should state that sufficient design information will be provided

in the license application to make the full set of findings required by 10 CFR 60.31 as stated in our February comments, so that the necessary information will be available to support licensing decisions. As indicated in the meeting among NRC and DOE staff on the preliminary draft of the Mission Plan on April 11, 1984, given the complexity of repository facilities, resolution of exactly what types, amounts, and levels of detail on design are required at each stage must be worked out through consideration of each aspect of design. As in the past, the NRC staff stands ready to consult with the DOE staff through the various available prelicensing consultation mechanisms to address and resolve this matter.

"We also recommend that at the earliest possible time during site characterization and design development, DOE implement a configuration control program, which as a minimum meets the requirements in Appendix B, 10 CFR Part 50, to assure that designs are approved prior to issuance and changes to design are systematically controlled."

Response

The DOE has reassessed the repository-design approach, taking into consideration programmatic needs (e.g., its statutory obligations and ensuring a cost-effective program) and the NRC's NUREG–1055 *(Improving Quality and the Assurance of Quality in the Design and Construction of Nuclear Power Plants).* On the basis of this reassessment, the DOE has decided that the design of the systems, components, excavations, structures, and bariers that are necessary for compliance with the performance objectives of 10 CFR Part 60 should be substantially completed at the time the license application is submitted to the NRC. To achieve this, the DOE plans to carry out the design process in the following steps:

1. *Conceptual design phase.* This phase includes the SCP conceptual design and an advanced conceptual design. The SCP conceptual design will result in a design report for each of the three sites approved for site characterization and will satisfy the requirements of the Act and 10 CFR Part 60. This design phase will concentrate on the underground system and the design of those structures, emplacement, and components that are required to identify needed site-characterization data and to provide the information needed to ensure that data-gathering plans relative to design will be adequately included in the site-characterization plan. Known site-specific data will be incorporated to assist in the identification of additional data needs, and sufficient design detail will be developed to ensure that all site data needs are identified. In addition, data requirements will be established, and site-specific licensing issues related to site characterization will be identified.

The advanced conceptual design, which will continue the design process, will be used to explore design alternatives and will firmly fix and refine design criteria and concepts to be finalized in later design efforts. The feasibility of the project will be demonstrated, the life-cycle cost estimated, preliminary drawings prepared, and construction schedule developed, as required by DOE Order 6410.1. During the advanced conceptual design, the DOE's objective is to develop appropriate solutions to all identified design-related licensing issues through consultation with the NRC as established by a procedural agreement between the DOE and the NRC. Site-characterization data and their impact on the design process will be reported in semiannual SCP reports, as required by the Act and 10 CFR Part 60.

2. *License-application design.* The license-application-design phase will complete the resolution of the design and licensing issues identified and assessed in earlier phases and will develop the design of the items that are necessary to demostrate compliance with the requirements and performance objectives of 10 CFR Part 60 to a level commensurate with the final design (i.e., through Title I and II). Design requirements resulting from detailed safety and reliability analyses will be fully integrated into the license-application design and will form the basis for the information required in the safety analysis report.

3. *Final procurement and construction design.* This portion of the Title I and II phase will be initiated for the one site selected from the three characterized candidate sites. Its objective will be to develop the final (working) drawings and specifications for procurement and construction. The completion of this design phase matches the completion of the Title II design effort for the entire repository. Although this design phase will occur after the submittal of the license application, and refinements of design will continue, little disruption of the NRC's review of the license application is expected because the level of design detail provided in the license application for the design of safety-related systems will minimize changes during the detailed-design phase.

The DOE is in the process of developing a statement of work for each of the phases of design. The above approach is oriented toward satisfying the information needs of the prelicensing documents (e.g., the site-characterization plans) and the license application, while also enabling the program to meet fiscal and schedule constraints. At the appropriate time, a joint NRC/DOE discussion of the current design approach will be scheduled to ensure that the NRC understands the design process.

Section 2.4 of Part II of the Mission Plan has been revised to include the new design approach.

NRC Objection 3

Statement of Objection

"The Mission Plan should specifically recognize the necessity of including a conceptual design in the SCP that meets the requirements of the NWPA and 10 CFR Part 60.

"10 CFR Part 60.11(a)(6)(ii) and NWPA (Section 113(b)(1)(c)) require that a conceptual design be developed *before* site characterization so that data gathering plans relative to design may be included in the SCP. However, the Mission Plan (Vol. I, 3–A–16) states that '[t]hese site-specific conceptual designs will be completed in the 1985–86 time frame to support the site characterization plans.' Inasmuch as the reference schedule for the first repository (3–A–38) shows the last SCP being issued by 9/85 and repository conceptual design studies continuing until 1/87, it is not clear whether or not a conceptual design of sufficient scope and level of detail will be completed as required by NWPA and 10 CFR Part 60.

"It is recognized that conceptual design may evolve as data are gathered at each site. Also, some of the logic diagrams (e.g., Fig. 2–1) show that conceptual design information will be available for the SCP's. However, given the importance of having complete information, the Mission Plan should specifically recognize requirements of the NWPA and 10 CFR Part 60. It should recognize that a conceptual design must be included in the SCP with scope and level of detail sufficient to permit determining whether or not (a) the quantity and type of tests and anaylses to be performed during site characterization will be adequate and (b) suitability of the site will be compromised by the components of the system that will be constructed for site characterization and later used in repository operation (e.g., exploratory shafts and test facilities)."

Response

The DOE recognizes that a respository design must be provided before proceeding to sink shafts at any candidate site to meet the requirements of the Act (section 113(b)(1)(c)) and 10 CFR Part 60.11(a)(6)(ii). Specifically, section 113(b)(1)(c) requires a conceptual repository design that takes into account likely site-specific requirements. As discussed in the response to objection 2, an SCP conceptual design meeting the above requirements and reflecting expected site conditions is being prepared for

each of the three sites recommended for detailed site characterization. Each design will be separately documented in an SCP conceptual design report. The site-characterization plan for each site will include, in Chapter 6, a summary of the basis and the design described in the SCP conceptual design report and a discussion of the information needs identified to support design. These information needs will form the basis for the site-characterization test plans discussed in Chapter 8 of the site-characterization plan.

The SCP conceptual design for each site will have a scope and details sufficient to provide the basis in the site-characterization plan to identify the quantity and type of tests and analyses to be performed during site characterization. The design will also reflect the integration of the site-characterization (exploratory-shaft) facilities with the repository in terms of design, construction, and performance, so that their impacts with respect to the suitability of the site can be assessed in the site-characterization plan. The DOE is in the process of detailing the exact information needs of this report The DOE is planning, at an appropriate point, to discuss this topic with the NRC.

Section 2.4 of Part II of the Mission Plan has been revised to include information on the SCP conceptual design report.

NRC Objection 4

Statement of Objection

"The Mission Plan does not identify how the performance goals for the various repository system components will be identified and controlled to ensure that necessary information will be available to meet the DOE schedule for submittal of a license application.

"NRC staff has previously identified to DOE the need to establish, as soon as possible, the intended performance goals for repository system components on a site specific basis. This was also noted in NRC comments on the preliminary draft of the Mission Plan. 10 CFR 60.113(b) giver DOE flexibility, on a case-by-case basis, to propose tradeoffs among system components (natural and engineered). At least tentative identification of component performance goals by DOE is a necessary prerequisite to establishing what is a necessary and sufficient level of testing during site characterization and engineered component design phases. This could have a major impact on the DOE schedule. For example, whether site characterization can be completed within the 49 months assumed in the reference schedule (Case 2–B) or the 133 months described in alternate scenarios (Case 2–D) depends primarily upon how these performance goals are established and what is needed in terms of testing to demonstrate that these performance goals are being met (see, for example, Enclosure 2, Comment No. 3).

"In both volumes (Volume I, page 3–A–15; Volume II, pages 2–38 and 2–39) the Mission Plan generally addresses this matter. In Volume II, Section 2.6, the systems engineering and performance assessment components of the DOE technology development activity are described. The description of the systems engineering task (2.6.1) states that top-level program documents on the mined geologic disposal system (MGDS) will be prepared for use in controlling technical requirements and in assuring uniformity of design efforts. Generic MGDS documents are to be issued in Fiscal Year 1984 and site specific MGDS documents will be issued during Fiscal Year 1984 and 1985. The description of these documents suggests that they will be used to determine 'whether the individual parts of the system will successfully work together' and to assure the system is optimized in terms of 'technical and cost performance.' These are necessary goals. However, the discussion of these documents does not indicate that specific performance goals for each repository system component will be established for the purpose of establishing test needs, in Site Characterization Plans or other DOE program documents referenced therein.

"The performance assessment task description indicates that preliminary assessments of site performance will be performed to determine what the subsystem performance objectives will be (Figure 2–6), and that the preliminary assessments will be used to evaluate data needs (Section 2.6.2). On its face, this appears to be logical. Early and ongoing performance assessment is needed to help identify data needs as indicated in the Mission Plan. However, we believe that assessments of site performance at the present stage of the repository program are likely to be premature for this purpose, given the uncertainties that exist before site characterization.

"Hence, we believe it would be prudent to make an early technical management decision guided by the performance criteria of 10 CFR Part 60 as to what the performance goals for individual components should be, and how much redundancy among system components will be included. As indicated previously, the earlier these goals are set the better, because of the long lead times involved in repository design, development, and testing. Failure to do so could preclude the collection of necessary information in time for licensing and delay the program, as well as hinder NRC's ability to give timely guidance to DOE on licensing needs. Until at least tentative decisions have been made about intended component performance goals by DOE, the repository investigation programs may be misdirected. As discussed in Enclosure 2, Comment No. 3, the practical consequence of not having such goals is to preclude resolution of uncertainties in the duration of in-situ testing.

"The initial setting of component performance goals must, of course, be tentative. An appropriate level of conservatism and redundancy among system components must be incorporated into the initial set of requirements owing to the uncertainties existing before site characterization. As site characterization proceeds, however, and uncertainties are reduced, it may be possible to relax some initial component requirements if site features can be demonstrated through actual testing to support these performance assessments. Based on ongoing, quality-assured data collection and site-specific testing, performance assessment should be used to refine the initial component performance goals as well as to evaluate additional data needs and design requirements as stated in Section 2.6.2. However, until initial requirements are set, major questions about the necessary scope of DOE programs and schedules cannot be answered.

"DOE must take the lead on this because deciding on initial performance targets will require consideration of many internal DOE budgetary, programmatic, and scheduling factors in addition to the overall performance objectives of 10 CFR Part 60. The NRC staff, however, stands ready to consult with DOE as these performance targets are established to help assure that ultimate licensing information needs are met."

Response

The site-characterization plans will describe how site-specific performance goals for the various components of the repository system will be identified and controlled. Site-specific performance goals for the repository system fall into two major categories: goals for the engineered-barrier system and goals for the natural-barrier system. Goals for the engineered barrier system can be achieved through a variety of designs, whereas the goals for the natural-barrier system must be achieved through the characteristics of the selected site.

Determining whether the performance goals for the engineered-barrier system will be met is a process of iteration between design and performance assessment. The process involves setting tentative design goals and then collecting data, developing models, identifying failure scenarios, and assessing whether the preliminary design will achieve the performance goals specified for the engineered-barrier system. This iterative process will ultimately result in the final allocations of performance to the individual components of the engineered-barrier system.

The process of determining site suitability requires that extensive site-characterization investigations be conducted to ascertain that the DOE siting guidelines (10 CFR Part 960) and the NRC technical criteria (10 CFR Part 60) will be met. The determination of the natural-barrier system contribution of individual characteristics of the overall repository performance also involves iteration between performance-

assessment and site-characterization activities. The process involves a determination of baseline conditions and conditions since the Quaternary Period, the development of scenarios, the development of conceptual and numerical models, sensitivity analyses, assessment of results through expert judgment, and a finding of site suitability.

Section 2.6 of Part II of the Mission Plan has been revised to describe how performance goals for the various components of the repository system will be identified and controlled in the site-characterization plans.

NRC Objection 5

Statement of Objection

"The Mission Plan should be revised to reflect the recent agreement between DOE and the Commission on the timing of the preliminary determination under Section 114(f) of NWPA.

"At the June 22, 1984 Commission meeting on the Commission's concurrence decision on the DOE siting guidelines, the Commission and DOE agreed that the preliminary decision required by Section 114(f) of the NWPA should be made after the completion of site characterization and not at the time of site recommendation for characterization. The Mission Plan should be revised accordingly to reflect this agreement."

Response

Section 114(f) of the Act provides that the environmental impact statement (EIS) for the first repository is to consider as alternative sites those sites with respect to which "(1) site characterization has been completed under section 113; and (2) the Secretary has made a preliminary determination, that such sites are suitable for development as repositories consistent with the guidelines promulgated under section 112(a)." The Act does not specify when in the siting process the "preliminary determination" is to be made, but by specifying that this determination by the Secretary was to be preliminary the Act recognized the possiblity of a site's subsequently being found by the Secretary to be unsuitable.

At the June 22, 1984, Commission meeting on the Commission's concurrence decision on the DOE siting guidelines, the DOE agreed to delete language from Section 960.3-2-3 of the guidelines related to the timing of the preliminary determination required under section 114(f) of the Act and instead to specify that timing in the Mission Plan. Therefore, in accordance with that agreement, section 3.1 of Part I in the Mission Plan specifies the timing of the preliminary determination. It says that the preliminary determination is to be made at the time the Secretary recommends three sites to the President for site characterization.

While discussions in that meeting may have indicated a further agreement relative to the timing of the preliminary determination, the DOE has concluded that a preliminary determination made after site characterization, as suggested in the Commission's objection, would have the effect of requiring that three sites be found suitable at the end of site characterization. At the June 22 meeting the DOE made clear its understanding that three suitable sites were not required at the end of site characterization. Requiring three suitable sites at the end of site characterization would necessitate the DOE's characterizing more than three sites or accepting the risk of large schedule and cost uncertainties should one of the initial three sites be found unsuitable. The Act does not require that more than three sites be characterized, but rather anticipates that the repository site would be selected from among the three characterized and that the repository would be developed in a timely fashion.

The purpose of the preliminary determination is to ensure the reasonableness of the alternative sites considered. Although other points in the siting process were considered, the DOE has concluded that the above purpose is served by having the preliminary determination made at the time of recommendation. This timing is both reasonable and in compliance with the Act.

The Secretary will have at that time the evaluation to support a preliminary determination for each of the three recommended sites. Under Section 112(b)(1)(E), the environmental assessments that accompany site nominations are to include, among other things, both (1) an evaluation as to whether the site is suitable for site characterization and (2) an evaluation as to whether the site is suitable for development as a repository. Each of these evaluations is to be based on the guidelines promulgated under Section 112(a). At the time of nomination, the Secretary will use the first evaluation to support the required finding that the nominated sites are suitable for characterization. Subsequently, at the time of recommendation, he will be able to use the second evaluation and any other available information to make the "preliminary determination" referred to in Section 114(f) that the sites are suitable for development as repositories.

NRC Objection 6

Statement of Objection

"The Mission Plan should provide additional information to justify the large diameter of the second exploratory shaft.

"Pages 3-A-20 and 3-A-21 of the Draft Mission Plan contain a discussion of DOE's intent to 'sink two exploratory shafts at each candidate site where they are required.' The second shaft will be sunk to support safe operation of the underground testing program and will have a larger diameter than the first shaft. This large diameter shaft will be approximately the same diameter as that indicated in the conceptual designs for repository access shafts (V. II, 7-15). The primary objective of the larger diameter shaft would be to '. . . provide flexibility in the scope and duration of in-situ testing' and to provide '. . . a demonstration of the ability to sink shafts of a size comparable to that needed for a repository' (3-A-21). DOE also notes that '. . . a large shaft could be utilized to facilitate subsurface construction if that site were selected as the repository site.'

"The Commission's regulations prohibit commencement of construction of the repository until a construction authorization has been issued. 10 CFR 60.3(b). Under the definition of 'commncement of construction' in 10 CFR Part 60, DOE would be permitted to pursue activities related to site characterization and other preconstruction monitoring and investigation necessary to establish background information related to the suitability of the site. However, any construction that occurs during site characterization must be reasoanbly and functionally related to the objectives of site characterization. The Mission Plan should spell out the advantages of a large diameter second shaft in terms of this crtierion, including what additional site characterization data could be obtained.

"To enable the Commission to review the justification of the larger second shaft during site characterization, the following information should also be provided: (1) The costs of site characterization activities with two large diameter shafts at each site compared with having a smaller second ventilation shaft; (2) the effort of the large diameter second shaft on site integrity and the ability to seal the repository; (3) the effect of the larger shafts on environmental mitigation concerns for sites which do not become repositories; and (4) the anticiapted effect of constructing two large shafts during site characterization on subsequent repository construction schedules.

"The rationale for the large diameter second shaft may well meet the criterion of being related to the objectives of site characterization. However, we must stress the limited extent to which construction may take place prior to the issuance of a construction authorization under our current rules."

Response

The DOE plans in the draft Mission Plan were based on the premise that the sizes of the exploratory shafts could be

influenced by program-schedule considerations, but the schedule was not the sole criterion influencing the selection of larger shaft sizes. Since the draft Mission Plan was issued, the DOE has selected not to include program-schedule considerations in setting the size of the exploratory shafts and has established and implemented the following objectives for the exploratory-shaft configurations:

1. Ensure compliance with the intent of sections 113(a) and 113(c)(1) of the Act.

2. Provide adequate margin for compliance with all established safety criteria.

3. Provide adequate flexibility both in the construction and operation of the exploratory-shaft facility in terms of site characterization and potential follow-up in-situ work.

4. Ensure institutional acceptability.

5. Provide cost effectiveness, with emphasis on near-term expenditures.

6. Meet site-characterization schedule requirement (e.g., start of in-situ testing).

The policy noted above has led the DOE to select the following shaft configurations at the proposed candidate sites:

Host rock	First shaft	Second shaft
Basalt	6-foot finished diameter, drilled.	6-foot finished diameter, drilled.
Salt	12-foot finished diameter, conventionally mined.	12-foot finished diameter, conventionally mined.
Tuff	12-foot finished diameter, conventionally mined.	6-foot finished diameter, drilled.

This policy is consistent with the NRC regulations restricting the commencement of construction until the contruction authorization has been issued, and the construction of these exploratory shafts during site characterization will comply with the requirement that construction be reasonably and functionally related to the objectives of site characterization.

If significant modifications are required to the in-situ test programs currently envisioned for the exploratory-shaft facilities, further modifications in the configurations may be necessary, including enlargement of one or both shafts.

Furthermore, the DOE intends to use the exploratory shafts, as required, to ensure that the construction of the repository can be completed in time to meet the Act mandated repository-startup date of January 31, 1998, and it will continue to evaluate the most cost-effective use of the exploratory shafts in the operating repository.

Part I and Sections 2 and 7 of Part II of the Mission Plan have been revised to reflect the current DOE plans and rationale for the size of the exploratory shafts.

NRC Objection 7

Statement of Objection

"The Mission Plan does not provide sufficient discussion of the information necessary to permit decisions to be made concerning the primary scientific, engineering, and technical information needed, including systems integration, to support a license application. The Mission Plan should explicitly recognize this and state where and when such information will be provided.

"In response to sections 301(a)(1) and (2) of the NWPA, the Mission Plan identifies in a general way technical issues and information needs, and summarizes the plans and schedules for research and technical development programs which are intended to satisfy these needs. The discussion is not complete enough, however, to determine whether information necessary to support licensing review and findings will be available by licensing time. Chapters 1 and 2 of Volume II, which are intended to address these sections of the Act constitute only a summary of information needs and plans and should indicate where and when required additional information will be provided (e.g., in the EAs or SCPs).

"Presumably, for those programs to be carried out during site characterization, needed information will be contained in the site Characterization Plans (SCPs) or in planning documents provided in connection with it (in a manner described in NUREG-0960 pp. xx,xxi, 10-1 and 10-2). For investigations currently under way or due to be completed prior to submission of the SCPs, consultation on test plans before actual testing is necessary if unnecessary delays in programs are to be avoided. The principle of 'prior consultation' is established in the NRC/DOE Procedural agreement on Repository Site Investigations, which also establishes the mechanisms for carrying out such consultation.

"Given the requirements of NWPA section 301(a)(1) and (2), which appear to call for more information than is presented, the limitation of the Mission Plan in this area should clearly be stated and the Plan should specify where and when this information will be provided."

Response

The DOE believes that Part II of the Mission Plan addresses the requirements of section 301(a)(1) and (2) of the Act in as much detail as is required for this document. More information on needed data can be found in the draft environmental assessments; detailed discussions of this topic will be incuded in the site-characterization plans and the EIS implementation plan.

NRC Objection 8

Statement of Objection

"Page 1-1, second paragraph

"It is stated that the NWPA requires DOE to '. . . site, *license*, and operate repositories . . .' (emphasis added). In addition, on the same page, DOE states as a program objective, '. . . to site, *license*, construct . . .geologic repositories . . .' (emphasis added). These statements require revisions to eliminate any implication that DOE has licensing authority for the repository. We note, however, that DOE has primary responsibility for obtaining a repository license, which entails providing the information required for a license application under 10 CFR 60.21, and in general providing all information necessary to support a license application and carrying the burden of proof in the licensing proceeding. We suggest using the phrase 'obtain a license for' in the appropriate places."

Response

The DOE agrees that it is responsible for *obtaining* a repository license. The wording has been changed appropriately throughout the Mission Plan.

NRC Objection 9

Statement of Objection

"Page 2-3, second paragraph

"On page 2-3, the Mission Plan states that '[a]ny defense wastes disposed of in a commercial repository will be required to meet standards necessary to be compatible with licensing of the repository by the Nuclear Regulatory Commission.' This statement incorrectly suggests that something less than formal NRC licensing of defense waste disposal at comercial repositories would be permissible. The Plan should clearly state that a commercial repository licensed by the NRC could only accept defense high-level waste if such waste met the license specifications of 10 CFR Part 60.

"Furthermore, if a decision is made by the President to develop a repository exclusively for the disposal of high-level waste from atomic energy defense activities, this repository shall '(A) be subject to licensing under section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842); and (B) comply with all requirements of the [Nuclear Regulatory] Commission for the siting, development, construction, and operation of a repository.' (Nuclear Waste Policy Act, Section 8(b)(3).)"

Response

The DOE agrees that a commercial repository licensed by the NRC could only accept defense high-level waste if such waste met the license specifications of 10 CFR Part 60. The statement about defense waste has been changed to avoid any misinterpretation.

NRC Objection 10

Statement of Objection

"Page 3–A–16, last paragraph
"Release rate requirements are on the engineered barrier system, not exclusively on the waste package."

Response

The DOE agrees that the radionuclide-release requirements are on the entire engineered-barrier system, not on just the waste package.

The sentence has been changed to read "(2) contribute to the performance of the total engineered-barrier system in limiting radionuclide releases to the host rock in accordance with. . . ."

NRC Objection 11

Statement of Objection

"Page 3–A–19, Section III.A.6.a
In describing the QA program for the license application, the terms 'safety-related structures, system, and components' are utilized. This is inconsistent with the terms in Subpart G of 10 CFR Part 60, which are 'systems, structures, and components important to safety' and 'barriers important to waste isolation.'
"Also, a distinction is made in the Mission Plan between the QA program description for design and that for site characterization (for the former, the adjective 'detailed' is utilized). A description of the program as it applies to all areas should be furnished in the Site Characterization Plan. Both of these items should be revised in the final Mission Plan."

Response

The DOE agrees with the suggested change in terms and request for additional detail. The quality-assurance section in the Mission Plan (Section 5.6 of Part I) has been revised and expanded in response to the suggestions.

NRC Objection 12

Statement of Objection

"Page 3–A–23, first complete paragraph
"It is stated that the repository design will be finalized during the Commission's review of the 'construction authorization application' and that the 'application for the license to receive and possess radioactive waste will be submitted to the Nuclear Regulatory Commission while construction is proceeding.' These statements indicate that DOE may not completely understand the nature of the Commission's licensing process. As we pointed out in our comments on the preliminary draft of the Mission Plan on the use of the term 'construction authorization application,' the process established by 10 CFR Part 60 involves an application for a *license* to receive or possess source, special nuclear, or byproduct material at a geologic repository operations area. 10 CFR 60.3(a). As an initial step in its review of the license application, the Commission may issue a *construction authorization* for the repository if the requisite standards are met. 10 CFR 60.31. Under 10 CFR 60.32(d), DOE is required to *update* its original license application as specified in 10 CFR 60.24 before the Commission will issue a license to receive radioactive waste at the repository. Although we have no objecton to the use of the term 'construction authorization application' as a convenient way to describe that portion of the repository siting process (particularly in view of the fact that this term appears in several sections of the NWPA), the use of this terminology should be within a context that clearly and accurately describes the Commission's licensing process."

Response

In referring to an application for construction authorization, the DOE consistently used the terms used in the Act (section 114). However, to avoid any further confusion, the Mission Plan has been revised to be consistent with the terms used in 10 CFR Part 60 to describe the licensing process.

NRC Objection 13

Statement of Objection

"Page 3–A–23, second complete paragraph
"DOE states the repository will be designed to allow waste retrieval up to 50 years after initiating waste emplacement operations. This is different from the Commission's requirements on retrievability in 10 CFR 60.111(b).
"This provision requires repository design '. . . so that any or all of the emplaced waste could be retrieved on a *reasonable schedule starting* at any time up to 50 years after waste emplacement operations are initiated . . .

Response

The DOE sees the statement in 10 CFR 60.111(b) as approval of the 50-year period. Because the NRC could lengthen the time period in a future action and because a scheduled withdrawal of emplaced waste could require more time, the design of the repository and the choice of its maintenance procedures and equipment must provide access to the waste for a number of years beyond 50.

The DOE's recently published *Generic Requirements for a Mined Geololgic Disposal System* (DOE/NE/44–301–1, September 1984) shows a total preclosure time of 90 years for the repository. As shown in the time line below, 6 years of this 90-year period will be used for construction and 28 years for repository operation. Beginning at the same time as repository operation (i.e., the emplacement of the first wastes) is a 50–year period of waste retrievability. The remainder, 34 years, is the length of time assumed to be necessary for waste retrieval if waste retrieval proved to be necessary at the end of the 50–year period of retrievability. It is assumed that the retrieval would take as long as waste emplacement (28 years) and repository construction (6 years). The 90–year requirement for repository maintainability in either a dormant or an active mode is based on the NRC's 10 CFR 60.111(b).

Section 3 of Part I of the Mission Plan has been revised to include this information.

NCR Objection 14

Statement of Objection

"Page 3–A–32, Case 2–A
"Under this alternative, in-situ test data would not be available to support the site selection decision. DOE should note in the Mission Plan that under 10 CFR § 60.10(b), it would have to obtain Commission approval in order to exclude in-situ exploration and testing from the site characterization program."

Response

The DOE based the site-characterization schedule on its current understanding of regulatory requirements. The DOE is planning to include in-situ testing in its site-characterization program. Two shafts will be used in the testing program. Schedule case 2–A, which is not part of the reference case, describes a possible scenario where no in-situ testing would be available to support the selection of the site for the first repository. The DOE agrees that, under 10 CFR Part 60, NRC approval is required to exclude in-situ testing from the site-characterization program.

The discussion of schedule case 2–A in section 3.1.7.1 of Part I was revised to note that NRC approval is required to exclude in-situ testing from the site-characterization program.

NCR Objection 15

Statement of Objection

"Page 3–A–43, Alternative Schedule 4
"In our comments on the preliminary draft of the Mission Plan, we indicated that the Commission regulations do not provide for a limited work authorization for a geologic repository; the Commission does not consider it appropriate to proceed without a comprehensive review of the license application for such a first-of-a-kind facility. The draft Mission Plan includes alternative schedule 4 (3–A–43; Figure A–4) which is based upon DOE's coming to NRC with a 'construction authorization application' for the work handling facilities on the surface 18 months prior to site description and the 'CAA' for the full underground repository. The NRC would therefore be asked to approve construction of the surface facilities prior to the decision on suitability of the site for a repository. The means that a massive monetary commitment would be made to the as-yet-unapproved site for activities that

would provided no additional data relating to site suitability. Furthermore, such a premature commitment of funds could be perceived as biasing NRC's review of the site's suitability.

"Should the NRC be asked to consider the two-step approach, it is clear that 10 CFR Part 60 would have to be modified to allow for a lesser determination of suitability inasmuch as when the first CAA is submitted, all the information needed to establish the site suitability against the performance objectives of 10 CFR Part 60 would be available. Both legal and policy concerns could present obstacles to this course."

Response

The two-step construction approach discussed in the draft Mission Plan in alternative schedule 4 was not selected by the DOE and was recognized in the draft Mission Plan as a concept that would require revision of 10 CFR Part 60. The DOE recognizes that the NRC is not presently in favor of such changes. However, it is procedurally possible to make such changes, and it follows that it is appropriate to consider the benefits that could accrue from such changes. This was the intent of alternative schedule 4.

The two-step construction approach was dropped from construction as an alternative schedule.

NRC Objection 16

Statement of Objection

"Page 3-C-8, first full sentence

"It is stated that 'a major activity for the Department would be to work with the Nuclear Regulatory Commission (in accordance with 10 CFR Part 71) to develop and maintain technical data bases to establish a consistent set of certification criteria for use in evaluation and acceptance of the system.' The statement should be revised to eliminate any possible implication that the Department will develop certification criteria for the NRC to use in accepting the Department's system."

Response

The DOE agrees that it will not develop certification criteria for the NRC. The statement was changed to avoid any misinterpretation.

NRC Objection 17

Statement of Objection

"Page 3-D-1

"DOE describes the NWPA's provisions on the Federal Interim Storage Program. The statement on the Commission's responsibilities should be revised to clearly express the criteria contained in Section 135(b) of the NWPA."

Response

The DOE agrees to the addition. Section 3.2.2 of Part I of the Mission Plan was revised to include the criteria contained in Section 135(b) of the Act.

NRC Objection 18

Statement of Objection

"Vol. II, page 1-5, Issue 1.1

"It is not an accurate paraphrasing of 60.113(a)(1)(ii) to say that 'for the site to be compatible with waste containment, it must be possible to design and build a waste package that will survive intact in the geohydrologic setting for the duration of the containment period (300 to 1000 years).' 10 CFR 60.113(a)(1) (ii) (A) requires that the containment be *'substantially complete.'* Furthermore, the post-containment performance objective of 10 CFR 60.113(1)(ii)(B) needs to be addressed under Issue 1.1. A suitable revision would state, 'For the site to be compatible with the achievement of waste containment and isolation objections, it must be possible to design and build a waste package compatible with the requirements of 10 CFR 60.113(a)(1)(ii) on the engineered barrier system.' For furthere clarification, the language of 10 CFR 60.113(a)(1)(ii) could be provided."

Response

The DOE agrees that the paraphrasing of the NRC's 10 CFR 60.113(a)(1)(ii) was no accurate. The Mission Plan was corrected as suggested.

NRC Objection 19

Statement of Objection

"Vol. II, Issue 1-3, page 1-7

"There is an apparent contradiction between lines 3-5 of the issue statement and lines 4-6 of the first subsequent paragraph. The statement of the issue suggests that DOE intends to rely on the waste package alone to meet the release-rate requirement 60.113(a)(1)(ii)(B). On the other hand, the performance of the waste package is to *contribute* to controlled release in the subsequent paragraph. This underscores the importance of explicitly specifying the level of component performance.

"In addition, 'Issue 1.3 . . .' refers to 'performance objectives for waste packages beginning after 'emplacement.' According to 10 CFR 60.113(a)(1)(ii)(A) containment performance begins at *'permanent closure'* not 'waste emplacement.'

"Such a misconception could affect waste package design, and the analysis of containment, release, and migration of radionuclides."

Response

The DOE agrees that issue 1.3 in Chapter 1 of Volume II (now Part II) contained imprecise statements regarding waste-package performance. The Mission Plan was revised to agree with 10 CFR 60.113.

NRC Objection 20

Statement of Objection

"Vol. II, Key Issue 2, page 1-13.

"The issues which address information needs with respect to operational safety do not include the need to determine the structures, systems and components that are important to safety 10 CFR 60.113(b). This discussion should be included."

Response

The DOE agrees that the information should be included. Additional information was added as issue 2.4.5.

NRC Objection 21

Statement of Objection

"Vol. II (Section 2.2.1.6 pages 2-11 and 12)

"The term 'natural resources' includes all types of resources, including oil and gas, metallic and non-metallic minerals, and groundwater.

"We believe the Mission Plan activities, as stated, would lead to an incomplete study of (1) the identification and evaluation of natural resources, especially of undiscovered resources, and (2) the possibility of their extraction as a potentially adverse condition. The specific requirements of 10 CFR 60.21 and 10 CFR 60.122 are as follows. There is no indication in the Mission Plan that the requirements *underlined below* will be investigated.

"10 CFR 60.21(c)(13) requires:

" 'An identification and evaluation of the natural resources of the geologic setting, including *estimates as to undiscovered deposits,* the exploitation of which could affect the ability of the geologic repository to isolate radioactive wastes. Undiscovered deposits of resources characteristic of the area shall be estimated by reasonable inference based on geological and geophysical evidence. The *evaluation of resources, including undiscovered deposits, shall be conducted for the site and for areas of similar size that are representative of and are within the geologic setting. For natural resources with current markets the resources shall be assessed, with estimates provided of both gross and net value.* The estimate of net value shall take into account current development, extraction, and marketing costs. *For natural resources without current markets, but which would be marketable given credible project changes in economic or technologic factors, the resources shall be described by physical factors such as tonnage or other amount, grade, and quality.'*

"The presence of natural resources is a potential adverse condition under 10 CFR 60.122 if: '(i) Economic extraction is currently feasible or potentially feasible during the foreseeable future; or (ii) *Such materials have greater gross value or net value than the average for other areas of similior size that are representative of and located within the geologic setting.'* Potentially adverse condtions must be evaluate if they are characteristic of the controlled area or may affect isolation within the controlled area."

Response

Measurements taken during the site-characterization program will allow the DOE to estimate upper limits on the quantities of undiscovered resources. Also, the detailed familiarity with the geology of the site obtained during

characterization will permit the DOE to reasonably exclude the possibility of certain types of resources. Using the knowledge gained during characterization, it will be possible to estimate upper bounds and likely magnitudes of the gross and net values of undiscovered resources at the site. These can then be compared with the values of the same resources known or suspected to exist in areas of similar size in the same geologic setting.

Section 2.2 of Part II was expanded to include reference to evaluations of undiscovered deposits of natural resources at the repository site.

NRC Objection 22

Statement of Objection

"Vol. II, page 3–14, fourth paragraph, last sentence

"This sentence implies that NRC could change its regulatory requirements based on informal communications with DOE and without making formalized changes to 10 CFR Part 60. This is not the case. NRC cannot change its requirements without undertaking the proper rulemaking procedures."

Response

The DOE is aware that the NRC cannot change its requirements without undertaking the proper rulemaking procedures.

No changes were made, as the subject sentence was part of a section that was deleted from Chapter 3 of Part II of the Mission plan.

[FR Doc. 85–16552 Filed 7–11–85; 8:45 am]

BILLING CODE 6450–01–M

International Energy Agency Allocation Systems Test; Training Session

AGENCY: Department of Energy.

ACTION: Notice of Training Session.

SUMMARY: The U.S. Department of Energy is planning to conduct a training session in Washington, D.C. on the Department's plans for U.S. participation in the International Energy Agency's (IEA's) Fifth Allocation Systems Test (AST–5), which is to be held September 20 through November 16, 1985. The training session is for representatives of U.S. companies that are members or affiliates of members of the IEA Group of Reporting Companies; representatives of Non-Reporting Companies (i.e., other U.S. firms which in an actual supply disruption may have the ability to rearrange petroleum supplies in connection with the IEA's emergency oil sharing system); and representatives of the States. The Department's training session is tentatively scheduled for July 30, 1985; however, the Department will notify attendees of the specific date of the training session in the event a change in the schedule is necessary to accommodate attendees.

The training session will be open to representatives of U.S. oil companies that are members or affiliates of members of the IEA Group of Reporting Companies (including U.S. affiliates of foreign-based IEA Reporting Companies); representatives of "Non-Reporting Companies" and the States who have notified the Department of their interest in participating in AST–5; representatives of the Departments of Energy, Justice, and State, and the Federal Trade Commission; and representatives of the General Accounting Office and the committees of Congress. The training session will not be a meeting to carry out the Voluntary Agreement and Plan of Action to Implement the International Energy Program.

DATE: Date, time, location: July 30, 1985 (tentative) in Washington, D.C.; deadline for expressions of interest in the training session to be submitted by July 23, 1985.

FOR FURTHER INFORMATION CONTACT: Romulo L. Diaz, Jr., Room GH–060 (IE–231), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4000. Yvonne Allen (States Only), Room 8H–032B (IE–241), Department of Energy, 1000 Independence Avenue, SW., (202) 252–5155.

SUPPLEMENTARY INFORMATION: The IEA's approved objective for AST–5 is to provide training for the IEA Secretariat, IEA Member governments, and IEA Reporting Companies with respect to the essential procedures and mechanics of the IEA's emergency oil sharing system, including:

- Compiling, handling and verifying emergency data for the IEA emergency information system;
- Determining communication requirements for data transmission;
- Calculating supply rights and allocation rights and obligations; and
- Transmitting and matching voluntary offers of oil.

The training session will focus on the essential procedures and mechanics of the IEA's emergency oil sharing system and the Department's operational plans for implementing the special assumptions and rules set forth in AST–5 Test Guide, including demand restraint guidance, use of stocks, and simulation of the activities of Non-Reporting Companies. The IEA Test Guide for AST–5 provides that the test will not attempt to simulate emergency market conditions, government policies or programs, or the actual redirection of any oil.

For those Reporting Companies and their affiliates who choose to attend, the Department will also provide training in their specific responsibilities with respect to data submission, communications and voluntary offers in light of the Department's operational plans for the test. Training session attendees who express a continuing interest in AST–5 will receive weekly status reports during the test on test events and activities. Following the completion of the test, there will be a "wrap-up" meeting to review the test.

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

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85–16678 Filed 7–11–85; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion Advisory Committee.

Date and time: Wednesday, August 14, 1985—9:00 a.m. to 5:00 p.m.

Thursday, August 15, 1985—9:00 a.m. to 5:00 p.m.

Location: Massachusetts Institute of Technology, Plasma Fusion Center, 175 Albany Street, Room NW17–218 (2nd Floor), Cambridge, Massachusetts.

Contact: Richard E. Nygren, Office of Fusion Energy (ER–50.1), U.S. Department of Energy, Mail Stop C–226, Washington, D.C. 20545, Phone: (301)–353–4941.

Purpose of the Committee

To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Agenda outline

Briefing and discussion of:

Wednesday, August 14, 1985

I. Systems Studies Panel (Charge 13)
II. Toroidal Program Review
III. RFP/OHTE Reviews
IV. Status of Technical Planning Activity
V. MFAC Discussion and Comments
VI. Public Comment (10 minute rule)

Thursday, August 15, 1985

I. U.S. Ignition Studies in FY 1985
II. Recent Meetings on International Collaboration
A. International Workshop (June)
B. Technical Working Party Meeting (July)
III. Preliminary Plans for U.S. Ignition Studies in FY 1986
IV. MFAC Discussion and Comments
V. New Charge—Ignition Physics
VI. Public Comment (10 minute rule)

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, Room 1E190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on July 10, 1985.

K. Dean Helms,

Advisory Committee Management Officer.

[FR Doc. 85-16702 Filed 7-11-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER79-97-001, and ER85-408-000]

Alamito Co., Order Accepting Rates for Filing, Granting Intervention, Granting Waiver of Notice Requirements, and Establishing Hearing Procedures

Issued: July 5, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa, and Charles G. Stalon.

On April 1, 1985, as completed on May 16, 1985,[1] Alamito Company (Alamito, or the company) tendered for filing in Docket No. ER85-408-000 an amendment to its power sale agreement with San Diego Gas & Electric Company (SDG&E)[2] setting forth new capitalization ratios and contract demand capacity related to its Springerville Unit 1 for the Phase Four period proposed to commence on June 1, 1985 under the power sale agreement.[3] At the time of Alamito's filing, the unit was expected to go into service on June 1, 1985. Attached to this amendment was an executed agreement regarding inspection of facilities, fuel costs and capacity factor. Alamito also tendered for filing, in Docket No. ER79-97-001, a compliance report containing justification for the cost of service for the Phase Four period including rate of return (as proposed in Docket No. ER85-408-000) and fuel cost data. This report was intended to comply with the Commission's order in Docket No. ER79-97-000 approving the formula rates in the power sale agreement on the conditions that Alamito file cost of service data with its notification of the commencement of Phases Three, Four and Five, and that revenues collected, including those based on costs incurred from purchases from an affiliated supplier, will be subject to refund should the Commission order an investigation.[4]

Notice of the filing in Docket No. ER79-97-001 was published in the **Federal Register**[5] with comments due on or before May 14, 1985. Notice of the filing in Docket No. ER85-408-000 was published in the **Federal Register**[6] with comments due on or before April 23, 1985.

On April 29, 1985, SDG&E filed a concurrence in the filing of the amendment to the power sale agreement in Docket No. ER85-408-000. On May 23, 1985, SDG&E filed, in Docket No. ER79-97-001, a motion to intervene out of time, a request for suspension and hearing and an alternative request for initiation of a complaint proceeding. SDG&E requests a one day suspension and consents to a waiver of the Commission's sixty day notice period so that Phase Four can commence on June 1, 1985. SDG&E questions the justness and reasonableness of fuel costs incurred from purchases made under a contract that was executed at a time when the supplier was affiliated with Alamito. SDG&E states that it was unable to complete its evaluation of fuel cost data by May 14, 1985.

On May 28, 1985, Alamito filed an answer to SDG&E's pleading in Docket No. ER79-97-001 opposing its requests, claiming that the pleading violates the agreement between the parties that was filed with the amendment to the power sale agreement in Docket No. ER85-408-000, disputing SDG&E's complaints about the fuel costs, and contending that Alamito's filing is a compliance report and not a rate change subject to section 205 of the Federal Power Act, that SDG&E failed to adequately explain why its pleading was filed late, and that any dispute should be resolved by arbitration procedures specified in the power sale agreement.[7]

Discussion

Notwithstanding the company's opposition to SDG&E's intervention in Docket No. ER79-97-001, we find that good cause exists to grant its motion. We are satisfied that SDG&E has expressed an interest in the outcome of this proceeding that is not represented by another party and that their participation may be in the public interest. Furthermore, given the early stage of this proceeding, SDG&E's intervention should result in no undue prejudice or delay. Accordingly, we shall grant the motion to intervene.

Based on our review of the company's filings in Docket Nos. ER79-97-001) and ER85-408-000, we find that the proposed rates in Docket No. ER84-408-000 will not produce excessive revenues. Accordingly, we shall accept the submittal in Docket No. ER85-408-000 for filing without suspension as ordered below. We shall grant waiver of the Commission's notice requirement in order to permit the Phase Four rates to take effect on June 1, 1985, or the commercial operation date of the Springerville Unit No. 1, whichever is later.

Our review of the company's filing and the pleadings in Docket No. ER79-

[1] The company submitted data to complete its filing pursuant to an inquiry from the Commission's Office of Electric Power Regulation.

[2] See Attachment for rate schedule designations. On November 1, 1984, Alamito assumed the rights and obligations of the power sale agreement between Tucson Gas and Electric Company (now Tucson Electric Power Company) and SDG&E which was conditionally approved by the Commission in Docket No. ER79-97-000 by order dated June 25, 1979. 7 FERC ¶ 61,298. Tucson's assignment of the contract to Alamito was accepted by the Commission on October 1, 1984 and designated Alamito Company Rate Schedule No. 1.

[3] The agreement established formula rates to be implemented in five phases over a ten year period.

[4] 7 FERC ¶ 61,298 (1979).

[5] 50 FR 19795 (1985).

[6] 50 FR 14747 (1985).

[7] SDG&E filed a motion for leave to respond to Alamito's response on May 29, 1985. Our rules do not provide for the filing of responses to responses; we therefore deny the motion to respond.

97-001 indicates that the coal costs have not been shown to be just and reasonable and that the cost of service effects on the rates may therefore be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall order an investigation into the justness and reasonableness of the cost of service effects of the fuel costs. Alamito will collect all revenues derived from these fuel costs subject to refund: upon the issuance of a Commission order determining the related just and reasonable rate determinants, it will make refunds in accordance with the Commission's regulations. Alamito's claim that the filing is not a change in rates subject to suspension, refund and hearing procedures under section 205 of the FPA is irrelevant in light of the conditions we imposed in accepting the power sale agreement for filing in our June 25, 1979 order [8] and our regulations requiring fuel costs recovered in formula rates to be just and reasonable.[9] Alamito's request that we require SDG&E to comply with the arbitration provisions of the power sale agreement is also irrelevant. Section 20.1 of the Ten Year Power Sale and Interconnection Agreement provides that:

> Disputes remaining unresolved within thirty (30) days by the Parties' respective Chief Executive Officers *may* be submitted to arbitration in accordance with the procedures in effect in this Section 20. [Emphasis added.]

Accordingly, neither party was obligated to submit the dispute to arbitration; such procedures are discretionary. Alamito has not claimed that such procedures have been initiated.

The Commission orders:

(A) SDG&E's untimely motion to intervene in Docket No. ER79-97-001 is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) Waiver of the notice requirements is hereby granted for good cause shown.

(C) Alamito's Phase Four rates in Docket No. ER85-408-000 are hereby accepted for filing to become effective on June 1, 1985, or the commercial operation date of the Springerville Unit No. 1, whichever date is later, without suspension or hearing.

(D) Alamito's Phase Four shall commence on June 1, 1985, or the commercial operation date of the Springerville Unit No. 1, whichever date is later. Revenues derived from fuel costs in Docket No. ER79-97-001 shall be collected subject to refund.

(E) Docket No. ER85-408-000 is hereby terminated.

(F) Docket No. ER79-97-001 is hereby terminated; the evidentiary proceeding ordered herein is hereby designated Docket No. ER79-97-002.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the fuel costs to be recovered in the rates.

(H) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of this order in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(I) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Acting Secretary.

ALAMITO CO., RATE SCHEDULE DESIGNATIONS

[Docket No. ER85-408-000]

Designation	Description
(1) Supplement No. 1 to Rate Schedule FERC No. 1.	Amendment No. 4 Change in Rate for Unit Sale.
(2) Supplement No. 1 to Rate Schedule FERC No. 1.	Agreement with Provisions for Operation of Springerville Unit No. 4.

[FR Doc. 85-16625 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-10-10-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on June 28, 1985, tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Alternate Fifth Revised Sheet No. 211
Alternate Fourteenth Revised Sheet No. 213
Alternate Third Revised Sheet No. 405
Alternate Third Revised Sheet No. 425

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedules STB and S-IS the effect of Texas Eastern Transmission Corporation's ("Texas Eastern") motion to withdraw proposed tariff revisions, which Algonquin Gas had previously tracked in its filing of May 24, 1985.

Algonquin Gas requests that the Commission grant such special permission as may be necessary to allow Algonquin Gas to provide an adjustment on the next month's billing subsequent to Commission approval to effectuate the rate change filed herein to be effective June 3, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before July 12, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16626 Filed 7-11-85 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-11-20-000 and 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Algonquin Gas Transmission company ("Algonquin Gas") on June 28, 1985 tendered for filing Seventh Revised Sheet No. 201, Fifteenth Revised Sheet No. 213 and Second Revised Sheet No. 241 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Seventh Revised Sheet No. 201 and Second Revised Sheet No. 241 are being filed

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[8] 7 FERC ¶ 61,298 (1979).

[9] *See, Public Service Company of New Hampshire,* Opinion No. 37, 6 FERC ¶ 61,299 (1979).

pursuant to Algonquin Gas' Purchased Gas Cost Adjustment as set forth in Section 17 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1. Fifteenth Revised Sheet No. 213 is being filed pursuant to the provisions of Section 11 of its Rate Schedule S–IS. Such tariff sheets reflect revised rates filed by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"). Second Revised Sheet No. 241 identifies the pruchased gas cost included in the sales rates shown on Seventh Revised Sheet No. 201.

Algonquin Gas proposes the effective date of Seventh Revised Sheet No. 201, Fifteenth Revised Sheet No. 213 and Second Revised Sheet No. 241 to be July 1, 1985, to coincide with the proposed effective date of Texas Eastern's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file amotion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before July 12, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party file must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16627 Filed 7–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85–12–20–000 and 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on July 1, 1985, tendered for filing Fifth Revised Sheet No. 203, Substitute Fifteenth Revised Sheet No. 213 and Alternate Fifteenth Revised Sheet No. 213 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that the above-mentioned tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F–2 and Rate Schedule S–IS decreases in Consolidated Gas Transmission Corporation's ("Consolidated") underlying Rate Schedule RQ and Rate Schedule E.

Algonquin Gas requests that the Commission accept Fifth Revised Sheet No. 203, effective July 1, 1985 to coincide with the proposed effective date of Consolidated's rate change.

Algonquin Gas also requests that the Commission accept either Substitute Fifteenth or Alternate Fifteenth Revised Sheet No. 213, whichever the Commission deems appropriate to be effective July 1, 1985.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protest should be filed on or before July 12, 1985. Protest will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16628 Filed 7–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85–2–61–000, 001]

Bayou Interstate Pipeline System; Proposed Changes in FERC Gas Tariff

July 5, 1985.

Take notice that Bayou Interstate Pipeline System (Bayou), on July 1, 1985 tendered for filing Second Revised Sheet No. 4A and First Revised Sheet No. 5 of its FERC Gas Tariff, Original Volume No. 1. The tariff sheets were filed pursuant to the Purchased Gas Cost Adjustment and Incremental Pricing Adjustment provisions contained in Sections 15 and 16 of Bayou's tariff. Copies of the filing were served upon Bayou's jurisdictional customer and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–16629 Filed 7–11–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85–169–000]

Consolidated Gas Transmission Corp.; Proposed Changes in Rates and Charges

July 5, 1985.

Take notice that on July 1, 1985, Consolidated Gas Transmission Corporation (Consolidated), pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's regulations, tendered for filing proposed changes to its FERC Gas Tariff, Original Volume No. 1 to become effective on August 1, 1985. Consolidated requests that the rates become effective, after five-month suspension, on January 1, 1986, in accordance with a rate moratorium agreed to in a rate settlement agreement in Docket No. RP82–115.

The proposed rate changes would increase Consolidated's revenues from jurisdictional sales and services by $82.9 million based on the twelve months ended March 31, 1985, adjusted for known and measurable changes through December 31, 1985.

Consolidated states that increased rates are necessary to reflect decreased sales and other billing determinants and to recover increased operation and maintenance expenses, increased taxes, and the increased cost of money. The rate of return is based on the capital structure agreed to for filing purposes in Docket No. RP82–115 with an equity return of 17 percent.

Consolidated states that the cost of gas, including pipeline production, was computed using the base costs of gas per unit of sales reflected on Consolidated's Substitute Second Revised Sheet No. 31.

Consolidated represents that Statement P will be filed within fifteen days of its filing. It states that it served copies of its filing upon its jurisdictional

customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16630 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP79-23-024 and RP79-24-016]

Distrigas of Massachusetts Corp.; Compliance Filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Fourth Substitute Forth Revised Sheet No. 17

The proposed effective date for this sheet is July 5, 1979.

DOMAC states that this filing is made pursuant to the Commission's "Order on Remand" issued June 4, 1985, in *Distrigas of Massachusetts Corp.*, Docket Nos. RP79-23, *et al.* and that the tariff sheet reflects the effect of restoration of $4,634,441 to DOMAC's rate base in compliance with the Court's mandate in *Distrigas of Massachusetts Corp.* v. *FERC*, 737 F.2d 1208 (1st Cir. 1984).

DOMAC has mailed a copy of this filing to each of its customers and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16608 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP81-34-011]

Distrigas of Massachusetts Corp.; Compliance filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheet to its FERC Gas Tariff, First Revised Volume No. 1:

Third Substitute Sixth Revised Sheet No. 17

The proposed effective date for this sheet is August 2, 1981.

DOMAC states that this tariff sheet is submitted pursuant to the Court's mandate in *Distrigas of Massachusetts Corp. v. FERC*, 737 F.2d 1208 (1st Cir. 1984) and the Commission's "Order on Remand" issued June 4, 1985, in DOMAC, Docket Nos. RP79-23, *et. al.* which effectuated the Court's mandate.

DOMAC has mailed a copy of this filing to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16609 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-138-004]

Distrigas of Massachusetts Corp.; Compliance Filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Second Substitute Seventh Revised Sheet No. 17
Substitute Original Sheet No. 23

The proposed effective date for these sheets is April 1, 1984.

DOMAC states that these tariff sheets are submitted pursuant to the Court's mandate in *Distrigas of Massachusetts Corp.* v. *FERC*, 737 F.2d 1208 (1st Cir. 1984) and the Commission's "Order on Remand" issued June 4, 1985, in *Distrigas of Massachusetts Corp.*, Docket Nos. RP79-23, *et al.* which effectuated the Court's mandate.

DOMAC has mailed a copy of this filing to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16610 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-125-002]

Distrigas of Massachusetts Corp.; Compliance Filing

July 9, 1985.

Take notice that on June 28, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing the following substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Eighth Revised Sheet No. 17
Second Revised Sheet No. 17A

First Revised Sheet No. 23

The proposed effective date for these sheets is October 1, 1985.

DOMAC states that these tariff sheets are submitted pursuant to the Court's mandate in *Distrigas of Massachusetts Corp. v. FERC*, 737 F.2d 1208 (1st Cir. 1984) and the Commission's "Order on Remand" issued June 4, 1985, in Distrigas of Massachusetts Corp., Docket Nos. RP79-23, *et al.* which effectuated the Court's mandate.

DOMAC has mailed a copy of this filing to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16611 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ID-2164-001]

Edward Donley; Application

July 8, 1985.

Take notice that on May 22, 1985, Edward Donley (applicant) filed an application pursuant to section 305(b) of the Federal Power Act to hold the following positions:

Director—Pennsylvania Power & Light Company
Director—Mellon Bank Corporation
Director—Mellon Bank, N.A.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16613 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-47-004]

East Tennessee Natural Gas Co.; Motion To Place Tariff Sheets Into Effect

July 9, 1985.

Take notice that on June 28, 1985, East Tennessee Natural Gas Company (East Tennessee) filed a motion to place the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1 into effect:

Second Revised Sheet No. 23
Second Revised Sheet No. 31
Second Revised Sheet No. 35
Substitute First Revised Sheet No. 119
Substitute Second Revised Sheet No. 121
Substitute Third Revised Sheet No. 122
Substitute Second Revised Sheet No. 124

East Tennessee requests that these tariff sheets be made effective on July 1, 1985, pursuant to the Commission's January 10, 1985 order (30 FERC ¶ 61,008). Copies of the filing have been mailed to each affected customer and state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16612 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-005]

El Paso Natural Gas Co.; Motion To Place Tariff Sheets Into Effect

July 9, 1985.

Take notice that on June 28, 1985, El Paso Natural Gas Company (El Paso) filed a motion to place the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1 into effect:

Alternate Fourth Revised Sheet No. 100
Alternate Substitute Second Revised Sheet No. 211
Alternate Substitute Second Revised Sheet No. 212
Second Revised Sheet No. 213
First Revised Sheet No. 220
Third Revised Sheet No. 221
Second Revised Sheet No. 222
Second Revised Sheet No. 223
Second Revised Sheet No. 224
First Revised Sheet No. 231
Alternate Twenty-ninth Revised Sheet No. 1-D
Substitute Fourteenth Revised Sheet No. 1-D.2
Alternate Thirtieth Revised Sheet No. 1-C

El Paso requests that these tariff sheets appended under Tab A of the filing be made effective on July 1, 1985, as permitted by the Commission's January 31, 1985 and March 5, 1985 orders and section 4(e) of the National Gas Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions of protests should be filed on or before July 17, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16614 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-33-000,001]

El Paso Natural Gas Co.; Proposed Out-of-Period Change In Rates Pursuant to Purchased Gas Cost Adjustment

July 5, 1985.

Take notice that on June 28, 1985, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Section 4 of the Natural Gas Act, and Part 154 of the Regulations issued thereunder by the Federal Energy Regulatory Commission ("Commission") and Paragraph 2.6 of Article II of El Paso's Stipulation and Agreement in Settlement of Rate Proceedings ("Stipulation and

Agreement") filed on June 25, 1985 at Docket No. RP85-58-000, et al., a notice of an out-of-period change in rates. The change in rates relates to jurisdictional gas service rendered to customers served by its interstate gas transmission system under rate schedules affected by and subject to Section 19, Purchased Gas Cost Adjustment Provision ("PGA"), contained in the General Terms and Conditions of El Paso's FERC Gas Tariff, First Revised Volume No. 1, which Section 19 also applies to certain special rate schedules contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2 and Original Volume No. 2A.

The filing reflects that the proposed total net change in El Paso's currently effective rates attributable to the cost of purchased gas component of the PGA is a decrease of $.0546 per dth. Such proposed change in rates is to be effective for the three-month period July through September, 1985. El Paso states that the surcharge components of the rates effective April 1, 1985 are not affected by the proposed out-of-period change in rates.

To implement the instant notice of change in rates, El Paso tendered for filing the following revised tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1	Fifth Revised Sheet No. 100. Fourth Revised Sheet No. 549.
Third Revised Volume No. 2	Thirtieth Revised Sheet No. 1-D.
Original Volume No. 2A	Thirty-first Revised Sheet No. 1-C.

Paragraph 2.6 of Article II of El Paso's Stipulation and Agreement at Docket No. RP85-58-000 *et al.*, provides that the approval of such Stipulation and Agreement, among other things, constitutes waiver of El Paso's Volume No. 1 Tariff and of the Commission's Regulations sufficient to permit the instant filing to go into effect July 1, 1985. The Stipulation and Agreement makes clear, moreover, that the instant filing will be effective only upon the effectiveness of the Stipulation and Agreement. With that limitation, El Paso requests the tendered revised tariff sheets to be effective on July 1, 1985.

El Paso further states that it is tendering First Revised Sheet No. 24 of its FERC Gas Tariff, Original Volume No. 1-A to be effective July 1, 1985 in order to reflect the rate of $2.6741 per dth to be utilized to determine the fuel reimbursement charge payable under Section 6 of Rate Schedule T-1 or T-2 of said Tariff by shippers electing to reimburse El Paso for fuel usage in monthly payments rather than in-kind, as included in the Stipulation and Agreement.

El Paso states that the filing has been served upon all interstate pipeline system customers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commisson in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16631 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. P-7499-001 et al.]

Kentucky Hydro Associates et al.; Surrender of Preliminary Permits

July 5, 1985.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Kentucky Hydro Associates

[Project No. 7499-001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Kentucky River Lock and Dam No. 3 Water Power Project No. 7499, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1986. The project would have been located on the Kentucky River in Owen County, Kentucky.

The Permittee filed the request on June 3, 1985.

2. Kentucky Hydro Associates

[Project No. 7504-001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Kentucky River Lock and Dam No. 2 Project No. 7504, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1986. The project would have been located on the Kentucky River in Owen County, Kentucky.

The Permittee filed the request on June 3, 1985.

3. Kentucky Hydro Associates

[Project No. 7501-001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Green River Lock and Dam No. 2 Project No. 7501, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1986. The project would have been located on the Green River in McLean County, Kentucky.

The Permittee filed the request on June 3, 1985.

4. Kentucky Hydro Associates

[Project No. 7502-001]

Take notice that Kentucky Hydro Associates, Permittee for the proposed Green River Lock and Dam No. 3 Water Power Project No. 7502, requested by letter dated May 27, 1985, that their preliminary permit be terminated. The preliminary permit was issued on June 27, 1984, and would have expired on May 31, 1986. The project would have been located on the Green River in Muhlenberg County, Kentucky.

The Permittee filed the request on June 3, 1985.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR § 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16615 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-14-000, 001]

Lawrenceburg Gas Transmission Corps.; Proposed Change in FERC Gas Tariff

July 5, 1985.

Take notice that on July 1, 1985 Lawrenceburg Gas Transmission Corporation (Lawrenceburg) tendered for filing three (3) revised gas tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, all of which are dated as issued on June 28, 1985

proposed to become effective August 1, 1985 and, identified as follows:

Thirty-sixth Revised Sheet No. 4
Twelfth Revised Sheet No. 4-B
Thirty-second Revised Sheet No. 18

Lawrenceburg states that its revised tariff sheets were filed under its Purchased Gas Adjustment (PGA) Provision and Incremental Pricing Surcharge Provision.

Copies of this filing were served upon Lawrenceburg's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16632 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-15-000, 001]

Mid Louisiana Gas Co.; Proposed Change in Rates

July 5, 1985.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on July 1, 1985, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Fifty-Second Revised Sheet No. 3a and Twelfth Revised Sheet No. 3c to become effective August 1, 1985.

Mid Louisiana states that the purpose of the filing of Fifty-Second Revised Sheet No. 3a is to reflect a Purchased Gas Cost Current Adjustment and a Purchased Gas Cost Surcharge resulting in a rate after current adjustment of 357.18¢. The filing is being made in accordance with section 19 of Mid Louisiana's FERC Gas Tariff, and the Purchased Gas Cost Current Adjustment reflects rates payable to Mid Louisiana's suppliers during the period August 1, 1985 through January 31, 1986.

Copies of the filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16633 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-32-000]

Mountaineer Gas Co.; Petition for Declaratory Order

Issued: July 3, 1985.

On June 4, 1985, Mountaineer Gas Company (Mountaineer) filed with the Commission, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, a petition for a declaratory order confirming that Mountaineer's obligations to Columbia Gas Transmission Corporation (Columbia) under service agreements dated October 28, 1982 and August 3, 1981, are unenforceable on the basis of the *force majeure* clause of those agreements and section 24-2-4c of the West Virginia code, which requires Mountaineer to follow a least-cost gas acquisition policy. Mountaineer states that the basic issue is whether changed circumstances beyond Mountaineer's control and the mandate of state law constitute *force majeure* events sufficient to render Mountaineer's agreements with Columbia unenforceable.

Mountaineer alleges the following facts. Mountaineer, formerly Columbia Gas of West Virginia (CWV), is a local distribution company operating in West Virginia.[1] Service agreements entered into by Columbia and CWV were inherited by Mountaineer. The Contract demand levels for gas in these contracts were established in 1971 and Mountaineer argues that they do not accurately reflect current market conditions for gas in West Virginia. Mountaineer further states that, as a result of the high cost of Columbia's gas supplies and the economic recession that continues in West Virginia, its market is severely depressed and that its total demand for gas is now substantially less than one-half of the demand of CWV in 1971 when the contract demand levels were established.

Mountaineer states that, as a result of the least-cost gas acquisition policy mandated by West Virginia law, it has secured other sources of gas more economic than that of Columbia. Mountaineer states that it will soon conclude other more economic supply arrangements, with the result that its reliance on Columbia as a supplier and transporter of gas will be minimal. Mountaineer states that the substantial changes in its degree of reliance on Columbia have been caused by circumstances beyond its control and which constitute *force majeure* under the general terms and conditions of Columbia's tariff. Mountaineer states it has notified Columbia of its unwillingness to continue to pay demand charges premised on the level of CWV's prior pruchases from Columbia under totally different circumstances.

Mountaineer requests that the Commission issue a declaratory order confirming that Mountaineer's obligations to Columbia under its service agreements are of no further force and effect as a result of circumstances constituting *force majeure*.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 214 or 211 of the Commission rules of practice and procedures. All such petitions or protests should be filed on or before July 26, 1985. Protests will be the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16634 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[1] In June 1984 the Columbia Gas System sold Columbia Gas to West Virginia to Allegheny & Western Energy Corporation which renamed it Mountaineer Gas Company.

[Docket No. TA85-2-16-000, 001]

National Fuel Gas Supply Corp.; Proposed Tariff Changes

July 5, 1985.

Take notice that on June 28, 1985, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 4 to be effective August 1, 1985.

National states that the purpose of this revised tariff sheet is to reflect a net decrease of 21.98¢ per Dth. This change consists of a decrease in current purchase gas cost of 24.88¢ per Dth, offset by an increase in the purchase gas cost surcharge adjustment of 2.90¢ per Dth.

It is stated that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16635 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-167-000]

Sea Robin Pipeline Co.; Proposed Changes in FERC Gas Tariff

Take notice that Sea Robin Pipeline Company (Sea Robin), on June 28, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume Nos. 1 and 2. The proposed changes are based on the twelve-month period ending February 28, 1985, as adjusted, for changes known and measurable through November 30, 1985 and would reduce overall revenues by approximately $1,200,000. Sea Robin requests an effective date of July 1, 1985.

Sea Robin states that the cost of service reflects $9,186,000 of one-time nonrecoupable payments to producer/suppliers in settlement of take-or-pay liabilities and that these payments are of the type covered by the statement of policy issued by the Commission on April 10, 1985 in Docket No. PL 85-1. Sea Robin has reflected the settlement amounts in the demand portion of the proposed sales rates to assure that the costs will be borne equally by Sea Robin's two sales customers.

The costs have been classified and allocated and rates have been designed in accordance with the fixed-variable rate design currently in effect on Sea Robin's system. The transportation volumes include volumes for all currently effective transportation under Part 284 and thus reflect representative volume levels for Part 284 transportation. Revenues attributable to transportation for Gulf Oil Corporation under Rate Schedule X-5 have been credited to the cost of service at the contract rate as in prior rate cases. Opinion 227-A issued May 21, 1985 ordered a change in that procedure, however that Opinion is subject to rehearing and appellate review.

Sea Robin proposes to utilize the current filing as compliance with requirements of § 154.38(d)(4)(vi).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or portests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Proposed Tariff Sheets

Original Volume No. 1

Seventh Revised Sheet No. 3
Fortieth Revised Sheet No. 4
Twentieth Revised Sheet No. 4-A

Original Volume No. 2

Twenty-Third Revised Sheet No. 127-D
Twenty-Third Revised Sheet No. 135-C

[FR Doc. 85-16636 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA85-3-18-000 and TA85-3-18-001]

Texas Gas Transmission Corp.; Proposed Changes in FPC Gas Tariff

July 5, 1985.

Take notice that Texas Gas Transmission Corporation, on June 28, 1985 tendered for filing Fiftieth Revised Sheet No. 7 to its FPC Gas Tariff, Third Revised Volume No. 1. This sheet is being issued to reflect changes in the surcharge for deferred purchased gas costs pursuant to Texas Gas's Purchased Gas Adjustment Clause.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16637 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT85-17-000]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

July 5, 1985.

Take notice that on June 27, 1985, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Tariff Sheet and Proposed Effective Date

Cover Sheet—August 1, 1985
Title Page—August 1, 1985
Ninth Revised Sheet No. 1—August 1, 1985
Third Revised Sheet No. 1-A—August 1, 1985
Original Sheet No. 1-A.1—August 1, 1985
Original Sheet No. 1-A.2—August 1, 1985

Original Sheet No. 1–A.3—August 1, 1985
Original Sheet No. 1–B—August 1, 1985

The purpose of this filing is to update Transco's Volume No. 2 Tariff by revising the Cover Page, Title page (designating a new person to whom correspondence in regard to the tariff should be directed) and Table of Contents. The Statement of Applicability of Curtailment Rules has been updated and renumbered in order to accommodate the multi-page Table of Contents.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 12, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 85–16638 Filed 7–11–85; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. QF85–540–000 et al.]

Downtown Athletic Club et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Downtown Athletic Club

[Docket No. QF85–540–000]

June 28, 1985.

On June 17, 1985, Downtown Athletic Club, (Applicant) of 19 West Street, New York, New York 10004 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the applicant's address in New York, New York. The facility will contain two Tecogen Model No. CM60 modules, each consisting of a natural gas-fired engine, an induction generator and a heat exchanger. The exhaust heat will be used to heat the water for the Athletic Club. The primary energy source will be natural gas. The net electrical power production capacity of the facility will be 120 kW. The installation of the facility is scheduled to begin on September 15, 1985.

2. Beowawe Geothermal Power Company

[Docket No. QF85–527–000]

July 5, 1985.

On June 10, 1985, Beowawe Geothermal Power Company (Applicant) of 2244 Walnut Grove Avenue, Rosemead, California 91770 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Elko, Nevada. It will consist of geothermal well field facilities, power plant facilities, which include a dual-entry steam turbine and directly coupled generator, and electric interconnection facilities with the Sierra Pacific Power Company. The primary energy source will be the natural geothermal water, steam, or brine obtained from the site. The electric power production capacity will be about 15.1 megawatts.

3. First Energy Associates

[Docket No. QF85–538–000]

July 5, 1985.

On June 18, 1985, First Energy Associates (Applicant) of 71 Spit Brook Road, Nashua, New Hampshire 03060 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Concord, New Hampshire. The facility will consist of an LPG and/or natural gas fired gas turbine generator exhausting to a heat recovery steam generator supplying steam to a partial extraction steam turbine generator. The extracted steam will be used for heating and absorption chilling service. The primary energy source will be LPG, with natural gas as a supplemental fuel. The electric power production capacity will be 41.1 megawatts. Installation of the facility will begin about October 1985.

4. NRG/Recovery Group, Inc.

[Docket No. QF85–553–000]

July 5, 1985.

On June 17, 1985, NRG/Recovery Group, Inc., (Applicant) of 1616 Athens Street, Lakeland, Florida 33803 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in the West Central section of Manatee County, Florida. The net electric power production capacity of the facility will be 18 megawatts. The primary energy source will be municipal solid wastes. The facility is designed to use natural gas for ignition, start-up and emergency use, but such natural gas useage will not exceed 25% of the annual energy source.

5. W&F Manufacturing, Inc.

[Docket No. QF85–530–000]

July 5, 1985.

On June 13, 1985, W&F Manufacturing, Inc. (Applicant) of 2299 Kenmore Avenue, Tonawanda, New York 14207 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Tonawanda, New York. The facility will consist of three natural gas fired engine generators with low pressure steam recovery. The steam will be used for wax manufacturing. The primary energy source will be natural gas. The electric power production capacity of the facility will be 1.42 megawatts. Installation of the facility will begin about December 1985.

6. American Alternate Energy, Ltd. (Pontiac Avenue)

[Docket No. QF85–546–000]

July 8, 1985.

On June 19, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Pontiac Avenue,

Providence County, Cranston, Rhode Island. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

7. American Alternate Energy, Ltd. (Sixth Avenue Extension)

[Docket No. QF85-554-000]

July 8, 1985.

On June 19, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Sixth Avenue, Extension, Blair County, East Altoona, Pennsylvania. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

8. American Alternate Energy, Ltd. (Jake Sears Road)

[Docket No. QF85-556-000]

July 8, 1985.

On June 20, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Maplewood Drive, Maple Shade, New Jersey 08052 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located on Jake Sears Road, City of Virginia Beach, Virginia Beach, Virginia. The primary energy source will be biomass in the form of methane gas. The electric power production capacity will be 10 megawatts. There is no planned use of natural gas, oil or coal in operating this facility.

Standard Paragraph

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions of protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriation action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16624 Filed 7-11-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51579; FRL 2863]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-five PMNs and provides a summary of each.

DATES: Close of Review Period:

P 85-1137, 85-1138, 85-1139 and 85-1140; September 25, 1985.

P 85-1141, 85-1142, 85-1143, 85-1144 and 85-1145; September 28, 1985.

P 85-1146, 85-1147, 85-1148, 85-1149, 85-1150, 85-1151, 85-1152, 85-1153, 85-1154, 85-1155, 85-1156, 85-1157, 85-1158, 85-1159, 85-1160, 85-1161, 85-1162 and 85-1163; September 29, 1985.

P 85-1164, 85-1165, 85-1166, 85-1167, 85-1168, 85-1169, 85-1170 and 85-1171; September 30, 1985.

Written comments by:

P 85-1137, 85-1138, 85-1139 and 85-1140; August 26, 1985.

P 85-1141, 85-1142, 85-1143 and 85-1144 and 85-1145; August 29, 1985.

P 85-1146, 85-1147, 85-1148, 85-1149, 85-1150, 85-1151, 85-1152, 85-1153, 85-1154, 85-1155, 85-1156, 85-1157, 85-1158, 85-1159, 85-1160, 85-1161, 85-1162 and 85-1163; August 30, 1985.

P 85-1164, 85-1165, 85-1166, 85-1167, 85-1168, 85-1169, 85-1170 and 85-1171; August 31, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51579]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202)-382-3725).

SUPPLEMENTARY INFORMATION: The follwing notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85 1137

Manufacturer. Confidential.

Chemical. (G) Hydroxyl-terminated polyurethane.

Use/Production. (S) Laminating adhesive as aqueous emulsion. Prod. Range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 1 worker.

Environmental Release/Disposal. 5 kg/batch released to land. Disposal by landfill.

P 85-1138

Importer. Confidential.

Chemical. (G) Medium-oil alkyd based on linseed oil.

Use/Import. (S) Industrial and commercial film forming resin component in air-drying automotive refinish coatings. Import range: 2,750-11,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import, processing and use: dermal, a total of 5 workers at one industrial site.

Environmental Release/Disposal. No release.

P 85-1139

Importer. Confidential.

Chemical. (G) Isocyanate-modified alkyd resin.

Use/Import. (S) Industrial, commercial and consummer film forming resin component in uralkyd wood coatings; and an industrial and commercial film forming resin component in high-build

industrial primers. Import range: 1,100–4,125 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import, processing and use: dermal, a total of 20 workers at four industrial sites.

Environmental Release/Disposal. No release.

P 85–1140

Importer. Confidential.

Chemical. (G) Alkyd resin additive.

Use/Import. (S) Commercial and consumer thixotropic agent for an alkyd resin for exterior alkyd coatings and industrial and commercial anti-rust primers. Import range: 765–1, 785 kg/yr.

Toxicity Data. No data submitted.

Exposure. Import, processing and use: dermal, a total of 10 workers at one industrial site.

Environmental Release/Disposal. No release.

P 85–1141

Manufacturer. Confidential.

Chemical. (S) 4-[Acetylamino]-5-hydroxy-2,7-naphthalenedi-sulfonic acid, dipyridinium salt.

Use/Production. (G) Chemical intermediate. Prod. range: 2,000–2,500 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 8 workers, up to 1.0 hr/da, up to 16 da/yr.

Environmental Release/Disposal. No release. Less than 3 to 11 kg/batch incinerated.

P 85–1142

Manufacturer. Confidential.

Chemical. (S) 4-amino-5-hydroxy-2,7-naphthalenedisulfonic acid, monopyridinium salt.

Use/Production. (G) Chemical intermediate. Prod. range: 2,000–2,500 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 8 workers, up to 1.0 hr/da, up to 7 da/yr.

Environmental Release/Disposal. No release. Less than 2 kg/batch incinerated.

P 85–1143

Manufacturer. Confidential.

Chemical. Further clarification needed before information can be released to the public files.

Use/Production. (S) Industrial, commercial and consumer wire insulation and transportation. Prod. range: 55,000–300,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 60 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Trace to 5 kg/batch released to land. Disposal by publicly owned treatment works (POTW), Resource Conservation Recovery Act (RCRA) approved incineration and disposal firm and navigable waterway.

P 85–1144

Importer. Confidential.

Chemical. (G) Thiotriazine.

Use/Import. (G) Rubber additive. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–1145

Importer. Confidential.

Chemical. (G) Alkoxylated alkyl amine.

Use/Import. (G) Complexing agent amine. Prod. range: Confidential.

Toxicity Data. Acute oral (rat): 3,000 mg/kg, Acute oral (mouse): 4.5 g/kg; Acute dermal: 10 g/kg; Irritation: Skin—Slight, Eye—Practically non-irritant; Ames Test: Not mutagenic; Skin sensitization: Not a cutaneous sensitizer.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1146

Manufacturer. E. I. du Pont de Nemours and Company, Inc.

Chemical. (G) Aliphatic aromatic co-polyester.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to land. Disposal by incineration and approved landfill

P 85–1147

Manufacturer. Monsanto Company.

Chemical. (G) Polymer of modified polyolefin and modified elastomers.

Use/Production. (G) Reactive polymeric polymer additive, destructive use. Prod. range: Confidential.

Toxicity Data. LC_{50} 96 hr (Rainbow trout): > 1,000 mg/1; LC_{50} 48 hr (Daphnia magna): > 1,000 mg/1.

Exposure. Manufacture: dermal and inhalation, a total of 14 workers, up to 8 hrs/da, up to 100 da/yr.

Environmental Release/Disposal. Release to water. Disposal by POTW and landfill.

P 85–1148

Manufacturer. Confidential.

Chemical. (G) Phenolic modified epoxy.

Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 4 workers, up to 1 hr/da, up to 50 da/yr.

Environmental Release/Disposal. 1 to 10 kg/batch released to land. Disposal by incineration and landfill.

P 85–1149

Manufacturer. Confidential.

Chemical. (G) Hydroxylated aromatic epoxy acrylate ester.

Use/Production. (S) Industrial coating, ink and binder component. Prod. range: 24,000–30,000 kg/yr.

Toxicity Data. Irritation: Skin—Not a primary irritant, Eye—Not a primary irritant.

Exposure. Manufacture and processing: dermal, a total of 20 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 2 to 10 kg/batch released to control technology. Disposal by incineration.

P 85–1150

Manufacturer. Confidential.

Chemical. (G) Benzothiazolylidenealkenylbenzothiazolium salt.

Use/Production. Chemical intermediate. Prod. range: 0.4-1.2 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 4 workers, up to 0.1 hr/da, up to 3 da/yr.

Environmental Release. No release.

P 85–1151

Manufacturer. Confidential.

Chemical. (G) Benzothiazolylidenealkenylbenzothiazolium salt.

Use/Production. (G) Contained use in an article. Prod. range: 0.5-1.0 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 0.4 hr/da, up to 5 da/yr.

Environmental Release. Less than 0.012 to 0.035 kg/batch incinerated.

P 85–1152

Manufacturer. Shell Oil Company.

Chemical. (S) Benzene, methyl-, mono-C_{14-30}-alkyl derivatives.

Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1153

Manufacturer. Shell Oil Company.
Chemical. (S) Benzene, methyl-, mono-C_{14-18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1154

Manufacturer. Shell Oil Company.
Chemical. (S) Benzene, methyl-, mono-C_{16-18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1155

Manufacturer. Shell Oil Company.
Chemical. (S) Benzene, methyl-, mono-C_{18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1156

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{14-20}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1157

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{14-18}-alkyl derivatives.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1158

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{16-18}-alkyl derivative.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1159

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{18} alkyl derivative.
Use/Production. (G) Destructive use (i.e., chemical intermediate). Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1160

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{14-20}-alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1161

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono- C_{14-18}- alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1162

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{16-18}-alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1163

Manufacturer. Shell Oil Company.
Chemical. (S) Benzenesulfonic acid, methyl-, mono-C_{18} alkyl derivatives, sodium salts.
Use/Production. (G) Semi-contained. Prod. range; Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1164

Manufacturer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Electric potting compound. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1165

Manufacturer. Confidential.
Chemical. (G) Fatty acrylate polymer.
Use/Production. (G) Oil additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1166

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/Production. (S) Acrylic resin converted into paint. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 85–1167

Manufacturer. The Dow Chemical Company.
Chemical. (G) Dichloropropene.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture and use: dermal and inhalation.
Environmental Release/Disposal. No release. Disposal by incineration.

P 85–1168

Manufacturer. Celanese Specialty Resins.
Chemical. (G) Epoxy acrylate.
Use/Production. (G) Coating resin. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 12 da/yr.
Environmental Release/Disposal. Less than 10 to 10 kg/batch released. Disposed of according to RCRA.

P 85–1169

Manufacturer. Celanese Specialty Resins.
Chemical. (G) Acid modified acrylated epoxide.
Use/Production. (G) Coating resin. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. Less than 16 kg/batch released. Disposed of according to RCRA.

P 85-1170

Manufacturer. Celanese Specialty Resins.

Chemical. (G) Acid modified acrylated epoxide.

Use/Production. (G) Coating resin. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. Less than 16 kg/batch released. Disposed of according to RCRA.

P 85-1171

Manufacturer. Celanese Specialty Resins.

Chemical. (G) Polymer modified acrylated epoxide.

Use/Production. (G) Coating resin. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal, a total of 18 workers, up to 8 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 16 kb/batch released. Disposed of according to RCRA.

Dated: July 8, 1985.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 85-16476 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59200; FRL-2862-9]

Certain Chemicals Test Marketing Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for an exemption, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by: July 29, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-59200]" and the specific TME number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. 3-201, 401 M Street, SW., Washington, DC 20460, (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

T 85-57

Close of Review Period. August 14, 1985.

Manufacturer. Confidential.

Chemical. (G) Urethane compound.

Use/Production. (G) Destructive use in industry. Prod. range: 215 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 16 workers, up to 4 hrs/da, up to 1 da/yr.

Environmental Release/Disposal. Very small amounts to 1 kg/batch released to land. Disposal by incineration.

T 85-58

Close of Review Period. August 15, 1985.

Manufacturer. Confidential.

Chemical. (G) Complex epoxy resin adduct.

Use/Production. (G) Performance additive for an industrial coating. Prod. range: 1,030 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 23 workers, up to 4 hrs/da, up to 13 da/yr.

Environmental Release/Disposal. 0.3 to 3 kg/batch released to land. Disposal by incineration and landfill.

T 85-59

Close of Review Period. August 15, 1985.

Manufacturer. Confidential.

Chemical. Urethane compound.

Use/Production. (G) Destructive use. Prod. range: 420 kg/6 mos.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 22 workers, up to 4 hrs/da, up to 2 da/yr.

Environmental Release/Disposal. Very small amounts to 1 kg/batch released to land. Disposal by incineration and landfill.

Dated: July 8, 1985.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 85-16475 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59722; FRL-2862-8]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seven such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 85-100; July 18, 1985.

Y 85-101, 85-102, 85-103 and 85-104; July 22, 1985.

Y 85-105 and 85-106; July 23, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-

confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-100

Import. Confidential.
Chemical. (G) Polymer of an aromatic diisocyanate, alkane polyols, alkanolamine, alkanedioic acid, alkane alcohol.
Use/Import. (G) Coating for textile fabrics. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. Use: inhalation.
Environmental Release/Disposal. Disposal by incineration.

Y 85-101

Manufacturer. The Upjohn Company.
Chemical. (S) Acid terminated prepolymer polyester.
Use/Production. (S) Industrial intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Trace released to air and 351 kg to water. Disposal by publicly owned treatment works (POTW).

Y 85-102

Import. Mitsubishi International Corporation.
Chemical. (S) Ethylene-propylene-styrene copolymer.
Use/Import. (S) Commercial and consumer food and medical packaging, master batch resin of blowing agent and colorant for polystryrene, etc., and adhesive for coextruded multi-laminar sheet (polypropylene/polystyrene. Import range: 9,200-90,900 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-103

Import. Mitsubishi International Corporation.
Chemical. (S) Ethylene-styrene copolymer.
User Import. (S) Commercial and consumer food and medical packaging and master batch resin of blowing agent and colorant for polystyrene, etc. Import range: 16,800-60,800 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-104

Import. Mitsubishi International Corporation.
Chemical. (S) Propylene-styrene copolymer.
Use/Import. (S) Commercial and consumer food and medical packaging, master batch resin of blowing agent and colorant for polyestyrene, etc., and an adhesive for coextruded multilaminar sheet (polypropylene/polystyrene). Import range: 3,000-30,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-105

Manufacturer. Confidential.
Chemical. (G) Polyether polyurethane polymer.
Use/Production. (G) Paint additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Y 85-106

Manufacturer. Confidential.
Chemical. (G) Polyether polyurethane polymer.
Use/Production. (G) Paint additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: July 8, 1985.

Linda K. Smith,

Acting Director, Information Management Division.

[FR Doc. 85-16474 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2851-3]

Environmental Impact Statements; Availability

Correction

In FR Doc. 85-14410 appearing on page 24943 in the issue of Friday, June 14, 1985, make the following corrections: In the second column, fourth complete paragraph, EIS No.850242, fourth and fifth lines, the telephone number should read "(702) 784-5331".

BILLING CODE 1505-01-M

[ER-FRL-2864-1]

Onion Creek Wastewater Treatment Facility, Revision of Special Conditions; Intent To Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the revision of special conditions associated with the City of Austin's Onion Creek Wastewater Treatment Facility Construction Grant.

SUMMARY: Purpose: In accordance with section 511(c) of the Clean Water Act (CWA) and section 102(2)(c) of the National Environmental Policy (NEPA) EPA has identified a need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

For further information and to be placed on the project mailing list contact: Mr. Clinton B. Spotts, Regional EIS Coordinator, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270. Telephone: (Commercial) 214-767-2716 or (FTS) 729-2716.

Description of Proposed Action

Need for Action: On June 15, 1984, EPA, through the Texas Department of Water Resources (TDWR), awarded a grant of $9,482,169 to the City of Austin for construction of the Onion Creek Wastewater Treatment Plant (WTP) located in Travis County, Texas. The environmental review process resulted in a condition (condition No. 16) being placed on that grant which stated: "Future sewer tie-ons to the proposed project downstream of the Williamson Creek Wastewater Treatment Plant will be limited to those serving development in existence on November 26, 1980." The City of Austin has now proposed this condition be removed from the grant because the City of Austin has changed its policies on growth in the area between the existing Williamson Creek WTP and the proposed Onion Creek WTP. The City of Austin now desires to meet the service needs of the present and projected population growth in the area with the Onion Creek WTP and a redesigned interceptor.

Alternatives

- EPA eliminates condition No. 16 and includes no additional conditions.
- EPA eliminates condition No. 16 but includes additional conditions.
- EPA does not change the present grant conditions.

Scoping

The Environmental Protection Agency (EPA), Region 6, will hold a public scoping meeting on Wednesday, August 14, 1985 at 7:00 p.m. at the City of Austin Electric Department Auditorium, 301 West Avenue, Austin, Texas. Details of the history of the project and proposed changes will be presented. The public is invited to attend and identify issues that should be addressed in the EIS.

Responsible Official: Dick Whittington, P.E. Regional Administrator.

Dated: July 9, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-16650 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-01-M

[ER-FRL-2863-7]

Environmental Impact Statements; Notice of Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075. Availability of Environmental Impact Statements filed July 1, 1985 Through July 5, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850280, Final, FHW, MT, Reserve Street Reconstruction, US 93 to South Third Street, Right-of-Way Acquisition and Improvement, Missoula County, Due: August 12, 1985, Contact: William Dunbar (406) 449-5310.

EIS No. 850281, DSuppl, FHW, NH, NH-101 Improvements, Chesham Road to Bonds Corner, Right-of-Way Acquisition and Construction, Modified Reconstruction Alternative, Cheshire County, Due: August 26, 1985, Contact: William O'Donnell (603) 224-3385.

EIS No. 850282, Final, SCS, IL, Lower Des Plaines Tributaries Watershed Multipurpose Plan, Improvements, Cook, Dupage and Lake Counties, Due: August 12, 1985, Contact: John Eckes (217) 398-5267.

EIS No. 850283, DRevised, AFS, NM AZ, Coronado National Forest, Land and Resource Management Plan, Due: October 11, 1985, Contact: R. B. Tippeconnic (602) 629-6805.

EIS No. 850284, Final, COE, MS, Pascagoula Harbor and Bayou Casotte Navigation Channels Improvements, Deepening, Jackson County, Due: August 12, 1985, Contact: Susan Ivester Rees (205) 690-2724.

EIS No. 850285, Draft, FHW, OR, 185th Avenue Improvements, Rock Creek Boulevard to Tualatin Valley Highway, Washington County, Due: August 29, 1985, Contact: Dale Wilken (503) 399-5749.

Amended Notices

EIS No. 850146, Draft, AFS, ID, WA, MI, Idaho Panhandle National Forest, Land and Resource Management Plan, Due: September 1, 1985, Published FR 4-19-85—Review period extended.

EIS No. 850273, Draft, 104H, MA Tent City Development, Parcells 11A and 11B, South End Urban Renewal Area, UDAG, Suffolk County, Published FR 7-5-85—OFFICIALLY WITHDRAWN.

EIS No. 850188, Draft, AFS, ID, Clearwater National Forest, Land and Resource Management Plan, Due: September 15, 1985, Published FR 5-20-85—Review period extended.

EIS No. 850267, FSuppl, COE, NC, Manteo (Shallowbag) Bay Project, Dredging, Design, Oregon Inlet, Dare County, Due: August 12, 1985, Published FR 7-05-85—Review period extended.

Dated: July 9, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-16651 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2863-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 24, 1985 through June 28, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5975/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D-BLM-G61031-NM, Rating LO, New Mexico Statewide Wilderness Study Areas, Wilderness Designation, NM. **SUMMARY:** EPA has not identified any potential environmental impacts requiring substantive changes to the proposal.

ERP No. D-BLM-G70001-NM, Rating LO, Rio Puerco Resource Area, Land and Resource Mgmt. Plan, NM. **SUMMARY:** EPA has not identified any potential environmental impacts requiring substantive changes to the proposal.

ERP No. D-BLM-K61079-00, Rating EC2, Eagle Lake—Cedarville Resource Area, Wilderness Study Area, Designation, CA, NV. **SUMMARY:** Due to the insufficient information present, EPA is concerned that potential adverse impacts to water quality could result from any site-specific actions.

ERP No. D-BLM-L70002-OR, Rating EC2, Two Rivers Planning Area, Resource Mgmt. Plan, John Day and Deschutes Rivers, OR. **SUMMARY:** EPA requested that the FEIS present additional data and discussion of ecological conditions so that the potential impacts could be better assessed and mitigation provided. In particular, more information is needed on existing water quality in the planning area, discussion of measures to protect riparian areas, and threatened and endangered plant species to activities such as livestock grazing and prescribed burning.

ERP No. D-COE-L36093-ID, Rating EO2, Salmon River Flood Damage Reduction Study, Construction, ID. **SUMMARY:** EPA identified two of the action alternatives (permanently evacuate the floodplain or enhance the existing levee system) as environmentally acceptable. One alternative (channelization of a portion of the Salmon River) would be environmentally unacceptable. It would take place in a designated Wild and Scenic portion of the Salmon River and would dewater a wetland on the EPA Priority Wetland list. EPA also noted that the existing background studies and information are inadequate for the channelization alternative, and that selection of that alternative as it is presented in the DEIS would necessitate referral to CEQ.

ERP No. D-FAA-K51031-CA, Rating EU3, Fremont General Aviation Reliever Airport Development Approval, CA. **SUMMARY:** EPA determined that the proposed project is environmentally unsatisfactory and the EIS is inadequate due to: (1) Project compliance with CWA Sect. 404(b)(1) guidelines; (2) lack of information to evaluate CWA Sect. 404 jurisdiction and compliance; (3) significant adverse project inpacts to on-site wetlands and a national wildlife refuge; (4) incompatibility of siting an airport adjacent to a wildlife refuge and two sanitary landfills; (5) lack of information on industrial development; and (6) need for more information on cumulative impacts.

Final EISs

ERP No. F-AFS-J61042-CO, Oh-Be-Joyful Wilderness Study Area, Grand Mesa, Uncompahgre, and Gunnison NF's, CO. **SUMMARY:** EPA made no formal comments. The FEIS adequately responded to EPA's earlier concerns.

ERP No. F-BLM-J65114-WY, Buffalo Resource Area, Resource Mgmt. Plan, WY. **SUMMARY:** The FEIS partially responded to EPA's concerns for protection of water quality in the Buffalo Resource Area. EPA continues to recommend that an alternative be selected which places greater emphasis on the improvement and protection of

water quality, range improvement and other environmental values.

ERP No. F-COE-E30006-FL, Amelia Island Beach Erosion Control, FL. **SUMMARY:** EPA's review concluded that the environmental impacts of this action are within acceptable limits.

ERP No. F-COE-H36079-KS, Arkansas City, Flood Control Plan, Arkansas and Walnut Rivers, KS. **SUMMARY:** EPA expressed concern about the potential downstream water quality impacts and requested that the results of the sediment sampling program be made available prior to the initiation of channel modifications to the Walnut River.

ERP No. F-FHW-K40116-HI, Huleia Bridge Replacement and Approaches, Kaumualii Highway (FAP 50) Construction, HI. **SUMMARY:** The FEIS adequately addressed the concerns EDP had raised on the DEIS.

ERP No. F-SCS-E36152-MS, Tallahaga Creek Watersbed Flood Protection Plan, MS. **SUMMARY:** EPA concluded that no significant, long-term, adverse impacts should occur from implementation of this project as proposed.

ERP No. F-USN-K10008-NV, Fallon Naval Air Station Supersonic Operations Area, Designation and Strike Warfare Center, Establishment, NV. **SUMMARY:** EPA had several remaining concerns with the proposal, including availability of safe drinking water for existing and new base personnel and the adequacy of noise mitigation measures.

ERP No. F-USN-K11028-AZ, Joint Guayule Rubber Program, Agricultural Operations, Gila R. Indian Reservation, AZ. **SUMMARY:** EPA expressed remaining concerns about proper registration of pesticides proposed for use under FIFRA and the RCRA permits needed for the project's processing phase.

Dated: July 7, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-16652 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection for OMB Review

The following information collection requirements have been approved by the Office of Management and Budget. For further information contact Doris Peacock, FCC, (202) 632-7513.

OMB No.: 3060-0012

Title: Application for Extension of Construction Permit or to Replace Expired Construction Permit

Form No.: FCC 701

A revised application form FCC 701 has been approved for use through 3/31/88. The current edition of the form is dated April 1985. All previous editions are obsolete.

OMB No.: 3060-0027

Title: Applicaton for Construction Permit for Commercial Broadcast Station

Form No.: FCC 301

A revised application form FCC 301 has been approved for use through 5/31/88. The April 1985 edition with an expiration date of 12/31/87 will remain in use until revised forms are available.

OMB No.: 3060-0049

Title: Restricted Radiotelephone Operator Permit Application and Temporary Permit

Form No.: FCC 753

A revised application form FCC 753 has been approved for use through 5/31/88. The December 1982 edition with an expiration date of 11/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0061

Title: Annual Report of Cable Television Systems

Form No.: FCC 325

The approval on report form FCC 325 has been extended through 4/30/88. The updated forms will be provided for the next report.

OMB No.: 3060-0062

Title: Application for Authority to Constuct or Make Changes in an Instructional Television Fixed and/or Response Station(s) and Low Power Relay Station(s)

Form No.: FCC 330-P

A revised application form FCC 330-P has been approved for use through 4/30/88. The October 1982 edition with the previous expiration date of 4/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0064

Title: Application for Station Authorization in the Private Operational Fixed Microwave Radio Service

Form No.: FCC 402

A revised application form FCC 402 has been approved for use through 4/30/88. The June 1982 edition with an expiration date of 9/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0066

Title: Application for Renewal of Instuctional Television Fixed and/or Response Station(s) and Low Power Relay Station(s)

Form No.: FCC 330-R

A revised application form FCC 330-R has been approved for use through 4/30/88. The January 1983 edition with the previous expiration date of 4/30/85 will remain in use until revised forms are available.

OMB No.: 3060-0079

Title: Application to Renew or Modify an Amateur Club, RACES or Military Recreation Station License

Form No.: FCC 610-B/BL

A revised application for FCC 610-B/BL has been approved for use through 4/30/88. The November 1981 edition with an extended approval through 9/30/86 will remain in use unitl revised forms are available.

OMB No.: 3060-0107

Title: Application for Renewal of Radio Station License and/or Notification of Change to License Information

Form No.: FCC 405-A

A revised application form FCC 405-A has been approved for use through 4/30/88. The July 1982 edition with an extended approval through 12/31/87 will remain in use until revised forms are available.

OMB No.: 3060-0134

Title: Application for Renewal of Radio Station License

Form No.: FCC 574-R

The approval on applciation form FCC 574-R has been extended through 4/30/88. The November 1983 edition with an expiration date of 4/30/86 will remain in use until supplies are exhausted and the updated forms are available.

William J. Tricarico,

Secreary, Federal Communications Commission.

July 3, 1985.

[FR Doc. 85-16562 Filed 7-11-85; 8:45 am]

BILLING CODE 6712-01-M

National Industry Advisory Committee, Common Carrier Communications Subcommittee; Meeting

Pursuant to the provisions of Pub. L. 92-463, announcement is made of a public meeting of the Common Carrier Communications Subcommittee of the National Industry Advisory Committee (NIAC) to be held Tuesday, July 30, 1985. The Subcommittee will meet at 9:30 a.m. at AT&T Communications, 1120—20th Street, NW., Washington, D.C. 20036, North Tower.

Purpose: To obtain advice concerning proposed National Security Emergency Preparedness (NSEP) Telecommunications Procedures.

Agenda

1. Opening remarks—Subcommittee Chairman John Boning and FCC Officials.
2. Review of proposed manual, "National Security Emergency Preparedness Telecommunications Procedures"—J. Randolph MacPherson, National Communications System.
3. Discussion.
4. Recommendations—Members.
5. Other business.
6. Adjournment.

Any member of the public may attend or file a written statement with the Subcommittee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Subcommittee prior to the meeting. Those desiring more specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634-1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-16563 Filed 7-11-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket No. FEMA-REP-7-KS-1]

Kansas Radiological Emergency Response Plans/Wolf Creek Generating Station

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Receipt of Plans.

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 a responsibility for reviewing the state and local government plans, the State of Kansas has submitted its radiological emergency plans to the FEMA Regional Office. These plans support nuclear power plants which impact on Kansas, and include those local governments near the Wolf Creek Generating Station located in Coffey County, Kansas.

DATE: Plans Received: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick J. Breheny, Regional Director, FEMA Region VII, 911 Walnut Street, Kansas City, Missouri 64106, (816) 374-5192.

In support of the Federal requirement for emergency response plans, FEMA has a Rule describing its procedures for review and approval of state and local governments' radiological emergency response plans. Pursuant to this FEMA Rule (44 CFR 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," the "State of Kansas, Annex A, Nuclear Facilities Incidents Response Plan to Assistance R, Nuclear Emergencies of the State Disaster Emergency plan" was received by the Federal Emergency Management Agency, Region VII Office. Included in this submission is the "Coffey County Contingency Plan for Incidents Involving Commercial Nuclear Power." The emergency planning zone for the Wolf Creek Generating Station is located entirely within Coffey County.

Copies of these plans are available for review at the FEMA Region VII Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in 44 CFR 5.46. There are 714 pages in the documents; reproduction fees are $.10 per page, payable with the request for copy.

Comments on these plans may be submitted in writing to Mr. Patrick J. Breheny, Regional Director, at the above address within thirty days of this **Federal Register** notice.

Patrick J. Breheny,

Regional Director, FEMA, Region VII.

[FR Doc. 85-16559 Filed 7-11-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007590-043.

Title: United States-Colombia Conference.

Parties:

Coordinated Caribbean Transport, Inc.

Flota Mercante Grancolombia, S.A.

Lykes Bros. Steamship Co., Inc.

United States Lines (S.A.)

Synopsis: The proposed amendment would reduce the required security deposit from $50,000 to $25,000 and would increase from three days to five days the time for members to respond to telephone polls with respect to northbound cargo. The parties have requested a shortened review period.

Agreement No.: 202-007680-057.

Title: American-West African Freight Conference.

Parties:

America-Africa Line, Ltd.

Barber West Africa Line

Companhia Nacional de Navegacao

Farrell Lines, Inc.

Maersk Line

Societe Ivoirienne de Transport Maritime

Torm West Africa Line

Westwind Africa Line, Ltd.

Associate Party: Cameroon Shipping Lines.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's regulations concerning form and format.

Agreement No.: 202-010390-008.

Title: United States Atlantic and Gulf/Ecuador Freight Association.

Parties:

Coordinated Caribbean Transport, Inc.

Ecuadorian Line, Inc.

Lykes Bros. Steamship Co., Inc.

Transportes Navieros Equatorianos

United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would increase from two days to three days the time for members to respond to telephone polls and would count a member's failure to vote as a vote for the majority rather than an affirmative vote. Additionally, it would substitute United States Lines (S.A.) for United States Lines, Inc. as a party to the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: July 9, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-16641 Filed 7-11-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Associated Bank Shares Corporation et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 2, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Associated Bank Shares Corporation,* Colorado Springs, Colorado; to become a bank holding company by acquiring 97.60 percent of the voting shares of First Bank, Colorado Springs, Colorado.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Crosby Bancshares, Inc.,* Crosby, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Crosby State Bank, Crosby, Texas.

2. *First American Bancshares, Inc.,* Baytown, Texas; to acquire 100 percent of the voting shares of First American Bank and Trust of Friendswood, Friendswood, Texas, a *de novo* bank.

3. *Pilot Point Bancorp, Inc.,* Pilot Point, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Pilot Point Bancshares, Inc., Pilot Point, Texas, thereby indirectly acquiring The Pilot Point National Bank, Pilot Point, Texas.

4. *USA Bancshares, Inc.,* Dallas, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Anna Bancshares, Inc., Anna, Texas and Howe Financial Corporation, Howe, Texas, thereby indirectly acquiring The First National Bank of Anna, Anna, Texas, Howe State Bank, Howe, Texas, and Plano East National Bank, Plano, Texas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Republic National Bancorp, Inc.,* Phoenix, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of Republic National Bank, Phoenix, Arizona (in organization).

Board of Governors of the Federal Reserve System, July 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16570 Filed 7-11-85; 8:45 am]

BILLING CODE 6210-01-M

Chase County Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have 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.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written prsentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 1, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chase County Bankshares, Inc.,* Strong City, Kansas; to engage directly in general insurance agency activities in a place with a population not exceeding 5,000, pursuant to section 4(C)(8)(C)(i) of the Act. These activities would be conducted in Chase County, Kansas.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp,* Dallas, Texas; and *MCorp Financial, Inc.,* Wilmington, Delaware; to acquire General Electric Services Company, Rockville, Maryland, thereby engaging in the provision of data processing and data transmission services consisting of wire transfer and cash management services; transmitting of other economic and financial information; and certain consulting and software maintenance services.

2. *MCorp,* Dallas, Texas and *MCorp Financial, Inc.,* Wilmington, Delaware; to acquire First Chicago Data Corporation, Chicago, Illinois, thereby engaging in the provision of data processing and data transmission services to financial institutions.

Board of Governors of the Federal Reserve System, July 8, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16571 Filed 7-11-85; 8:45 am]

BILLING CODE 6210-01-M

First NH Banks, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval

under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless 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.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.*, Manchester, New Hampshire; to engage *de novo* through its subsidiary, First NH Resources, Inc., Manchester, New Hampshire, in the leasing of personal property and acting as an agent, broker and advisor in leasing such property.

Board of Governors of the Federal Reserve System, July 8, 1985.

James McAfee,

Associated Secretary of the Board.

[FR Doc. 85-16572 Filed 7-11-85; 8:45 am]

BILLING CODE 6210-01-M

North Community Bancorp, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

Correction

In FR Doc. 85-15798 beginning on page 27359 in the issue of Tuesday, July 2, 1985, make the following correction:

On page 27360, first column, first complete paragraph, fifth line, "January 22, 1965" should read "July 22, 1985".

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notificaton rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 85-0597—Sterling Software Inc.'s proposed acquisition of voting securities of Informatics General Corp.	June 17, 1985.
(2) 85-0681—Matthew G. Norton's proposed acquisition of voting securities of McDonald Industries, Inc.	Do.
(3) 85-0691—Transco Energy Company's proposed acquisition of voting securities of 15 subsidiaries (Kaneb Services, Inc., UPE).	June 18, 1985.
(4) 85-0696—The Broken Hill Proprietary Company Limited's proposed acquisition of voting securities of General Electric Minerals Inc. (General Electric Company, UPE).	Do.
(5) 85-0847—Harcourt Brace Jovanovich, Inc.'s proposed acquisition of voting securities of Federal Home Life Insurance Company, and PHF Life Insurance Company (City Investing Company, UPE).	June 20, 1985.
(6) 85-0709—Allegheny Power System, Inc.'s proposed acquisition of assets of Virginia Electric and Power Compay, (Dominion Resources, Inc., UPE).	Do.
(7) 85-0719—Balmoe Corporation's proposed acquisition of assets of The Frankelite Company and voting securities of Diaman-Mexo held by Diamond F.	Do.
(8) 85-0852—Meridian Bancorp, Inc.'s proposed acquisition of voting securities of American Title Insurance Company (The Continental Corporation, UPE).	June 21, 1985.
(9) 85-0705—General Host Corporation's proposed acquisition of voting securities of Scott's Seaboard Corporation.	Do.
(10) 85-0706—General Host Corporation's proposed acquisition of voting securities of Scott's Seaboard Corporation.	Do.
(11) 85-0728—Royal Dutch Petroleum Company's proposed acquisition of voting securities of Colombia-Cities Service Petroleum Corporation (Occidental Petroleum Corporation, UPE).	Do.
(12) 85-0730—Conquest Exploration Company's proposed acquisition of assets of Royal Dutch Petroleum Company.	Do.
(13) 85-0720—Leon Hess' proposed acquisition of votnig securities of Amerada Hess Corporation.	June 24, 1985.
(14) 85-0733—The Northwestern Mutual Life Insurance Company's proposed acquisition of assets of Royal Dutch Petroleum Company.	Do.
(15) 85-0670—Temple-Inland, Inc.'s proposed acquisition of voting securities of National Fidelity Life Insurance Company (General Electric Company, UPE).	June 25, 1985.
(16) 85-0697—Revco D. S., Inc.—proposed acquisition of Carls Drug Co., Inc. (I C Industries, Inc., UPE).	Do.
(17) 85-0708—Chrysler Corporation's proposed acquisition of voting securities of Mitsubishi Motors Corporation (Mitsubishi Heavy Industries, Ltd., UPE).	Do.
(18) 85-0712—Xerox Corporation's proposed acquisition of voting securities of Assurance Life Company (Business Men's Assurance Company of America, UPE).	Do.
(19) 85-0713—Consolidated Oil & Gas Inc.'s proposed acquisition of assets of Petro Lewis Corporation.	Do.
(20) 85-0722—The Union Corporation's proposed acquisition of voting securities of Transworld Systems, Inc. (Floyd Watkins, UPE).	Do.
(21) 85-0737—Oy W. Rosenlew Ab. (W. Rosenlew, Ltd.) proposed acquisition of voting securities of Poly-Pac Incorporated (Harold M. Shapiro, UPE).	Do.
(22) 85-0646—Heritage Communications, Inc.'s proposed acquisition of assets of Dakota Broadcasting Co. and Dakotaland Broadcasting Co. (Sherwood L. Corner, UPE).	June 26, 1985.
(23) 85-0662—Heritage Communications, Inc.'s proposed acquisition of assets of Dakota Broadcasting Co. and Dakotaland Broadcasting Co. (Gilbert D. Moyle, UPE).	Do.
(24) 85-0682—Cargill, Inc.'s proposed acquisition of Wrightco, Inc. (James Ridgeway, UPE).	Do.
(25) 85-0683—American Family Corporation's proposed acquisition of voting securities of WITN-TV, Inc.	Do.
(26) 85-0695—British Petroleum Company, p.l.c.'s proposed acquisition of assets of the Polyolefin and Vinyl Material Division (Reichhold Chemicals, Inc., UPE).	June 27, 1985.
(27) 85-0715—Washington National Corporation's proposed acquisition of voting securities of United Presidential Corp.	Do.

Transaction	Waiting period terminated effective
(28) 85-0727—Zenith National Insurance Corporation's proposed acquisition of assets of Cal-Farm Insurance Company and voting securities of Cal-Farm Life Insurance Company (California Farm Bureau Federation, UPE).	Do.
(29) 85-0735—Dalgety PLC's proposed acquisition of voting securities of Gill & Duffus Group PLC.	Do.
(30) 85-0739—Flying J. Corporation (Osborne Jay Call's proposed acquisition of voting securities of RMT Properties, Inc. and Husky Pipeline Company (Nova and Alberta Corporation, UPE).	Do.
(31) 85-0780—First Federal Saving and Loan Association of Austin, of assets of certain branches of University Savings Association (Entex, Inc., UPE).	Do.
(32) 85-0701—Transco Energy Company's proposed acquisition of assets of Paramont Coal Company.	June 25, 1985.
(33) 85-0703—Commonwealth Savings Association's proposed acquisition of voting securities of General Electric Mortgage Company (General Electric Company, UPE).	June 28, 1985.
(34) 85-0724—Elsevier—NDV N.V.'s proposed acquisition of voting securities of Gordon Publications, Inc. (Theodore E. Gordon, UPE).	Do.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 85-16587 Filed 7-11-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 5, 1985.

Social Security Administration

Subject: Beneficiary Information Report—SSA-9585—Extension (0960-0111)
Respondents: State mental institutions which serve as representative payees
Subject: Application for Lump-Sum Death Payment—SSA-8—Revision (0960-0013)
Respondents: Individuals
Subject: Health Insurance Information Request—SSA-8019-U2—Revision (0960-0323)
Respondents: Individuals
OMB Desk Officer: Judy A. McIntosh

Public Health Service

Food and Drug Administration

Subject: Administrative Detention Recordkeeping Requirements—Revision (0910-0114)
Respondents: Businesses
Subject: Hearing Aid Devices, Professional and Patient Labeling and Conditions for Sale—Revision (0910-0171)
Respondents: Businesses or other for-profit institutions, small businesses or organizations
OMB Desk Officer: Bruce Artim

Health Resources and Services Administration

Subject: Application for Assignment of Health Manpower by the National Health Service Corps—Reinstatement (0915-0010)
Respondents: State/local governments, non-proift institutions

Alcohol, Drug Abuse and Mental Health Administration

Subject: Annual Census of Patient Characteristics in State and County Mental Hospital Inpatient Services—1985—Reinstatement (0930-0093)
Respondents: State/local governments
Subject: Costs Outcome Research Methodology for the Chronically Mentally Ill—New
Respondents: State/local governments

Centers for Disease Control

Subject: Dioxin Morbidity and Reproductive Study of U.S. Chemical Workers—New
Respondents: Individuals or households
OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: Claims Processing Assessment System Plan—HCFA-495—New
Respondents: State/local governments
Subject: Report on Provider Participation in the Medicaid Program—HCFA-350—Reinstatement (0938-0262)
Respondents: State/local governments
OMB Desk Officer: Fay S. Iudicello

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503, ATTN: (name of OMB Desk Officer).

Dated: July 8, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-16500 Filed 7-11-85; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

Project Grants for Preventive Health Services; Sexually Transmitted Diseases Professional Education; Availability of Funds for Fiscal Year 1986

Introduction

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1986 for a Project Grant for Sexually Transmitted Diseases (STD) Professional Education to be funded under the Sexually Transmitted Diseases Research, Demonstrations, and Public and Professional Education Grant Program. The Catalog of Federal Domestic Assistance Number is 13.978. This program is authorized by section 318(b) of the Public Health Service Act, as amended (42 U.S.C. 247c(b)). Regulations governing Grants for Sexually Transmitted Diseases Research, Demonstration, and Public and Professional Education (formerly Venereal Disease Research, Demonstrations, and Public Information and Education) are codified in Part 51b at Subparts A and F of Title 42, Code of Federal Regulations.

Purpose

The objectives of the program of grants under section 318(b) of the Public Health Service Act are to develop, improve, and evaluate methods for the prevention and control of STD through demonstrations and applied research; to develop, improve, apply, and evaluate methods and strategies for public information and education about STD; and to support particularly deserving STD public and professional education programs. The professional education objective is the purpose of this announcement. It is designed to meet the 1990 Objective for the Nation which states that 95 percent of health providers seeing suspected cases of STD will be capable of diagnosing and treating all diseases and syndromes that fall within that definition. This will be accomplished primarily by training health department STD clinicians, but

also by updating the STD knowledge of private sector practitioners, by educating physicians-in-training to whatever extent their curricula permit, and by demonstrating quality standards for the care of patients with STD. The achievement of the 1990 objective to improve clinical capability and the other objectives to reduce STD cases and complications are mutually dependent and are national in scope. Therefore, it is necessary to assure that this training initiative is coordinated effectively with the basic control components of the local STD program. It must also be coordinated with CDC to assure that the total training environment represents a national model, that training is consistent with guidelines and is uniform nationwide, and that course offerings can be broadly publicized by CDC. The objective of this specific grant offering is to establish a comprehensive STD Prevention/Training (P/T) Center to serve the clinical training needs primarily of STD clinicians from the East Central part of the United States.

Eligible Applicants

Eligible applicants are the official State or local health agencies in Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. Awards will be limited to applicants who meet the following minimum requirements:

1. Plan to locate the P/T Center in a health department clinic that:

a. Is dedicated to the diagnosis and treatment of STD patients,

b. Serves an average of at least 300 patients per 40 weekly service hours, and

c. Serves patients of sufficient demographic variety and morbidity to support and stimulate the learning process.

2. Have at least one university school of medicine in the vicinity and provide evidence of support, experience, and a firm interest in participating from such a local institution.

3. Provide assurance that a full schedule of training activities will continue without interruption if the award is made to an existing P/T Center, or if a new P/T Center is created as a result of this announcement, training will begin within 180 days of the date of grant award.

4. Provide evidence of their capability of adhering to the CDC document entitled "Quality Assurance Guidelines for STD Clinics, 1982" (Clinic QAG) in providing diagnostic and treatment services, and to applicable portions of the CDC document entitled "STD Prevention/Training Center Curriculum Guidelines and Performance Standards for STD Clinical Training" (P/T Center Guidelines) in the training of health personnel prior to beginning any training activities.

Availability of funds

Approxmately $220,000 will be available for Fiscal Year 1986 to fund one new grant award. It is expected that the initial grant will begin on or about November 1, 1985, and will be funded for 12 months in a 2- to 5-yea project period. Continuation awards within the project period will be made on the basis of satisfactory progress in meeting project objectives, compliance with the P/T Center Guidelines and the Clinic QAG, or future updates thereof, and on the availability of funds. The funding estimate outlined above may vary and is subject to change.

Use of Funds

Funds will not be awarded for the purchase or lease of land or buildings or for the construction of a facility. Except where another agency normally houses the public STD clinic, the P/T Center should be located in the health department facility. funds will not be awarded to renovate existing space, without adequate justification, including appropriate detailed diagrams, reliable estimates of cost, and a realistic projection of the time required for completion.

Reporting Requirements

Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Guidelines for Application Narrative

Applications must include a narrative which, in addition to the minimum requirements for an eligible application as stated above, details the following: (1) Evidence that the State/local health department is willing to work toward meeting STD 1990 Objectives for the Nation; (2) evidence that the training component of this project will function in concert with the operating STD clinic and STD intervention outreach components of the local control program; (3) long- and short-term objectives of the proposed training which address the applicant's expected role over the project period in meeting the 1990 Objectives for the Nation and which establish the applicant's anticipated training accomplishments for the initial budget period; (4) the activities and methods which will be employed to accomplish the objectives, (including relationships, responsibilities, and procedures that ensure the P/T Center functions according to the Clinic QAG and the P/T Center Guidelines); (5) a description of the existing medical school-health department liaison activities needed to develop and implement clinical training; (6) an evaluation plan which will help determine if the methods are effective and the objectives are being achieved; (7) a budget with justification; and (8) any other information which will support the request for assistance.

Review and Evaluation Criteria

Grant applications will be reviewed and evaluated based on the evidence submitted which specifically describes (with documentation and attachments) the applicant's ability to meet the following criteria:

1. The applicant conveys a satisfactory commitment from the State/local health department administration toward meeting STD 1990 Objectives for the Nation, and specifically, that objective related to the preparation of STD clinicians to adequately diagnose and treat STD, and to conduct such noninvasive STD research that may be feasible and which will not conflict with other program priorities.

2. The applicant satisfactorily describes how the P/T Center corresponds to the needs, plans, and objectives of the State/local STD Program; how the P/T Center activities will be effectively coordinated with the basic control components of the local STD program; and how both will be coordinated with CDC to assure that the total training environment represnts a national model.

3. The applicant's expected role over the projec period in meeting STD 1990 Objectives for the Nation and anticipated training accomplishments for the initial budget period are satisfactorily addressed in the long- and short-term objectives.

4. The applicant adequately assures that STD diagnostic and treatment services will be provided principally in accordance with the Clinic QAG, in particular:

a. There will be adequate space and staff to accommodate patient volume.

b. There will be at least 5 days of full clinical services provided (a minimum of 35 registration hours during a minimum of 40 patient service hours, including at least one evening or Saturday session each week) with no interim daily shutdowns.

c. Clinic management responsibility will be assigned to one person with clinical and/or administrative skills and experience.

d. Diagnosis and treatment will be provided for most STD and their syndromes (e.g., syphilis, gonorrhea, nongonococcal urethritis, pelvic inflammatory disease, herpes, trichomoniasis, human papilloma virus, scabies, etc.).

e. A nurse clinician or nurse clinician and physician assistant model of care will be used with a physician available on-site for consultation.

f. An integrated flow will be used which minimizes the number of patient stops and the amount of patient waiting time.

g. Patients will be seen, regardless of sex, by the next available clinician.

h. Confidentiality will be observed during both patient registration and patient care service delivery.

i. A standardized (e.g., "checkoff"), fully auditable, STD medical record will be employed.

j. There will be an on-site laboratory facility which offers a range of immediately available (stat) tests for commonly seen STD.

k. There will be quality assurance procedures through which clinical care is audited systematically and the proficiency of laboratory activities are assessed periodically through smear/culture and serologic test correlations.

l. CDC diagnostic guidelines will be used (e.g., bimanual examinations for women, complete genital examinations for males).

m. The policies and procedures of the STD clinic will harmoniously complement the activities of the disease intervention outreach component of the program.

n. CDC recommended treatment schedules will be used.

5. The applicant adequately assures that the development and operation of the clinical training component of the proposed P/T Center will be according to the P/T Center Guidelines, in particular:

a. There will be adequate training space for clinical courses and assurances that it will be available for all scheduled courses.

b. Classroom space will be adequately furnished and equipped.

c. A P/T Center Coordinator will be identified or provided for through a proposal to create and fill such a position.

d. A clerical resource will be identified and available on-site to assist the P/T Center Training coordinator or will be provided for through a proposal to create and fill such a position.

e. The curricula will be developed according to P/T Center Guidelines.

f. The clinic and stat laboratory practicum will be structured such that participants are provided an opportunity to demonstrate their clinical skills under the supervision of P/T Center personnel by performing STD examinations on patients and practicing STD stat laboratory procedures.

g. There will be an evaluation of student and medical school teaching faculty performance.

h. A minimum of 400 hours of instruction will be provided annually to P/T Center students which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described by the P/T Center Guidelines.

i. The medical school personnel will play a dominant role in classroom training.

6. There is a commitment in principle from a local university medical school to participate with the applicant in the establishment of a P/T Center which addresses the following:

a. Part of the time of a liaison/coordinating person (a physician, preferably a physician in the second or third year of a fellowship) with the expense of medical school faculty instructional services being covered by the most cost-effective mechanism possible.

b. The medical school's participation in the development of curriculum that is governed by the P/T Center Guidelines.

c. A minimum of 400 hours of instruction that will be provided annually which consists of at least six "core" courses (two of which are "Comprehensive"), and two different types of course offerings, as described in the P/T Center Guidelines.

d. Faculty assistance from the medical school in clinic practicum through the use of residents or fellows.

e. The medical school's reinforcement of the provisions of the Clinic QAG during curriculum development, instruction, and precepting clinic practicum.

f. The medical school's arrangement for medical students, accompanied by faculty preceptors, to rotate through the center for training and clinic practicum.

7. The applicant provides a satisfactory evaluation plan which will help determine if the methods are effective and the objectives are being achieved.

8. The budget request is clearly explained, adequately justified, reasonable, cost-effective, and consistent with the intended use of grant funds.

9. The site of the proposed P/T Center is sufficiently near to major highways that accessibility by car is a reasonable option (since driving has been the common mode of travel used by people in the area to attend these courses).

10. The location of the proposed P/T Center is convenient to restaurants and reasonable hotel/motel accommodations and accessible through a local ground transportation system from an airport.

Site visits may also be made in connection with the review of applications.

Application Information

The original and two copies of the application must be submitted to Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, on or before 4:30 p.m. (e.d.t.) on August 23, 1985.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or,

2. Sent on or before 4:30 p.m. (e.d.t.) on August 23, 1985, and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

C. *Review Requirements:* Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

D. *Where to Obtain Additional Information:* Information on application procedures, copies of application forms, and other material may be obtained from Betty Feeley, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, or by calling (404) 262-6575 or FTS 236-6575. Technical assistance may be obtained from Cheryl A. Blackmore, Division of Sexually Transmitted Diseases, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333.

telephone (404) 329–2558 or FTS 236–2558.

Dated: July 8, 1985.

Robert L. Foster,

Assistant Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 85–16556 Filed 7–11–85; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 85C–0283]

Optacryl, Inc.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Optacryl, Inc., has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Violet No. 2 as a color additive in contact lenses.

FOR FURTHER INFORMATION CONTACT: Mary J. Stephens, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 706(d)(1), 74 Stat. 402–403 (21 U.S.C. 376(d)(1))), notice is given that a petition (CAP 5C0190) has been filed by Optacryl, Inc., 2890 South Tejon, Englewood, CO 80110, proposing that Part 74 (21 CFR Part 74) be amended to provide for the safe use of D&C Violet No. 2, as a color additive in contact lenses.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 3, 1985.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85–16555 Filed 7–11–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 85M–0253]

Hoffman-La Roche, Inc.; Premarket Approval of the CEA-Roche® EIA

Correction

In FR Doc. 85–14073 beginning on page 24704 in the issue of Wednesday, June 12, 1985, make the following correction:

On page 24705, first column, **DATE,** "June 12, 1985" should read "July 12, 1985".

BILLING CODE 1505–01–M

Public Workshop; Serologic Test for Antibody to Human T-Lymphotropic Virus Type III (HTLV–III)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a forthcoming public workshop to discuss the data available from blood banks voluntarily testing donor blood using the recently licensed serologic test for antibody to human T-lymphotropic virus type III (HTLV–III). New developments in performing the antibody to HTLV–III test and viral detection tests also will be discussed. HTLV–III is believed to be the etiologic agent of acquired immunodeficiency syndrome (AIDS).

DATE: The Workshop will be held on July 31, 8:30 a.m. to 5 p.m.

ADDRESS: The workshop will be held at the Jack Masur Auditorium, Warren Grant Magnuson Clinical Center, Bldg. 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: Isaac F. Roubein, Center for Drugs and Biologics (HFN–32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4696.

SUPPLEMENTARY INFORMATION: The Centers for Disease Control, the National Institutes of Health, and FDA will sponsor the workshop to discuss (1) experience gained by blood and plasma collection establishments from voluntary use of the serologic test for antibody to HTLV–III, (2) correlation between laboratory and epidemiological findings, (3) new developments in HTLV–III testing, and (4) issues concerning donor notification of test results. Presentations will be made by invited research scientists and by representatives of blood and plasma collecting groups, the sponsoring organizations, and industry. The workshop will be open to the public.

Requests for information on the workshop should be directed to Isaac F. Roubein (address above).

Dated: July 10, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–16675 Filed 7–10–85; 10:06 am]

BILLING CODE 4160–01–M

Health Resources and Services Administration Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following national advisory body scheduled to meet during the month of August 1985:

Name: Task Force On Organ Transplantation

Date and Time: August 6, 1985, 8:30 a.m.

Place: Shoreham Hotel, 2500 Calvert Street & Connecticut Avenue, NW., Washington, DC 20008.

The entire meeting is open to the public.

Purpose: The Task Force on Organ Transplantation is required to conduct comprehensive examinations of the medical, legal, ethical economic, and social issues presented by human organ procurement and transplantation; including an assessment of immunosuppressive medications used to prevent organ rejection in transplant patients. Reports on these issues are required to be submitted to the Department of Health and Human Services and the Congress later this year.

Agenda: Discussion and adoption of the Task's Force report on immunosuppressive therapies; status reports on activities of the Task Force relating to issues such as organ donation/procurement/education and networking; and a discussion of advantages and disadvantages of designating centers that can perform transplants.

Public comment will begin at 3:30 p.m. Anyone wishing to make a statement, please notify Linda D. Sheaffer, Executive Director, so that these may be scheduled.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Ms. Linda D. Sheaffer, Executive Director, Office of Organ Procurement and Transplantation, Office of the Administrator, Health Resources and Services Administration, Room 17–60, Parklawn Building, 5600 Fishers Lane,

Rockville, MD 20857, telephone (301) 443-5911.

Agenda items are subject to change as priorities dictate.

Dated: July 9, 1985.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 85-16591 Filed 7-11-85; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health Division of Research Resources; Biotechnology Resources Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biotechnology Resources Review Committee (BRRC), Division of Research Resources (DRR), July 17, 1985, Conference Room 6, Building 31, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205.

This meeting will be open to the public on July 17 from 9:00 a.m. to approximately 12:15 p.m. for comments from the Director, DRR, and the Director, Biomedical Research Technology Program (BRTP), and an update on activities in the Program. There will also be presentations on the results of a series of workshops on Biological Models, and on a recent report on instrument needs in the biological sciences. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 1:00 p.m. to adjournment on July 17 for the review, discussion, and evaluation of individual research grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. James Augustine, Information Officer, Division of Research Resources, Bldg. 31, Rm. 5B-10, National Institutes of Health, Bethesda, MD 20205, (301) 496-5545, will provide a summary of the meeting and a roster of committee members. Dr. Charles L. Coulter, Executive Secretary, Biotechnology Resources Review Committee, Division of Research Resources, Bldg. 31, Rm. 5B-41, National Institutes of Health, Bethesda, MD 20205, (301) 496-5411, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.371, Biotechnology Research, National Institutes of Health)

Dated: July 1, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85-16565 Filed 7-11-85; 8:45 am]

BILLING CODE 4140-01

National Cancer Institute; Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, July 18-19, 1985, Building 31C, Conference Room 9, Bethesda, Maryland 20205. This meeting will be open to the public on July 18, from 8:30 a.m. to 9:00 a.m., to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 18, from approximately 9:00 a.m. until recess, and July 19, from 8:30 a.m. to adjournment for the review, discussion and evaluation of contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeeting and rosters of committee members, upon request.

Dr. Wilna A. Woods, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 807, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7153) will furnish substantive program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-16566 Filed 7-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Cancer Preclinical Program Project Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Preclinical Program Project Review Committee, National Cancer Institute, National Institutes of Health, July 30-31, 1985, Linden Hill Hotel, 5400 Pooks Hill Road, Bethesda, Maryland 20814. This meeting will be open to the public on July 30, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on July 30 from approximately 9:30 a.m. to recess; and on July 31 from 8:30 a.m. to adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Edwin M. Bartos, Executive Secretary, Cancer Preclinical Program Project Review Committee, National Cancer Institute, Westwood Building, Room 836, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7565) will furnish substantive program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-16567 Filed 7-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, August 16, Building 31, Conference Room 7, Bethesda, Maryland 20205. This

meeting will be open to the public on August 16, from 8:30 A.M. to 9:00 A.M. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on August 16 from 9:00 A.M. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7575) will provide program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-16568 Filed 7-11-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Institute; Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, September 13, Building 31, Conference Room 9, Bethesda, Maryland 20205. This meeting will be open to the public on September 13, from 8:30 A.M. to 9:00 A.M. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on September 13 from 9:00 A.M. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, diclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20205 (301/496-7575) will provide program information.

Dated: July 1, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-16569 Filed 7-11-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-85-1519; FR-1959]

Extension of Time for Applications To Participate in the HUD Multifamily Urban Homesteading Demonstration Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Solicitation of Proposals from Eligible Applicants to Participate in a Multifamily Urban Homesteading Demonstration Program.

SUMMARY: HUD solicited Letters-of-Intent from localities for participation in a Multifamily Urban Homesteading Demonstration Program by Notice published in the **Federal Register** of April 16, 1985 (50 FR 14987). Because the Department received fewer Letters-of-Intent than expected in reponse to the April 16, 1985 Notice, this Notice is being published to inform prospective applicants that the solicitation period has been extended until July 26, 1985.

DATE: Letter-of-Intent due date—Two copies of the Letter of Intent to participate in the Multifamily Urban Homesteading Demonstration Program must be received or postmarked by 5:00 p.m., July 26, 1985.

ADDRESSES: One copy of the Letter of Intent shall be submitted to the Director, Office of Community Planning and Development (CPD), in the Field Office having jurisdiction over the applicant. A second copy shall be addressed to HUD Headquarters, at the address listed under **"FOR FURTHER INFORMATION CONTACT."**

FOR FURTHER INFORMATION CONTACT: Richard R. Burk, Director, Urban Homesteading Program, Room 7168, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Telephone number (202) 755-5324. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information supplied here is a brief recapitulation of the "Supplementary Information" printed in the April 16, 1985 Notice, which describes the Multifamily Urban Homesteading Demonstration Program in greater detail. Readers are therefore reminded that this summary is only provided as a quick reference souce and that they should consult the April 16, 1985 "Supplementary Information" for a full description of the program.

Summary of April 16, 1985 Notice

Under the Multifamily Urban Homesteading Demonstration Program, HUD will award up to $3 million of section 810 Urban Homesteading funds to approximately 10 localities to purchase HUD-owned (formerly FHA-insured) multifamily projects. Other multifamily projects purchased or already owned by localities are eligible for the Demonstration; however, section 810 funds cannot be used to reimburse localities for purchasing such properties. The program is intended to demonstrate the feasibility of local government's assisting lower income tenants in acquiring and rehabilitating multifamily projects for homeownership. It is also hoped that the success of this program will create a body of experienced local administrators and be an incentive for other local governments to develop similar programs.

As the April 16, 1985 Notice explained, a prototype Multifamily Urban Homesteading program was federally funded in 1977 in New York City. The lessons learned from the New York model were applied to a similar program that was extended the following year to several other cities. In 1979, the section 510 program, which created homeownership opportunities for lower income families by rehabilitating and converting multifamily properties to cooperatives and condominiums, was begun in New

York City and later expanded to other cities.

With the experience gained from these programs, HUD would like to test other approaches to multifamily homeownership, while giving local governments a further opportunity to acquire knowledge about these programs. In this regard, HUD will use this program to test the feasibility of a variety of homeownership options such as cooperatives (including Limited Equity Cooperatives, Leased Cooperatives and Syndicated Cooperatives), condominiums, and mutual housing associations. Three types of financing models—the split subsidy or tenant-based subsidy model, the internal subsidy model, and the project-based subsidy model—will also be tested in this Demonstration.

Any unit of general local government, as defined in 24 CFR part 590, is eligible to participate in the Multifamily Urban Homesteading Program. Interested localities may obtain lists of HUD-owned multifamily projects from the property disposition staff of the HUD Field Office having jurisdiction over the locality.

For further information, readers are again encouraged to consult the April 16, 1985 Notice which sets out, among other things, program provisions relating to eligible occupants, funding allocation, mandatory criteria for program acceptability, and compliance with statutory requirements and with other HUD housing assistance programs. That Notice also details the requisite contents of a Letter of Intent submitted by a locality to signify its intention to participate in the Demonstration program. Also set forth in detail in that Notice are the requirements that a selected applicant's program application must meet to be funded under the Demonstration program.

Other Matters

Under 5 U.S.C. 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities because of the limited funding level of the Demonstration and the anticipated selection of only approximately 10 applicants.

Paperwork Reduction Act

The information collection requirement contained in this Notice was submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and has been assigned OMB Control Number 2506–0083. Approval for this information collection will expire on April 30, 1986.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50. A copy of this Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

The Catalog of Federal Domestic Assistance program number and title are 14.222, Urban Homesteading.

Authority: Sec. 810(b) of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 3, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85–16598 Filed 7–11–85; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) 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 Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: 1985 Survey of Fishing, Hunting, and Wildlife-Associated Recreation.

Abstract: The Census Bureau will gather information for the U.S. Fish and Wildlife Service about fishing, hunting, and wildlife related activities in the United States, which will be used by Federal, State and Service administrators to formulate resource management plans.

Form Number(s): FH–2, FH–3, FH–4, FH–1(L), and FH–5(L).

Frequency: Once every five years.

Description of Respondents: Anglers, hunters, and noncomsumptive wildlife users over age 16.

Annual Responses: 158,200.

Annual Burden Hours: 49,485.

Service Clearance Officer: Arthur J. Ferguson, telephone 202–653–7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated: June 28, 1985.

James C. Leupold,

Acting Assistant Director—Planning and Budget.

[FR Doc. 85–16642 Filed 7–11–85; 8:45 am]

BILLING CODE 4310-55-M

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) 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 Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202–395–7313.

Title: Application for Economic and Public Use Permit and Surveys.

Abstract: Economic and public use of the natural resources of wildlife areas is allowed by permit only. Application data enables the Service to establish applicant's eligibility, priority, and terms necessary for resource protection. Survey data is used to manage wildlife populations, assess visitor use and trends for management and planning purposes.

Form Number: 3–2001 (Refuge Fur Trapping Permit Application). No specific form is required for other applications.

Frequency: Annually.

Description of Respondents: Individuals and households, small business or organizations and farms.

Annual Responses: 256,842.

Annual Burden Hours: 20,446.

Serivce Clearance Officer: Arthur J. Ferguson, 202–653–7499, Room 859, Riddell Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

Dated: June 28, 1985.

Walter R. McAllester,

Acting Associate Director—Wildlife Resources.

[FR Doc. 85-16643 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[F-14857-A2, F-14857-B2]

Alaska Native Claims Selection; Gwitchyaazhee Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of secs. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1611 (1976), will be issued to Gwitchyaazhee Corporation for approximately 41,288 acreas. The lands involved are within T. 22 N., R. 11 E. and T. 22 N., R. 13 E., Fairbanks Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the TUNDRA TIMES. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until August 12, 1985 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85-16647 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-JA-M

[F-84742]

Proposed Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Air Force proposes to withdraw approximately 3,630 acres of public land necessary for military purposes at Beaver Creek Research Site. This notice closes the land for up to 2 years from appropriation under the public land laws including mining and mineral leasing.

DATE: Comments must be received on or before October 10, 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, BLM Alaska State Office, 701 C Street, Box 13, (907) 271-5060.

On February 27, 1985, the U.S. Army Corps of Engineers filed an application for the Department of the Air Force to amend Public Land Order (PLO) 5164 of February 28, 1972, and withdraw the following described lands from all forms of appropriation under the public land laws, including the mining and mineral leasing laws.

Copper River Meridian (Surveyed)

T. 15 N., R. 19 E.,
- Sec. 14, W½E½, W½, excluding PLO 5164;
- Sec. 15, E½;
- Sec. 20, E½SE¼;
- Sec. 21, S½N½NE¼ and S½N½ and S½, excluding PLO 5164;
- Sec. 22, excluding PLO 5164;
- Sec. 23, S½NE¼, NW¼ and S½, excluding PLO 5164;
- Sec. 24, W½SW¼;
- Sec. 25, NW¼NW¼;
- Sec. 26, NE¼, E½NW¼, NW¼NW¼;
- Sec. 27, N½N½NE¼, NE¼NE¼NW¼, SW¼, excluding PLO 5164, W½W½S E¼;
- Sec. 28, N½NE¼, excluding PLO 5164, E½W½E½SW¼NE¼, E½E½ SW¼NE¼, excluding PLO 5164, SE¼NE¼, N½NW¼, excluding PLO 5164, N½SW¼NW¼, NW¼SE¼NW¼, W½W½NE¼SE¼NW¼, NE¼SE¼ and E½NW¼SE¼, excluding PLO 5164, E½W½NW¼SE¼, E½W½W½NW¼S E¼, SE¼SE¼, excluding PLO 5164;
- Sec. 29, NE¼NE¼;
- Sec. 33, N½NE¼, N½SW¼NE¼, SE¼SW¼NE¼, SE¼NE¼, N½NE¼S E¼;
- Sec. 34, W½W½NE¼, NW¼, excluding PLO 5164, N½N½SW¼.

The area described contains approximately 3,630 acres.

The purpose of the withdrawal is to add approximately 3,630 acres to approximately 425 acres previously withdrawn as Beaver Creek Air Force Research Site under PLO 5164, for an aggregate of 4,055 acres.

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 a written 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 premitted 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, and the segregation shall not have the effect of authorizing any use of the lands by the applicant agency.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 85-16557 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-JA-M

Joint Winnemucca/Carson City District Advisory Council; Meeting and Tour

Notice is hereby given in accordance with Pub. L. 92-463 that a joint meeting and tour of the Winnemucca and Carson City District Advisory Councils will be held on September 3 and 4, 1985. The meeting will be from 3:00 p.m. to 5:30 p.m. on September 3, 1985 in the Banquet Room of the Windmill Cafe, 915 Cornell Avenue, Lovelock, Nevada, 89419. The tour will be conducted on Pershing County, Winnemucca District, on September 4, 1985, commencing at the Windmill Cafe in Lovelock at 7:30 a.m. and ending at the Windmill Cafe at 3:00 p.m.

The agenda for the meeting on September 3 will include:

(1) Update—Winnemucca and Carson City Districts.

(2) Election of officers—Winnemucca and Carson City Districts.

(3) Mining and mineral development in Pershing County.

The meeting and tour is open to the public. Interested persons may make oral statements to the Councils at 4:00 p.m. on September 3, 1985 or file written statements for the Councils' consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada, 89445 by August 20, 1985. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the respective District Offices and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: July 5, 1985.

Frank C. Shields,

District Manager.

[FR Doc. 85-16648 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-HC-M

[AA-5964]

Termination of Proposed Withdrawal and Reservation of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregative effect of a proposed withdrawal and reservation of lands requested by the United States Forest Service, Department of Agriculture, for the recreational and scenic enjoyment of the traveling public, near Sunrise, Alaska.

EFFECTIVE DATE: July 12, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Jane Clawson, 701 C Street, Box 13, Anchorage, Alaska 99513. Phone (907) 271-3240.

Notice of a proposed withdrawal and reservation of lands for the United States Forest Service, Department of Agriculture, was published in the **Federal Register** on March 25, 1971, Volume 36, No. 58, Page 5624, Document No. 71-4033 and republished on November 16, 1979, Volume 44, No. 223, Page 66078, Document 79-35306. The purpose of the application, serial number AA-5964, was for protection of the recreational and scenic values along a portion of the Hope Highway within the Chugach National Forest.

On July 2, 1984, the Forest Service requested that a portion of its original application be deleted and the segregation order be terminated.

Therefore, the segregative effect of the proposed withdrawal on the following described lands is hereby terminated:

Beginning at the boundary of the Sunrise Townsite Elimination at approximately mile 7.0 of the Hope Highway thence south along Sixmile Creek to the section line between Secs. 15 and 22, T. 9 N., R. 1 W., Seward Meridian; said withdrawal being a strip of land lying between the east bank of Sixmile Creek and 200 feet west of the centerline of the Hope Highway, containing approximately 185 acres more or less.

This order does not otherwise affect the status of the lands, and they remain subject to other withdrawals of record.

Mary Jane Clawson,

Chief, Branch of Lands.

[FR Doc. 85-16654 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-JA-M

[CA 7075 WR, CA 7575 WR, SAC 067221 WR]

California; Proposed Continuation of Withdrawals

July 3, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Mid-Pacific Region, proposes that three land withdrawals, aggregating approximately 1,031 acres for the Solano Project continue for an additional 50 years. The land will remain closed to surface entry and mining, but have been and will remain open to mineral leasing.

DATE: Comments should be received by October 10, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: A. Pack-Lovelace, California State Office, (916) 484-4431.

The Bureau of Reclamation proposes to continue three existing withdrawals of land for a period of 50 years pursuant to the provisions of section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The withdrawals are described as follows:

Mount Diablo Meridian

CA 7075 WR

Bureau of Land Management Order of February 27, 1952

T. 7 N., R. 3 W.,
Sec. 2, SE¼NE¼;
T. 8 N., R. 3 W.,
Sec. 35, NE¼NE¼;
T. 8 N., R. 4 W.,
Sec. 1, fractional portion SE¼NE¼;
T. 9 N., R. 4 W.,
Sec. 4, Lots 8, 9, 10, and 13 to 16 inclusive;
Sec. 20, SE¼NE¼.

The areas described aggregate 390.94 acres in Napa County.

CA 7575 WR

Bureau of Land Management Order of October 2, 1947

T. 9 N., R. 4 W.,
Sec. 3, Lots 2, 3, S½NW¼, and SW¼;
Sec. 4, Lots 5, 6, 7, 11, 12, 17 and 18.

The areas described aggregate 599.75 acres in Napa County.

SAC 067221 WR

Public Land Order 2706 of June 15, 1962

T. 8 N., R. 3 W.,
Sec. 26, SE¼NE¼.

The area described contains 40.00 acres in Napa County.

The purpose of the withdrawals is to protect lands for the Solano Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-16653 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Availability; Finding of No Significant Impact for the Draft General Management Plan/Development Concept Plan and Environmental Assessment, and Draft Land Protection Plan; Chaco Culture National Historical Park, New Mexico

Pursuant to the National Environmental Policy Act of 1969, Title 40 of the Code of Federal Regulations, Chapter 1 of Title 36 of the Code of Federal Regulations, the final interpretive rule for Preparation of Land Protection Plans printed in the Federal Register on May 11, 1983 (48 FR 21121), and section 506 of Pub. L. 96-550, the National Park Service has prepared a Finding of No Significant Impact for the Draft General Management Plan/Development Concept Plan and Environmental Assessment, and the Draft Land Protection Plan, for Chaco Culture National Historical Park, McKinley and San Juan Counties, New Mexico.

The Draft General Management Plan/Development Concept Plan and Environmental Assessment, and the Draft Land Protection Plan, were placed on public review from the publication date of a Notice of Availability in the Federal Register, on October 5, 1984, through November 29, 1984, and a Public Meeting was held on November 1, 1984, in Albuquerque, New Mexico. Based on public review comments received and on management decisions, a Finding of No Significant Impact has now been completed. The National Park Service is adopting the proposals described in the draft plans, to expand visitor services and programs at Chaco Culture National Historical Park to meet the needs of increasing visitation for the next 10-year period, and to provide for protection and management of 13,205 acres added to the park by Pub. L. 96-550 in December 1980.

It is the conclusion of the National Park Service that the proposals are not a major Federal action that will significantly affect the human environment. Therefore, an environmental impact statement will not be prepared. The National Park Service will proceed with Development of the final General Management Plan/Development Concept Plan and Land Protection Plan for implementation.

Copies of the Finding of No Significant Impact are available from Chaco Culture National Historical Park, Star Route 4, Box 6500, Bloomfield, New Mexico 87413; and the National Park Service, Southwest region, Post Office Box 728, Santa Fe, New Mexico 87501, and will be sent upon request.

Dated: July 2, 1985.

Robert Kerr,

Regional Director, Southwest Region

[FR Doc. 85-16602 Filed 7-11-85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Application; Ganes Chemicals, Inc.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 21, 1985, Ganes Chemicals Inc., Lessee of Siegfried Chemical, Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Methadone (9250)	II
Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane (9254)	II
Dextropropoxyphene (9273)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than August 12, 1985.

Dated: July 3, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-16594 Filed 7-11-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment Standards Administration

Advisory Committee on Sheltered Workshops; Meeting

A meeting of the Advisory Committee on Sheltered Workshops will be held in the Frances Perkins Building, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. on August 15 and 16 starting at 8:30 a.m. in room S4215. Various subcommittees will meet on August 14 starting at 8:30 a.m. in room N3437.

The mission of the Advisory Committee is to provide guidance to the Department regarding the administration and enforcement of the Fair Labor Standards Act and other Federal minimum wage laws as they relate to the employment of handicapped individuals with impaired productivity at special lower minimum wages in sheltered workshops, hospitals, or institutions.

The following subcommittees are tentatively scheduled to meet on August 14:

8:30 a.m.

Education and Training (N3437A)
Prevailing Wages (N3437B)
Patient Worker (N3437C)

10:30 a.m.

Piece Rates and Standard Productivity Schedules (Na3437A)
Application Forms (N3437B)

1:15 p.m.

State Liaison (N3437A)
Compliance Activities (N3437B)

The agenda items to be considered by the Advisory Committee include the following:

—Reports of the various subcommittees listed above;
—The Washington State Pilot Project which provides for on-the-job evaluation of handicapped individuals in competitive industry;
—The impact of the Supreme Court's decision in *Garcia* v. *San Antonio Metropolitan Transit Authority et al.* 105 S. Ct. 1005 on State and local government-operated sheltered workshops;
—Determining prevailing wages under Regulation, 29 CFR Part 525;
—Determining the existence of an employment relationship for patients or residents volunteering their services in homes for the aging under Regulation, 29 CFR Part 529;
—Determining compensable time for handicapped workers engaged in work simulation;

—Eliminating out-moded terminology;
—Discussion of supported work by Madeline Will, Assistant Secretary, Office of Special Education and Rehabilitation Services.

Other items may be included on the agenda or introduced during the meeting.

The public is invited to attend all meetings, including those of the subcommittees. Written data, views, or arguments pertaining to the business before the Committee are invited. Such data, views or arguments may be forwarded to the Committee Secretariat prior to the meeting or presented at the meeting.

Any inquiries concerning the meeting or the Committee may be directed to: Mr. Arthur H. Korn, Secretariat for the Advisory Committee on Sheltered Workshops, Room C4316, Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone number (202) 523-8727. This is not a toll free telephone number.

Signed in Washington, D.C., this 9th day of July 1985.

Herbert J. Cohen,

Deputy Administrator.

[FR Doc. 85-16607 Filed 7-11-85; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-16,010]

Hilo Coast Processing Co., Pepeekeo, HI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 20, 1985 in response to a worker petition received on May 13, 1985 which was filed on behalf of workers at the Hilo Coast Processing Company, Pepeekeo, Hawaii.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C., this 2nd day of July 1985.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-16606 Filed 7-11-85; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293-OLA; ASLBP No. 85-510-01 LA]

Boston Edison Co.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Boston Edison Company
Pilgrim Nuclear Power Station
Facility Operating License No. DPR-35

This Board is being established pursuant to a notice published by the Commission on May 21, 1985, in the **Federal Register** (50 FR 20969-20971) entitled, "Monthly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations." The proposed amendment would, among other things, change the Technical Specifications by raising the K-effective limit of the fuel storage pool from 0.90 to 0.95 for normal conditions.

The Board is comprised of the following administrative judges:

Peter B. Bloch, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Mr. Gustave A. Linenberger, Jr., Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Dr. Jerry Harbour, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Bethesda, Maryland, this 8th day of July, 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-16657 Filed 7-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456 & 50-457]

Commonwealth Edison Co. (Braidwood Nuclear Power Station, Units 1 and 2); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license proceeding: Gary J. Edles, Chairman, Thomas S. Moore, Dr. Reginald L. Gotchy.

Dated: July 8, 1985.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-16656 Filed 7-11-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station, Unit 2); Amendment of Order

I

GPU Nuclear Corporation, Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (collectively, the licensee) are the holders of Facility Operating License No. DPR-73, which had authorized operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2) at power levels up to 2772 megawatts thermal. The facility, which is located in Londonderry Township, Dauphin County, Pennsylvania, is a pressurized water reactor previously used for the commercial generation of electricity.

II

By Order for Modification of License, dated July 20, 1979, the licensee's authority to operate the facility was suspended and the licensee's authority was limited to maintenance of the facility in the present shutdown cooling mode (44 FR 45271). By further Order of the Director, Office of Nuclear Reactor Regulation, dated February 11, 1980, a new set of formal license requirements was imposed to reflect the post-accident condition of the facility and to assure the continued maintenance of the current safe, stable, long-term cooling condition of the facility (45 FR 11292).

Although these requirements were imposed on the licensee by an Order of the Director of Nuclear Reactor

Regulation, dated February 11, 1980, the TMI–2 license has not been formally amended. The requirements are reflected in the Recovery Mode Proposed Technical Specifications (PTS) presently pending before the Atomic Safety and Licensing Board. The revisions that are the subject of this order do not give the licensee authorizations that may be needed to undertake specific cleanup activities. Hereafter in this Amendment of Order, the requirements in question are identified by the applicable Proposed Technical Specification.

III

By letter dated October 31, 1984, GPU Nuclear Corporation (GPUNC) informed the NRC that certain containment penetration valve configurations presently in use at the Three Mile Island, Unit 2 (TMI–2) do not conform to the July 17, 1984 Amendment of Order which modified the PTS definition of containment integrity. In addition, these configurations do not conform to the staff's Approval of Alternate Design relative to 10 CFR 50, Appendix A, Criteria 55 and 56 also issued on July 17, 1984.

After reviewing the licensee's discussion in the subject letter and performing a safety evaluation addressing the containment isolation configurations, the staff has modified Section 1.7 of the PTS and added Table 3.6–2 which lists exceptions to containment penetration valve configurations.

The staff review concluded that: (1) The subject penetration valve configurations were previously concurred with by the NRC in NUREG–0107, (2) Many of the systems affected are not in use during the recovery period and are therefore depressurized, and (3) Those systems still in use are primarily used under emergency conditions and will not experience transients as extreme as those previously analyzed in NUREG–0107 for emergency or non-emergency use.

Based on the above, the addition of certain exceptions to the two valve isolation requirements of the PTS are warranted and will not have an adverse impact on the health and safety of the public. The staff's safety assessment of this matter as discussed above is set forth in the concurrently issued Safety Evaluation.

Since the February 11, 1980 Order imposing the Proposed Technical Specifications is currently pending before the Atomic Safety and Licensing Board, the staff will be advising the Licensing Board of this Amendment of Order through a Notice of Issuance of Amendment of Order and a Motion to Conform Proposed Technical Specifications in Accordance Herewith.

It is further determined that the modification does not authorize a change in effluent types or total amounts nor an increase in power level and will not result in any significant environmental impact. The staff has determined that this action is insignificant from the standpoint of environmental impact and neither an environmental impact statement nor an environmental assessment need be prepared.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, the Director's Order of February 11, 1980, is hereby revised to incorporate the deletions, additions, and modifications set forth in Enclosure 3 hereto. This Amendment of Order shall be effective on August 12, 1985.

For further details with respect to this action, see (1) Letter to B. J. Snyder, USNRC, from F. R. Standerfer, GPUNC, Containment Isolation Valves, and (2) the Director's Order of February 11, 1980.

All the above documents are available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building; Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Effective Date: August 12, 1985.

Dated at Bethesda, Maryland.

Issuance Date: July 8, 1985.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Deputy Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85–16655 Filed 7–11–85; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–341]

Detroit Edison Co., Wolverine Power Supply Cooperative, Inc. FERMI–2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the granting of an exemption from a portion of the requirements of 10 CFR Part 50, Appendix E to Detroit Edison Company and Wolverine Power Supply Cooperative, Incorporated (the licensees) for Fermi-2, located at the licensees' site in Frenchtown Township, Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

The Exemption from Section IV.F of 10 CFR Part 50, Apendix E would delay the conduct of a full participation offsite emergency planning exercise. Section IV.F of Appendix E requires that this exercise be conducted within one year before issuance of the first operating license at the site for full power and prior to operation above 5% of rated power. The last full participation emergency preparedness exercise for Fermi-2 was conducted on June 26–27, 1984.

Need for Proposed Action

The proposed Exemption is required because Section IV.F of Appendix E would require that a full participation offsite emergency planning exercise be conducted within one year prior to exceeding five percent power. A license authorizing operation of Fermi-2 up to five percent of rated power was issued on March 20, 1985, but the licensees have not yet been issued a license authorizing operation above five percent of rated power. In a letter dated June 14, 1985, supplemented July 3, 1985, the licensees provided justification for delaying this exercise beyond the date of authorization of operation above five percent of rated power. The NRC staff has reviewed the licensees' request for exemption and considered the following factors.

1. Prior to licensing, two full participation emergency preparedness exercises were conducted with favorable findings; the latest of these was conducted on June 26–27, 1984.

2. Various drills were conducted in 1984 and 1985 which tested those elements of the Fermi emergency plan which involve offsite response agencies.

3. The State of Michigan participated in two partial participation emergency preparedness exercises at other sites in 1985.

4. A Fermi exercise is scheduled for October 1985 which will include voluntary local offsite participation.

These factors indicate that the emergency plans for the Fermi–2 facility have been subjected to substantial testing within the last several years, that further exercise of the plans would be delayed only briefly, and that granting the proposed Exemption would not significantly affect the level of emergency preparedness for Fermi–2.

Environmental Impacts of Proposed Action

The proposed Exemption would not affect the environmental impact of the

facility because the level of emergency preparedeness is not being degraded. The probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed Exemption, nor does the proposed Exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Liewise the proposed Exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed Exemption.

Alternative to the Proposed Action

Because we have concluded that there is no measurable environmental impact associated with the proposed Exemption, any alternatives to the relief will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested Exemption. Such action would not reduce environmental impacts of Fermi-2 operations and would result in an unwarranted burden to the licensees and the State and local governments.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Enrico Fermi Atomic Power Plant, Unit No. 2" dated August 1981.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request that supports the proposed Exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

For further details with respect to this action, see the licensees' request for the Exemption dated June 14, 1985, and supplemented July 3, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Monroe County Library Systems, Reference Department, 3700 Custer Road, Monroe, Michigan 48161.

Dated at Bethesda, Maryland, this 10th day of July 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-16746 Filed 7-11-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, August 1, 1985
Thursday, August 8, 1985
Thursday, August 15, 1985
Thursday, August 22, 1985
Thursday, August 29, 1985

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW, Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW, Washington, D.C. 20415 (202) 632-9710.

July 12, 1985.

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 85-16560 Filed 7-11-85; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 5th Street NW., Washington, D.C. 20549.

Revised

Regulation 14A (No. 270-56)
Regulation 14C (No. 270-57)

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission has submitted for clearance proposed revisions to Regulations 14A and 14C under the Securities Act of 1933 to be used in the solicitation of proxies and distribution of information statements respectively.

Submit comments to OMB Desk Officer, Ms. Katie Lewin (202) 395-7231, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

By the Commission.

John Wheeler,

Secretary.

July 8, 1985.

[FR Doc. 85-16660 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14621; 811-3745]

Application and Opportunity for Hearing; Sun Life of Canada (U.S.) Variable Account D

July 8, 1985.

Notice is hereby given that Sun Life of Canada (U.S.) Variable Account D ("Applicant"), One Sun Life Executive Park, Wellesley Hills, Massachusetts 02181, an insurance company separate account registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, filed an application on June 21, 1985, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company. 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 are referred to the Act and the rules thereunder for the applicable provisions.

On May 24, 1983, Applicant filed a notification of registration on Form N-8A and a registration statement on Form S-6. The registration statement was amended on March 7, 1984, but was never declared effective.

Applicant states that it has never made a public offering on any of its securities, which would have been flexible payment deferred combination variable and fixed annuity contracts ("contracts"), and that it has no contractholders. Applicant further states that it never made any sales of contracts or of any other securities. Applicant represents that it has no assets, debts or other liabilities, and that it is not a party to any litigation or administrative proceedings.

Applicant maintains that it is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. On June 18, 1985, the Secretary of the Depositor, Sun Life Assurance Company of Canada (U.S.), acting on behalf of the Depositor, authorized the termination of the Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 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. 85-16659 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14622; 811-4059]

Application and Opportunity for Hearing; Variable Investment Products Series Fund, Inc.

July 8, 1985.

Notice is hereby given that Variable Investment Products Series Fund, Inc. ("Applicant"), 501 Boylston Street, Boston, Massachusetts 02117, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on June 20, 1985, pursuant to section 8(f) of the Act, for an order of the Commission declaring that Applicant has ceased to be an investment company. 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 are referred to the Act and the rules thereunder for the applicable provisions.

On June 27, 1984, Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-1A. The registration statement was never declared effective, and was withdrawn on April 24, 1985.

Applicant states that it has never made a public offering of any of its securities, which would have been shares of beneficial interest funding insurance company contracts ("contracts"), and that it has no shareholders. Other than the shares issued to New England Mutual Life Insurance Company on February 7, 1985, upon receipt of $100,000 seed money, which was repaid on May 10, 1985, Applicant states that it has never made any sales of its securities. Applicant represents that it has no assets, debts or other liabilities, and that it is not a party to any litigation or administrative proceedings.

Applicant maintains that it is not engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up its affairs. On May 8, 1985, the Board of Directors voted to dissolve the Applicant and authorized the termination of the Applicant.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than August 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. 85-16658 Filed 7-11-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 942]

Delegation of Authority No. 158; Assistant Secretary for Oceans and International Environmental and Scientific Affairs

By virtue of the authority vested in me by section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. sec. 2658), as amended, I hereby delegate to the Assistant Secretary for Oceans and International Environmental and Scientific Affairs the functions vested in the Secretary of State by sections 3(b), (f) and (g)(7), (4)(a) and (b) and (13) of the Pacific Salmon Treaty Act of 1985.

Dated: June 25, 1985.

George P. Shultz,

Secretary of State.

[FR Doc. 85-16649 Filed 7-11-85; 8:45 am]

BILLING CODE 4710-03-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits filed; Week Ended July 5, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings.

Date filed	Docket No.	Description
7-3-85	43234	Galena Air Service, Inc., c/o Bill Miller, Bill Miller Associates, Suite 301, 1341 G Street, N.W., Washington D.C. 20005. Application of Galena Air Service, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate air transportation of persons, property and mail: Between any point in any state in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States. Conforming Applications, Motions to Modify Scope and Answers may be filed by July 31, 1985.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 85-16603 Filed 7-11-85; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. IP85-10; Notice 1]

Firestone Tire & Rubber Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Firestone Tire & Rubber Company, of Akron, Ohio, has petitioned to be exempt from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for a noncompliance with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires—Passenger Cars." The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition for a determination of inconsequentiality is published in accordance with section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph § 4.3 of Standard No. 109 requires each tire to be labeled with seven items of information to be molded into or onto both sidewalls. These are size designation, the maximum permissible inflation pressure, the maximum load rating, the generic name of the cord material used in the plies, the actual number of plies in the sidewall (and the actual number of plies in the tread area if different) the words "tubeless" or "tube type" as applicable, and the word "radial" if the tire is a radial ply tire. Firestone produced approximately 106,311 various brand-named passenger car tires where the word 'tubeless" does not appear on the serial side of these white side-walled tires. Firestone has impounded 12,565 tires in its possession and all recovered tires will be branded with the word "Tubeless" on the serial side to conform to Standard No. 109. Therefore, this petition affects 93,746 passenger car tires manufacturered during 1983, 1984 and through June 1, 1985.

The petitioner believes that the noncompliance is inconsequential as it relates to motor vehicle safety as (1) all tires affected are white sidewalled and the word "tubeless" appears on the whitewall side and most, if not all tires would be mounted with the correct information facing the outside of the vehicle; (2) Firestone does not manufacture any affected size and type combinations that are tube type and, therefore, they could only be sold as tubeless; and (3) if the consumer used the tire as a tube type, and mounted the tire using a tube, the tire would perform satisfactorily.

Interested persons are invited to submit written data, views and arguments on the petition of Firestone Tire & Rubber Company described above. Comments should refer to the docket number and be submitted to Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the **Federal Register** pursuant to the authority indicated below.

The engineer and attorney primarily responsible for this notice are Art Casanova and Taylor Vinson, respectively.

Comment closing date: August 12, 1985.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 8, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

o[FR Doc. 85-16582 Filed 7-11-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Form 990 Advisory Committee; Meeting

The Form 990 Advisory Committee will meet from 1:00 p.m. to 5:30 p.m. on Monday, July 29, 1985, and from 9:00 a.m. to 12:00 p.m. on Tuesday, July 30, 1985. The meeting will be held in Room 3313 of the Internal Revenue Service Building at the address shown below.

At this meeting the Committee will review and evaluate proposed changes to IRS Forms 990 and 990-PF and the instructions to those forms for 1985. These forms are annual information returns required to be filed by various types of organizations exempt from federal income tax and by nonexempt charitable trusts.

The meeting on both days will be open to the public. Time for oral comments from the public will be provided on the second day of the meeting. Anyone wishing to submit written comments to the Committee should address them to the Chairman, Form 990 Advisory Committee, Room 3408, Internal Revenue Service, 1111

Constitution Avenue, NW, Washington, DC 20224.

Because it is necessary for the Committee to complete its consideration of the 1985 forms and instructions at this time, not other meetings of the Committee are planned for this year.

For futher information contact: Robert W. Gardiner, Employee Plans and Exempt Organizations Operations Division, 202–566–9299.

Dated: July 8, 1985.

S. Allen Winborne,

Assistant Commissioner (Employee Plans and Exempt Organizations).

[FR Doc. 85–16535 Filed 7–11–85; 8:45 am]

BILLING CODE 4830–01–M

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service Panel

July 5, 1985.

As Chief Counsel of the Internal Revenue Service, under the authority delegated to me by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Vernon Jean Owens, Deputy Chief Counsel;

2. Margery Waxman, Deputy General Counsel;

3. James J. Keightley, Associate Chief Counsel (Litigation);

4. Clarence E. Barnes, Jr., Regional Counsel, Central Region;

5. James J. McGovern, Director, Employee Plans & Exempt Organizations Division;

6. Kenneth A. Little, District Counsel, Dallas, Texas.

This publication is required by section 4314(c)(4) of 5 United States Code.

Fred T. Goldberg, Jr.,

Chief Counsel.

[FR Doc. 85–16662 Filed 7–11–85; 8:45 am]

BILLING CODE 4830–01–M

UNITED STATES INFORMATION AGENCY

Fulbright Teacher Exchange Program

The United States Information Agency announces the 1986–87 Fulbright Teacher Exchange Program. Applications are invited from elementary and secondary school teachers and administrators and college faculty to teach in schools or attend seminars abroad under the Mutual Educational and Cultural (Fulbright) Act of 1961. Eligibility requirements include: (1) U.S. citizenship; (2) bachelor's degree; (3) three years of full-time teaching experience for teaching positions; two years full-time teaching experience for teachers applying to seminar positions; (4) current full-time employment in appropriate subject areas; and (5) fluency in foreign languages for certain non-English speaking countries. Participating countries are announced on a tentative basis: Belgium/Luxembourg, Canada, Colombia, Denmark, Federal Republic of Germany, France, Italy, The Netherlands, Norway, Switzerland, and the United Kingdom. Usually, U.S. and foreign teachers exchange teaching positions for one academic year. U.S. and foreign teachers continue to receive a salary from their home institutions. A limited number of one-way assignments are also available. Seminars are presently planned in Italy and The Netherlands. Participants in seminars may be provided with transportation, room, board, and/or tuition, depending on the program. Applications must be submitted by October 15 for the following summer or academic year programs. The application packet is disseminated in late August. Further information should be requested from the: Fulbright Teacher Exchange Program, E/ASX, United States Information Agency, 301 4th St., SW., Washington, D.C. 20547, (202) 485–2555.

Dated: July 9, 1985.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 85–16601 Filed 7–11–85; 8:45 am]

BILLING CODE 8230–01–M

VETERANS ADMINISTRATION

Advisory Committee on Health-Related Effects of Herbicides; Reestablishment

Notice is hereby given of a determination by the Administrator of Veterans Affairs to reestablish the Advisory Committee on Health-Related Effects of Herbicides which expired on June 20, 1985. This determination follows consultation with the Committee Management Secretariat, General Services Administration, as required by Pub. L. 92–463.

The committee will (1) review and make appropriate recommendations relative to the Veterans Administration's programs to assist Vietnam veterans who were exposed to herbicides; such recommendations may concern the information delivery system and outreach efforts, scheduling of Agent Orange-related examinations, essential follow-up activities, and other related matters; (2) advise the Administrator on VA Agent Orange-related programs, programs of the Federal Government, and State programs which are designed to assist veterans exposed to herbicides, and simultaneously, will minimize duplication of VA and other federal programs concerned with the Agent Orange issue; (3) receive and review information from veterans service organizations regarding services provided by the Veterans Administration to Vietnam veterans concerned about the possible adverse health effects of exposure to herbicides; (4) review and comment on proposals for research on the possible health effects of exposure to herbicides; and (5) serve as a forum for individual veterans to inform the Veterans Administration of their views on policy issues and on the operation of Agency programs designed to assist veterans exposed to herbicides and dioxins in Vietnam.

Interested persons may submit comments regarding the reestablishment of the Advisory Committee on Health-Related Effects of Herbicides to Barclay M. Shepard, M.D., Director, Agent Orange Projects Office (10X2), Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 376–7528.

Dated: July 8, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Office.

[FR Doc. 85–16590 Filed 7–11–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 134
Friday, July 12, 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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m. (eastern time), Tuesday July 16, 1985.

CHANGES IN THE MEETING:

The following matter was inadvertently scheduled for this meeting. It is expected to be scheduled at a later date. "Compliance Manual Section 23, Volume I"

The following matter was incorrectly posted and should read as: "Processing Charges Raising the Issue of Jurisdiction over Licensing Agencies"

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: July 8, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued July 8, 1985.

[FR Doc. 85-16723 Filed 7-10-85; 2:11 pm]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: Monday, July 22, 1985, 2:00 p.m. (eastern time).

PLACE. Clarence M. Mitchell, Jr., Conference Room No. 200-C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, D.C. 20507.

STATUS: Closed to the public.

Closed

1. Litigation Authorization: General Counsel Recommendations
2. Proposed Commission Decisions

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission Meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at all times for information on these meetings).

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Dated: July 10, 1985.

Cynthia C. Matthews,

Executive Officer.

This Notice Issued July 10, 1985.

[FR Doc. 85-16736 Filed 7-10-85; 3:10 pm]

BILLING CODE 6750-06-M

3

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, July 8, 1985, the Corporation's Board of Directors determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Citizens First National Bank of New Jersey, Ridgewood, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in the Barnegat Branch, Forked River Branch, Manahawkin Branch, Ship Bottom Branch, Tuckerton Branch, and Crestwood Branch of Jersey Shore Savings and Loan Association, Toms River, New Jersey, a non-FDIC-insured institution.

Memorandum re: Revisions to Appendix E of the delegations of authority to the Division of Liquidation.

By the same majority vote, the Board further determined 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:

Application of Bank One of Eastern Ohio, National Association, Youngstown, Ohio, for consent to acquire certain assets of and assume the liability to pay deposits made in the Flushing, Ohio, branch of Buckeye Savings and Loan Company, Bellaire, Ohio, a non-federally-insured institution.

Application of The Fifth Third Bank of Columbus, Columbus, Ohio, a proposed State member bank, for consent to purchase certain assets of and assume the liability to pay deposits made in three Franklin County, Ohio, branches of Hunter Savings Association, Cincinnati, Ohio, a non-FDIC-insured institution.

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: July 9, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-16705 Filed 7-10-85; 11:56 am]

BILLING CODE 6714-01-M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, July 17, 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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. 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: July 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16694 Filed 7-10-85; 10:43 am]

BILLING CODE 6210-01-M

5

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-28]

TIME AND DATE: 4:00 p.m., Tuesday, July 16, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Emergency meeting—less than ten days' prior notice. Open to the Public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Investigation 731-TA-266/268 [Preliminary] (Certain steel wire nails from the Peoples' Republic of China, Poland, and Yugoslavia)—briefing and vote.
5. Investigation 337-TA-185 (Rotary wheel printing systems)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-16751 Filed 7-10-85; 3:57 pm]

BILLING CODE 7020-02-M

6

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of the Directors

TIME AND DATE: 9:00 a.m. (closed portion). 10:00 a.m. (open portion), Tuesday, July 23, 1985.

PLACE: Offices of the Corporation, seventh floor Board Room 1129 20th Street NW., Washington, DC

STATUS: The first part of the meeting from 9:00 a.m. to 10:00 a.m. will be closed to the public. The open portion of the meeting will start at 10:00 a.m.

MATTERS TO BE CONSIDERED: (Closed to the public 9:00 a.m. to 10:00 a.m.):

1. Finance Project in East Asian Country.
2. Finance and Insurance Project in Caribbean Country.
3. Insurance Project in African Country.
4. Proposed OPIC Budget for FY 1987 and Proposed Amendments to OPIC Budget for FY 1986.
5. Hickenlooper and Gonzalez Amendments Effect on OPIC Underwriting Activities and OPIC Participation in the Interagency Staff Coordinating Group on Expropriations.
6. Claims Report.
7. Information Report: Finance Projects.
8. Information Report: General.
9. China Projects: Status Report.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public 10:00 a.m.):

1. Approval of the Minutes of the Previous Meeting.
2. Confirmation of Scheduled Board Meetings.
3. Personal Actions.
4. Financial Statements.
5. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653-2925.

Elizabeth A. Burton,

Corporate Secretary.

July 10, 1985.

[FR Doc. 85-16752 Filed 7-10-85; 3:57 pm]

BILLING CODE 3210-01-M

7

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C 8701, 8712(f)(1)) and Section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

MATTERS TO BE CONSIDER:

Open Session

I. Call to Order
II. Board Minutes
III. Fourth General Solicitation Projects—Equity Milestone Review
  A. Keystone
  B. Utah Methanol
  C. ASC/Indiana
IV. Eastern Coal Solicitation—Report on Preliminary Qualification Proposals
V. Consideration of Status of Coal-Water Fuels Solicitation—Private Sector Coal-Water Fuels Activity
VI. Impacts of Proposed Tax Changes on Project Financing
VII. Approval of Appendices to Comprehensive Strategy Report
VIII. Financial Interests of Directors Related to Projects Considered at Meeting
IX. Consideration of Financial Assistance Award for the Great Plains Project
X. Resolution to Close Meeting

Closed Session

XI. Consideration of Financial Assistance Award for the Great Plains Project
XII. Consideration of Dow Syngas Proposal for Project Modification

TIME AND DATE: 9:30 a.m., July 16, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director, Media Relations, at (202) 822-6455.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

July 9, 1985.

[FR Doc. 85-16663 Filed 7-9-85; 5:02 pm]

BILLING CODE 6450-01-M

federal register

Friday
July 12, 1985

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations Procedure for Predetermination of Wage Rates, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Iowa:	
IA84–4043	June 15, 1984.
IA84–4042	Do.
New York:	
NY84–3018	July 6, 1984.
NY83–3027	July 22, 1983.
NY84–3036	Sept. 14, 1984.
Pennsylvania:	
PA85–3012	Mar. 8, 1985.
PA85–3029	June 21, 1985.

Cancellation of General Wage Determination Decision

General Wage Decision number MN82–2010—Aitkin, Crow Wing, Itasca, Kanabec, Koochiching, Mille Lacs, & Morrison Counties, Minnesota is canceled. Agencies with construction projects pending to which the canceled decision would have been applicable should utilize the project determination procedure by submitting form SF–308. See Regulations Part 1, 29 CFR 1.5.

Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 6.6(c)(3)(i), the incorporation of the canceled decision in contract specifications, the opening of bids for which is within ten (10) days of the notice, need not be affected.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Florida:	FL83-1016 (FL85-3038).	June 25, 1982.
New Jersey:	NJ84-3021 (NJ85-3033).	July 6, 1984.
Pennsylvania:	PA84-3012 (PA85-3035).	May 11, 1984.

Signed at Washington, D.C., this 5th day of July 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-30-M

MODIFICATIONS P. 1

DECISION #IA84-4043-MOD.#5
(49 FR 24856-June 15, 1984)

Black Hawk, Cerro Gordo, Clinton, Des Moines, Dubuque, Johnson, Linn, & Polk Counties, Iowa

CHANGE:

	Basic Hourly Rates	Fringe Benefits
Bricklayers & Stonemasons:		
Zone 1	$12.83	$2.62
Zone 8	14.44	2.82
Carpenters(all other const.):		
Zone 8		
Carpenters	13.15	2.59
Millwrights	13.50	2.59
Floor Coverers	12.90	2.59
Electricians:		
Zone 1	10.60	1.25+ 3.75%
Zone 8	13.97	1.72+ 3.75%
Ironworkers:		
Zone 2 & 8	17.52	3.01
Plumbers & Pipefitters:		
Zone 2	14.29	1.65
Zone 5	14.92	2.63
Zones 6 & 7	15.05	2.27
Zone 8	15.98	3.15
Sheet Metal Workers:		
Zone 1	12.91	2.71

DECISION #IA84-4042-MOD.#3
(49 FR 24855-June 15, 1984)

WOODBURY COUNTY, IOWA

CHANGE:

Plumbers & Pipefitters	$13.59	$2.25

DECISION NO. NY83-3027 - MOD. 10
(48 FR 33622 - July 22, 1983)
NASSAU, SUFFOLK COUNTIES, NEW YORK

CHANGE:

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Building	20.85	.37+ 41.5%
Wiring of single or multiple family dwellings and apartments up to and including 2 stories	15.00	35.7%
Installation of television receivers, radio receivers, record players and associated apparatus and antenna and home appliances and closed circuit TV and multiple outlet distribution systems, sound and intercommunication systems and commercial electromechanical devices and appliances where such is not part of an electrical contract	11.075	a

DECISION NO. NY84-3036 - MOD. #6
(49 FR 36230 - Sept. 14, 1984)
ONONDAGA COUNTY, NEW YORK

CHANGE:

TRUCK DRIVERS:		
Heavy & Highway (Except Ready-mix):		
Class 1	14.04	2.50+b
Class 2	14.09	2.50+b
Class 3	14.14	2.50+b
Class 4	14.29	2.50+b
Class 5	14.44	2.50+b

MODIFICATIONS P. 2

DECISION NO. NY84-3018 - MOD. #2
(49 FR 27899 - July 6, 1984)
CATTARAUGUS, CHATAUQUA & ERIE COUNTIES, NEW YORK

ADD:

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Area 1:		
Dump trucks	9.25	1.05

DECISION NO. PA85-3029
MOD. NO. 1
(50 FR 25850 - June 21, 1985)
Erie County, Pennsylvania

CHANGE:

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Common Laborers	$13.40	.08+ 22%
Mason Tenders	13.90	.08+ 22%
Marble Finishers, Tile Finishers & Terrazzo Finishers	13.90	.08+ 22%

DECISION NO. PA85-3012 - MOD. #4 (50 FR 9568 - March 8, 1985) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CEMENT MASONS:		
Zone 1	14.25	6.79
ELECTRICIANS:		
Zone 1		
Commercial	19.34	28%
ELEVATOR CONSTRUCTORS:		
Elevator Constructors	20.07	3.58+ c+d
Elevator Constructors Helpers	70%JR	3.58+ c+d
Elevator Constructors Helpers (Prob.)	50%JR	
IRONWORKERS:		
Zone 3		
Structural & Ornamental Reinforcing Steel Mesh	17.25	7.30
Rehab work	17.77	6.80
Rigger, Machinery Moving	16.20	6.70
LABORERS:		
All Other Work		
Class 1	13.70	3.70
Class 2	13.80	3.70
Class 3	13.85	3.70
Class 4	14.00	3.70
Class 5	14.10	3.70
Class 6	13.64	3.70
LINE CONSTRUCTION		
Zone 1		
Linemen	21.27	.80+6%
Groundmen	12.76	.80+6%
Winch truck operator	14.89	.80+6%
MARBLE SETTERS	16.24	4.39
PAINTERS:		
Zone 4		
Brush	15.76	4.48
Steel	16.31	4.48
PLASTERERS:		
Zone 1	20.74	1.53
PILEDRIVERMEN	15.97	7.76+g
ROOFERS:		
Shingle, slate, and tile	14.15	2.42
Mechanic II (for shingle, slate, or tile work) - handles and transports all materials, tools & equipment; clean-up debris	6.25	2.42
TERRAZZO WORKERS	15.38	4.39
POWER EQUIPMENT OPERATORS		
Group 1	17.82	26.6%+ .75+j
Group 2	17.56	26.6%+ .75+j
Group 3	16.10	26.6%+ .75+j
Group 4	15.79	26.6%+ .75+j
Group 5	14.02	26.6%+ .75+j
Group 6	13.51	26.6%+ .75+j
BUILDING CONSTRUCTION TRUCK DRIVERS		
Class 1	13.05	3.3225 +k+1
Class II	13.15	3.3225 +k+1
Class III	13.35	3.3225 +k+1
TRUCK DRIVERS: HEAVY & HIGHWAY INCLUDING SITE PREPARATION, PAVING & UTILITIES ON BUILDING CONSTRUCTION		
Class 1	12.90	3.3225 +o+p
Class 2	13.00	3.3225 +o+p
Class 3	13.20	3.3225 +o+p

(5)

STATE: FLORIDA COUNTY: DADE
DECISION NUMBER: FL85-3038 DATE: DATE OF PUBLICATION
Supersedes Decision Number FL83-1016, dated June 25, 1982, in 48 FR 14307.
DESCRIPTION OF WORK: BUILDING CONSTRUCTION PROJECTS (does not include single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS (Heat & Frost Insulators)	$15.73	3.11
BOILERMAKERS	17.20	3.875
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TILE SETTERS, & TERRAZZO WORKERS	16.25	1.97
CARPENTERS, DRYWALL HANGERS, LATHERS, SOFT FLOOR LAYERS & CARPET LAYERS	12.40	1.73
DRYWALL FINISHERS & TAPERS	14.75	1.87
ELECTRICIANS:		
Wiremen & Technicians	18.55	1.55 + 8%
Cable splicers	19.05	1.55 + 8%
Sound & Commufication (Installation, operation, inspection, & repair of radio, television, recording-voice-sound-vision production and reproduction apparatus, equipment and appliance used for domestic, commercial, education entertainment purposes) Communication technicians	9.00	2.31
Installers	8.50	2.26
ELEVATOR CONSTRUCTORS:		
Mechanics	17.105	3.29 + a
Helpers	11.97	3.29 + a
Probationary Helpers	8.55	
GLAZIERS	15.77	2.70
IRONWORKERS	15.15	3.03
LABORERS - GENERAL	8.50	1.33
LINE CONSTRUCTION:		
Class 1 - Linemen;		
Class 2 - Cable splicers;		
Class 3 - Heavy Equipment Operators: Hole digger, Bucket truck, Crane, Cat, 5th wheel truck, Two-axle pole trailer, Cleveland or Barber-Greene trenches, Digger (similar to No. 1 Cleveland digger) Backhoe tractor, Gradall digger;		
Class 4 - Winch truck operator;		
Class 5 - Groundmen		
Underground, Direct Burial Cable, & Duct Work:		
Class 1	14.00	2.48
Class 2	-----	----
Class 3	10.50	2.18
Class 4	11.20	2.23
Class 5	8.12	1.96
All Other Line Construction:		
Class 1	17.13	2.75
Class 2	17.43	2.77
Class 3	17.13	2.75
Class 4	13.70	2.45
Class 5	9.94	2.13
MARBLE, TILE, & TERRAZZO FINISHERS	14.35	3.20
MILLWRIGHTS	15.35	2.63
PAINTERS:		
Brush & Roller	14.10	1.97
Paperhangers	14.35	1.97
Spray, Sandblast, & Scaffold	14.60	1.97
PILEDRIVERMEN	14.80	2.63

(6)

DECISION NO. FL85-3038 (Page 2)

	Basic Hourly Rates	Fringe Benefits
PIPEFITTERS & STEAMFITTERS:		
Air conditioning systems up to 5 tons:	$10.00	.20
Air conditioning systems up to 10 tons; refrigeration self-contained or split systems under 1 HP and all ice machines;	13.75	2.58
Air conditioning systems up to 100 tons; refrigeration systems 1 HP and over;	16.75	2.58
Air conditioning systems over 100 tons; refrigeration systems (non-retail such as ice or freezer plants); industrial piping (such as power house, airports, fuel lines, manufacturer of a product).	17.75	2.58
PLUMBERS:		
Commercial Buildings of five stories or less, except hospitals, manufacturing plants, Miami International Airport;	11.94	20%
All Other Work	17.06	20%

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 1	$16.75	1.25
Group 2	15.58	1.25
Group 3	14.46	1.25
Group 4	13.29	1.25
Group 5	12.06	1.25
ROOFERS:		
Composition, Damp & Waterproof	13.88	1.45
Slate & Tile	14.13	1.45
Kettlemen & Mortarmen	10.68	1.45
SHEET METAL WORKERS	18.51	1.78
SPRINKLER FITTERS	16.00	3.48
WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.		
Unlisted classifications needed for work not included within the scope of the classifications listed may be added only after award as provided in the labor standards contract clauses (29 CFR Part 5, 5.5 (a) (1) (ii)).		

FOOTNOTE 'a' - Seven Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving Day, & Christmas Day; Vacation Pay Credit: Employer contributes 8% of the regular hourly rate for employees with 5 years or more of service, and 6% for those employees with 6 months to 5 years of service.

POWER EQUIPMENT OPERATORS' CLASSIFICATION DEFINITIONS:
Group 1 - Crane, Derrick, Hoist, Field Batch Plant Operator, Inside Elevator Operator;
Group 2 - Backhoe, Dragline, Finishing Grader Operator, Fireman, Forklift, Pumps (3 inches or larger) or combination of 5 or less pumps and air compressors (over 125 CFM) or other equipment;
Group 3 - Bulldozer, Distributor, Front End Loader, Motor Grader, Trenching Machine, Scraper, Welding Machines (Only when 3 or more are being used), Winch Truck Operator, Air Compressor (above 125 CFM);
Group 4 - Finishing Machine, Mixer, Oiler Driver, Roller, Tractor;
Group 5 - Oiler on Crawler Crane, Driver.

SUPERSEDEAS DECISION

STATE: New Jersey
COUNTIES: Bergen, Essex, Hudson and Passaic
DECISION NO.: NJ85-3033
DATE: Date of Publication
Supersedes Decision No. NJ84-3021, dated July 6, 1984 in 49 FR 27894.
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits
AIR CONDITIONING & REFRIGERATION MECHANICS:		
Group 1	15.40	1.48+a
ASBESTOS WORKERS	18.30	6.825
BOILERMAKERS	18.27	.29+38%
BRICKLAYERS, CEMENT MASONS, PLASTERERS & STONEMASONS:		
Zone 1	16.37	5.20
Zone 2	18.00	5.57
Zone 3	19.03	4.83
Zone 4:		
Bricklayers & Stonemasons	16.80	5.05
Cement Masons & Plasterers	18.15	3.80
CARPENTERS, INSULATORS AND MILLWRIGHTS:		
Zone 1:		
Carpenters & Insulators	19.26	23½%
Millwrights	19.76	23½%
Zone 2:		
Carpenters & Insulators	18.51	20.5%
Millwrights	19.01	20.5%
Zone 3	18.35	5.38
Zone 4:		
Carpenters & Insulators	19.75	20.5%
Millwrights	20.75	20.5%
DIVERS & DIVER TENDERS:		
Divers	20.87	6.83
Diver Tenders	16.27	6.83
DOCK BUILDERS AND PILE-DRIVERMEN	17.66	6.75
DRYWALL TAPERS & FINISHERS	10.60	2.10
ELECTRICIANS & CABLE SPLICERS:		
Family residence construction not to exceed 4 unit apartments (Note: Firewalls alone are not a determinative criterion.)	11.73	10%+2c
Other residential construction:		
Bergen & Hudson Cos.	20.82	28.5%+1.00
Essex County	19.40	39.25%
Passaic County Linemen	21.10	2.00+18%
Cable Splicers	22.60	2.00+18%

	Basic Hourly Rates	Fringe Benefits
ELEVATOR CONSTRUCTION:		
New Construction:		
Mechanics	18.80	3.69+b+c+d
Helpers	14.10	3.69+b+c+d
Probationary Helpers	9.40	
Modernization:		
Mechanics	15.96	3.69+b+c+d
Helpers	11.95	3.69+b+c+d
Probationary Helpers	9.40	
Contract Repairs:		
Mechanics	15.96	3.69+b+c+d
Helpers	11.95	3.69+b+c+d
Probationary Helpers	9.40	
GLAZIERS:		
Bergen & Passaic Cos.	16.14	7.33
Essex & Hudson Cos.	18.95	6.05
IRONWORKERS - ORNAMENTAL, REINFORCING & STRUCTURAL	18.65	6.11
LABORERS:		
Zone 1:		
Group 1	12.55	3.10
Zone 2:		
Group 1	13.40	4.25
Zone 3:		
Group 1	12.55	3.25
Group 2	12.80	3.25
Zone 4:		
Laborers	13.50	2.15
Zone 5:		
Laborers	12.25	3.40
Zone 6:		
Group 1	11.65	4.00
Zone 7:		
Laborers	11.85	3.80
LINE CONSTRUCTION:		
Zone 1:		
Linemen, Cable Splicers, Line Equipment Operators, Line Truck Operators, Groundman and Welders	19.40	39.75%

DECISION NO. NJ85-3033 LINE CONSTRUCTION CONT'D	Basic Hourly Rates	Fringe Benefits
Zone 2:		
Linemen and Equipment Operators	21.10	2.00+ 17%+ 100.00 P/YR.
Cable Splicers	22.60	2.00+ 17%+ 100.00 P/YR.
Groundmen	70%JR	
Zone 3:		
Linemen, Cable Splicers, Equipment Operators and Groundmen	20.82	1.00+ 28%
MARBLE SETTERS; TERRAZZO WORKERS & TILE SETTERS:		
Cutters & Setters	13.93	4.19+e
Carbers	14.48	4.19+e
Polishers	14.89	2.19+e
Crane Op.: Derrickmen	12.91	4.34+e
Marble Finisher (Helpers)	12.91	2.19+e
Terrazzo Workers & Mosaic Finishers	15.28	2.71
Tile Setters	15.28	4.335
Tile Setters Finishers	13.84	3.17
MARBLE SETTERS, TILE SETTERS AND TERRAZZO WORKER FINISHERS:		
Marble Setters' Finishers	8.28	2.32+e
Terrazzo Workers' Finishers	9.84	2.71
PAINTERS:		
Zone 1:		
Uncontrollable & Repaint Work	12.60	5.01
Other Residential Construction:		
Painters & Tapers	14.60	5.01
Steel Outside & Spray	16.60	5.01
Zone 2: (West half of County) Counties:		
Group 1	13.80	2.55
Group 2	12.70	2.55
Group 3	13.30	2.55
Group 4	13.95	2.55
Group 5	12.85	2.55
Group 6	14.40	2.55

	Basic Hourly Rates	Fringe Benefits
Zone 3:		
Group 1	14.25	4.83
Group 2	14.55	4.83
Group 3	15.05	4.83
Group 4	12.30	4.83
Group 5	12.65	4.83
PIPEFITTERS:		
Zone 1	18.25	6.93
Zone 2	18.12	7.05
PLUMBERS:		
Zone 1	19.33	5.85
Zone 2	18.58	6.55
ROOFERS:		
Zone 1:		
Composition	18.05	4.59
Zone 2:		
Composition, Damp, Waterproofing, Slate & Tile	18.72	3.00
Zone 3:		
Slate & Tile	16.70	4.75
Slate & Tile Helpers	8.85	4.75
Zone 4:		
Composition, Damp and Waterproofing	17.00	8.19
SHEET METAL WORKERS:		
Zone 1	12.80	3.56
Zone 2	14.20	1.63+ 16%
SOFT FLOOR LAYERS	17.22	1.50+ 13%
SPRINKLER FITTERS	18.28	5.37
POWER EQUIPMENT OPERATORS Construction, repairs and alterations of dwellings such as a home, duplex, town house or walk-up apartment, 3 stories or less (including clearing and grading, excavation for foundations, back filling, storm and sanitary sewers, sidewalks, street excavation and paving, curbing and landscaping water and gas supply lines)	12.19	5.80+a
Other Residential Construction (up to and including 4 stories): Group 1	21.92	5.80+a

(9)

DECISION NO. NJ85-3033	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D)		
Group 2	20.33	5.80+a
Group 3	18.42	5.80+a
Group 4	16.79	5.80+a
Group 5	15.08	5.80+a
Group 6	23.74	5.80+a
TRUCK DRIVERS:		
Zone 1:		
Group 1	".27	1.43+ h+i
Group 2	7.50	1.43+ h+i
Group 3	7.55	1.43+ h+i
Group 4	7.65	1.43+ h+i
Group 5	7.76	1.43+ h+i
Zone 2:		
Group 1	14.97	2.00+ h+i+j
Group 2	15.20	2.00+ h+i+j
Group 3	15.25	2.00+ h+i+j
Group 4	15.35	2.00+ h+i+j
Group 5	15.45	2.00+ h+i+j

(10)

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS:
A - New Year's Day; B - Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Christmas Day

FOOTNOTES:
a. Holidays: A through F, plus Armistic Day and Washington's Birthday Presidential Election Day and Veterans Day, provided the employee works any of the 3-days in the 5-day workweek preceeding the holiday and the first day work after the holiday.
b. Employer contributes $8.00 per day per employee to an Annuity Fund
c. Holiday: A through F, Plus Lincoln's Birthday, Washington's Birthday, Columbus Day, Election Day, and Armistic Day
d. Employees with 6 months of service but less than 5 years of service receive 2 weeks vacation; 5 or more years of service receive 3 weeks vacation
e. Holiday: A half day's pay for Labor Day
f. Holidays: A through F, plus Washington's Birthday, Veterans' Day and Presidential Election Day providing the employee works on 3 days for the same employer within a period of 10 working days, consisting of 5 working days before and 5 working days after the day upon which the holiday falls or is observed as such
g. Holidays: A through F, plus Washington's Birthday, Presidential Election Day and Veterans' Day providing the employee works any of the 3 days in the 5 days preceeding the holiday and the first work day after the recognized holiday
h. All Employees who are assigned to work on Sundays or the following holidays: New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, General Election Day, Columbus Day, Veteran's Day, Thanksgiving Day, Christmas Day, and any new holiday proclaimed by the Federal Government (not days of mourning), shall be paid two and one half times the rates listed for all hours worked which includes the holiday pay
i. Employees working or receiving pay for 80 days within a year receive one week's vacation (48 hours); 125 days receive two weeks vacation (96 hours); 145 days receive 15 days (120 hours); 15 years seniority and 145 days receive 4 weeks vacation (160 hours)
j. Employer contribution of $170.00 per month per employee to Health and Welfare Funds

AREA, GROUP and ZONE DESCRIPTIONS

AIR CONDITION and REFRIGERATION MECHANIC:
Group 1: Installation of refrigeration equipment for any type of building where the combined compressor tonage does not exceed 5 tons; Installation of water-cooled air conditioning that does not exceed 10 tons (includes the piping of component system and the erection of the water tower); Installation of air-cooled air conditioning that does not exceed 15 tons

BRICKLAYERS; STONEMASONS, CEMENT MASONS; and PLASTERERS:
Zone 1: Bergen (North Arlington, Lyndhurst - east of Ridge Road and north to Rutherford Avenue and Barry's Creek, west to the Hackensack River); Essex (except Millburn Township); Judson that portion west of the Jackensack River
Zone 2: Bergen (Wallington, part of East Patterson, Garfield, Lodi, North Arlington and part of Lyndhurst); Morris (Ponpton Plains, Pequannock, Lincoln Part, Kinnelon, Butler and Riverdale); Passaic and Sussex (that portion north of a line along Route #521 from Dingmans Ferry to Tuttles Corner, Along Route #206 to Lafayette, then along North Church Road to Route #23 to Passaic County Line) Counties
Zone 3: Bergen (Remainder of County)
Zone 4: Hudson (Remainder of County)
Zone 5: Essex (Millburn Township), Morris (Gillette and Sterling, Shore Hills Townships), Union (New Providence Springfield Summit and Union Townships

CARPENTERS, INSULATORS and MILLWRIGHTS:
Zone 1: Essex County and that part of Hudson County west of the Hackensack River
Zone 2: Passaic County and the City of Garfield and Borough of Lodi and Wallington in Bergen County
Zone 3: Bergen County (east of the Hackensack River including but not limited to Cliffside, Fort Lee, Grant Wood, Palisades Part, Ridgefield, Edgewater, Fairview, Leonia and Coytesville) and that part of Hudson County east of the Hackensack River
Zone 4: Bergen (Remainder of County)

LABORERS BUILDING CONSTRUCTION
Zone 1: Passaic County (Townships of Boroughs Passaic, Delawanna, Allwood, Athenia and Clifton to Piaget Avenue; Paterson, and the Boroughs and Townships of Albion Place, Little Fall, Totowa Borough, West Paterson, Wayne, Hawthorne, Pompton, Haledon, Clifton to Piaget Avenue, West Millford, Ringwood, Bloomingdale, New Jersey and East Paterson to the Garfield boundary line) Bergen County (Townships of Garfield, Lodi and Wallington):
Group 1: Laborers; Air Tool Operators (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); and Plasterer Tenders

ZONE and GROUP DESCRIPTIONS (Cont'd)

LABORERS BUILDING CONSTRUCTION (Cont'd):
Zone 2: Bergen County (Cliffside: Borough of Cliffside Park: Borough of Fort Lee, south of Central Boulevard; Borough of Palisades Part, south of Central Boulevard; Borough of Ridgefield; Borough of Edgewater, and Borough of Fairview; Hackensack: City of Hackensack; Hasbrouck Heights; Little Ferry; South Jackensack; Ridgefield Park; Bogota; Teaneck Township, west of Teaneck Road and South of Fort Lee Road; Maywood; Saddle Brook Township; Borough of Paramus, east of Sprout Brook; and the Borough of River Edge; New Milford;Teterboro; Bendix; and Tochell Park; Englewood: City of Englewood; Borough of Dumont; Borough of Bergenfield; Borough of Palisades Park, north of Central Boulevard to Edgewater; Fort Lee, to the Hudson River; Borough of Fort Lee, north of Central Boulevard; Township of Teaneck, east of Teaneck Road and north of Fort Lee Road; Borough of Leonia; Borough of Englewood Cliffs; Borough of Tenafly; Borough of Cresskill; Borough of Demarest; Borough of Closter; Borough of Oradell; Borough of Montvale; Borough of Woodcliff Lake; Borough of Park Ridge; Borough of Hillsdale; Township of Washington; Borough of Westwood; Borough of Emerson; Borough of Haworth; Borough of alpine; Borough of Rockleigh; Borough of Norwood; Borough of Harrington Park; Borough of Old Tappan; Borough of Northvale; and Township of Rivervale; Lyndhurst: Rutherford; East Rutherford; Wood-Ridge; Carlton; Carlstadt; North Arlington and Moonachie; Ridgewood: Village of Ridgewood; Borough of Fair Lawn; Borough of Blen Rock; Borough of HoHoKus; Borough of Saddle River; Borough of Upper Saddle River; Borough of Allendale; Borough of Ramsey; Borough of Waldwick; Borough of Midland Park; Borough of Oakland; Borough of Franklin Lakes; Township of Wykoof; Township of HoHoKus; and Borough of Paramus with the exception of portion of Paramus, east of Sprout Brook and Borough of Mahwah):
  Group 1: Laborers; Air Tool Operator (Jackhammers, Vibrators); Mason Tenders; Mortar Mixers; Pipelayers (concrete and clay); Plasterer Tenders; Wrecking and Excavation
Zone 3: Essex County (City of East Orange, Townships of South Orange and Maplewood):
  Group 1: Laborers
  Group 2: Mortar Mixers; Scaffold Men; Pneumatic Hammer Operators; Bell Men and Carpenter Tenders
Zone 4: Essex County (Orange and Montclair)
Zone 5: Essex (Millburn) and Union (Springfield and Union Townships) Counties
Zone 6: Essex (Remainder of County) and Hudson (Kearny, East of Newark and Harrison) Counties:
  Group 1: Laborers; Air Tool Operators; Mason Tenders; Mortar Mixers and Pipelayers (concrete and clay)
Zone 7: Remainder of Hudson County

AREA, GROUP, and ZONE DESCRIPTIONS (Cont'd)

PAINTERS:
Zone 1: Bergen, Passaic Counties
Zone 2: Essex, Hudson (west half of County) Counties:
 Group 1: Painters on New Construction and Major Alterations
 Group 2: Painters on REpaint Work
 Group 3: Spraying or Application of hazardous or dangerous materials on Repaint Work
 Group 4: Exterior Work exceeding 3 stories in height for painting of Open Structural Steel and Tanks under 3 stories in height except Flat Tanks on the ground and on interior work which requires painting higher than 20' above the ground or floor (this shall not be applicable to Machinery or Equipment located therein)
 Group 5: Repaint Work as described in Group 4
 Group 6: On Bridges, Television and Radio Towers, Structural Steel and Tanks above 3 stories in height (30' or over), Smoke Stacks, Water Towers, Sandblasting, Steam Cleaning, Spraying or application of Hazardous materials
Zone 3: Hudson (Remainder of County):
 Group 1: Interior of apartment houses; Paperhangers
 Group 2: All extension Ladder work, 36 feet high and over, on all scaffold work except one and two family homes and all boatswains chair work; Structural Steel, Tanks, Bridges, Towers, Smokestacks, Radio Towers, Television Towers, Flag Poles (steel or wood construction), Fire Escapes from top to bottom, Cable Work, Hazardous Work
 Group 3: Sandblasting; Spraying
 Group 4: Repainting high rises and old warehouses with Scaffold or extension Ladders
 Group 5: Rehab. Work - all closets below street level, basements, sub-basements, Boiler Rooms and Stairways, may be sprayed

PIPEFITTERS:
 Zone 1: Bergen, Hudson and Passaic Counties

PLUMBERS:
Zone 1: Bergen, Hudson (excluding East Newark, Harrison, and Kearney), and Passaic Counties
Zone 1: Bergen, Hudson (excluding East Newark, Harrison and Kearney), and Passaic County

Zone 2: Hudson (East Newark, Harrison, and Kearney only) and Essex Counties

AREA, GROUP AND ZONE DESCRIPTION (Cont'd)

ROOFERS:
Zone 1: Bergen and Passaic Counties
Zone 2: Essex, Hudson (West of the Hackensack River) Counties
Zone 3: Bergen, Passaic Counties
Zone 4: Hudson (East of Hackensack River) County
SHEET METAL WORKERS:
Zone 1: Bergen and Hudson Counties
Zone 2: Essex and Passaic Counties
LINE CONSTRUCTION:
Zone 1: Essex County
Zone 2: Passaic County
Zone 3: Bergen and Hudson Counties

POWER EQUIPMENT OPERATORS

Class 1: Autograde - Combination Subgrader; Base Metal Spreader and 7 Base Trimmer (CMI and similar types); Autograde Placer, Trimmer, Spreader Combination (CMI and similar types); Autograde Slipform Paver (CMI and similar types); Backhoe; Central Power Plants (all types); Concrete Paving Machines; Cranes (all types, including Overhead and Straddle Travelling type); Cranes; Gantry; Derricks (Land or Floating); Drillmaster, Quarrymaster (down the Hole Drill) Rotary Drill; Self Propelled Hydraulic Drill; Self-powered Drill; Dragline; Elevator Graders; Front End Loaders (5 yds. and over); Gradalls; Grader; Raygo; Locomotive (large); Mucking Machines; Pavement and Concrete Breaker, 1.e.; Superhammer and Hoe Ram; Pile Driver; Length of Boom including Length of Leads, shall determine premium rate applicable; Roadway Surface Grinder; Scooper (Loader and Shovel); Shovels; Tree Chopper with Boom; Trench Machines

Class B: "A" Frame; Backhoe (combination); Boom Attachment on Loaders (rate based on size of Bucket) not applicable to Pipehook, Boring and Drilling Machines; Brush Chopper; Shredder and Tree Shredder; Tree shearer; Cableways; Carryalls; Concrete Pump; Concrete Pumping System; Pumpcrete and similar types; Conveyors, 125 ft. and over; Drill Doctor including Dust Collector, Maintenance); Front End Loaders (2 yds. but less than 5 yds.); Graders (Finisher); Groove Cutting Machine (ride on type); Header Planer; Hoists: (all types hoists, shall also include Steam, Gas, Diesel, Electric, Air Hydraulic, Single and Double Drum, Concrete Brick Shaft Caisson, Snorkel Roof, and/or any other similar type Hoisting Machines, portable or stationary, except Chicago Boom type); Hoists (Chicago Boom type); Hydraulic Cranes, 10 tons and under; Hydro-axle; Jacks Screw Air Hydraulic power operated unit or Console type (not Hand Jack or Pile Load Test type); Log Skidder; Pans; Pavers (all Concrete; Pumpcrete Machines; Squeezecrete and Concrete Pumping (regardless of size); Scrapers; Side Booms; Straddle Carrier; Ross and similar types; Winch Truck (hoisting)

POWER EQUIPMENT OPERATORS (Cont'd)

Class C: Asphalt Curbing Machine; Asphalt Plant Engineer; Asphalt Spreader; Autograde Tube Finisher and Texturing Machine (CMI and similar types); Autograde Curercrete Machine (CMI and similar types); Autograde Curb Trimmer and Sidewalk; Shoulder; Slipform (CMI and similar types); Bar Bending Machines (power); Batchers; Batching Plant and Crusher on Site; Belt Conveyor Systems; Boom type Skimmer Machines, Bridge Deck Finisher; Bulldozers (all); Car Dumpers (railroad); Compressor and Blower type units (used independently or mounted on Dual Purposes Trucks, on job site or in conjuction with job site, in loading and unloading of Concrete, Cement, Fly Ash, Instancrete, or similar type materials); Compressor (2 or 3)(Battery); Concrete Finishing Machines; Concrete Saws and Cutters (ride on type); Concrete Spreaders; Hetzel; Rexomatic and similar types; Concrete Vibrators; Conveyors; under 125 ft.; Crushing Machines; Ditching Machine; Small (Ditchwitch or similar type); Dope Pots (Mechanical with or without Pump); Dumpsters; Elevator; Fireman; Fork Lifts (Economobile; Lull and similar types of equipment); Front End Loaders (1 yd. and over but less than 2 yds.); Generators (2 or 3) in Battery; Giraffe Grinders; Graders and Motor Patrols; Gunnite Machines (excluding Nozzle); Hammer Vibratory (in conjunction with Generator); Hoist (Roof, Tugger, Aerial Platform Hoist and House Cars); Hoppers; Hopper Doors (power operated); Ladders (motorized); Laddervator; Locomotive; Dinky type; Maintenance; Utility Man; Mechanics; Mixers (except Paving Mixers); Motor Patrols and Graders; Pavement Breakers, small; Self-propelled Ride on type (also maintaining Compressor or Hydraulic unit); Pavement Breaker; Truck mounted; Pipe Bending Machine (power); Pitch Pump; Plaster Pump (regardless of size); Post Hole Digger (Post Pounder and Auger); Rod Bending Machines (power); Roller; Black Top; Scales; Power; Seaman Pulverizing Mixer; Shoulder Widener; Silos; Skimmer Machines (boom type); Steel Cutting Machine; Services and Maintaning; Tractors; Tug Captain; Vibrating Plants (used in conjunction with unloading); Welder and Repair Mechanics

Class D: Brooms and Sweepers, Chippers, Compressor (single), Concrete Spreaders (small type), Conveyor Loaders (not including Elevator Graders), Engines, Large Diesel (1620 H.P.) and Staging Pump, Farm Tractors; Fertilizing Equipment (operation and maintenance) Fine Grade Machine (small type); Form Line Graders (small type); Front Loader (under 1 yd.); Generator (single); Grease, Gas, Fuel and Oil Supply Trucks; Heaters (Nelson or other type including Propane, Natural Gas or Flow-type units); Lights; Portable Generating Light Plants; Mixers; Concrete small; Mulching Equipment (operation and maintenance) Pumps (4 inch suction and over including Sumbersible Pumps); Pumps (2 or less than 4" suction and over including submersible pumps); Pumps (Diesel engine and Hydraulic) immaterial of power Road Finishing Machines (small type); Rollers; Grade; Fill or Stone Base; Seeding Equipment (operation and maintenance of); Sprinkler and Water Pump Trucks Steam Jennies and Boilers, Stone Spreader; Tamping Machines Vibrating Ride-on; Temporary Heating Plant (Nelson or other type, including Propane, Natrual Gas or Flow type units); Water and Sprinkler Trucks; Welding Machines (gas, diesel, and/or electric Converters of any type, single; two or three in a Battery); Welding System, Multiple (Rectifier Transformer type); Wellpoint Systems.

Class E: Oiler

Class F: Helicopter Pilot

TRUCK DRIVERS ZONES:
Zone 1: Bergen, Hudson and Passaic Counties.
Zone 2: Essex County

TRUCK DRIVERS:
Group 1: Mechanic Helper
Group 2: Drivers on the following type vehicles: straight Dumps Flats, Floats, Pickups, Container Haulers, Fuel, Water Sprinkler, road Oil, Stringer, Bead, Hot Pass, Bus Dumpcrete, Transit Mixers, Agitator Mixer, Half Truck, Winch Truch, Side-O-Matic, Dynamite, Powder, X-ray, Welding, Skid, Jeep, Station Wagon, Stringer, A-frame, All Dual Purpose Trucks, Trucks with mechanical tailgates, Asphalt Distributor, Batch Trucks, Seeding, Mulching, Fertilizer, Air Compressor Trucks (intransit), Parts Chaser, Escort, Scissor, Hi-lift, Telescope, Concrete Breaker, Gin Pole, Stone, Sand, Asphalt Distributor and Spreader, Nipper, Fuel Trucks (drivers on Fuel Trucks including handling of hose and nozzle-entire unit), Team Drivers, Vacuum or Vac-all Trucks (entire unit), Skid Truck (debris container - entire unit), Concrete Mobile Trucks (entire unit), Expediter (parts chaser), Beltcrete Trucks, Pumpcrete trucks, Line truck, Reel Truck, Wreckers, Utility Trucks, Tack Trucks, Warehousemen, Warehouse Parts-men, Hardmen, Lift Truck in Warehouse, Helper when required on Lift Truck in Warehouse, Warehouse Clerk, Parts Man, MaterialChecker, Receivers, Shippers, Binning Men (materials), Cardex Man, Helper when required on Broyhill Coat Tar Epoxy Truck and Asphalt and Bituminous Distributor Truck, Drivers on the following type vehicles: Broyhill Coat Tar Epoxy Trucks, Little Ford Bituminous Distributor, Slurry Seal Truck or vehicle, Thiokol Track Master Pickup (Swamp Cat Pickup); Bucket Loader Dump Truck and any rubbertired Tractor used in pulling and towing Farm Wagons and Trailers of any discription, similar type vehicles, Off-site and On-site Repair Shop
Group 3: Drivers on straight 3-axle materials: Trucks and Floats
Group 4: Drivers on all Euclid type vehicles: Euclids, International Harvesters, Wabcos, Caterpillar, Koehring, Tractors and Wagons, Dumpsters, Straight, Bottom, Rear and Side Dumps, Carry-alls and Scarpers (not self loading, loading over the top); Water Sprinkler Trailers; Water Pulls and similar types of vehicles; Drivers on Tractors and Trailer type vehicles: Flat, Floats, I-Beams, Low Beds, Water Sprinkler, Bituminous Transit Mix, Road Oil, Fuel, Bottom Dump Hopper, Rear Dump, Office,Shanty, Epoxy, Asphalt, Agitator Mixer Distributor, Water Pulls (entire unit) (Tractor Trailer), Reel Trailer, and similar types of vehicles
Group 5: Winch Trailers Drivers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Pennsylvania
COUNTIES: BUCKS, CHESTER, DELWARE, MONTGOMERY & PHILADELPHIA
DECISION NO.: PA85-3035
DATE: Date of Publication
Supersedes Decision No.: PA84-3012 dated May 11, 1984, in 49 FR 20229.
DESCRIPTION OF WORK: Heavy and Highway Construction.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS	15.97	6.11+a
CEMENT MASONS	14.25	6.79
ELECTRICIANS:		
Philadelphia (only)	19.34	28%
IRONWORKERS:		
Structural & Ornamental Philadelphia (only)	17.25	7.30
Rigger, machinery mover Philadelphia (only)	18.20	4.70
Reinforcing	17.77	6.80
LABORERS:		
Group 1	13.95	3.75
Group 2	13.75	3.75
Group 3	13.65	3.75
Group 4	13.80	3.75
Group 5	13.55	3.75
Group 6	14.20	3.75
Group 7	14.05	3.75
Group 8	13.90	3.75
Tunnel Compressed Air:		
Laborers:		
Blasters, shield drivers	19.375	1.80
Miners, miner's bore driver	20.00	1.80
Brakemen, trackmen, miners, helpers, groutmen, iron men, maintenance man, pump men, electrician, cement finisher, carpenters, hydraulic men, monorail men, conveyor men, power carriers, pan men, powder carriers, pan men, riggers, lock tenders' helpers, nippers, derailed men, cablemen, hosemen, gravel men	17.955	1.80
Mucking machine operators	20.665	1.80
Laborers (Surface) per hour	9.75	1.80
Between Locks		
Lock tenders, motor men	18.80	1.80
All other men	17.955	1.80
Outside of Locks		
Outside lock tenders, gauge tenders	19.955	1.80
Outside lock tenders' helpers	17.11	1.80

AMOUNT IN ADDITION TO BASE RATE (NOT CUMULATIVE)

Air Pressure		
15 lb. up to but less than 26 lb.	1.50	
26 lb. up to but less than 31 lb.	2.00	
31 lb. up to but less than 36 lb.	2.50	
36 lb. up to but less than 41 lb.	3.00	
41 lb. or more	3.50	
LANDSCAPING:		
Landscape Laborers	8.30	1.80+b
Farm Tractor Driver	8.80	1.80+b
Hydroseeder Nozzlemen	8.80	1.80+b
Mulcher Nozzlemen	8.80	1.80+b
LINE CONSTRUCTION		
ZONE 1		
Linemen	21.23	.80+6%
Groundmen	12.76	.80+6%
Winch truck operator	14.89	.80+6%
ZONE 2		
Linemen, cable splicers, heavy equipment operator, truck driver	15.27	.80+10 3/4%
Groundman, winch operator	12.22	.80+10 3/4%
LINE CONSTRUCTION (RAILROAD ONLY)		
Linemen		
"A" equipment operator	13.28	.60+3 3/4%+c
"B" equipment operator	11.61	.60+3 3/4%+c
MILLWRIGHTS:		
Philadelphia (only)	16.32	5.51
PILEDRIVERMEN	15.97	7.76+d
POWER EQUIPMENT OPERATORS:		
Heavy Construction Wage Group 1	17.82	26.6% +.75+e

DECISION NO. PA85-3035

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: CONTINUED		
Wage Group 2	17.56	26.6%+ .75 +e
Wage Group 3	16.10	26.6%+ .75 +e
Wage Group 4	15.79	26.6%+ .75 +e
Wage Group 5	14.02	26.6%+ .75 +e
Wage Group 6	13.51	26.6%+ .75 +e
Highway Construction, and Water Lines Construction (Off Plant Site)		
GROUP 1	17.57	26.6%+ .75+e
GROUP 2	17.35	26.6%+ .75 +e
GROUP 3	15.83	26.6%+ .75 +e
GROUP 4	15.46	26.6%+ .75 +e
GROUP 5	13.87	26.6%+ .75 +e
GROUP 6	13.52	26.6%+ .75 +e
HEAVY & HIGHWAY TRUCK DRIVERS: Including Site Preparation, Paving and Utilities on Building Construction		
Class 1	12.90	3.3225 +f+g
Class 2	13.00	3.3225 +f+g
Class 3	13.20	3.3225 +f+g

	Basic Hourly Rates	Fringe Benefits
WELDERS - Rate for craft to which the welding is incidential.		

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))."

DECISION NO. PA85-3035

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia Counties; Remainder of Bucks County.

ZONE 2 - Bock county: That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to Tr 532, north on Tr 532 to Tr 11w, north on Tr 113 to Tr 232 at Anchor Inn, northeast on Tr 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough Line at the Southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included

CLASSIFICTIONS DEFINITIONS FOR LINE CONSTRUCTION (RAILROAD ONLY)

"A" Equipment Operators:

1. Hoisting equipment - when erecting complete towers, erecting framed structures, erecting steel transmission poles, erecting railroad pole extensions and crossbeams and when operating personnel lift baskets.

2. Tension pulling equipment under energized conditions - parallel with other energized circuits or above energized circuits on the same structure, not to include crossovers. Bundled conductor stringing, including static conductors on bundled conductor lines.

3. Excavating augurs 36" inches in diameter or larger, 5/8 cubic yard backhoe and larger, trencher over four feet in depth, bulldozer D-6 (caterpillar) or larger, and blade on finish grade work

"B" Equipment Operators:

Operators of all other equipment

LABORERS CLASSFICATIONS OTHER THAN TUNNEL COMPRESSED AIR & LANDSCAPING

Group 1 - Powderman, multiple wagon drill op. under pinning excavation, bottom men

Group 2 - Finished surface asphalt rakers ops., pipelayers, or caulkers conduit and duct layers, jackhammer operator, paving

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LABORERS CLASSIFICATIONS (CONTINUED)

Group 3 - Other pneumatic tools ops., labor stripping concrete forms, carrying or handling lumber, steel & steel mesh and other concrete materials, form pinners, tool room men, mortar mixers, concrete pitman & spaders, grademen, asphalt shovelers, men working in shoring, men working in lagging, laborers assistance in the setting of cut stone, granite or artifical stone, hod carriers, scaffold builders, all other laborers on construction with the exception of workers in compressed air, releif joints and approach slab, men working in sheeting

Group 4 - Wagon drill operators

Group 5 - Yard workers: Laborers, scale mixemen, burnermen dustmen, feeder

Group 6 - Free Air Tunnel: Miner bore driver, blasters, drillers, pneumatic shield op., welders & burners, miners

Group 7 - Miners' Helper, form setters, circular caisson excavation bottom men underpinning excavation bottom men, welders, burners and air tugger

Group 8 - Trackmen, brakemen, groutmen, bottom shaft men, all others in free air tunnels

POWER EQUIPMENT OPERATORS
(HEAVY CONSTRUCTION CLASSIFICATION DEFINITIONS)

Wage Group 1 - Handling steel and stone in connection with erection, cranes doing hook work, any machines handling machinery, cable spinning machine, helicopters, and machines similar to above.

Wage Group 2 - All types of cranes, all types of backhoes, cableways, drag lines, keystones, all types of shovels, derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoist - double drum, (unless used as single drum), mucking machines in tunnel, gradalls, front end loaders, boat captain, tandem scrapers, towers type crane opertion, erecting, dismantling, jumping or jacking, drill self contained (drillmaster type), fork lift (20 ft. and over), motor patrols (fine grade), batch mixer, scrapers & tournapulls, rollers (high grade finishing), mechanic-welder, spreaders, bulldozers and tractors, and machines similar to the above.

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POWER EQUIPMENT (CONTINUED)

Wage Group 3 - Conveyors (except building converyors), building hoists (single drum), asphalt plant engineers, high or low pressure boilers, concrete pumps, well drillers, fork lift trucks of all types, ditch witch type trencher, motor patrol, concrete breaking machines, rollers, and machines similar to the above.

Wage Group 4 - Seaman pulverizing mixer, tireman on power equipment, maintenance engineer (power boat), farm tractors, fine grade machines, form line graders, road finishing machines, power broom (self-contained), seed spreader, grease truck, and machines similar to the above.

Wage Group 5 - Coveyors (building), welding machines, heaters, wellpoints, compressors, pumps, and machines similar to the above.

Wage Group 6 - Fireman, oilers and deckhands (personnel boats), grease truck helper.

HIGHWAY CONSTRUCTION CLASSIFICATIONS

Wage Group 1 - handling steel and stone in connection with erection, cranes, doing work any machine handling machinery, helicopters, machines similar to the above.

Wage Group 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, pavers 21E and over, trenching machines, graddalls, front-end loaders, boat captain, pippin type backhoes, tandems scrapers, towers type crane operation erecting, dismantling, jumping, or jacking, drills self-contained, (drillmaster type) forklift (20 ft. and over, motor patrols (fine grade), batch plant with mixer, carryalls, scraper, tournapulls, roller (High Grade Finishing), spreaders (Asphalt), bulldozers and tractors, mechanic-welder, and machines similar to the above.

Wage Group 3 - Asphalt plant engineers, concrete pumps, well drillers, ditch witch (small trencher), motor patrols, conveyors, ten-ton roller (grade fill stone base), concrete breaking machines, and machines similar to the above.

Wage Group 4 - Seaman pulverizer, form line grader, fine grade machines, farm tractors, road finishing, concrete spreaders, power broom self contained, seed spreader, grease truck, and machines similar to the above.

Wage Group 5 - Compressors, pumps, well point pumps, welding machines tireman, power equipment, maintenance engineers (Power Boats), and machines similar to the above.

Wage Group 6 - Fireman, oilers and deck hands (Personnel Boats), grease truck helpers.

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HEAVY AND HIGHWAY TRUCK DRIVERS INCLUDING
SITE PREPARATION, PAVING AND UTILITIES
ON BUILDING CONSTRUCTION CLASSIFICATIONS

Class 1 - Helpers, stake body truck (single axle, dumpster)

Class 2 - Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

Class 3 - Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

FOOTNOTES:

a. Paid Holiday: Labor Day.

b. Paid Holidays: July 4th, Labor Day, and Thanksgiving Day.

c. Paid Holidays: New Year's Day; Decoration Day; Indendence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday.

d. Paid Holidays: Washington's Birthday; Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veteran's Day; Thanksgiving Day and Christmas.

e. Paid Holidays: New Yer's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day, providing the employee works the day before and after the holiday.

f. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year. During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation.

g. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the scheduled work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holiday every two (2) months up to a maximum of five (5) consecutive month period, emplyee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all personal holidays.

(23)

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Friday
July 12, 1985

Part III

Environmental Protection Agency

40 CFR Part 419

Petroleum Refining Point Source Category; Effluent Limitations Guidelines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 419

[OW-FRL-2815-5]

Petroleum Refining Point Source Category; Effluent Limitations Guidelines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the regulation which limits effluent discharges to waters of the United States from facilities engaged in the refining and processing of petroleum. EPA proposed these modifications on August 28, 1984, (49 FR 34152) in accordance with a settlement agreement which resolved a lawsuit brought against EPA by the Natural Resources Defense Council, Inc. The lawsuit challenged the final petroleum refining regulation promulgated on October 18, 1982 (47 FR 46434).

Today's final rule incorporates the proposed amendments which are: (1) Modifications to the "best available technology economically achievable" (BAT) effluent limitations for process wastewater for the pollutants phenolic compounds, total chromium, and hexavalent chromium; (2) "best conventional pollutant control technology" (BCT) effluent limitations for process wastewater; and (3) "best practicable control technology currently available" (BPT), BCT, and BAT effluent limitations for contaminated storm water runoff. Amendments are also made in this final rule, which will correct errors identified in the October 28, 1984 rule, the August 28, 1984 Proposed Rule, as well as errors contained in 40 CFR Part 419, revised as of July 1, 1984.

DATES: In accordance with 40 CFR 100.01, the regulations developed in this rulemaking shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on July 29, 1985. These regulations shall become effective August 26, 1985.

Under Section 509(b)(1) of the Clean Water Act, judicial review of these regulations is available only by filing a petition for review in the United States Court of Appeals within ninety days after these regulations are considered issued for purpose of judicial review. Under section 509(b)(2) of the Clean Water Act, these requirements of the regulations may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Those portions of the existing petroleum refining effluent limitations guidelines and standards that are not substantively amended by this notice are not subject to judicial review nor is their effectiveness altered by this notice.

ADDRESSES: The record for this rulemaking will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. The EPA information regulation provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Ruddy, Industrial Technology Division, at (202) 382-7131.

SUPPLEMENTARY INFORMATION:

I. Legal Authority
II. Background
  A. Prior Regulation
  B. Challenges to the Prior Regulation
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III. Changes from Proposal
IV. Amendments to the Petroleum Refining Point Source Category Regulation
  A. Best Available Technology Effluent Limitations Guidelines
  B. Best Conventional Pollutant Technology Effluent Limitations Guidelines
  C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff
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VI. Responses to Major Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
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X. List of Subjects: 40 CFR Part 419

I. Legal Authority

The amendments to the regulation described in this notice are promulgated under the authority of sections 301, 304, 307, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251, et seq., as amended by the Clean Water Act of 1977, Pub. L. 92-517). These changes are also promulgated in response to the Settlement Agreement in *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, No. 83-1122 (D.C. Cir.).

II. Background

A. Prior Regulation

On October 18, 1982, EPA published final effluent limitations guidelines and standards for the petroleum refining point source category. That regulation provided final effluent limitations for "best available technology economically achievable" (BAT) and established final pretreatment standards for existing sources (PSES) and for new sources (PSNS). The Agency retained its previously promulgated "new source performance standards" (NSPS) and also did not modify its effluent limitations guidelines for "best practicable control technology currently available" (BPT). The Agency reserved coverage of "best conventional pollutant control technology" (BCT) effluent limitations guidelines. The preamble of the 1982 final regulations describes the history of the rulemaking. (47 FR 46343)

B. Challenges to the Prior Regulation

On January 27, 1983, the Natural Resources Defense Council, Inc. ("NRDC") filed a petition to review the final petroleum refining regulation. *Natural Resources Defense Council, Inc.* v. *Environmental Protection Agency*, No. 83-1122 (D.C. Cir.). The American Petroleum Institute ("API") and seven individual oil companies intervened in the litigation.

C. Settlement Agreement

On April 17, 1984, EPA, NRDC, API and all other interveners to the litigation entered into a comprehensive Settlement Agreement. In the Settlement Agreement, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain modifications to the 1982 final petroleum refining BAT effluent limitations guidelines. In addition, EPA agreed to propose BCT effluent limitations guidelines for four conventional pollutants and BPT, BAT and BCT effluent limitations guidelines for contaminated storm water runoff. Petitioner NRDC agreed that if EPA took final action pursuant to and consistent with the Settlement Agreement that it will dismiss its lawsuit challenging the 1982 final petroleum refining regulation.

As part of the Settlement Agreement, the parties agreed to seek a judicial stay of the regulatory provisions to be modified. On July 24, 1984, the Court entered a stay of the effluent limitations for phenolic compounds, total chromium and hexavalent chromium for the following portions of the regulation pending the rulemaking: 40 CFR 419.13(a), 419.23(a), 419.33(a), 419.43(a), and 419.53(a). On August 28, 1984, EPA published the proposed amendments to the 1982 effluent limitations guidelines in accordance with the Settlement Agreement (49 FR 34152). Public comments were received and considered in issuing this final rule.

III. Changes From Proposal

Today's final rule amends the effluent limitations guidelines for the petroleum refining point source category; it is the same as the August 28, 1984 proposed amendments. However, certain cost determinations used to develop the BCT

effluent limitations guidelines have been revised since the proposal but do not affect the Agency's original conclusion that BCT should be set equal to BPT for this industry.

EPA published a proposed BCT methodology (47 FR 49176) which set forth a procedure for evaluating the cost reasonableness of BCT effluent limitations guidelines. The proposed BCT limitations for the petroleum refining industry were based upon that published methodology, which includes the "POTW test" and the "industry cost test." The Agency selected and evaluated two levels of technology for the control of conventional pollutants from petroleum refineries (i.e., recycle/reuse and recycle/reuse plus granular media filtration following BPT). Incremental (beyond BPT) conventional pollutant removals and costs associated with the candidate BCT technologies were calculated for model plants representative of each of the five petroleum refining subcategories. The resulting "cost per pound removed" ratios failed the BCT cost test. The Agency therefore proposed that BCT be set equal to BPT for all five petroleum refining subcategories.

Subsequently, EPA published a notice of data availability concerning the BCT methodology on September 20, 1984 (49 FR 37046). The Agency has revised its BCT cost evaluation for petroleum refining to incorporate the updated information referenced in the notice of data availability. The revised cost ratios for the recycle/reuse technology options with 20 to 40 percent reductions in discharge flow range from $50.48 to $1.36 (1977 dollars). The revised cost ratios for the recycle/reuse plus filtrations options range from $27.05 to $1.11 (1977 dollars). The benchmark in 1977 dollars for the POTW cost test based on the Agency's reproposed BCT methodology is approximately $.76 per pound of pollutant removed. The Agency is presently revising the BCT methodology and expects the benchmark to change. Based on preliminary analysis, the Agency expects that the candidate technologies will fail under future BCT cost tests. Thus, the Agency has decided to establish BCT effluent limitations guidelines equal to BPT effluent limitations guidelines for the Petroleum Refining Industry in this rulemaking.

Several typographical and transcription errors appeared in 419.43(c)(2), 419.14(a), 419.34(b)(1) and in Appendix A, in the proposed rule published on August 28, 1984, 49 FR 34152. Those errors have been corrected in the amendments set forth below.

In addition, today's notice amends the BPT effluent limitations guidelines for sulfide in Subparts A and C and for hexavalent chromium in Subpart A, which appeared in the **Federal Register** notice of October 18, 1982 (47 FR 46434) and were reprinted in 40 CFR Part 419 dated July 1, 1984 to correct typrographical errors. Because these limitations appeared in both metric and English units, the typorgraphical errors have been obvious. Also, amendments are made to correct typographical errors in a paragraph reference that appeared in Subparts D and E for NSPS, and in a refinery capacity range in a size factor table that appeared in Subpart E for BPT. These amendments appear in the amended regulation that follows this preamble.

IV. Amendments to the Petroleum Refining Point Source Category Regulation

The following are the changes to the petroleum industry regulation that EPA proposed on August 28, 1984:

A. Best Available Technology Effluent Limitations Guidelines

On October 18, 1982 EPA published final effluent limitations guidelines for best available technology economically achievable (BAT) and final pretreatment standards for existing sources (PSES) and for new sources (PSNS) for the petroleum refining industry. 47 FR 46434. The Natural Resources Defense Council ("NRDC") filed a petition to review the October 18, 1982 regulation in the United States Court of Appeals for the District of Columbia Circuit. The American Petroleum Institute (API) and seven companies which own and operate petroleum refineries intervened in that proceeding. A number of issues were raised in settlement discussions among the parties in the lawsuit pertaining to the BAT effluent limitations guidelines. After extensive discussions, the petitioner, interveners and EPA entered a Settement Agreement, which provides for specified revisions to the BAT effluent limitations guidelines. Those revisions are set forth in today's amended regulation.

In October 1982 EPA promulgated BAT effluent limitations for the following pollutants: (1) Nonconventional pollutants: chemical oxygen demand (COD), phenolic compounds (4AAP), ammonia (as N) and sulfide; and (2) toxic pollutants: total chromium and hexavalent chromium. The model technology for these regulations was flow equalization, initial oil and solids removal, advanced oil and solids removal, biological treatment and filtration or other final "polishing steps."

The Agency is now amending the BAT effluent limitations guidelines for total chromium, hexavalent chromium and phenolic compounds (4AAP). EPA is adding flow reduction to the model treatment technology for the BAT effluent limitations guidelines and is basing the effluent limitations for each of these three pollutants on a more recent data base, rather than the one it relied upon in the October 18, 1982 BAT promulgation. That rulemaking utilized the same data based used by the Agency when it established best practicable control technology currently available (BPT) effluent limitations guidelines for the petroleum refining point source category. The BPT level of control for this industry was promulgated on May 9, 1974 (39 FR 16560) and subsequently amended on May 20, 1975 (40 FR 21939). The BAT effluent limitations guidelines for other pollutants remain unchanged.

The BAT effluent limitations guidelines for total chromium being promulgated today are based upon the revised 1979 flow model developed by the Agency to predict refinery flows, rather than the BPT 1974 flow model used in the October 1982 BAT promulagtion. The effluent limitations for total chromium being promulgated today were derived by applying this updated flow model to concentrations for total chromium observed from plant sampling in 1976–1977.

BAT effluent limitations guidelines for hexavalent chromium and phenolic compounds being promulgated today were derived using the 1982 Development Document concentrations and the revised 1979 flow model to more accurately represent effluent reductions for these pollutants which the industry was generally achieving in 1979 or could technologically achieve by the final BAT compliance date. BAT for hexavalent chromium being promulgated today is based upon option 7 (discharge flow reduction of 37.5 percent from the revised 1979 model flow). BAT for phenolic compounds (4AAP) being promulgated today is based upon option 8 (a reduction of 20 percent from the revised 1979 model flow).

Under today's rulemaking, the BAT effluent limitations guidelines for each of these three pollutants are substantially more stringent than the BAT effluent limitations guidelines promulgated in 1982. The total allowable discharge of total chromium to the nation's navigable waters is reduced by approximately 286,000 pounds per year, a 66 percent annual reduction beyond discharge levels allowable under the existing BAT effluent limitations guidelines; the total allowable discharge of hexavalent chromium is reduced by

approximately 19,300 pounds per year, a 56 percent annual reduction beyond discharge levels allowable under existing BAT; the total allowable discharge of phenolic compounds (4AAP), is reduced by approximately 75,000 pounds per year, a 43 percent annual reduction beyond discharge levels allowable under existing BAT. These reductions are based on data in the Agency's refined BAT flow model. The refined flow model is included in the record for this rulemaking in a report entitled "Petroleum Refining Industry, Refinements to 1979 Proposed Flow Model."

EPA believes that approximately one half of the refineries which directly discharge pollutants to navigable waters already are complying with the effluent limitations being promulgated today. Further, EPA believes that the effluent limitations are economically achievable for the industry.

In the preamble to the October 18, 1982 promulgated regulations for this industry, EPA estimated that capital costs of $112 million and $37 million (1979 dollars) in annualized costs would be required in order for petroleum refiners to comply with option 7, one of the BAT control treatment options considered by the Agency (47 FR 46438). Likewise, EPA estimated that capital costs of $77 million and annualized costs of $25 million (1979 dollars) would be required in order for petroleum refiners to comply with option 8, another of the BAT control treatment options considered by the Agency (47 FR 46438).

The revised limitations being promulgated today for phenolic compounds, hexavalent chromium and total chromium are not based on either option 7 or option 8 alone. The effluent limitations for phenolic compounds are based upon option 8. The effluent limitations for hexavalent chromium are based upon option 8. The effluent limitations for hexavalent chromium are based upon option 7. The effluent limitations for total chromium, while somewhat more stringent than the BAT effluent limitations for total chromium, are less stringent than those based upon option 8.

The Agency has reevaluated the costs of compliance for today's changes to the BAT effluent limitations and estimates that the total industry costs of compliance would not exceed those previously calculated for option 8. EPA estimates that no more than 61 petroleum refineries will have to incur aggregate capital costs no greater than $77 million and annualized costs no greater than $25 million (1979 dollars). These costs translate to an average increase of no greater than one half cent per gallon of refinery product. No refinery closures are anticipated by the Agency. Refinery capacity and consumption would remain unaffected. Given these factors, the Agency believes that its earlier heavy reliance on costs as the basis for rejecting more stringent effluent controls in this industry was inappropriate, and that the effluent limitations guidelines for total chromium, hexavalent chromium and phenolic compounds (4AAP) being promulgated today, rather than the effluent limitations guidelines promulgated in 1982, are appropriate for this industry as the BAT level of control. The revised Bat numerical limitations and contained in the final regulation.

B. Best Conventional Pollutant Control Technology Effluent Limitations Guidelines

As part of the Settlement Agreement EPA agreed to propose best conventional pollutant control technology ("BCT") effluent limitations guidelines for the petroleum refining industry. The 1977 Amendments to the Clear Water Act ("CWA") added section 301(b)(2)(E) of the Act establishing BCT for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(a)(4) [biochemical oxygen demanding pollutants (BOD_5), total suspended solids (TSS), fecal coliform and pH], and any additional pollutants defined by the Administrator as "conventional". The Administrator designated oil and grease as a conventional pollutant on July 30, 1979, 44 FR 44501.

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other specified in Section 304(b)(4)(B) the Act requires the BCT limitations be assessed in light of a two-part "cost reasonableness" test. *American Paper Institute* v. *EPA*, 660 F2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond best practicable control technology currently available (BPT). EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published a proposed BCT methodology on October 29, 1982. (47 FR 49176). This proposed BCT methodology explains the details of the two part cost-reasonableness test, i.e., the "POTW test" and the "industry cost test." In addition, the Agency published a "notice of data availability" concerning the proposed BCT methodology on September 20, 1984 (49 FR 37046).

Today's promulgated BCT effluent limitations guidelines for the petroleum refining industry are based on the proposed BCT methodology. Today's final regulations establish BCT equal to BPT for the petroleum refining industry.

EPA considered two levels of technology for increnmental control beyond BPT of total suspended solids (TSS) and oil and grease. These technology levels are recycle/reuse and recycle/reuse followed by granular media filtration. These technologies are already in use at certain sites in the petroleum refining industry. These technologies were selected as candidate BCT technonogies because the Agency believes they represent the first levels of control beyond BPT which could effect reduction in conventional pollutant loadings in this industry. Filtration alone was not selected as a candidate BCT technology because it is one of the existing BPT treatment technologies. However, the Agency decided to consider the combination of recycly/reuse plus filtration as a candidate BCT technology. This is because the decreased hydraulic loading resulting from recycle/reuse results in the need for smaller and less costly filtration equipment than that included in the BPT treatment model. The BCT cost test was then performed on the combination of recycle/reuse and filtration as a double-check on the effects of the less costly filtration step.

In order to determine whether these candidate technologies are "cost-reasonable", EPA developed one model plant representative of a typical plant in each of the five BPT subcategories. The five BPT subcategories are:

A—Topping
B—Cracking
C—Petrochemical
D—Lube
E—Integrated

Then EPA calculated the incremental (beyond BPT) conventional pollutant removals and the incremental costs associated with these technologies for each model plant. Based on this information, cost-per-pound ratios were calcualted for each of the five BPT subcategories.

EPA evaluated reductions in total suspended solids (TSS), biochemical oxygen demand (BOD_5), and oil and grease for each of these technology levels. However, oil and grease was not considered for the BCT calculations for

recycle/reuse for this industry. Additionally, BOD_5 was not considered for the BCT calculations for filtration for this industry. This is in accordance with the proposed BCT methodology in order to avoid "double counting" of the amount of pollutants removed by a candidate BCT technology.

The recycle/reuse technology option identified for BCT was evaluated in the range of from 20 to 40 percent reduction in discharge flow. The cost per pound ranges from $41.00 to $0.77 (1977 dollars) [$50.48 to $1.36 (1977 dollars) based upon the September 20, 1984 notice of data availability] in the first part of the proposed BCT cost reasonableness test (the "POTW test"). Accordingly, the Agency found that the addition of recycle/reuse technology fails the first part of the proposed BCT cost reasonableness test in all five subcategories ($0.30 per pound in 1977 dollars) [approximately $0.76 per pound in 1977 dollars based upon the September 20, 1984 notice of data availability.]

The Agency also found that the addition of recycle/reuse plus filtration fails the first part of the proposed BCT cost reasonableness test in all five subcategories. The recycle/reuse portion of this option was evaluated in the range of from 20 to 40 percent reduction in discharge flow. The cost per pound (1977 dollars) ranges from $21.00 to $0.58, compared to the benchmark of $0.30 per pound (1977 dollars) [$27.05 to $1.11, compared to the benchmark of approximately $0.76 per pound (1977 dollars) based upon the September 20, 1984 notice of data availability].

Therefore, the Agency is promulgating BCT equal to BPT for the five subcategories in this industry.

A more complete discussion of the selection of the candidate BCT technologies, the details of the first part of the proposed BCT cost reasonableness test ("POTW test"), and the basis for decision are contained in the administrative record of this rulemaking.

C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff

In the October 18, 1982 rulemaking the Agency withdrew storm water effluent limitations guidelines for BPT, BAT and NSPS, because they were remanded by the U.S. Court of Appeals in *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976).

Since that remand there has been some confusion on the part of permit writers and others as to whether storm water runoff ("runoff") effluent limitations should be contained in permits. There are two kinds of such runoff, i.e., contaminated and uncontaminated.

The purpose of this rulemaking is to establish BPT, BCT and BAT effluent limitations guidelines for contaminated storm water runoff. Today's promulgated contaminated runoff effluent limitations are to be included in petroleum refinery permits in addition to process wastewater effluent limitations. NSPS for contaminated runoff is being reserved for future rulemaking.

In today's final regulations EPA is defining contaminated runoff, for purposes of these regulations only, to be runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property. Any other storm water runoff at a refinery is considered uncontaminated. Today's final regulations also amend the definition of the term "runoff" currently found in 40 CFR 419.11(b) to clarify that it means the flow of storm water resulting from precipitation coming into contact with petroleum refinery property. Contaminated runoff constitutes an additional source of pollution which must be managed during periods of precipitation along with process wastewater from refinery operations. Today's final regulations do not establish numerical effluent limitations for uncontaminated runoff. Effluent limitations, including but not limited to allocations for uncontaminated runoff may be established by the permit writer based on his/her best professional judgment.

The Agency believes that the best practicable control technology currently available, the best conventional pollutant control technology and the best available technology economically achievable for treatment of contaminated runoff are the same as the technologies identified for treatment of process wastewater. The Agency has not identified any feasible technologies capable of achieving pollutant reductions for contaminated runoff from refineries to any greater degree than those which are achievable by the process wastewater treatment facility.

The Agency believes that the conventional pollutant oil and grease and the nonconventional pollutant parameter total organic carbon (TOC) are appropriate measures to determine whether pollutant loadings in contaminated runoff would be measurably reduced by the model treatment technologies used to develop these final regulations. Under today's final regulations for BPT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment if it does not exceed 15 mg/l oil and grease and 110 mg/l TOC, based upon an analysis of any single grab or composite sample. Under today's final regulations for BCT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment, if it does not exceed 15 mg/l oil and grease and under the final regulations for BAT, wastewater consisting solely of contaminated runoff may be discharged directly without treatment if it does not exceed 110 mg/l TOC. If contaminated runoff (whether or not it exceeds 15 mg/l oil and grease or 110 mg/l TOC) is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease or 110 mg/l TOC is not commingled or treated with any other type of wastewater, then such runoff would be subject to the alternative BPT/BCT/BAT effluent limitations guidelines for contaminated runoff being promulgated today, as appropriate. These oil and grease and TOC numerical effluent limitations are based on the concentrations expected from the properly designed and operated model treatment facilities.

The effluent limitations guidelines in today's BPT regulation for contaminated runoff are based on the same concentrations and variability factors used to develop the Agency's existing BPT process wastewater effluent limitations guidelines.

Today's BAT regulation for contaminated runoff is based upon the same concentrations and variability factors used to develop the Agency's existing BAT process wastewater effluent limitations guidelines, except those for total chromium, which are based upon the same concentrations and variability factors used for today's promulgated BAT effluent limitations guidelines for process wastewater.

Today's promulgated BAT effluent guidelines for phenolic compounds (4AAP) for contaminated runoff are based on the same concentrations used for the existing BAT effluent limitations guidelines for process wastewater and the same variability factors used for the Agency's existing BAT effluent limitations guidelines. EPA has determined that this approach is appropriate because of the specifics of each data base available to the Agency. If EPA used the variability factors from today's promulgated BAT effluent limitations guidelines, less stringent BAT contaminated runoff numerical effluent limitations for phenolic compounds (4AAP) would be derived than under today's promulgated BPT

contaminated runoff numerical effluent limitations for phenolic compounds (4AAP). The more stringent effluent limitations clearly are achievable and as a matter of law BAT cannot be less stringent than BPT.

Today's BCT regulation for contaminated runoff is based on the same concentrations and variability factors used for today's promulgated BCT process wastewater effluent limitations guidelines.

The Agency believes that the costs attributable to today's regulations will be minimal, while providing for reductions in refinery pollutant discharges. This is because the Agency believes the industry as a whole already is (a) treating contaminated runoff with process wastewater or (b) is discharging contaminated runoff below today's promulgated threshold for treatment. Today's final regulations do not cover contaminated runoff which is commingled with nonprocess wastewater streams. EPA believes that such instances are infrequent, and accordingly, they are left to the permit writer's discretion.

Unlike the effluent limitations guidelines for process wastewater for this industry which are mass-based, today's promulgated effluent limitations guidelines for contaminated runoff are concentration-based. This is because storm water volumes are not related to any measurement of refinery production. However, under today's regulations permit effluent limitations for contaminated runoff are to be established on a mass basis. The mass-based effluent limitations for each regulated pollutant for contaminated runoff in a petroleum refining permit are the product of (1) the respective effluent guideline concentration for that pollutant; and (2) the measured or calculated contaminated runoff volume.

Under today's regulations permit writers are given flexibility in determining refinery storm water volumes on a case-by-case basis. The following factors are among those appropriate for permit writers to consider in determining what contaminated runoff volume to use in calculating mass-based effluent limitations for refinery permits: (a) Measured difference between dry weather and wet weather discharge flow from the treatment facility where contaminated runoff is the only runoff present in the treatment facility; and (b) volume of contaminated runoff water calculated from the product of (1) measurement of land area where precipitation would become contaminated, and (2) an historical measure of precipitation for the particular refinery location.

Once the mass based effluent limitation is derived, it may be incorporated into a refinery permit in one of three ways. The proper choice depends on site-specific factors, such as local rainfall patterns and the design of runoff holding facilities.

The first method is a continuous allocation. This presents the problem of providing an allocation when no runoff is present and is appropriate only where precipitation patterns are relatively constant through the year or when holding facilities are used to bleed runoff into the treatment facility over most or all of the year. The second method is a variable allocation based on measurement or calculation of actual contaminated runoff volume. While this is the most ideal method, it may present compliance measurement and enforcement complexities. The third method is dual wet weather/dry weather limitations triggered by either time of year, precipitation events, or actual contaminated runoff volume. The method of determining contaminated runoff volume used to calculate the effluent limitations will vary depending on the method used and the design of any runoff holding facilities. Therefore, it is left to the permit writer to select an appropriate method under today's rulemaking.

These regulations do not address uncontaminated runoff which is discharged through the process wastewater treatment facility. This is because the Agency believes that introducing uncontaminated runoff to the process wastewater treatment system may result in the discharge of an increased mass of pollutants to the environment compared to the mass of pollutants discharged if no uncontaminated runoff were present in the process wastewater treatment system. Therefore, the Agency does not want to encourage this practice on a national basis.

In the case of BPT, the effluent limitations guidelines promulgated today are for the following pollutants (1) conventional pollutants: total suspended solids (TSS), oil and grease, five-day biochemical oxygen demand (BOD_5) and pH; (2) nonconventional pollutants: phenolic compounds (4AAP), chemical oxygen demand (COD) and total organic carbon (TOC); and (3) toxic pollutants: total chromium and hexavalent chromium. In the case of BAT, the effluent limitations guidelines being promulgated today are for (1) nonconventional pollutants: Phenolic compounds (4AAP), chemical oxygen demand (COD) and total organic carbon (TOC); and (2) toxic pollutants: total chromium and hexavalent chromium. In the case of BCT, the effluent limitations guidelines being promulgated today are for the conventional pollutants TSS, oil and grease, BOD_5 and pH. In the case of COD, there may be instances where extremely high chloride levels (greater than 1,000 mg/l) will interfere with the COD analytical method. In this event, the Agency believes that TOC is an acceptable substitute parameter for COD. A TOC limitation shall be based upon effluent data from the particular refinery which correlated TOC to BOD_5. Where adequate correlation data are not available, the permitting authority may establish a TOC limitation on a ratio of 2.2 to 1 to the applicable BPT/BCT effluent limitations for BOD_5. This ratio is based upon effluent data analyzed by the Agency.

No effluent limitations guidelines for contaminated runoff are being promulgated for the nonconventional pollutants ammonia (as N) and sulfide regulated under existing BPT and BAT levels of control.

V. Environmental Impact of the Amendments

EPA's estimates of the reduction in industry-wide direct discharges of phenolic compounds, hexavalent chromium, and total chromium for process wastewater from those allowed under the 1982 final petroleum industry regulation to those allowed by today's amendments are presented below.

REDUCTIONS IN ALLOWABLE DISCHARGE

(Pounds per year)

Pollutant	Reduction
Total chromium	286,000
Hexavalent chromium	19,300
Phenolic compounds	75,000

VI. Responses to Major Comments

The Agency encourages public participation in the rulemaking process and solicited comments on the proposed amendments. Public comments were received and considered in issuing this final rule. A summary of all the comments received and the Agency's responses to those comments are included in a report titled, "Responses to Public Comments on the Proposed Amendments to the Effluent Limitations Guidelines for the Petroleum Refining Point Source Category", which is included in the public record for this regulation.

Most of the commenters expressed full support for the promulgation of the

amended regulations as proposed. Although none of the commenters disagreed with the Agency's action, some believed it necessary to comment on the background and development of the proposal and to seek clarification on the Agency's intended procedures for applying the effluent limitations guidelines. The major comments are addressed below.

A. Best Available Technology Effluent Limitations Guidelines (BAT)

Some of the commenters argued that wastewater flow reduction is not an appropriate basis upon which to base effluent limitations guidelines for this industry. It was claimed that other pollutant specific control techniques will be used, if necessary, to achieve the proposed discharge limits for process wastewater.

The Agency has documentation that flow reduction is an achievable technology for this industry. Industry and Agency studies that confirm this fact are included in the rulemaking record for this regulation. These investigations conclusively demonstrated that refineries have numerous methods available to reduce process wastewater generation or discharge volumes. These studies also demonstrated that the costs and specific methods available are heavily dependent on site-specific factors at each individual refinery. The Agency has also noted that there is a substantial downward trend in historical water usage/discharge rates industry-wide regardless of environmental regulatory requirements.

There may be some refineries which have already achieved a low flow condition or cannot implement flow reduction due to site-specific factors. In these cases, improvements to the existing treatment system design or operation, or in refinery operating practices, may be necessary to meet today's amended BAT effluent limitations. It should be further clarified that the regulation does not preclude the implementation of other control options such as pollutant specific control techniques or other techniques which a refinery considers the most cost-effective method to achieve its permit conditions.

Clarification was sought by commenters on the method that should be followed to determine the appropriate refinery production rates for calculating mass effluent limits. Questions were also raised about the possibility of BAT pollutant limits being less stringent than BPT levels due to differences in the procedures for calculating BAT and BPT permit limits.

The effluent limitations guidelines developed for the petroleum refining industry are production based. Although previous permits may have been issued on the basis of process capacities, permit limits based on the revised BAT regulations should be calculated on the basis of actual production rates. For this reason, the permit writer should undertake a thorough review of a refinery's historical process utilization rates and process groupings to determine a reasonable measure of actual production projected for the period the permit would be in effect. This method of determining appropriate process feedstock rates for use in calculating mass effluent limits is in accordance with 40 CFR 122.45(b). The individual process feedstock rates established should be based on data from the same time period, i.e., all production data for the same time period. Generally, this time period (e.g., calendar year) could be that for which the sum of the crude process feedstock rates is the greatest, but is still representative of anticipated feedstock rates for the duration of the NPDES permit.

The next step in this method is to calculate a daily average feedstock rate for each refinery process included in the determination of effluent limitations. These values may be calculated by dividing an historical annual feedstock rate for each process by the number of days the process was in operation. These same average daily process feedstock rates should be used in the calculation of both daily maximum and 30-day average BAT effluent limitations. This method is consistent with the procedure the Agency used to develop the effluent limitation factors for the amended regulations and with 40 CFR 122.45. Additionally, the daily maximum and 30-day average variability factors, which are components of the effluent limitation factors used to derive permit effluent limitations, reflect short-term (i.e., monthly and daily) deviations from long-term (annual average) performance.

The amended BAT limits for phenolic compounds, total chromium and hexavalent chromium are based on a flow model and daily maximum variability factors which are different than those used to establish the BPT regulations. Some BAT permit limitations could be less stringent than the BPT limitations for a given refinery, even though the BAT and BPT limitations are calculated using the same process feedstock rates determined in accordance with the provisions of 40 CFR 122.45. These occurrences can be caused by the inclusion of additional processes and a new process grouping in the BAT flow model. In such instances, the resultant permit limitations would be the more stringent of either the calculated BPT limitations or calculated BAT limitations. This is because BAT permit limitations may not be less stringent than BPT. In order to make a proper comparison, the BPT limitations should be recalculated using: (1) Production data from the same time period that are used to calculate the BAT limitations; and (2) the BPT process groupings and subcategorization.

In an effort to provide guidance on the application of the proposed amendments to the BAT effluent limitations guidelines, the Agency held workshops in San Francisco and Dallas for permit writers during November and December 1984.

B. Best Conventional Pollutant Control Technology Effluent Limitations Guidelines (BCT)

Commenters agreed with the approach that was followed by the Agency in its BCT cost evaluation and that the two candidate technologies selected are the most cost effective beyond BPT. Even though the Agency found that none of the four regulatory options that were considered passed the BCT cost test for any of the five subcategories, commenters argued that the actual cost per pound of pollutant removed would be greater than those estimated by EPA. It was argued that the removal cost ratios presented in the Agency's original BCT cost evaluation report were underestimated because filtration costs were understated and removal efficiencies were overstated. It was also pointed out that the BCT evaluation should incorporate available updated information.

As discussed in Section III of this preamble, the Agency has revised its BCT cost evaluation to incorporate the updated information referenced in the notice of data availability published on September 20, 1984 (49 FR 37046). The Agency also believes that the filtration costs and removal efficiencies used in tis original evaluation are realistic. Nonetheless, if costs were understated and pollutant removals were overstated as argued, then removal cost ratios would fail the BCT cost test by an even wider margin, which would not change the Agency's original conclusion that BCT should be set equal to BPT for this industry.

C. Effluent Limitations Guidelines for Contaminated Storm Water Runoff

Commenters supported the reinstitution of allocations for the

discharge of contaminated storm water runoff commingled with process wastewater and treated in a refiner's effluent treatment system. Commenters recognized that storm water runoff can have a significant impact on a wastewater treatment system and argued that allocations are appropriate for both contaminated and uncontaminated runoff. In addition, clarifications were requested on the Agency's definition of contaminated runoff and its intentions to include only water which comes into direct contact with raw materials or petroleum products (i.e., exposed or spilled oil) or to extend its coverage to runoff from storage areas or tank farms where, ideally, no direct contact occurs.

The Agency's intent in promulgating storm water runoff limitations is to provide a mechanism for the control of storm water when this waste stream is, or is very likely to be, contaminated by direct contact with raw, intermediate or final products. The collection and treatment of storm water runoff that is uncontaminated can be costly and burden the refinery's wastewater treatment system. For this reason, the Agency wishes to encourage refineries which segregate uncontaminated storm water runoff from contaminated wastewater streams to continue this practice. The regulation, however, does not require such segregation.

One commenter argued that the total organic carbon (TOC) and oil and grease discharge criteria for the control of contaminated runoff effectively sets storm water runoff limitations.

The 110 mg/l TOC and 15 mg/l oil and grease applicability criteria for BAT/BCT effluent limitations apply only to contaminated runoff as defined at § 419.11(g). These values are intended to serve as threshold criteria for including contaminated runoff effluent limitations (e.g., phenolic compounds, total chromium, total suspended solids) in NPDES permits. These criteria or other limitations may be applied to such discharges on a case-by-case basis at the permitting authority's discretion. For example, a particular stormwater runoff discharge that normally meets the threshold criteria may be of a nature where it could become very contaminated by an accidental spill. In such situations it may be appropriate to impose the TOC, oil and grease and/or other values as effluent limitations or to at least require periodic sampling and analysis for such pollutants to monitor the nature of such discharges.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it does not fall within the criteria for major regulations established in Excutive Order 12291.

VIII. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA must prepare a Regulatory Flexibility Analysis for all regulations that have a significant impact on a substantial number of small entities. The Agency does not believe that today's rulemaking will have a significant impact on any segment of the petroleum refining industry, large or small. The Agency has not, therefore, prepared a formal analysis for this regulation.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA responses to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M Street, SW., Washington, D.C. from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

X. List of Subjects in 40 CFR Part 419

Petroleum, water pollution control, Wastewater treatment and disposal.

Dated: July 1, 1985.

A. James Barnes,

Acting Administrator.

For the reasons set out in the preamble, EPA is amending 40 CFR Part 419 as follow:

PART 419—PETROLEUM REFINING POINT SOURCE CATEGORY

1. The authority citation for Part 419 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307 (b) and (c), and 501, Federal Water Pollution Control Act as amended (the Act); 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

2. Section 419.11 is amended by revising paragraph (b) and adding paragraph (g) to read as follows:

§ 419.11 Specialized definitions.

* * * * *

(b) The term "runoff" shall mean the flow of storm water resulting from precipitation coming into contact with petroleum refinery property.

* * * * *

(g) The term "contaminated runoff" shall mean runoff which comes into contact with any raw material, intermediate product, finished product, by-product or waste product located on petroleum refinery property.

§ 419.12 [Amended]

3. In § 419.12(a), the table is amended as follows:

A. Under the heading "English units (pounds per 1,000 bbl of feedstock)", in the first column opposite "sulfide", "0.53" is revised to read "0.053".

B. Under the heading "English units (pounds per 1,000 bbl of feedstock)", opposite "sulfide" in the second column, "0.24" is revised to read "0.024".

C. Under the heading "English units (pounds per 1,000 bbl of feedstock)", opposite "hexavalent chromium", in the first column "0.10" is revised to read "0.01".

§ 419.32 [Amended]

4–6. In § 419.32(a), in the second column of the table, under "Metric units (Kilograms per 1,000m^3 of feedstock)", opposite "sulfide", "0.52" is revised to read "0.22".

§ 419.52 [Amended]

7. The table in § 419.52(b)(1), under the column "1,000 barrels of feedstock per stream day," the figures "125.0 to 124.9" and "200 to 244.9" are revised to read "125.0 to 149.9" and "200.0 to 224.9," respectively.

§§ 419.12, 419.22, 419.32, 419.42, and 419.52 [Amended]

8. Sections 419.12(e), 419.22(e), 419.32(e), 419.42(e), and 419.52(e) are amended by removing the paragraph heading and the word "reserved" and by adding the following text:

§ 419 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff, which may be discharged after the application of the best practicable control technology currently available by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process

wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease and 110 mg/l total organic carbon (TOC) based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease or 110 mg/l TOC is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BPT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m³ of flow)		
BOD_5	48.	26.
TSS	33.	21.
COD [1]	360.	180.
Oil and grease	15.	8.
Phenolic compounds (4AAP)	0.35	0.17
Total chromium	0.73	0.43
Hexavalent chromium	0.062	0.028
pH	[2]	[2]
English units (pounds per 1,000 gallons of flow)		
BOD_5	0.40	0.22
TSS	0.28	0.18
COD [1]	3.0	1.5
Oil and grease	0.13	0.067
Phenolic compounds (4AAP)	0.0029	0.0014
Total chromium	0.0060	0.0035
Hexavalent chromium	0.00052	0.00023
pH	[2]	[2]

[1] In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the permitting authority may substitute TOC as a parameter in lieu of COD. A TOC effluent limitation shall be based on effluent data from the particular refinery which correlates TOC to BOD_5. If in the judgment of the permitting authority, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations for BOD_5.

[2] Within the range of 6.0 to 9.0.

§§ 419.13, 419.23, 419.33, 419.43, and 419.53 [Amended]

9. Sections 419.13, 419.23, 419.33, 419.43, and 419.53 are amended by removing the entries and effluent limitations for phenolic compounds, total chromium, and hexavalent chromium from the tables in paragraph (a).

10. Sections 419.13, 419.23, 419.33, 419.43, and 419.53 are further amended by redesignating paragraph (e) as (f), redesignating paragraph (d) as (e), redesignating paragraph (c) as (d), and revising the redesignated paragraph (f) to read as follows:

§ 419.—Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(f) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff, which may be discharged after the application of the best available technology economically achievable by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 110 mg/l total organic carbon (TOC) based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 110 mg/l TOC is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BAT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m³ of flow)		
Phenolic compounds (4AAP)	0.35	0.17
Total chromium	0.60	0.21
Hexavalent chromium	0.062	0.028
COD [1]	360.	180.
English units (pounds per 1,000 gallons of flow)		
Phenolic compounds (4AAP)	0.0029	0.0014
Total chromium	0.0050	0.0018
Hexavalent chromium	0.00052	0.00023
COD [1]	3.0	1.5

[1] In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the permitting authority may substitute TOC as a parameter in lieu of COD. A TOC effluent limitation shall be based on effluent data from the particular refinery which correlates TOC to BOD_5. If in the judgement of the permitting authority, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations for BOD_5.

11. Sections 419.23, 419.33, 419.43, and 419.53 are amended in newly designated paragraph (d) by changing "419.13(c)" to read "419.13(d)".

12. Sections 419.12 (a) and (c), 419.13 (a), 419.16 (a) and (c), 419.22(a), 419.23(a), 419.26(a), 419.32(a), 419.33(a), 419.36(a), 419.42(a), 419.43(a), 419.46(a), 419.52(a), 419.53(a), and 419.56(a) are amended by revising footnote (1) to the table to read "[1] See footnote following table in § 419.13(b)".

§§ 419.13, 419.23, 419.33, and 419.53 [Amended]

13. Sections 419.13, 419.23, 419.33, and 419.53 are amended by adding a new paragraph (c) to read as follows:

§ 419.—Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(c)(1) In addition to the provisions contained above pertaining to COD, ammonia and sulfide, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(i) For each of the regulated pollutant parameters listed below, the effluent limitation for a given refinery is the sum of the products of each effluent limitation factor times the applicable process feedstock rate, calculated as provided in 40 CFR 122.45(b). Applicable production processes are presented in Appendix A, by process type. The process identification numbers presented in this Appendix A are for the convenience of the reader. They can be cross-referenced in the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Petroleum Refining Point Source Category* (EPA 440/1–82/014), Table III–7, pp. 49–54.

Pollutant or pollutant property and process type	BAT effluent limitation factor	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 cubic meters of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.037	0.009
Cracking and coking	0.419	0.102
Asphalt	0.226	0.055
Lube	1.055	0.257
Reforming and alkylation	0.377	0.092
Total chromium:		
Crude	0.030	0.011
Cracking and coking	0.340	0.118
Asphalt	0.183	0.064
Lube	0.855	0.297
Reforming and alkylation	0.305	0.106
Hexavalent chromium:		
Crude	0.0019	0.0009
Cracking and coking	0.0218	0.0098

Pollutant or pollutant property and process type	BAT effluent limitation factor: Maximum for any 1 day	BAT effluent limitation factor: Average of daily values for 30 consecutive days shall not exceed
Asphalt	0.0117	0.0053
Lube	0.0549	0.0248
Reforming and alkylation	0.0196	0.0068
English units (pounds per 1,000 bbl of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.013	0.003
Cracking and coking	0.147	0.036
Asphalt	0.079	0.019
Lube	0.369	0.090
Reforming and alkylation	0.132	0.032
Total chromium:		
Crude	0.011	0.004
Cracking and coking	0.119	0.041
Asphalt	0.064	0.022
Lube	0.299	0.104
Reforming and alkylation	0.107	0.037
Hexavalent chromium:		
Crude	0.0007	0.0003
Cracking and coking	0.0076	0.0034
Asphalt	0.0041	0.0019
Lube	0.0192	0.0087
Reforming and alkylation	0.0069	0.0031

(2) See the comprehensive example in Subpart D, § 419.43(c)(2).

14. Section 419.43 is amended by adding a new paragraph (c) to read as follows:

§ 419.43 Effluent limitation guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

(c)(1) In addition to the provisions contained above pertaining to COD, ammonia and sulfide, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(i) For each of the regulated pollutant parameters listed below, the effluent limitation for a given refinery is the sum of the products of each effluent limitation factor times the applicable process feedstock rate, calculated as provided in 40 CFR 122.45(b). Applicable production processes are presented in Appendix A, by process type. The process identification numbers presented in this Appendix A are for the convenience of the reader. They can be cross-referenced in the *Development Document for Effluent Limitations Guidelines, New Source Performance Standards, and Pretreatment Standards for the Petroleum Refining Point Source Category* (EPA 440/1–82/014), Table III–7, pp. 49–54.

Pollutant or pollutant property and process type	BAT effluent limitation factor: Maximum for any 1 day	BAT effluent limitation factor: Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m³ of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.037	0.009
Cracking and coking	0.419	0.102
Asphalt	0.226	0.055
Lube	1.055	0.257
Reforming and alkylation	0.377	0.092
Total chromium:		
Crude	0.030	0.011
Cracking and coking	0.340	0.118
Asphalt	0.183	0.064
Lube	0.855	0.297
Reforming and alkylation	0.305	0.106
Hexavalent chromium:		
Crude	0.0019	0.0009
Cracking and coking	0.0218	0.0098
Asphalt	0.0117	0.0053
Lube	0.0549	0.0248
Reforming and alkylation	0.0196	0.0068
English units (pounds per 1,000 bbl of feedstock)		
Phenolic compounds (4AAP):		
Crude	0.013	0.003
Cracking and coking	0.147	0.036
Asphalt	0.079	0.019
Lube	0.369	0.090
Reforming and alkylation	0.132	0.032
Total chromium:		
Crude	0.011	0.004
Cracking and coking	0.119	0.041
Asphalt	0.064	0.022
Lube	0.299	0.104
Reforming and alkylation	0.107	0.037
Hexavalent chromium:		
Crude	0.0007	0.0003
Cracking and coking	0.0076	0.0034
Asphalt	0.0041	0.0019
Lube	0.0192	0.0087
Reforming and alkylation	0.0069	0.0031

(2) Example Application of Effluent Limitations Guidelines as Applicable to Phenolic Compounds, Hexavalent Chromium, and Total Chromium.

The following example presents the derivation of a BAT phenolic compound (4AAP) effluent limitation (30-day average) for a petroleum refinery permit. The methodology is also applicable to hexavalent chromium and total chromium.

Refinery process	Process feedstock rate 1,000 bbl/day
1. Atmospheric crude distillation	100
2. Crude desalting	50
3. Vacuum crude distillation	75
Total crude processes (C)	225
6. Fluid catalytic cracking	25
10. Hydrocracking	20
Total cracking and coking processes (K)	45
18. Asphalt production	5
Total asphalt processes (A)	5
21. Hydrofining	3
Total lube processes (L)	3
8. Catalytic reforming	10
Total reforming and alkylation processes (R)	10

Note: 30 day average effluent limitation for phenolic compounds (4AAP), lb/day = (0.003) (225) + (0.036) (45) + (0.019) (5) + (0.090) (3) + (0.032) (10) = 2.96 lb/day

* * * * *

15. Section 419.14 is revised to read as follows:

§419.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (Kilograms per 1,000 m³ of feedstock)		
BOD_5	22.7	12.0
TSS	15.8	10.1
Oil and Grease	6.9	3.7
pH	(1)	(1)
English units (pounds per 1,000 bbl of feedstock)		
BOD_5	8.0	4.25
TSS	5.6	3.6
Oil and Grease	2.5	1.3
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 24.9	1.02
25.0 to 49.9	1.06
50.0 to 74.9	1.16
75.0 to 99.9	1.26
100 to 124.9	1.38
125.0 to 149.9	1.50
150.0 or greater	1.57

(2) Process factor.

Process configuration	Process factor
Less than 2.49	0.62
2.5 to 3.49	0.67

Process configuration	Process factor
3.5 to 4.49	0.80
4.5 to 5.49	0.95
5.5 to 5.99	1.07
6.0 to 6.49	1.17
6.5 to 6.99	1.27
7.0 to 7.49	1.39
7.5 to 7.99	1.51
8.0 to 8.49	1.64
8.5 to 8.99	1.79
9.0 to 9.49	1.95
9.5 to 9.99	2.12
10.0 to 10.49	2.31
10.5 to 10.99	2.51
11.0 to 11.49	2.73
11.5 to 11.99	2.98
12.0 to 12.49	3.24
12.5 to 12.99	3.53
13.0 to 13.49	3.84
13.5 to 13.99	4.18
14.0 or greater	4.36

(3) See the comprehensive example in Subpart D, § 419.43(b)(3).

(c) The following allocations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to ballast, which may be discharged after the application of best conventional pollutant control technology by a point source subject to this subpart, in addition to the discharge allowed by paragraph (b) of this section. The allocation allowed for ballast water flow, as kg/cu m (lb/1000 gal), shall be based on those ballast waters treated at the refinery.

Pollutant or pollutant property	BCT Effluent limitations for ballast water	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per m^3 of flow)	
BOD_5	0.048	0.026
TSS	0.033	0.021
Oil and grease	0.015	0.008
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.21
TSS	0.26	0.17
Oil and grease	0.126	0.067
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 (m^3 of flow)	
BOD_5	48.	26.
TSS	33.	21.
Oil and grease	15.	8.
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

16. Section 419.24 is revised to read as follows:

§ 419.24 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventiona pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BTC):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 (m^3 of feedstock)	
BOD_5	28.2	15.6
TSS	19.3	12.6
Oil and grease	8.4	4.5
pH	(1)	(1)
	English units (pounds per 1,000 bbl of feedstock)	
BOD_5	9.9	5.5
TSS	6.9	4.4
Oil and grease	3.0	1.8
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 24.9	0.91
25.0 to 49.9	0.95
50.0 to 74.9	1.04
75.0 to 99.9	1.13
100.0 to 124.9	1.23
125.0 to 149.9	1.35
150.0 or greater	1.41

(2) Process factor.

Process configuration	Process factor
Less than 2.49	0.58
2.5 to 3.49	0.63
3.5 to 4.49	0.74
4.5 to 5.49	0.88
5.5 to 5.99	1.00
6.0 to 6.49	1.09
6.5 to 6.99	1.19
7.0 to 7.49	1.29
7.5 to 7.99	1.41
8.0 to 8.49	1.53
8.5 to 8.99	1.67
9.0 to 9.49	1.82
9.5 or greater	1.89

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharge of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the

best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of flow)	
BOD_5	48	26
TSS	33	21
Oil and grease	15	8
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

17. Section 419.34 is revised to read as follows:

§ 419.34 Effluent Limitations Guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of feedstock)	
BOD_5	34.6	18.4
TSS	23.4	14.6
Oil and grease	11.1	5.9
pH	(1)	(1)
	English units (pounds per 1,000 bbl of feedstock)	
BOD_5	12.1	6.5
TSS	8.3	5.25
Oil and grease	3.9	2.1
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 24.9	0.73
25.0 to 49.9	0.76
50.0 to 74.9	0.83
75.0 to 99.9	0.91
100.0 to 124.9	0.99
125.0 to 149.9	1.06
150.0 or greater	1.13

(2) Process factor.

Process configuration	Process factor
Less than 4.49	0.73
4.5 to 5.49	0.80
5.5 to 5.99	0.91
6.0 to 6.49	0.99
6.5 to 6.99	1.06
7.0 to 7.49	1.17
7.5 to 7.99	1.28
8.0 to 8.49	1.39
8.5 to 8.99	1.51
9.0 to 9.49	1.65
9.5 or greater	1.72

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of flow)	
BOD_5	48.	26.
TSS	33.	21.
Oil and grease	15.	8.
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

18. Section 419.44 is revised to read as follows:

§ 419.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of feedstock	
BOD_5	50.6	25.8
TSS	35.6	22.7

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Oil and Grease	16.2	8.5
pH	(1)	(1)
English units (pounds per 1,000 bbl of feedstock)		
BOD_5	17.9	9.1
TSS	12.5	8.0
Oil and Grease	5.7	3.0
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 49.9	0.71
50.0 to 74.9	0.74
75.0 to 99.9	0.81
100.0 to 124.9	0.88
125.0 to 149.9	0.97
150.0 to 174.9	1.05
175.0 to 199.9	1.14
200.0 or greater	1.19

(2) Process factor.

Process configuration	Process factor
Less than 6.49	0.81
6.5 to 7.49	0.88
7.5 to 7.99	1.00
8.0 to 8.49	1.09
8.5 to 8.99	1.19
9.0 to 9.49	1.29
9.5 to 9.99	1.41
10.0 to 10.49	1.53
10.5 to 10.99	1.67
11.0 to 11.49	1.82
11.5 to 11.99	1.98
12.0 to 12.49	2.15
12.5 to 12.99	2.34
13.0 or greater	2.44

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff: Maximum for any 1 day	BCT effluent limitations for contaminated runoff: Average of daily values for 30 consecutive days shall not exceed
Metric unit (kilograms per 1,000 m^3 of flow)		
BOD5	48.	26.
TSS	33.	21.
Oil and grease	15.	8.
pH	(1)	(1)
English units (pounds per 1,000 gallons of flow)		
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

19. Section 419.54 is revised to read as follows:

§ 419.54 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

(a) Any existing point subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Metric units (kilograms per 1,000 m^3 of feedstock)		
BOD_5	54.4	28.9
TSS	37.3	23.7

Pollutant or pollutant property	BCT effluent limitations: Maximum for any 1 day	BCT effluent limitations: Average of daily values for 30 consecutive days shall not exceed
Oil and grease	17.1	9.1
pH	(1)	(1)
English units (pounds per 1,000 bbl of feedstock)		
BOD_5	19.2	10.2
TSS	13.2	8.4
Oil and grease	6.0	3.2
ph	(1)	(1)

[1] Within the range of 6.0 to 9.0.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day	Size factor
Less than 124.9	0.73
125.0 to 149.9	0.76
150.0 to 174.9	0.83
175. to 199.9	0.91
200.0 to 224.9	0.99
225.0 or greater	1.04

(2) Process factor.

Process configuration	Process factor
Less than 6.49	0.75
6.5 to 7.49	0.82
7.5 to 7.99	0.92
8.0 to 8.49	1.00
8.5 to 8.99	1.10
9.0 to 9.49	1.20
9.5 to 9.99	1.30
10.0 to 10.49	1.42
10.5 to 10.99	1.54
11.0 to 11.49	1.68
11.5 to 11.99	1.83
12.0 to 12.49	1.99
12.5 to 12.99	2.17
13.0 or greater	2.26

(3) See the comprehensive example in Subpart D, § 419.42(b)(3).

(c) The provisions of § 419.14(c) apply to discharges of process wastewater pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge alllowed by paragraph (b) of this section.

(e) *Effluent Limitations for Contaminated Runoff.* The following effluent limitations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to contaminated runoff which may be

discharged after the application of the best conventional pollutant control technology by a point source subject to this subpart.

(1) If wastewater consists solely of contaminated runoff and is not commingled or treated with process wastewater, it may be discharged if it does not exceed 15 mg/l oil and grease based upon an analysis of any single grab or composite sample.

(2) If contaminated runoff is commingled or treated with process wastewater, or if wastewater consisting solely of contaminated runoff which exceeds 15 mg/l oil and grease is not commingled or treated with any other type of wastewater, the quantity of pollutants discharged shall not exceed the quantity determined by multiplying the flow of contaminated runoff as determined by the permit writer times the concentrations listed in the following table:

Pollutant or pollutant property	BCT effluent limitations for contaminated runoff	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
	Metric units (kilograms per 1,000 m^3 of feedstock)	
BOD_5	48.	26.
TSS	33.	21.
Oil and grease	15.	8.
pH	(1)	(1)
	English units (pounds per 1,000 gallons of flow)	
BOD_5	0.40	0.22
TSS	0.28	0.18
Oil and grease	0.13	0.067
pH	(1)	(1)

[1] Within the range of 6.0 to 9.0.

§ 419.46 and 419.56 [Amended]

20. In §§ 419.46(c) and 419.56(c), "419.15(c)", is revised to read "419.16(c)."

21. 40 CFR Part 419 is amended by adding the following Appendix A:

Appendix A.—Processes Included in the Determination of BAT Effluent Limitations for Total Chromium, Hexavalent Chromium, and Phenolic Compounds (4AAP)

Crude Processes

1. Atmospheric Crude Distillation
2. Crude Desalting
3. Vacuum Crude Distillation

Cracking and Coking Processes

4. Visbreaking
5. Thermal Cracking
6. Fluid Catalvtic Cracking
7. Moving Bed Catalytic Cracking
10. Hydrocracking
15. Delayed Coking
16. Fluid Coking
54. Hydrotreating

Asphalt Processes

18. Asphalt Production
32. 200°F Softening Point Unfluxed Asphalt
43. Asphalt Oxidizing
89. Asphalt Emulsifying

Lube Processes

21. Hydrofining, Hydrofinishing, Lube Hydrofining
22. White Oil Manufacture
23. Propane Dewaxing, Propane Deasphalting, Propane Fractioning, Propane Deresining
24. Duo Sol, Solvent Treating, Solvent Extraction, Duotreating, Solvent Dewaxing, Solvent Deasphalting
25. Lube Vac Twr, Oil Fractionation, Batch Still (Naphtha Strip), Bright Stock Treating
26. Centrifuge and Chilling
27. MEK Dewaxing, Ketone Dewaxing, MEK-Toluene Dewaxing
28. Deoiling (wax)
29. Naphthenic Lubes Production
30. SO_2 Extraction
34. Wax Pressing
35. Wax Plant (with Neutral Separation)
36. Furfural Extraction
37. Clay Contacting—Percolation
38. Wax Sweating
39. Acid Treating
40. Phenol Extraction

Reforming and Alkylation Processes

8. H_2SO_4 Alkylation
12. Catalytic Reforming

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federal register

Friday
July 12, 1985

Part IV

Environmental Protection Agency

40 CFR Part 763
Asbestos Abatement Projects; Immediately Effective Proposed Rule

Agency Paperwork Reduction Act Clearance Request Completed by the Office of Management and Budget

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62044; FRL 2848-9]

Asbestos Abatement Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediately effective proposed rule.

SUMMARY: EPA is proposing a rule under section 6(a) of the Toxic Substances Control Act (TSCA), which is effective immediately under section 6(d) of TSCA. The proposed rule will remain in effect until EPA promulgates a final rule. The rule would apply to asbestos abatement projects using employees not protected by regulations of the Occupational Safety and Health Administration (OSHA) or by regulations of State plans adopted under the Occupational Safety and Health Act (OSHA). The rule is similar to the current OSHA Asbestos Standard.

DATE: This rule is effective July 12, 1985. Comments must be submitted by September 10, 1985. A public hearing, if requested, will be held beginning on September 24, 1985.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-209, 401 M St., SW., Washington, D.C. 20460.

Comments should include the docket control number OPTS-62044. Nonconfidential comments and nonconfidential versions of confidential comments received on this proposal will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107, at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

OMB Control No. 2070-0072.

I. Authority

Section 6(a) of TSCA authorizes EPA to impose a number of regulatory requirements concerning a chemical substance or mixture if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those listed in sections 6(a)(5) and 6(a)(6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

These sections provide authority for EPA to issue this rule, which establishes requirements to protect State and local public employees conducting asbestos abatement activities. The asbestos in buildings where State and local public employees may be involved in abatement has been sold as a commercial product. Therefore, regulation of abatement activities affecting its use in these buildings, such as encapsulation or enclosure, is considered regulation of commercial use. The removal of asbestos, a disposal activity, will affect a number of commercial activities that take place in the public buildings and, therefore, is considered disposal for commercial purposes.

Under section 6(d) of TSCA, EPA may declare a proposed rule under section 6(a) to be effective upon its publication in the **Federal Register** and until the effective date of final action taken if (1) EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to the proposed rule, or any combination of such activities, is likely to result in an unreasonable risk of serious or widespread injury to health or the environment before the effective date of final action by EPA and (2) EPA determines that making the proposed rule effective upon its publication in the **Federal Register** is necessary to protect the public interest.

II. Background

On November 13, 1983, the Service Employees International Union (SEIU) petitioned EPA under section 21 of TSCA to:

1. Establish standards for the performance of asbestos abatement activities, including standards for the protection of persons performing such activities.

2. Establish standards for determining when friable asbestos-containing materials in schools are hazardous.

3. Establish requirements for corrective action in schools when friable asbestos-containing materials are determined to be hazardous.

4. Establish requirements for inspection and abatement of friable asbestos-containing materials in public and commercial buildings.

EPA granted the petition by a notice in the **Federal Register** of March 7, 1984 (49 FR 8450), and a May 7, 1984, letter to the SEIU in which EPA ageed to commence an appropriate proceeding within the meaning of section 21 of TSCA. The May 7, 1984, letter was published in the **Federal Register** of June 14, 1984 (49 FR 24552). EPA promptly commenced an appropriate proceeding by holding four public hearings between May 7, 1984, and June 28, 1984. EPA received oral and written testimony on each point in the petition from many groups interested in reducing the risks associated with asbestos in schools and other public and commercial buildings.

EPA analyzed the hearing record and all other data available to EPA and announced its plans in a November 30, 1984, letter to the SEIU. In that letter, EPA stated, among other things, that there may be merit to the concept of establishing requirements to protect public employees not protected by OSHA requirements who perform asbestos abatement work. EPA announced that it intended either to propose a rule in June 1985 to establish requirements to protect those public employees or to explain the reasons that have made rulemaking inappropriate. EPA also announced in the letter that it would take appropriate action if EPA determined that a more expedited proceeding, such as the issuance of an immediately effective rule, is necessary. EPA has determined that the issuance of a rule to protect public employees from asbestos released to the air during asbestos abatement work is necessary to reduce the unreasonable risk associated with that activity and that the rule should be immediately effective. Therefore, EPA is proposing such a rule. This rule is part of an integrated EPA program to address the risks associated with asbestos in schools and other public and commercial buildings. As part of that program, EPA is establishing three pilot information centers at the regional level to provide information concerning the identification and abatement of asbestos hazards and to train people in proper abatement techniques. To ensure that asbestos abatement is performed safely and

correctly, EPA is helping States establish certification programs for asbestos abatement contractors. EPA is giving some States grants to help them set up contractor certification programs and is suggesting to States ways to implement such programs. EPA is also expanding its technical assistance program to provide guidance on asbestos matters to public and commercial building owners and managers as well as school officials. Finally, EPA is updating existing guidance material and preparing new material.

III. Provisions of the Rule

Sections 763.120 of the rule states the rule's scope. The rule applies to asbestos abatement projects, which include any activity involving the removal, enclosure, or encapsulation of friable asbestos material. EPA considers any material containing more than 1 percent absestos by weight, which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure to be friable asbestos material. The rule covers all employees of State and local governments not covered by either the OSHA Asbestos Standard or an asbestos standard adopted by a State as part of a State plan approved by OSHA under section 18 of the OSHA Act. The rule would be enforced against the employers of those employees. Currently, State and local employees in 27 States are not protected by the OSHA Asbestos Standard. In addition, public employees in some other possessions of the United States are not protected by the OSHA Asbestos Standard. This rule would cover those persons not currently protected. EPA notes that many asbestos abatement projects subject to this rule are also covered under the Clean Air Act by the National Emission Standard for Asbestos, and are obligated to follow that rule also.

Section 763.121 of the rule sets forth the main regulatory requirements. Section 763.121 is almost identical to the current OSHA Asbestos Standard found in 29 CFR 1910.1001. A major substantive change in § 763.121 is in the definition of asbestos. OSHA now defines asbestos as "chrysotile, amosite, crocidolite, tremolite, anthophyllite, and actinolite." OSHA has recognized that its current definition is inconsistent with those of other agencies because the OSHA definition includes non-asbestiform tremolite. In this rule, EPA defines asbestos as "the asbestiform varieties of chrysotile (serpentine); corcidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite." EPA specifically requests comment on the appropriated definition of asbestos.

This rule does not include the part of the current OSHA Asbestos Standard which states that personnel rotation is preferred over use of respirators to meet the permissible exposure requirements. OSHA has announced its intention to revoke that provision (Ref. 12). EPA agrees with OSHA's statement that personnel rotation merely increases the population at risk and would not reduce the absolute number of excess deaths attributable to asbestos according to mathematical models.

This rule, following the current OSHA Asbestos Standard, requires that employers collect samples of air levels "of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees."

EPA adopts and will follow OSHA's administrative interpretations of identical provisions in the Asbestos Standard, including the interpretation that the medical surveillance requirements are triggered by an action level of 0.1 fiber per cubic centimeter (f/cc). Employers would be required to conduct personal and environmental monitoring as required by the rule to see if that level is exceeded.

Section 763.124 of this rule requires State and local employers to report to EPA at least 10 days before they begin an asbestos abatement project using public employees covered by this rule. EPA needs this information to enforce the rule. EPA can inspect asbestos abatement projects covered by this rule only if EPA knows where those projects are located. The report would be sent to the Regional Asbestos Coordinator for the EPA region in which the project is located. Employers who give EPA 10 days advance notice of asbestos abatement projects under the National Emission Standard for Asbestos under 40 CFR 61.146 and clearly indicate that employees covered by this rule will perform asbestos abatement activities, are exempt from reporting under this rule. The latter provision will avoid unnecessary duplicative reporting. Section 763.125 of the rule states EPA enforcement authority, and § 763.126 states EPA inspection authority.

While EPA is adopting the provisions of the current OSHA Asbestos Standard in this rule, EPA encourages persons to provide even greater protection to abatement workers and building occupants who may be exposed to asbestos. OSHA has recognized that employees exposed to asbestos at levels permitted by the current standard face a significant risk to health and OSHA has proposed amending the current standard (Ref. 12). To ensure adequate protection, EPA strongly encourages all employers covered by this rule and other persons to follow EPA guidance materials and take additional steps to control exposure to asbestos. EPA encourages employers covered by this rule to contact a Regional Asbestos Coordinator or the TSCA Assistance Office to obtain EPA guidance documents and other technical assistance information. In addition, OSHA has proposed changes in its Asbestos Standard and EPA is considering adopting the provisions of the revised OSHA Asbestos Standard when that rule is finalized. EPA is considering the permissible exposure limits of 0.5 and 0.2 f/cc proposed by OSHA. EPA is also considering the other issues discussed by OSHA in the preamble to the proposed revised Asbestos Standard. Those issues included the definition of asbestos; a ceiling limit for exposure; and action level to trigger requirements such as exposure monitoring, regulated areas, hygiene facilities, protective clothing, and medical surveillance; exposure monitoring; regulated areas; methods of compliance with the permissible exposure limits; respirator requirements; medical surveillance; signs and labels; and issues concerning the construction industry. EPA may include such provisions in a final rule. EPA expects to adopt a rule very similar to the final OSHA Asbestos Standard.

EPA also specifically requests comments on whether this rule should apply in States that do not have an OSHA-approved State plan but have regulations protecting public employees who perform asbestos abatement work. EPA encourages any State with an existing relevant regulation to inform EPA of the existence of the regulation during the comment period. EPA will consider exempting States from this rule when it is promulgated if they have regulations that are comparable or more stringent than this rule. States which adopt regulations protecting public employees who perform asbestos abatement work after this rule is promulgated should contact EPA at that time. EPA will consider amending this rule to exclude those States from coverage if their regulations provide comparable or greater protection than this rule.

IV. Regulatory Assessment

Under section 6(c)(1) of TSCA, EPA must consider the following factors when determining whether a chemical substance or mixture presents an unreasonable risk:

1. The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such a substance or mixture.

2. The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.

3. The benefits of such substance or mixture for various uses and the availablity of substitutes for such uses.

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

After considering the above factors, EPA proposes the following findings concerning the unregulated removal, enclosure, or encapsulation of friable asbestos material.

A. Health Effects and Magnitude of Exposure to Asbestos

1. Health Effects

The following summarizes the health effects of asbestos. Detailed discussion and assessment of the health effects of asbestos may be found in the "Report to the United States Consumer Product Safety Commission (CPSC), by the Chronic Hazard Advisory Panel on Asbestos" (CHAP), "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings," and the "Report of the (National Research Council) Committee on Nonoccupational Health Risks of Asbestiform Fibers" (Refs. 1 and 4).

Asbestos has been thoroughly examined in numerous epidemiology studies. The life-threatening diseases that have been repeatedly identified are asbestosis, lung cancer, and mesothelioma. Also associated with asbestos exposure in some studies are cancers of the larynx, pharynx, gastrointestinal tract, kidney, and ovary. Major health effects are discussed below.

Asbestosis is a serious chronic disease involving fibrosis of lung and pleural tissues. There is no effective treatment for asbestosis and it is often disabling or fatal. Asbestosis is diagnosed from findings which may include radiographic changes, breathlessness, and abnormal lung function. Since some clinical symptoms of asbestosis are similar to those of other fibrosing lung diseases, a history of occupational exposure to asbestos is often a key feature of its diagnosis. Asbestosis can appear and progress decades after exposure to asbestos fibers. This is partly true because some inhaled asbestos fibers remain in the body for the lifetime of a victim. Under working conditions where average fiber concentrations in the air were high (more than 10 fibers per cubic centimeter) asbestosis has accounted for more than 17 percent of observed deaths (Ref. 11). It is apparently less common than lung cancer or mesothelioma at exposures lower than the current OSHA workplace standard of 2.0 f/cc. (According to the method developed by OSHA and the National Institute for Occupational Safety and Health (NIOSH), 2.0 f/cc means that 2.0 fibers longer than 5 microns are present in each milliliter of air. As many as 98 percent of airborne asbestos fibers are less than 5 microns and thus are not counted by the OSHA/NIOSH method.) Some recent data on the incidence of asbestosis appear compatible with a linear exposure-response relationship with no threshold (Ref. 12). Whether asbestosis is likely from the low doses characteristic of the nonoccupational environment is considered to be uncertain.

Lung cancer is responsible for the largest number of deaths from exposure to asbestos. Lung cancer has been associated with exposure to all the principal commercial asbestos fiber types. Excess lung cancer has been documented in asbestos mining, milling, manufacture, and use. Studies in which the extent of exposure can be approximated provide evidence that lung cancer increases linearly with both level and duration of exposure. Cigarette smoking and asbestos have a strong synergistic interaction in development of lung cancer. Asbestos exposure appears to multiply the underlying risk of lung cancer. Consequently, when exposed to asbestos, the risk of lung cancer for smokers (for whom the risk of lung cancer is already high) is much higher than that for nonsmokers exposed to asbestos. The CHAP estimated that the absolute increase in lung cancers in nonsmokers is about 1/10 of that in smokers exposed to asbestos.

Mesotheliomas are cancers that occur as thick diffuse masses in the serous membranes (mesothelia) that line body cavities. Many human studies have shown that exposures to asbestos produce mesotheliomas in the pleura (the membrane that surrounds the lungs and lines the lung cavity) and the peritoneum (which surrounds the abdominal organs and lines the abdominal cavity). Neither form of mesothelioma can be treated effectively, and both forms are nearly always fatal within the first 2 years after diagnosis. Epidemiology studies suggest that the incidence of mesothelioma is related to dose and time from first exposure. Association of mesothelioma with smoking is weak or nonexistent. Asbestos fibers appear, by far, to be the most common cause of mesotheliomas.

In occupational studies where the primary route of exposure is through inhalation, lung cancer and mesotheliomas usually account for about 90 percent of the excess cancers seen among workers. However, as noted in the CHAP report (Ref. 1), a number of other cancers, principally of the gastrointestinal tract, have been associated with asbestos exposure. These are cancers of the larynx, pharynx, oral cavity, esophagus, stomach, colon, and rectum. Statistically significant excesses of cancers of the kidney and ovary have also been shown. In addition, the excess of cancers at all other sites combined is statistically significant in some studies.

The conclusions from epidemiology studies concerning the health effects of asbestos are also supported by results of laboratory studies. Animals treated with asbestos have shown increased incidence of fibrosis, lung cancer, and mesotheliomas. All commercial forms and several other types of asbestos are implicated from a variety of modes of exposure. Animal studies, however, have not shown an increased incidence of gastrointestinal or other cancers.

Most occupational studies have been conducted on populations exposed to high airborne concentrations of asbestos for long periods of time. Short-term occupational exposures, however, have also been shown to increase the risk of lung cancer and mesothelioma (Ref. 9). In addition, there are many documented cases of mesothelioma linked to extremely brief exposure to high concentrations of asbestos or long-term exposure to low concentrations (Ref. 4).

Direct evidence of adverse health effects from nonoccupational asbestos exposure also exists. Persons who lived in the household of asbestos workers have developed pleural mesothelioma and signs of asbestosis (Ref. 10). A number of mesotheliomas have also been documented among populations whose only identified exposure was from living near asbestos mining areas, asbestos product factories, or shipyards where asbestos use had been very heavy.

In addition to exposure to asbestos fibers in the air, the general population is also exposed through various oral sources, including drinking water containing asbestos. Because of the

potential for oral exposure as well as the excess of gastrointestinal tract cancers that has frequently been found in occupational groups exposed to asbestos in the air, there has been much study of the possible health effects of ingestion of asbestos fibers. Despite those efforts, evidence showing health effects from ingestion is still ambiguous (Ref. 5).

2. Cancer Risk Extrapolation

As discussed above, numerous human studies have demonstrated that exposure to asbestos has increased the risk of cancer and asbestosis. This unit presents EPA's approach in estimating the cancer risk attributable to exposures during the removal, enclosure, or encapsulation of friable asbestos.

Since a number of epidemiology studies indicate a positive relationship between asbestos exposure and the risk of lung cancer, several models may be used to extrapolate from risk at high exposure to risk at lower exposure. The model that EPA believes is most consistent with available human and animal data is the linear nonthreshold dose/response model. This model assumes that (1) any exposure increases risk, and (2) the increase in risk is proportional to the background risk in the nonexposed population and to the level of exposure, defined as duration of exposure times concentration of asbestos fibers to which populations may be exposed.

The choice of the linear model appears reasonable since there is no evidence for a threshold level of asbestos exposure below which there is no increased risk. It is further supported by evidence of cancers among populations whose asbestos exposure is believed to have been lower than levels reported in the epidemiology studies of asbestos workers mentioned above.

The model adopted by EPA to estimate excess mesothelioma incidence due to asbestos exposure relates disease incidence to dose and the time from first exposure (minus 10 years) raised to the third power. This model reflects a delay (or minimum latency period) of 10 years between first exposure and the likely earliest possible appearance of the disease. Both the lung cancer and mesothelioma models have also been adopted by OSHA (Ref. 12). The derivation and validation of the models is discussed in detail in the CHAP report (Ref. 1) and in EPA's "Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products" (Ref. 3).

Although EPA believes that excess mortality from asbestosis and cancers other than lung cancer and mesothelioma could occur from exposure to asbestos released during asbestos abatement operations, EPA has not attempted to quantify that excess mortality since lung cancer and mesothelioma appear to present the greatest threats to human health at current exposure levels.

The risk of asbestos-induced disease may be modified by several factors. As mentioned in the earlier discussion on lung cancer, smoking drastically increases the risk of developing lung cancer from exposure to asbestos. Because of their lower underlying risk, the absolute increase of incidence of lung cancer in nonsmokers is about one-tenth of that in smokers. However, complete control of the smoking factor (if possible) would not in itself reduce the overall risk of asbestos health effects to acceptable levels since the risk of mesothelioma (which is apparently unaffected by smoking) and the risk of lung cancer to nonsmokers would still remain.

Another factor that may affect the risk of asbestos-induced disease is the possible diffrences in biological potency among the different fiber types. Epidemiology studies suggest that chrysotile may have a lower potential for producing peritoneal mesotheliomas than crocidolite or amosite. However, this has not been supported by laboratory studies. There is less evidence of marked differences between fiber types in their potential to produce pleural mesothelioma and lung cancer. Since all major fiber types (chrysotile, crocidolite, and amosite) are capable of causing lung cancer and pleural mesothelioma, and since the observed differences in potency are ambiguous, EPA has concluded that it is prudent to treat all asbestos fiber types as having equivalent biological activity.

Fiber dimension has also been suggested as a factor that may affect incidence of asbestos-induced disease. Animal studies in which asbestos fibers were applied by injection or implantation suggest that longer and finer fibers are more carcinogenic than shorter and coarser fibers. This has not, however, been confirmed by inhalation studies. EPA has not differentiated among fiber sizes in its assessment of the potential risk of asbestos. First, asbestos fibers released during asbestos abatement projects consist of a great range of dimensions, including those suggested as most dangerous. Second, it has not been clearly shown that short fibers pose a significantly lesser risk. No dimensional threshold for potency has been established.

3. Magnitude of Human Exposure

Persons can be exposed to high levels of airborne asbestos in or near the work area during asbestos abatement projects. Peak exposure during the removal of asbestos insulation have been measured at levels ranging from 4.5 f/cc to 82.2 f/cc. Mean exposure levels during the dry removal of an asbestos-containing ceiling have been measured at 42.2 f/cc. Mean exposure levels during the wet removal of an asbestos-containing ceiling have been measured at 23.1 f/cc. Mean exposure levels during removal of an asbestos-containing ceiling using water and a surfactant have been measured at 8.1 f/cc (Refs. 2 and 13). OSHA has estimated that average airborne concentrations in the dry wall removal, renovation, and demolition industry are 20 f/cc. (Ref. 12).

There may also be much exposure to asbestos during the encapsulation and enclosure of friable asbestos material. Using an electron microscope, levels of 40, 380, 390, and 8,740 nanograms per cubic meter were found in samples taken in the work area with a mobile pump during painting with an encapsulant. Samples taken by personal pumps worn by two painters during encapsulation showed very low levels in one case and levels of 1,000, 1,700, 2,300, and 13,000 nanograms per cubic meter in the other case (Ref. 14). EPA has received anecdotal evidence that there may be much exposure to asbestos during enclosure of friable asbestos material.

Based on available exposure information, EPA estimates that unregulated dry removal of asbestos results in exposure levels of 24.0 f/cc in the work area during abatement, 1.6 f/cc outside the work area during abatement and 0.8 f/cc outside work area post abatement. EPA estimates that unregulated wet removal of asbestos results in exposure levels of 18.0 f/cc in the work area during abatement, 0.9 f/cc outside the work area during abatement, and 0.5 f/cc in the building post abatement (Ref. 13). Many of the estimates are based on data reported in studies, while others are essentially assumed due to a lack of data (Ref. 13).

EPA estimates that this rule would reduce the concentrations of airborne asbestos to 11.9 f/cc in the work area during abatement, 0.3 f/cc outside the work area during abatement, and 0.05 f/cc in the building post abatement (Ref. 13).

EPA estimates that about 450 abatement workers per year would be covered by this rule. This is based on an estimate of the number of abatement projects each year and an estimate of the percentage of those projects in which State and local employees are used. EPA estimates that these asbestos abatement workers would be exposed to asbestos during abatement for 3 to 6 days a year. In addition, other persons would be exposed to asbestos as a result of asbestos abatement activities. EPA estimates that about 1,250 other States and local public employees, such as public school teachers, other public school personnel, public hospital staff, and State and local government office workers, would be exposed during abatement and about 3,700 employees would be exposed post abatement. EPA also estimates that about 400 other building occupants such as school children and hospital patients and visitors would be exposed during abatement and about 38,600 other occupants and visitors would be exposed post abatement (Ref. 13). EPA expects that this rule will reduce the level of asbestos exposure to all of these groups.

B. Environmental Effects

Section 6(c) of TSCA requires that EPA state the relevant environmental factors and key considerations which form the basis for regulatory action under section 6(a). The unreasonable risk finding of this rule is based solely on risks to human health since these risks are by far the most serious consequence of unregulated removal, enclosure, or encapsulation of friable asbestos material and are sufficient to support this rule.

C. Benefits of Asbestos Products and Availability of Substitutes

EPA finds that the benefits of the asbestos-containing products affected by this rule are minimal. This rule applies only when persons have already decided to remove, enclose, or encapsulate friable asbestos material. These people presumably will have already determined that there are no benefits in using the asbestos-containing material in its present condition. In addition, there are adequate substitutes for the asbestos products that are being removed from buildings.

D. Economic Effects of the Rule

This portion of the preamble presents EPA's determination of the "reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health" as required by section 6(c)(1)(D) of TSCA.

EPA estimates that this rule would increase the cost of asbestos abatement to some extent. EPA estimates that the rule would increase the cost of typical abatements as follows:

Project	Without rule	With rule	Increase	Percent increase
School	$12,900	$15,300	$2,400	18
Office Building	18,800	22,000	3,200	17
Hospital	58,500	65,800	7,300	12
Boiler room	3,700	4,900	1,200	32
Boiler pipes	1,700	2,600	900	54

EPA estimates that this rule would increase the costs of asbestos abatement a total of about $730,000. This figure is the present value of cost incurred over the next 15 years, assuming that all friable asbestos is abated. EPA also estimates that this rule would avoid about 200 cancer cases. This is about $3,650 per cancer case avoided.

This rule would not have a direct impact on small business since it applies only to those public employees not covered by the OSHA Asbestos Standard. However, by establishing regulatory requirements for public employees similar to those of private employees under OSHA jurisdiction, the rule would eliminate cost advantages that may encourage the use of public employees rather than private contractors for asbestos abatement. This rule may, therefore, bring about increased use of private contractors, some of which are small businesses. This rule could have an impact on small government entities because it would increase the cost of performing asbestos abatement activities using public employees. However, the rules would not increase the cost of using contractors to perform asbestos abatement and would not require any government entity to undertake asbestos abatement activities.

EPA does not believe that this rule will restrict technological innovation. The rule allows sufficient flexibility for the development of new technology concerning asbestos abatement.

E. Other EPA Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA, EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce the risks to the workers associated with the removal, renovation, or encapsulation of asbestos to a sufficient extent.

Several EPA statutes have been used to limit asbestos exposure. In 1973, EPA used the authority of the Clean Air Act (CAA) to list asbestos as a hazardous air pollutant, establish a "no visible" emission standard for manufacturers, and ban the use of spray-applied asbestos-containing material as insulation in buildings. The regulation was published in the **Federal Register** of April 6, 1973 (38 FR 8826). EPA amended this regulation in 1975 to ban asbestos-containing pipe lagging, by a rule published in the **Federal Register** of October 12, 1975 (40 FR 48292); and in 1978 extended the ban to all uses of sprayed-on asbestos by a rule published in the **Federal Register** of June 19, 1978 (43 FR 26372). The CAA rule also regulates operations involving the demolition or renovation of buildings containing friable asbestos and the disposal of wastes generated by such operations.

However, the CAA has limitations. The CAA does not apply directly to the protection of workers exposed to indoor air. Consequently, any possible additional use of that statute could leave many workers exposed to situations of inadequate protection.

An additional EPA statute that could be used to limit asbestos exposure is the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA could list asbestos as a hazardous waste and subject asbestos waste to general RCRA requirements designed to reduce exposure. However, such action under RCRA would reduce exposure only when the wastes from asbestos removal are ultimately placed in disposal facilities. It would not reduce exposure during the actual removal, enclosure, or encapsulation of asbestos products. Therefore, EPA finds it is in the public interest to take action under TSCA rather than under another statute administered by EPA.

F. Other Options Considered

Section 6 of TSCA requires that EPA apply the least burdensome requirements to reduce an unreasonable risk. EPA considered the following options for reducing the risks associated with the removal, enclosure, or encapsulation of asbestos without any regulatory controls beyond those

required by the National Emission Standard for Asbestos.

1. *Take no regulatory action under TSCA; instead provide the public with information and technical assistance.* Under this option, EPA would take no regulatory action, beyond that already taken as part of the National Emission Standard for Asbestos; but would instead provide the public with information and technical assistance. EPA is already increasing the information and technical assistance it provides the public. Persons could use that information to reduce the risk to public employees who perform asbestos abatement work during the removal, enclosure, or encapsulation of asbestos.

This approach would minimize the burden caused by regulatory action. However, this option is an adequate response given the high risk to abatement workers associated with the removal, enclosure, or encapsulation of asbestos following only the requirements of the National Emission Standard for Asbestos. The National Emission Standard for Asbestos was designed to limit the release of asbestos to the ambient air and only incidentally protects abatement workers inside a building.

2. *Take no regulatory action under TSCA; instead defer to the States.* Under this option, EPA would take no regulatory action beyond that already taken as part of the National Emission Standard for Asbestos but would instead provide the States with information and technical assistance so that States can adopt regulations to protect public employees who perform asbestos abatement work.

This approach would minimize the burden caused by Federal regulatory action. However, this option is an inadequate response since a number of States have not taken action in this area in the past and may not take action in the future. Still, EPA encourages States to take action to protect such public employees with requirements more stringent than those in this rule. As stated earlier, employees exposed to asbestos at the level permitted by this rule still face a risk to health.

3. *Propose a rule which provides greater protection than the current OSHA Asbestos Standard.* OSHA has recognized that its current Asbestos Standard is inadequate and has begun rulemaking to adopt a new standard. EPA could propose a rule closer to the proposed OSHA standard or closer to the recommendations for worker protection in EPA's technical guidance documents. Because this proposed rule is immediately effective, EPA decided to follow the current OSHA Asbestos Standard closely to maintain consistency among Federal agencies. However, EPA is considering adopting one of the proposed OSHA permissible exposure levels of 0.5 and 0.2 f/cc in a final EPA rule. In addition, EPA is considering the other issues discussed by OSHA in the preamble to its proposed amendments to the Asbestos Standard. EPA may adopt some or all of these provisions in a final rule. EPA expects to adopt a rule very similar to the revised OSHA Asbestos Standard.

G. Analysis Under Section 9(a) of TSCA

Section 9(a) of TSCA requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce to a sufficient extent such risks. EPA has reviewed other Federal authorities. The only statute not administered by EPA that could reduce such risks in the OSHAct. However, this rule covers only persons not covered by the OSHA Asbestos Standard. OSHA currently has no statutory authority to cover public employees in a State without an OSHA-approved State plan and 27 States do not have an approved plan. Thus, EPA cannot determine that there is a statute administered by another Federal agency that can prevent or reduce the risk presented to persons not covered by the OSHA Asbestos Standard during the removal, enclosure, or encapsulation of friable asbestos.

V. Finding of Unreasonable Risk

EPA has weighed the health risks from unregulated asbestos abatement against the costs attributable to the proposed regulation. EPA estimates that this rule would avoid 200 cancer cases, among abatement workers, other employees in buildings where abatement occurs, and visitors to such buildings while costing about $730,000 over 15 years. This is about $3,650 per cancer case avoided. EPA has concluded that the avoidance of these premature deaths substantially outweighs the costs of the control measures required.

Therefore, EPA finds that unregulated removal, enclosure, or encapsulation of friable asbestos material presents an unreasonable risk to human health and proposes to require that certain measures be taken to reduce the risk faced by asbestos abatement workers and persons using and visiting buildings during and after asbestos abatement activities. The finding is based on the following points:

1. The health effects from asbestos exposure are very serious. Asbestos is a demonstrated human carcinogen. The cancers caused by asbestos are usually fatal and cause much pain and suffering.

2. Available evidence supports the conclusion that there is no safe level of exposure to asbestos. This conclusion is consistent with present theory of cancer etiology and is further supported by the many documented cases where low or short-term exposure has been shown to cause asbestos-related disease.

3. Models developed to estimate the relative risk of developing cancer from exposure to asbestos show a linear dose-response relationship. Based on data from epidemiology studies, these models predict that humans exposed to even very low levels of asbestos incur some risk.

4. A substantial number of persons are involved in asbestos abatement activities, but are not protected by the OSHA Asbestos Standard.

5. Persons can be exposed to high levels of airborne asbestos if they conduct asbestos abatement without any exposure controls.

6. The estimated incremental economic costs of this rule are minimal in view of the number of cancers that may be avoided by the rule.

EPA also finds that such unregulated removal, enclosure, or encapsulation of friable asbestos is likely to result in an unreasonable risk of serious or widespread injury to human health before the effective date of final action by EPA and that making the proposed rule effective upon its publication in the **Federal Register** is necessary to protect the public interest. Asbestos is a known human carcinogen. If persons attempt to abate asbestos hazards, but do so incorrectly, there may be very high levels of exposure to asbestos on the part of abatement workers, other employees who work in the building, and visitors to the building. These levels may far exceed the levels of exposure permitted by the current OSHA Asbestos Standard. For example, in schools that incorrectly abate asbestos hazards, school teachers and other school employees and school children could be exposed as well as abatement workers. State and local public employees could potentially take part in asbestos abatement activities in all State and local public buildings in the States not covered by OSHA State plans. Thus, many persons could be exposed to high concentrations of asbestos before the effective date of this rule. Because of increased public concern about asbestos in buildings and increased abatement activity during the summer months, EPA expects that much asbestos abatement would take place

during the period normally allowed for comment on this proposed rule.

VI. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated under section 6 of TSCA. Therefore, failure to comply with this rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to (1) fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying of records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In addition, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule.

VII. Rulemaking Process

Under section 6(d) of TSCA, after making the statutory findings discussed in Unit V of this preamble, EPA may issue a proposed rule under section 6(a). Such a proposed rule is effective upon publication in the **Federal Register.**

Section 6(d)(2)(B) of TSCA provides that EPA must give interested persons prompt notice of the action, provide a reasonable opportunity for a hearing in accordance with section 6(c)(2) and (3), and either promulgate the rule as proposed, or with modifications, or revoke it. However, unlike an ordinary section 6(c) rulemaking in which EPA would schedule the hearing after allowing written comment, section 6(d)(2)(B) provides that, if a person requests a hearing, EPA must begin the hearing within 5 days of the request, unless EPA and the person making the request agree upon a later date. Section 6(d)(2)(B) further provides that EPA promulgate a final rule, or revoke the proposed rule, within 10 days of the conclusion of the hearing.

For this rulemaking, EPA has established the following schedule in accordance with the requirements of 40 CFR Part 750: To provide a reasonable opportunity for comment by all interested persons, EPA will accept written comments for 60 days from the date of publication of this proposed rule in the **Federal Register.** A legislative hearing is scheduled to begin 14 days after the end of the 60-day comment period. The hearing will be held only if EPA receives a formal request from an interested person by the end of the 60-day comment period. If a hearing is requested, interested persons will be given an opportunity to present information. Fourteen days after the conclusion of the initial hearing, EPA may hold a cross-examination hearing. Participants in the initial hearing may request an opportunity for cross-examination within 7 days of the time the full transcript of the initial hearing becomes available. EPA will grant the request for cross-examination if there is a disputed issue of material fact. Within 14 days of the close of the initial hearing, or within 14 days of the close of the cross-examination hearing if such a hearing is held, reply comments may be submitted. After that 14-day period, the hearing is officially concluded, and EPA will promulgate the final rule or revoke it within 10 days.

EPA requests that persons adhere to this schedule to allow all persons an adequate opportunity to comment on the rule. However, if a person requests an immediate hearing during the 60-day comment period, EPA is required to begin the hearing within 5 days of the request. If so, EPA will be forced to cut short the written comment period and proceed with the hearing. EPA will give as much notice as possible of any such hearing request and any change in the rulemaking schedule.

VIII. Confidentiality

A person may assert a claim of confidentiality for any information, including public comments, submitted to EPA in connection with this proposed rule. Any person who submits a confidential public comment must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons would claim information confidential by circling, bracketing, or underlining it and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR Part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS-62044). A public version of the record, without any confidential business information, is available to the public in the Office of Toxic Substances Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E-107, 401 M St., SW., Washington, D.C.

The record includes information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received. The record now includes the following categories of information:

1. **Federal Register** notices.
2. Support documents.
3. Reports.
4. Memoranda and letters.

EPA will include by reference the rulemaking record compiled by OSHA as part of the revision of the OSHA Asbestos Standard. Therefore, persons should not send EPA copies of their comments to OSHA. EPA will identify the complete rulemaking record by date of promulgation. EPA will accept additional material for inclusion in the record at any time between this notice and designation of the complete record. The final rule will also permit persons to point out any errors or omissions in the record.

X. References

(1) USCPSC. Report to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos. July 1983.

(2) USEPA, OPTS, OTS. Exposure Assessment for Asbestos. Draft January 9, 1984.

(3) USEPA, OPTS, OTS. Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. Draft March 1985.

(4) USEPA, OPTS, OTS. Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings-Health Effects and Magnitude of Exposure. January, 1982.

(5) National Research Council. "Asbestos" In: *Drinking Water and Health.* Vol. 3. National Academy Press. Washington, D.C. (1982): 223-263.

(6) National Research Council. "Nonoccupational Health Risks of Asbestiform Fibers." National Academy Press. Washington, D.C. 1984:

(7) NIOSH-OSHA Asbestos Work Group. Workplace Exposure to Asbestos: "Review and Recommendations." DHHS (NIOSH) Publication No. 81-103. U.S. Government Printing Office, Washington, D.C. 20402. (1980).

(8) OSHA. "Quantitative Risk Analysis for Asbestos-Related Cancers: A Preliminary Report." (1983).

(9) Seidman, H., Selikoff, I.J., Hammond, E.C., "Short-Term Observation." In: "Annals of the New York Academy of Science," 330 (1979): 61–89.
(10) Selikoff, I.J., Anderson, H.A., Seidman, H. "Asbestos Disease Among Household Contacts of Asbestos Workers" In: "Disability Compensation for Asbestos-Associated Disease in the U.S.," edited by I.J. Selikoff. Environmental Sciences Laboratory, Mount Sinai School of Medicine of the City University of New York. (1982): 73–76.
(11) Selikoff, I.J., Hammond, E.C., Seidman H., "Mortality Experience of Insulation Workers in the U.S. and Canada, 1943–1976. In: *Annals of the New York Academy of Science*. 330 (1979): 91–116.
(12) USDOL, OSHA. "Occupational Exposure to Asbestos; Proposed Rule and Notice of Hearing. (April 10, 1984; 49 FR 14116).
(13) USEPA, OPTS, OTS. Asbestos Abatement Rules: A Preliminary Cost-Effectiveness Analysis. Revised Draft Report May, 1985.
(14) USEPA, OPTS, OTS. Evaluation of Asbestos Techniques: Encapsulation. Draft report April 1985.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA has prepared a Cost-Effectiveness Analysis. The Analysis estimates that this rule would cost about $730,000 over 15 years, while avoiding about 200 fatal cancer cases. This is a cost of about $3,650 per cancer case avoided. As shown in Unit V above, EPA believes that these costs are reasonable. Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this proposed rule on small businesses. A summary of EPA's analysis appears in Unit IV.D.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* (Control No. 2070–0072). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB and marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Asbestos.

Dated: June 22, 1985.

Lee M. Thomas,

Administrator.

PART 763—[AMENDED]

Therefore, 40 CFR Part 763 is amended as follows:

1. The authority citation for Part 763 is revised to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. Subpart G is added to read as follows:

Subpart G—Asbestos Abatement Projects

Sec.
763.120 Scope.
763.121 Regulatory requirements.
763.124 Reporting.
763.125 Enforcement.
763.126 Inspections.

Authority: 15 U.S.C. 2605.

Subpart G—Asbestos Abatement Projects

§ 763.120 Scope.

(a) This part establishes requirements which must be followed during asbestos abatement projects, which include any activity involving the removal, enclosure, or encapsulation of any material containing more than 1 percent asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure.

(b) This part applies to all employers of State and local government employees not covered by the Asbestos Standard of the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1001, or an Asbestos Standard adopted by a State as part of a State plan approved by OSHA under section 18 of the Occupational Safety and Health Act. The rule covers the employees of those employers. The employer is the public department, agency, or entity which hires the employee. This includes, but is not limited to the following examples of public entities: any State, County, City or other local governmental entity which operates or administers schools, a department of health or human services, a library, a police department, a fire department, or similar public service agencies or offices.

§ 763.121 Regulatory requirements.

(a) *Definitions.* For the purpose of this section:

(1) "Asbestos" means "the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite."

(2) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(b) *Permissible exposure to airborne concentrations of asbestos fibers.*

(1) [Reserved]

(2) *Standard effective July 12, 1985.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(3) *Ceiling concentration.* No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) *Methods of compliance*—(1) *Engineering methods.* (i) *engineering controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (A) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2–1979, (Revision of ANSI Z9.2–1971) which is incorporated by reference herein.

(B) ANSI Z9.2–1979 is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American National Standards Institute, 1430 Broadway, New York, NY, 10018 (212–354–3473).

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with paragraph (c)(1)(ii) of this section.

(2) *Work practices*—(i) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in paragraph (b) of this section, unless the usefulness of the product would be diminished thereby.

(ii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in paragraph (b) of this section.

(iii) *Spraying, demolition, or removal.* Employees engaged in the spraying of asbestos, the removal, or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with paragraph (d)(2)(iii) of this section and with special clothing in accordance with paragraph (d)(3) of this section.

(d) *Personal protective equipment.* (1) Compliance with the exposure limits prescribed by paragraph (b) of this section may not be achieved by the use of respirators or shift rotation of employees, except:

(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section;

(ii) In work situations in which the methods prescribed in paragraph (c) of this section are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by paragraph (b) of this section; or

(iii) In emergencies.

(2) Where a respirator is permitted by paragraph (d)(1) of this section, it shall be selected from among those approved by the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health, Education, and Welfare, under the provisions of 30 CFR Part 11 (37 FR 6244, Mar. 25, 1972), and shall be used in accordance with paragraph (d)(2) (i), (ii), (iii), and (iv) of this section.

(i) *Air purifying respirators.* A reusable or single use air purifying respirator, or a respirator described in paragraph (d)(2) (ii) or (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(ii) *Powered air purifying respirators.* A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in paragraph (d)(2) (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(iii) *Type "C" supplied-air respirators, continuous flow or pressure-demand class.* A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(iv) *Establishment of a respirator program.* (A) The employer shall establish a respirator program in accordance with the requirements of the American National Standard Practices for Respiratory Protection, ANSI Z88.2–1980 (Revision of ANSI Z88.2–1969), which is incorporated by reference herein.

(B) ANSI Z88.2–1980 is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS-793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American National Standards Institute, 1430 Broadway, New York, NY 10018, (212–354–3473).

(C) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) *Special clothing.* The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in paragraph (b) of this section.

(4) *Change rooms.* (i) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, the employer shall provide change rooms for employees working regularly at the place.

(ii) *Clothes lockers.* The employee shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(iii) *Laundering.* (A) Laundering of asbestos contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(B) Any employer who gives asbestos contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (d)(4)(iii) (A) of this section to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(C) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable bags, or other closed, impermeable containers, and labeled in accordance with paragraph (g) of this section.

(e) *Method of measurement.* All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400–450 x (magnification) (4 millimeter objective) with phase contrast illumination.

(f) *Monitoring*—(1) *Initial determinations.* Every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in paragraph (b) of this section. If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with paragraph (c) of this section.

(2) *Personal monitoring.* (i) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees.

(3) *Environmental monitoring.* (i) Samples shall be collected from areas of a work environment which are representative of the airborne concentrations of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees.

(4) *Employee observation of monitoring.* Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by this paragraph and shall have access to the records thereof.

(g) *Caution signs and labels*—(1) *Caution signs.* (i) *Posting.* Caution signs shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in paragraph (b) of this section. Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(ii) *Sign specifications.* The warning signs required by paragraph (g)(1)(i) of this section shall conform to the requirements of 20" x 14" vertical format signs specified in 29 CFR 1910.145(d)(4), and to this paragraph (g)(1)(ii). The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in this paragraph (g)(1)(ii).

Legend	*Notation*
Asbestos	1" Sans serif, gothic or block.
Dust Hazard	¾" San serif, gothic or block.
Avoid Breathing Dust	¼" gothic.
Wear Assigned Protective Equipment.	¼" gothic
Do Not Remain in Area Unless Your Work Requires it.	¼" gothic.
Breathing Asbestos Dust May be Hazardous To Your Health.	14 point gothic.

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) *Caution labels*—(i) *Labeling.* Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section will be released.

(ii) *Label specifications.* The caution labels required by paragraph (g)(2)(i) of this section shall be printed in letters of sufficient size and contrast to be readily visible and legible. The label shall state:

CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM

(h) *Housekeeping*—(1) *Cleaning.* All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section shall be collected and dispose of in sealed impermeable bags, or other closed, impermeable containers.

(i) *Recordkeeping*—(1) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Environmental Protection Agency, the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) *Employee access.* Every employee and former employee shall have reasonable access to any record required to be maintained by paragraph (i)(1) of this section, which indicates the employee's own exposure to asbestos fibers.

(3) *Employee notification.* Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in paragraph (b) of this section shall be notifed in writing of the exposure as soon as practicable but not later than 5 days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) *Medical examinations*—(1) *General.* The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph.

(2) *Preplacement.* The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(3) *Annual examinations.* On or before July 14, 1986, and at least annually thereafter, every employer shall provide,

or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(4) *Termination of employment.* The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches), a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(6) *Medical records*—(i) *Maintenance.* Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(ii) *Access.* The contents of the records of the medical examinations required by this paragraph shall be made available, for inspection and copying, to the Environmental Protection Agency, the Assistant Secretary of Labor for Occupational Safety and Health, the Director of NIOSH, to authorized physicians and medical consultants of either of them, and, upon the request of an employee or former employee, to his physician. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer of the examined employee all the information specifically required by this paragraph, and any other medical information related to occupational exposure to asbestos fibers.

§ 763.124 Reporting.

(a) Employers subject to this rule must report to the Regional Asbestos Coordinator for the EPA Region in which the asbestos abatement project is located at least 10 days before they begin an asbestos standard or an Asbestos Standard adopted by a State as part of a State plan approved by OSHA. A list of the EPA Regional Office is given under 40 CFR 1.7(b).

(b) The report must include:

(1) The employer's name and address.

(2) The location, including street address, of the asbestos abatement project.

(3) The scheduled starting and completion dates for the asbestos abatement project.

(c) If a report is mailed to EPA, the report must be postmarked at least 10 days before the asbestos abatement project begins.

(d) Employers do not have to report under this section if they submit a notice to EPA under the National Emission Standard for Asbestos, 40 CFR 61.146, at least 10 days before they begin the asbestos abatement project and that notice clearly indicates that employees not covered by the OSHA Asbestos Standard or an Asbestos Standard adopted by a State as part of a State plan approved by OSHA will perform some or all of the asbestos abatement work.

(Approved by the Office of Management and Budget under the control number 2070–0072)

§ 763.125 Enforcement.

(a) Failure to comply with any provisions of this part is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin an asbestos abatement project in violation of this Part, or take other actions under the authority of sections 7 or 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.126 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this part.

[FR Doc. 85–16089 Filed 7–11–85; 8:45 am]
BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL 2859-4]

Agency Paperwork Reduction Act Clearance Request Completed by the Office of Management and Budget

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) has approved the following Information Collection Request (ICR).

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM-223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION: EPA #1246; Asbestos Abatement Worker Protection Rule, was approved (OMB #2070-0072; expires 6/30/88).

This information collection request was submitted in conjunction with an immediately effective proposed rule, which appears in this issue of the **Federal Register.** Because this rule is immediately effective, OMB has waived a public comment period at this time. As stated in the rule, OMB will, however, consider public comments in its review of the final version of the rule. Submit comments on the information collection requirements contained in this rule to: Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Rm 3228), Washington, D.C. 20503.

Dated: July 1, 1985.

Howard A. Howell,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-16088 Filed 7-11-85; 8:45 am]

BILLING CODE 6560-50-M

federal register

Friday
July 12, 1985

Part V

Environmental Protection Agency

40 CFR Part 52

State Implementation Plans for Visibility; New Source Review and Monitoring Strategy; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AD-FRL-2847-8]

State Implementation Plans for Visibility New Source Review and Monitoring Strategy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: In this action, EPA is promulating Federal regulations for visibility new source review for 16 States and a visibility monitoring strategy for 19 States that have failed to submit revised State implementation plans (SIP's). The regulations were proposed at 49 FR 42670 on October 23, 1984. This action completes the first part of a settlement agreement with the Environmental Defense Fund, et al. (EDF), described at 49 FR 20647 on May 16, 1984.

The EPA is also taking a direct final action in this notice for four States that EPA has determined do not require the visibility new source review provisions for nonattainment areas. The EPA believes that this action sastisfies the requirements for a direct final action.

DATES: The visibility new source review provisions and the monitoring strategies will become effective August 12, 1985. The direct final action for the four States will become effective on September 10, 1985 unless notice is received within 30 days that critical or adverse comments will be submitted. Such notice should be submitted to Bruce V. Polkowsky at the address given in **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Docket A-48-32 was established for this rulemaking and is located in the Central Docket Section, West Tower Lobby, U.S. EPA, 401 M Street SW., Washington, D.C. 20460. The docket can be inspected between 8 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Bruce V. Polkowsky, Control Programs Development Division (MD-15), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone (919) 541-5540.

SUPPLEMENTARY INFORMATION:

Background

Section 169A of the Clean Air Act (Act), 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. "Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a) (40 CFR 81.400-937). Section 169A specifically requires EPA to promulgate regulations requiring certain States to amend their SIP's to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations at 45 FR 80084, codified at 40 CFR 51.300 et. seq. The visibility regulations required 36 States to submit revised SIP's satisfying these provisions by September 2, 1981. Numerous parties sought judicial review of the visibility regulations in the United States Court of Appeals for the District of Columbia Circuit. The D.C. Circuit Court stayed the litigation in March 1981, pending EPA action on related administrative petitions for reconsideration. Because of the litigation and petitions, few States initiated work on revised visibility SIP's.

In December 1982, EDF filed a citizen suit in the United States District Court for the Northern District of California alleging that EPA had failed to perform a nondiscretionary duty under Section 110(c) of the Act (42 U.S.C. 7410(c)) to promulgate visibility SIP's for 35 States that had failed to submit such SIP revisions to EPA (*EDF* v. *Gorsuch*, Number C82-6850 RPA). The State of Alaska had submitted a SIP which was approved on July 5, 1983, at 48 FR 30623. The EPA and EDF negotiated settlement agreement for the remaining States which the court approved by order on April 20, 1984.

The settlement agreement requires EPA to promulgate visibility SIP's on a specified schedule for those States that have not submitted visibility SIP revisions to EPA. In the first part of the settlement, EPA is to promulgate Federal plans for those States whose SIP's were found to be deficient for a monitoring strategy (§ 51.305) and visibility new source review (§ 51.307). The details and schedule for the remainder of the settlement agreement are described at 49 FR 20647 (May 16, 1984).

On October 23, 1984, at 49 FR 42670, EPA proposed disapproval of, and Federal plans for, 34 States whose SIP's were preliminarily determined to be inadequate. (The EPA had proposed approval of a SIP submittal for the State of Louisiana on May 15, 1984, at 49 FR 20519.) The States were given an opportunity to avoid Federal promulgation of these regulations if they submitted SiP revisions to EPA that satisfy the requirements in §§ 51.305 and 51.307 by May 6, 1985. In today's notice, EPA is disapproving the SIP's of, and promulgating Federal regulations for, those States that failed to act by the May deadline.

The EPA took public comment and held two public hearings on the proposed disapprovals and Federal regulations. Over 80 comments were received and 12 persons spoke at the public hearings. All the major issues are identified and discussed in today's notice.

SIP Disapprovals

Several commenters stated that EPA should not disapprove the SIP's for the 34 States because (1) EPA did not provide evidence that the SIP's were "substantially inadequate," and (2) EPA was unnecessarily interfering in State programs for rather minor deficiencies.

The EPA did provide evidence that the SIP's were inadequate. The EPA Regional Officers reviewed each of the 34 SIP's and compared them to the requirements of §51.305 and § 51.307. Each Regional Office prepared a summary chart detailing the deficiencies in each SIP. The charts show that each SIP contained certain deficiencies with respect to both § 51.305 and § 51.307. This information was placed in Docket A-84-32, items II-B-8, in October 1984. The information was available for public review and comment during the public comment period. The EPA did not include the actual summaries in the October **Federal Register** notice due to their detailed nature and volume.

The EPA realizes that the deficiencies in question are relatively small, but they are nevertheless significant in relation to the Part 51 visibility regulations. The EPA, moreover, plainly has the power under section 110, 169A, and 301 to disapprove SIP's because of the deficiencies. Thus, the disapprovals are neither unwarranted nor unauthorized. Beyond that, the settlement agreement calls for them.

It should be noted that EPA is only disapproving the States' SIP's with respect to visibility protection; all other previously approved SIP programs remain valid. The EPA has also specifically designed the Federal programs to minimize interference in ongoing State programs.

In today's action, EPA is disapproving the SIP's of, and promulgating Federal regulations for, States that have failed to submit plans by the May deadline. The EPA is reviewing the SIP revisions submitted to EPA by May 6, 1985, and will take appropriate action on them by January 6, 1986. In the event that a submittal is found to be inadequate, EPA will disapprove the submittal and simultaneously promulgate today's requirements for these States. The EPA recognizes that several States are developing plans to meet the visibility

requirements but could not submit them before the May 6 deadline. These States should be aware that EPA will revoke this promulgation as soon as it approves any future SIP submittal.

The following State SIP's are disapproved for failing to meet the requirements in § 51.305 (monitoring strategy):

Arizona	New Hampshire
California	North Dakota
Colorado	South Carolina
Florida	South Dakota
Hawaii	Texas
Idaho	Vermont
Maine	Virginia
Michigan	Virgin Islands
Minnesota	West Virginia
Nevada	

The following State SIP's are disapproved for failing to meet the requirements in § 51.307 (visibility new source review):

Arizona	New Hampshire
California	New Jersey
Colorado	North Dakota
Hawaii	South Dakota
Maine	Vermont
Michigan	Virginia
Minnesota	Virgin Islands
Nevada	West Virginia

The EPA has determined that four States are not required to include the new source review provisions for nonattainment areas, § 51.307(b)(2), in their SIP's. This action is explained later in this notice.

Visibility Monitoring Strategy

Proposal

The visibility monitoring strategy (§ 51.305) in the existing visibility regulations required the States to develop a "strategy for evaluating visibility in the mandatory Class I areas" and to provide a mechanism for using any available data in decisions required by the visibility protection program. Visibility data are needed in assessing visibility, evaluating the progress toward the national visibility goal, determining the potential impact of new stationary sources and major modifications, determining sources to which any identified impairment can be reasonably attributed, and developing control measures for such sources. The EPA proposed that these needs could be met by gathering data on prevailing background visibility conditions in and around the visibility protection areas and on existing impairment from a source or small group of sources.

The EPA proposed two options for collecting background data: (1) a cooperative EPA/Federal land manager (FLM) monitoring network, or (2) a requirement for permit applicants to monitor visibility as part of required preapplication monitoring. The EPA prepared a draft monitoring plan to accompany the first option. The EPA stated that visibility need not be monitored at every visibility protection area. As few as 25 sites may be appropriate to represent background visibility conditions for all areas. The EPA proposed short term validation studies in all protection areas to verify that the number of stations and choices for monitoring sites were indeed representative. The draft monitoring plan described the regions, data collection methods, implementation schedule, and administrative responsibilities for implementing the program.

For attributing impairment to sources, EPA proposed a program that would consist of case-by-case studies of identified visibility impairment. The goal of the program was to attempt to trace the impairment to a given source. Although several techniques were suggested to accomplish this goal, no specific studies or examples were given in the monitoring plan. This program was not to be affected by the option chosen for background data collection.

General Comments

One commenter stated that EPA was using an inappropriate mechanism by implementing a visibility monitoring network. According to this commenter, § 51.305 only requires States to have a mechanism for visibility evaluation and for consideration of existing visibility data. This commenter contended that the preamble of the visibility regulations also frees the States from monitoring visibility. The commenter contended that EPA could establish a network for visibility monitoring, but it is not required by § 51.305 to do so and therefore EPA mischaracterized the requirements of the visibility regulations.

The EPA recognizes that the language in the preamble and rule is not specific as to exactly what the States, and therefore EPA in lieu of States, is required to do. Section 51.305 specifically states that each State plan must include a strategy for evaluating visibility "by visual observation or other appropriate monitoring techniques." The EPA interprets this section, in light of the structure and purposes of the regulations as a whole, to call for a strategy which will generate visibility data that will reasonably, if roughly, serve the needs of the overall State program. One of the clear needs of a program is to have a sound measure of background visibility. The most cost-effective and efficient way for EPA to obtain such a measure is through a national monitoring network inasmuch as EPA, by default, must now establish and implement a multi-State visibility program. Therefore EPA, in lieu of States, will collect monitoring data on a national scale. The EPA specifically realizes that States need not necessarily implement similar networks when developing their own strategies. However, EPA's policy is to require States to provide a mechanism in their SIP's to collect adequate visibility data where none exist. Section 51.305 clearly contemplates such data collection as a component of the strategy to evaluate visibility.

Reference Methods

Many commenters felt that EPA was being premature to even propose to monitor visibility without first approving a reference method for visibility. These commenters stated that a number of technical questions remain unanswered with each of the available visibility monitoring techniques. It would be foolish and costly, they contended, to collect data now that may not be useful once a reference method is available. Also, before a monitoring program is established, commenters suggested that EPA must establish exactly what visibility impairment is.

The EPA recognizes these concerns and is planning a program to develop a visibility monitoring reference method beginning in 1986. However, § 51.305 requires State plans to include a visibility monitoring strategy now, without regard to the existence of a reference method. States that do not wish to invest in monitoring equipment prior to establishment of a reference method may submit SIP's containing other methods of visibility data collection.

The EPA concludes that given its needs for a national data collection system, the proposed network will be the most cost effective and efficient means of gathering useful data despite the absence of a reference method. The EPA believes that any data collected before a reference method is promulgated will be useful, although these data may not be completely compatible with the reference method data.

The EPA established a definition of visibility impairment in § 51.301. The monitoring strategy merely implements the existing regulations and appropriate definitions. The EPA believes the existing definition of visibility impairment is adequate for these purposes. Should future visibility research lead EPA to believe that this

definition is not adequate, EPA will take appropriate action at that time.

Options for Background Data

The commenters almost unanimously supported EPA's first option of a cooperative EPA/FLM background monitoring network. The reasons given were similar to those given by EPA in the proposal—the cost effectiveness of operation, uniformity of data collection, the ability to determine long term trends, and the cooperation of the FLM's.

The reasons given by commenters for not favoring the alternative of requiring permit applicants to monitor visibility were the extra cost and time constraints put on the applicant, the inability to determine long term trends, and the difficulty applicants may have in acquiring access to the visibility protection areas. Some commenters felt that some permit applicant monitoring should also be required. The one commenter who favored the second option did so because he felt monitoring programs sponsored by industry would provide more meaningful data.

Although there was substantial support for the cooperative background network, there were also substantial criticisms of the details in the monitoring plan. Commenters felt that although a regional network approach might be justified, the number of proposed visibility regions would need to be increased dramatically. Others felt that the regions as drawn in the monitoring plan were not representative, and they gave specific examples of selected areas that could not be adequately represented by the data from a given region. Many citizens felt that every Class I area should have at least one monitor. Several commenters were concerned that the presumption that visibility was consistent throughout one of the regions was tantamount to protecting visibility in the whole region, not just the protection areas. They argued that visibility protection is afforded to each mandatory Class I area based on the conditions at the Class I area only.

Commenters also had concerns about the validation studies. Many felt that short term studies were not sufficient and would not detect seasonal variations. The validation study techniques were also criticized. Even when identical techniques are used, one commenter suggested, the data could not be reliably compared.

The EPA recognizes that many of these comments are valid criticisms of the proposed network. A 23-station network would provide data that could be used for trend analysis at more than the 23 areas. However, the sites may not be representative of all of the areas, and the data collected may not be sufficiently detailed for modeling potential impacts of new sources.[1] On the other hand, if EPA were to promulgate the permit applicant monitoring option, the data collected would be useful only for the specific area monitoring for the purposes of modeling potential impacts. The results from the modeling would be open to question as to whether the input data were representative over time. The EPA would also have no mechanism for trend assessment.

Therefore, EPA has decided to promulgate a combination of the two options for collecting background data in States that have disapproved visibility monitoring strategies. The EPA would establish a cooperative background network to develop data that can be used for trend analysis and where appropriate, support modeling of new source impacts. The EPA would also require permit applicants to monitor visibility in or near those protection areas that may not be adequately represented by the network sites and/or to collect additional site-specific data necessary for the impact analysis. In this manner, both spatial and temporal visibility data will be available for regulatory purposes, and the applicants would be subject to less time-consuming monitoring.

The EPA is planning to select site locations that are representative of the greatest number of visibility protection areas by using all available visibility data, such as from the National Park Service or from industrial research-sponsored studies. The EPA will carefully consider the specific comments submitted on the importance to collect data at particular areas; and EPA recognizes that the number of stations may not completely represent all areas. The priority for establishing background network sites should be determined by 1) the lack of available data for regulatory purposes, and 2) the potential for growth near protection areas where permitting activities are expected. This priority system is described in more detail in the revised monitoring plan. In the future, EPA may want to expand the cooperative network to encompass sites at all areas. However it is premature to establish stations in all areas until some of the outstanding technical questions have been answered and a reference method is available.

[1] AeroVironment, "Critical Assessment of the Visibility Monitoring For Class I Areas," prepared for Utility Air Regulatory Group. Available through Docket# A-84-32, IV-D-63.

The EPA did not intend to imply that use of background data collected at one area and deemed representative of background conditions at another area in any way extended the visibility protection requirements to non-Class I areas not otherwise covered by the visibility regulations. The visibility regulations provide only for protection of the visibility values of Class I areas and related integral vistas, and do not apply to any other lands located outside the boundaries of such Class I areas.

The EPA has revised the monitoring plan to describe the monitoring program and to answer some of the questions about the monitoring methods for data collection and validation raised in the public comment period. This document can be obtained through the Central Docket Section at the address given in the beginning of this notice. The EPA also realizes that there are technical questions that remain unresolved in visibility monitoring. These questions can only be resolved from experience with, and review of, many visibility monitoring programs. This regulatory network is not the only visibility monitoring work that will be conducted by EPA, States, or industry. The EPA will use the results from these other research programs, where appropriate, in making assessments required by the visibility regulations. In addition, EPA is planning to develop reference systems for visibility monitoring.

Attribution Program

Many commenters stated that the techniques described in the draft monitoring plan were not appropriate for source-specific studies. Also, concern was expressed over the proposed priorities for these studies. One commenter felt EPA would waste time and resources on rather minor sources before attempting to identify and control large contributors.

The EPA did not mean to imply that the data collection techniques for the background network were to be used in the source-specific studies. The proposed background instrumentation will be used only as appropriate for these studies. The attribution program will be implemented on a case-by-case basis with regard to both siting and equipment. The EPA has requested that the FLM's identify impairment in each of their areas. From this identification, appropriate studies will be designed which will be unique to each identified problem. Priorities for implementation will be based on availability of existing data, the severity of the suspected impairment, and the probability of an effective control strategy.

Administration

Many of the industrial commenters requested that they be included on the Technical Steering Committee because they have been active in monitoring programs and have expertise that EPA could use. Commenters also stressed the importance of a quality assurance plan for the background network, validation studies, and attribution program. They felt EPA had not placed sufficient emphasis on this aspect of the monitoring program. Commenters also suggested that the proposed level of funding was insufficient to meet the goals of the program.

The EPA has established a Technical Steering Committee consisting of representatives of the FLM's, contributing States, and EPA. If EPA were to invite representatives of industry to join the Committee, it would feel compelled, on general fairness grounds, to also invite other members of the general public to join the Committee. If EPA opened membership on the Technical Steering Committee to the general public, the Committee would become too unwieldy to manage the visibility monitoring program effectively. Consequently, EPA will hold periodic public meetings to obtain input from the general public and industry. At these meetings visibility monitoring issues will be discussed, including, but not limited to, the regulatory program. The EPA recognizes that many industries have expertise that can be helpful to EPA, and the Technical Steering Committee will be responsible for keeping abreast of current visibility research programs, including those of industry. The public and environmental groups are also interested in ensuring that EPA recognizes the priorities for monitoring. The public meetings will be a forum for discussions on various aspects of visibility monitoring programs.

The EPA also recognizes the importance of an effective quality assurance program and intends to implement one. This becomes essential as EPA will be using data from other sources, as well as its own network, and must have some criteria on which to judge the quality of various monitoring programs. Much of the first year of the network will be spent in developing procedures as outlined in the revised monitoring plan.

As a cooperative network, EPA is negotiating with the FLM's to provide comparable support for the monitoring program. States are also encouraged to participate in the network to maximize the effectiveness of the program.

Regulatory Language

Few comments were received on the proposed regulatory language, § 52.26, of the Federal monitoring strategy. One commenter stated that before EPA could promulgate a requirement for permit applicant monitoring, specific regulatory language must be proposed and subject to public comment. This language was proposed in the new source review provisions, § 52.21, §52.27, and § 52.28, which gave EPA the authority to require permit applicants to monitor.

In today's action, EPA is promulgating § 52.26 (visibility monitoring strategy), as proposed, for the States that have failed to submit SIP revisions. These States are:

Arizona	New Hampshire
California	North Dakota
Colorado	South Carolina
Florida	South Dakota
Hawaii	Texas
Idaho	Vermont
Maine	Virginia
Michigan	Virgin Islands
Minnesota	West Virginia
Nevada	

New Source Review

States are required by § 51.307 and § 51.24 to review new major stationary sources and major modifications, prior to construction, to assess potential impacts on visibility in any protection area, regardless of the air quality status of the area in which the source is locating. The requirements in § 51.307 ensure that (1) the FLM is notified of permit applications in a timely and consistent manner, (2) the reviewing authority considers the FLM's recommendation on adverse impact determinations, (3) applications from sources locating in nonattainment areas are reviewed similarly to sources locating in attainment areas, and (4) the reviewing authority has the ability to require permit applicants to monitor visibility as a pre- or post-construction condition.

In October 1984, EPA proposed three separate programs to implement § 51.307, each to be applicable in separate circumstances. The first program, revised § 52.21, would be applicable in States where the prevention of significant deterioration program (PSD) was operated by EPA or by the State through delegation of the Federal program. The second program, new § 52.27, would be applicable in States with approved State PSD programs. The third program, new § 52.28, would be applicable in States with nonattainment areas. The EPA chose this approach to minimize Federal interference in ongoing State-operated programs.

General Comments

Many commenters stated that EPA is implementing requirements without issuing adequate guidance. The commenters suggested that the definition of "adverse impact on visibility" was too vague and allowed the FLM's too much discretionary authority in permitting decisions. This lack of guidance, they asserted, makes it difficult for industries to make siting decisions, States to make permit decisions, and the FLM's to make adverse impairment determinations. The commenters recommended that EPA issue new or revised definitions of "adverse impact on visibility," "near" or "nearby," and "impairment." States also requested that EPA issue definitions or guidance on "may impact a Class I Federal area" and "advance notification." Commenters recommended that EPA revise "The Workbook for Estimating Visibility Impairment" [EPA 450/4–80–031] as this document does not include the substantial research that has been done since 1980. The commenters felt this was imperative for an effective program. One commenter recommended EPA use improved assessment techniques.

Comments were also received discussing the FLM's consultation requirements in the rules. Several comments suggested that the FLM's would be unable to conduct an adequate assessment of a permit application in 30 days. On the other hand, one commenter stated that 30 days was indeed sufficient. Two FLM's stressed the importance of being involved early in the permitting process, and would very much like to be involved in any preapplication meetings between States and sources. Many citizens stressed the importance of public participation in permits that affect the Class I area.

The EPA recognizes all of these concerns. However, EPA's proposal and promulgation are meant to implement the existing new source review and consultation requirements in § 51.307. This rulemaking was not intended to modify these requirements or the definitions in § 51.301 associated with them. The EPA believes that the existing definitions are adequate for implementation of the existing regulations. The EPA also recognizes that the guidance documents issued with the visibility regulations may require updating, and is therefore reviewing these documents to determine what, if any, future guidance is necessary. The EPA will also evaluate any techniques for estimating visibility impacts that are

developed by industry and submitted to EPA.

Environmental groups and private citizens expressed the need for a policy on reviewing cumulative impacts from new sources. Rapid industrial growth is expected near some of the Class I areas. These commenters are concerned that any one source would not cause significant impairment, but the combination of sources may adversely affect air quality related values (including visibility). This would occur if the permitting authority only reviews the potential impacts of a new source on prevailing visibility conditions without regard to the impacts of permitted sources not yet completed. One commenter rebutted these comments, stating that Section 165 of the Act only requires the State to consider the merits of one application, and cumulative impacts are to be considered in Section 169A of the Act for existing sources.

In assessing a proposed source's impact on visibility, the reviewing authority must necessarily review that impact in the context of existing background visibility. This point does not seem debatable. The question raised by the commenters focuses on whether previously permitted sources that have not yet been constructed are part of the existing background. The EPA concludes that such sources are part of existing background. In other situations, EPA has always regarded permitted sources as part of existing background. For instance, in assessing impacts on the national ambient air quality standards, permit applicants must account for the air quality impacts of permitted, as well as constructed, sources. This treatment should be the same for visibility assessment. The EPA does not believe that a change in the proposed language for new source review is necessary to effect this implementation. The EPA concludes that the proposed language on assessing whether a proposed source will cause an adverse impact on visibility requires the reviewing authority to review the new source's impact in the context of background visibility impacts caused by both existing and previously permitted sources.

Several industrial commenters and States questioned whether the requirement for preapplication monitoring is necessary in this rulemaking, stating that the Federal monitoring program could be improved to fulfill any data requirements for the applicants. Several States felt that they already had the authority to require monitoring and did not need to revise their SIP's for visibility preapplication monitoring.

The EPA's review of the SIP's indicates that they do not contain adequate authority to require visibility monitoring and consequently need to be revised to include that authority. As stated earlier in this notice, the Federal monitoring program is unlikely to fulfill all data requirements for new source impact analyses in the near future. Therefore, EPA or a State may need to require a permit applicant to monitor. This requirement would be used sparingly and could be tied to the potential of the new source to impair visibility. For example, a source that would not cause impairment based on a Level 1 analysis from the Workbook would probably not be required to monitor. A source that would require a Level 3 analysis, or modeling analysis, to determine its potential impact would likely be required to monitor. States are encouraged to include the FLM's in preapplication meetings with permit applicants so exact monitoring requirements and impact analyses for the air quality related values can be determined prior to the application review.

Federal PSD Program

The EPA proposed revising the Federal PSD program, § 52.21, to include the requirements of § 51.307. Revised § 52.21 was to be applicable in those States where EPA was operating the PSD program or had delegated its authority to the State. One commenter stated that EPA had incorrectly referenced paragraph (r) of § 52.21 in the proposed amendment to § 52.21(p)(1) when the citation should have been to § 52.21(q).

The commenter is correct—§ 52.21(r) was redesignated paragraph (q) in 45 FR 52735 on August 7, 1980. Since EPA has not made technical or conforming amendments to § 52.21 since then, the citation in § 52.21(p)(1) has remained incorrect. The EPA has now changed the citation in § 52.21(p)(1) to refer to paragraph (q) of § 52.21 and is thereby correcting the inaccuracy with this action.

Revised § 52.21 is applicable in the following States:

California (except for Mendocino County, Monterey County, North Coast Unified Region, Northern Sonoma County, and Sacramento County)	Minnesota
	Nevada
	New Hampshire
	New Jersey
	South Dakota
	Virginia
	Virgin Islands
Michigan	West Virginia

State PSD Program

The EPA proposed new § 52.27 to be applicable in States with approved PSD programs. This section allows an interested party to petition EPA to take authority for issuing a visibility permit in cases where the State had failed to follow the procedures of § 51.307. The EPA would only take authority in cases where the State had failed to act consistently with § 51.307, and would not try to reexamine a State's reasoning in issuing a permit where the appropriate procedures were followed.

Many commenters felt that this requirement would lead to confusion and unnecessary delays in permit decisions. The EPA recognizes that this provision could cause confusion and delays in permit processing. It is for these very reasons that EPA anticipates that the States will act as required by § 51.307 and not give an interested party reason to petition EPA. The EPA will have no cause to interfere or delay permits if the States provide the appropriate notification procedures. The EPA believes permitting decisions are best handled by the State and does not wish to issue permits. However, § 51.307 requires certain notification procedures that are not contained in the existing SIP's. The alternative for this petition mechanism would be a separate Federal visibility permit program for these States, which is far less desirable.

An environmental group commented that § 52.27(d)(2) usurps the FLM's exclusive authority to make adverse impact determinations. One commenter stated that the EPA does not have the authority to use this mechanism.

The EPA believes that § 52.27, including paragraph (d)(2), is an appropriate mechanism for implementing § 51.307, and therefore EPA has the authority under section 110 and 301 of the Clean Air Act (42 U.S.C. 7410 and 7601) to promulgate it. Section 165 (d)(2)(B) gives the FLM's the affirmative responsibility to protect air quality related values (including visibility) in the Class I areas and to consider, *in consultation* with the Administrator, whether a proposed facility will have an adverse impact on such values (emphasis added). Section 51.307(a)(3) and § 52.21(p)(3) require the permitting authority to consider any analysis, provided by the FLM's, showing that a proposed source would have an adverse impact on visibility in a Class I area. However, the FLM's must demonstrate, to the satisfaction of the permitting authority, that such an adverse impact will result—before the permitting authority is constrained to

deny a permit application. (See Clean Air Act section 165(d)(2)(C)(ii) and § 52.21(p)(4).) The reviewing authority is required by § 51.307 and § 52.27(d)(2) only to notify the public if the FLM's analysis does not demonstrate to its satisfaction that adverse impact will result from the proposed facility and to make available its explanation of that decision. If the permitting authority concludes, after considering the FLM's analysis, public comment, and its own analysis, that adverse impact will result, the permit shall be denied. Thus, the statute and the regulations do not give FLM's the sole authority to determine whether an adverse impact will result from a proposed facility. The FLM's and reviewing authority share this responsibility, and the final decision rests with the reviewing authority. Of course the reviewing authority must have a rational basis for concluding the FLMs' analysis is incorrect, given the FLMs' affirmative responsibility and expertise regarding the Class I areas within their jurisdiction.

The EPA is promulgating § 52.27 for the following States:

Arizona
Hawaii
Maine
Mendocino County, California
Monterey County, California
North Coast Unified Region, California
Northern Sonoma County, California
North Dakota
Sacramento County, California
Vermont

Nonattainment Program

The EPA proposed a new Federal permit requirement (§ 52.28) for new sources or major modifications to sources which may impact a visibility protection area and may locate or are located in a nonattainment area. These requirements are similar to those for PSD sources. The reviewing authority, however, can take into account the progress toward the national goal of preventing future impairment and remedying existing impairment in making permit decisions.

The EPA reviewed the requirements in response to a comment from the Bay Area Air Quality Management District of California and realized that a provision for allowing the Administrator to delegate the authority of this section to the States had not been included. As stated earlier, EPA does wish to delegate permitting authority, where possible, to the States. Therefore, a new paragraph, § 52.28(i), has been included to give the Administrator this ability.

The EPA is promulgating § 52.28 for the following States:

Arizona
California (except for Monterey County, and Sacramento County)
Colorado
Hawaii
Michigan
Minnesota
Nevada
New Hampshire
New Jersey
South Dakota
West Virginia

Exemptions From Nonattainment Program

The States of Arkansas, New Jersey, and Texas commented that they had been incorrectly listed in the nonattainment section of the proposal. Arkansas' one nonattainment area was reclassified attainment on September 26, 1984, at 49 FR 37753. Texas claimed that sources locating in the nonattainment areas within Texas do not have the potential to impact the visibility protection areas because of the distance between the nonattainment areas and the visibility protection areas.

New Jersey contains nonattainment areas for carbon monoxide, ozone, and total suspended particulate matter. New Jersey claimed that carbon monoxide does not impair visibility. Consequently, any impact assessment required by § 52.28 would show no adverse impact on visibility from this pollutant in any visibility protection area. New Jersey stated that control strategies for attaining the ozone standard are based on reductions in emissions of precursor volatile organic hydrocarbons. Furthermore, New Jersey stated, these precursor compounds do not by themselves cause a visible plume that would adversely impact a visibility protection area. Ozone can contribute to visibility impairment from urban plumes or regional haze, but since these are not to be addressed in this program, New Jersey claimed that ozone assessments under § 52.28 should not be required at this time.

New Jersey also stated that the State contains three nonattainment areas for total suspended particulate matter. New Jersey stated that under the current regulations, any emission increase of 50 tons per year or more would need to be offset. Therefore New Jersey claimed that an impact assessment required by 52.28 would show no adverse impact on visibility.

The EPA accepts New Jersey's claim that carbon monoxide and ozone should not be considered for visibility impact assessments in this program. However, New Jersey has two nonattainment areas for total suspended particulate matter that are within a distance to the visibility protection areas that such new sources or major modifications may impact the protection area. The EPA concludes that New Jersey must still have the ability to require a visibility impact assessment for sources emitting total suspended particulates and locating in Bridgeton or Camden. The EPA, therefore, has promulgated § 52.28 for New Jersey in the previous section of today's notice. The EPA is willing to delegate this authority to the State to minimize Federal interference in this program. The State may then balance any offsets with the assessment of visibility impact from the permit applicant to ensure progress toward the national visibility goal on a case-by-case basis.

The EPA, in response to New Jersey's comment, reviewed the nonattainment areas in all States required to develop visibility protection programs. The States of Georgia and Virginia have only carbon monoxide and ozone nonattainment areas.[3]

In today's action, EPA is exempting Arkansas, Georgia, Texas, and Virginia from the requirements in § 551.307(b)(2) and 52.28. The EPA is allowing for public comment as required by paragraph (3) of the settlement agreement. The EPA does not expect critical or adverse comments on this action. If a request for public comment on this action is received, EPA will withdraw this final exemption and will propose the action, thereby establishing a comment period.

Classification

The Administrator certifies pursuant to the provisions of 5 U.S.C. 605(b) that the attached rule will not have a significant economic impact on a substantial number of small entities. Only a few sources, that are not already required to do so under the existing PSD program, will be required to evaluate the potential impact on visibility.

The rules promulgated today do not contain any information collection requirements subject to the Office of Management and Budget (OMB) review under the Paperwork Reduction Act of 1980, U.S.C. 3501 *et seq.*

Today's action implements part of Subpart P (40 CFR 51.300–51.307) which was promulgated on December 2, 1980. An economic impact assessment was done for that rulemaking, pursuant to section 317 of the Clean Air Act. An economic assessment for these revisions is not required because these revisions are not substantial.

The rules have been submitted to OMB for review under Executive Order 12291. Any written comments from that

[3] "Maps Depicting Nonattainment Areas Pursuant to Section 107 of the Clean Air Act–1984," EPA–450/2–84–006, available through Docket A–84–32, Item IV–B–1, or National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia, 22161, Number PB 85–140630.

office have been placed in the Docket A–84–32. These rules are not major within the meaning of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate district by September 10, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

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

Dated: July 3, 1985.

A. James Barnes,

Acting Administrator.

PART 52—[AMENDED]

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

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.21 is amended by adding paragraphs (b)(29), (o)(3), and (p)(3); revising paragraph (p)(1) to read as follows; and redesignating the existing paragraphs (p)(3) as (p)(4), (p)(4) as (p)(5), (p)(5) as (p)(6), (p)(6) as (p)(7), and (p)(7) as (p)(8):

§ 52.21 Prevention of significant deterioration of air quality.

(b) * * *

(29) "Adverse impact on visibility" means visibility impairment which interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility.

* * * * *

(o) * * *

(3) *Visibility monitoring.* The Administrator may require monitoring of visibility in any Federal class I area near the proposed new stationary source for major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(p) *Sources Impacting Federal Class I Areas—Additional Requirements*—(1) *Notice to Federal Land Managers.* The Administrator shall provide written notice of any permit application for a proposed major stationary source or major modification, the emissions from which may affect a Class I area, to the Federal land manager and the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in the Federal Class I area. The Administrator shall also provide the Federal land manager and such Federal officials with a copy of the preliminary determination required under paragraph (q) of this section, and shall make available to them any materials used in making that determination, promptly after the Administrator makes such determination. Finally, the Administrator shall also notify all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

* * * * *

(3) *Visibility analysis.* The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (p)(1) of this section, that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the Federal Class I area, the Administrator must, in the notice of public hearing on the permit application, either explain his decision or give notice as to where the explanation can be obtained.

* * * * *

3. Section 52.26 is added to read as follows:

§ 52.26 Visibility monitoring strategy.

(a) *Plan Disapprovals.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to visibility monitoring. Specific disapprovals are listed where applicable in Subparts B through DD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plan for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For the purposes of this section:

(1) "Visibility protection area" means any area listed in 40 CFR 81.401–81.436 (1984).

(2) All other terms shall have the meaning ascribed to them in the Clean Air Act, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

(c) *Monitoring Requirements.* (1) The Administrator, in cooperation with the appropriate Federal land manager, shall monitor visibility within each visibility protection area in any State whose State implementation plan is subject to a disapproval for failure to satisfy 40 CFR 51.305 (1984).

(2) The Administrator, in monitoring visibility within each such area, shall determine both background visibility conditions and reasonably attributable visibility impairment caused by a source or small group of sources for that area. The extent and the form of monitoring shall be sufficient for use in determining the potential effects of a new stationary source on visibility in the area, the stationary source or sources that are causing any visibility impairment, and progress toward remedying that impairment.

(3) The Administrator shall use the following as appropriate to monitor visibility within each such area: (i) photographic cameras, (ii) fine particulate matter samplers, (iii) teleradiometers (iv) nephelometers, (v) human observation, or (vi) other appropriate technology.

(4) The Administrator, in cooperation with the Federal land managers, shall prepare monitoring plans that describe, to the maximum extent practicable, the methods and instruments of data collection, the monitoring locations and frequencies, the implementation schedule, the quality assurance procedures, and the methods of data reporting that the Administrator will use for each area. The Administrator shall make these plans available to the public.

(5) The Administrator shall establish a central repository of monitoring data that includes any data on background visibility conditions and reasonably attributable impairment that the Administrator collects under this section and that the Federal land manager may collect or may have collected independently. These data shall be available to any person, subject to reasonable charges for copying.

(d) *Monitoring Plan Revision.* (1) The Administrator shall review the monitoring plan annually for each visibility protection area, revise it as necessary, and include an assessment of changes to visibility conditions since the last review. The Administrator shall make all plan revisions available to the public.

(2) Any person may make a request to the Administrator, at any time, for a revision to a monitoring plan. The Administrator shall respond to any such request within one year.

(e) *Delegation.* The Administrator may delegate, with respect to a particular visibility protection area, any of his functions under this section to any State of local air pollution control agency of any State whose boundaries encompass that area or to any Federal land manager with jurisdiction over the area.

4. Section 52.27 is added to read as follows:

§ 52.27 Protection of visibility from sources in attainment areas.

(a) *Plan Disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas, from sources emitting pollutants in any portion of any State where the existing air quality is better than the national ambient air quality standards for such pollutants, and where a State PSD program has been approved as part of the applicable SIP pursuant to 40 CFR 51.24. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitions.* For purposes of this section, all terms shall have the meaning ascribed to them in the Clean Air Act, in the prevention of significant deterioration (PSD) program approved as part of the applicable SIP pursuant to 40 CFR 51.24 for the State, or in the protection of visibility program (40 CFR 51.301), all as in effect on July 12, 1985.

(c) *Federal Visibility Analysis.* Any person shall have the right, in connection with any application for a permit to construct a major stationary source or major modification, to request that the administrator take responsibility from the State for conducting the required review of a proposed source's impact on visibility in any Fedral Class I area. If requested, the Administrator shall take such responsibility and conduct such review pursuant to paragraphs (e), (f) and (g) of this section in any case where the State fails to provide all of the procedural steps listed in paragraph (d) of this section. A request pursuant to this paragraph must be made within 60 days of the notice soliciting public comment on a permit, unless such notice is not properly given. The Administrator will not entertain requests challenging the substance of any State action concerning visibility where the State has provided all of the procedural steps listed in paragraph (d) of this section.

(d) *Procedural Steps in Visibility Review.* (1) The reviewing authority must provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any Federal Class I area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include the proposed source's anticipated impacts on visibility in any Federal Class I area as provided by the applicant. Notification must also be given to all affected Federal land managers within 30 days of receipt of any advance notification of any such permit application.

(2) The reviewing authority must consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (d)(1) of this section, that shows that such proposed new major stationary source or major modification may have an adverse impact on visibility in any Federal Class I area. Where the reviewing authority finds that such an analysis does not demonstrate to the satisfaction of the reviewing authority that an adverse impact on visibility will result in the Federal Class I area, either an explanation of its decision or notification as to where the explanation can be obtained must be included in the notice of public hearing. Where the reviewing authority finds that adverse impact on visibility will result, a permit shall not be issued.

(e) *Federal Land Manager Notification.* The Administrator shall provide all of the procedural steps listed in paragraph (d) of this section in conducting reviews pursuant to this section.

(f) *Monitoring.* The Administrator may require monitoring of visibility in any Federal Class I area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(g) *Public Participation.* The Administrator shall follow the applicable procedures at 40 CFR Part 124 in conducting reviews under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR Part 124 do not apply.

(h) *Federal Permit.* In any case where the Administrator has made a finding that a State consistently fails or is unable to provide the procedural steps listed in paragraph (d) of this section, the Administrator shall require all prospective permit applicants in such State to apply directly to the Administrator, and the Administrator shall conduct a visibility review pursuant to this section for all permit applications.

5. Section 52.28 is added to read as follows:

§ 52.28 Protection of visibility from sources in nonattainment areas.

(a) *Plan Disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to protection of visibility, in mandatory Class I Federal areas where visibility is considered an important value, from sources emitting pollutants in any portion of any State where the existing air quality is not in compliance with the national ambient air quality standards for such pollutants. Specific disapprovals are listed where applicable in Subparts B through DDD of this part. The provisions of this section have been incorporated into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part.

(b) *Definitons.* For the purposes of this section:

(1) "Visibility protection area" means any area listed in 40 CFR 81.401–81.436 (1984).

(2) All other terms shall have the meaning ascribed to them in the protection of visibility program (40 CFR 51.301) or the prevention of significant deterioration (PSD) program either approved as part of the applicable SIP pursuant to 40 CFR 51.24 or in effect for the applicable SIP pursuant to 40 CFR 52.21, all as in effect on July 12, 1985.

(c) *Review of Major Stationary Sources and Major Modifications—Source Applicability and Exemptions.* (1) No stationary source or modification to which the requirements of this section apply shall begin actual construction without a permit which states that the

stationary source or modification would meet those requirements. The Administrator has sole authority to issue any such permit unless the authority has been delegated pursuant to paragraph (i) of this section.

(2) The requirements of this section shall apply to construction of any new major stationary source or major modification that would both be constructed in an area classified as nonattainment under section 107(d)(1)(A), (B) or (C) of the Clean Air Act and potentially have an impact on visibility in any visibility proctection area.

(3) The requirements of this section shall apply to any such major stationary source and any such major modification with respect to each pollutant subject to regulation under the Clean Air Act that it would emit, except as this section otherwise provides.

(4) The requirements of this section shall not apply to a particular major stationary source or major modification, if:

(i) The source or modification would be a nonprofit health or nonprofit educational institution, or a major modification would occur at such an institution, and the governor of the State in which the source or modification would be located requests that it be exempt from those requirements; or

(ii) The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

(A) Coal cleaning plants (with thermal dryers);

(B) Kraft pulp mills;

(C) Portland cement plants;

(D) Primary zinc smelters;

(E) Iron and steel mills;

(F) Primary aluminum ore reduction plants;

(G) Primary copper smelters;

(H) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(I) Hydrofluoric, sulfuric, or nitric acid plants;

(J) Petroleum refineries;

(K) Lime plants;

(L) Phosphate rock processing plants;

(M) Coke oven batteries;

(N) Sulfur recovery plants;

(O) Carbon black plants (furnace process);

(P) Primary lead smelters;

(Q) Fuel conversion plants;

(R) Sintering plants;

(S) Secondary metal production plants;

(T) Chemical process plants;

(U) Fossil-fuel boiler (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(V) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(W) Taconite ore processing plants;

(X) Glass fiber processing plants;

(Y) Charcoal production plants;

(Z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(AA) Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act; or

(iii) The source is a portable stationary source which has previously received a permit under this section, and

(A) The owner or operator proposes to relocate the source and emissions of the source at the new location would be temporary; and

(B) The emissions from the source would not exceed its allowable emissions; and

(C) The emissions from the source would impact no Class I area and no area where an applicable increment is known to be violated; and

(D) Reasonable notice is given to the Administrator, prior to the relocation, identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the Administrator not less than 10 days in advance of the proposed relocation, unless a different time duration is previously approved by the Administrator.

(5) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as attainment under section 107 of the Clean Air Act.

(6) The requirements of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

(i) Would impact no Class I area and no area where an applicable increment is known to be violated, and

(ii) Would be temporary.

(d) *Visibility Impact Analyses.* The owner or operator of a source shall provide an analysis of the impairment to visibility that would occur as a result of the source or modification and general commercial, residential, industrial and other growth associated with the source or modification.

(e) *Federal Land Manager Notification.* (1) The Federal land manager and the Federal official charged with direct responsibility for management of Federal Class I areas have an affirmative responsibility to protect the air quality related values (including visibility) of such lands and to consider, in consultation with the Administrator, whether a proposed source or modification will have an adverse impact on such values.

(2) The Administrator shall provide written notification to all affected Federal land managers of any permit application for any proposed new major stationary source or major modification that may affect visibility in any visibility protection area. The Administrator shall also provide for such notification to the Federal official charged with direct responsibility for management of any lands within any such area. Such notification shall include a copy of all information relevant to the permit application and shall be given within 30 days of receipt and at least 60 days prior to any public hearing on the application for a permit to construct. Such notification shall include an analysis of the proposed source's anticipated impacts on visibility in any visibility protection area. The Administrator shall also notify all affected FLM's within 30 days of receipt of any advance notification of any such permit application.

(3) The Administrator shall consider any analysis performed by the Federal land manager, provided within 30 days of the notification required by paragraph (e)(2) of this section, that such proposed new major stationary source or major modification may have an adverse impact on visibility in any visibility protection area. Where the Administrator finds that such an analysis does not demonstrate to the satisfaction of the Administrator that an adverse impact on visibility will result in the visibility protection area, the Administrator must, in the notice of public hearing, either explain his decision or give notice as to where the explanation can be obtained.

(f) *Public Participation.* The Administrator shall follow the applicable procedures of 40 CFR Part 124 in processing applications under this section. The Administrator shall follow the procedures at 40 CFR 52.21(q) as in effect on August 7, 1980, to the extent that the procedures of 40 CFR Part 124 do not apply.

(g) *National Visibility Goal.* The Administrator shall only issue permits to those sources whose emissions will be consistent with making reasonable progress toward the national goal of preventing any future, and remedying any existing, impairment of visibility in visibility protection areas which impairment results from man-made air pollution. In making the decision to issue a permit, the Administrator may take into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.

(h) *Monitoring.* The Administrator may require monitoring of visibility in any visibility protection area near the proposed new stationary source or major modification for such purposes and by such means as the Administrator deems necessary and appropriate.

(i) *Delegation of Authority.* (1) The Administrator shall have the authority to delegate the responsibility for conducting source review pursuant to this section to any agency in accordance with subparagraphs (i)(2) and (3) of this section.

(2) Where the Administrator delegates the responsibility for conducting source review under this section to any agency other than a Regional Office of the Environmental Protection Agency, the following provisions shall apply:

(i) Where the delegate agency is not an air pollution control agency it shall consult with the appropriate State and local air pollution control agency prior to making any determination under this section. Similarly, where the delegate agency does not have continuing responsibility for managing land use, it shall consult with the appropriate State and local agency primarily responsible for managing land use prior to making any determination under this section.

(ii) The delegate agency shall submit a copy of any public comment notice required under paragraph (f) of this section to the Administrator through the appropriate Regional Office.

(3) The Administrator's authority for reviewing a source or modification located on an Indian Reservation shall not be redelegated other than to a Regional Office of the Environmental Protection Agency, except where the State has assumed jurisdiction over such land under other laws. Where the State has assumed such jurisdiction, the Administrator may delegate his authority to the States in accordance with paragraph (i)(2) of this section.

6. Sections 52.145(AZ), 52.281(CA), 52.344(CO), 52.534(FL), 52.633(HI), 52.689(ID), 52.1031(ME), 52.1183(MI), 52.1236(MN), 52.1488(NV), 52.1531(NH), 52.1605(NJ), 52.1831(ND), 52.2132(SC), 52.2179(SD), 52.2304(TX), 52.2383(VT), 52.2452(VA), 52.2533(WV), and 52.2781(VI) are added to read as follows:

§ 52.—— Visibility protection.

(a) The requirements of Section 169A of the Clean Air Act are not met, because the plan does not include approvable procedures for protection of visibility in mandatory Class I Federal areas.

7. Sections 52.145(AZ), and 52.633(HI) are amended by adding paragraph (b) to read as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulations for visibility monitoring and new source review.* The provisions of Sections 52.26, 52.27 and 52.28, are hereby incorporated and made part of the applicable plan for the State of ————.

8. Sections 52.344(CO), 52.1183(MI), 52.1236(MN), 52.1488(NV), 52.1531(NH), 52.2179(SD), and 52.2533(WV) are amended by adding paragraph (b) to read as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulation for visibility monitoring and new source review.* The provisions of §§ 52.26 and 52.28 are hereby incorporated and made a part of the applicable plan for the State of ————.

9. Sections 52.1031(ME), 52.1881(ND), 52.2382(VT), are amended by adding paragraph (b) to read as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulation for visibility monitoring and new source review.* The provisions of Sections 52.26 and 52.27 are hereby incorporated and made a part of the applicable plan for the State of ————.

10. Section 52.281 is amended by adding paragraphs (b), (c), and (d) to read as follows:

§ 52.281 Visibility protection.

* * * * *

(b) *Regulations for visibility monitoring.* The provisions of Section 52.26 are hereby incorporated and made part of the applicable plan for the State of California.

(c) *Regulations for visibility new source review.* The provisions of § 52.27 are hereby incorporated and made part of the applicable plan for the State of California only with respect to:

(1) Mendocino County air pollution control district,

(2) Monterey County air pollution control district,

(3) North Coast Unified air quality management district,

(4) Northern Sonoma County air pollution control district, and

(5) Sacramento County air pollution control district.

(d) The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of California, except for:

(1) Monterey County air pollution control district, and

(2) Sacramento County air pollution control district.

11. Sections 52.534(FL), 52.689(ID), 52.2132(SC), 52.2304(TX), 52.2452(VA), and 52.2781(VI) are amended by adding paragraph (b) as follows:

§ 52.—— Visibility protection.

* * * * *

(b) *Regulation for visibility monitoring.* The provisions of § 52.26 are hereby incorporated and made a part of the applicable plan for the State of ————.

12. Section 52.1605(NJ) is amended by adding paragraph (b) to read as follows:

§ 52.1605 Visibility protection.

* * * * *

(b) *Regulations for visibility new source review.* The provisions of § 52.28 are hereby incorporated and made part of the applicable plan for the State of New Jersey.

[FR Doc. 85-16596 Filed 7-11-85; 8:45 am]
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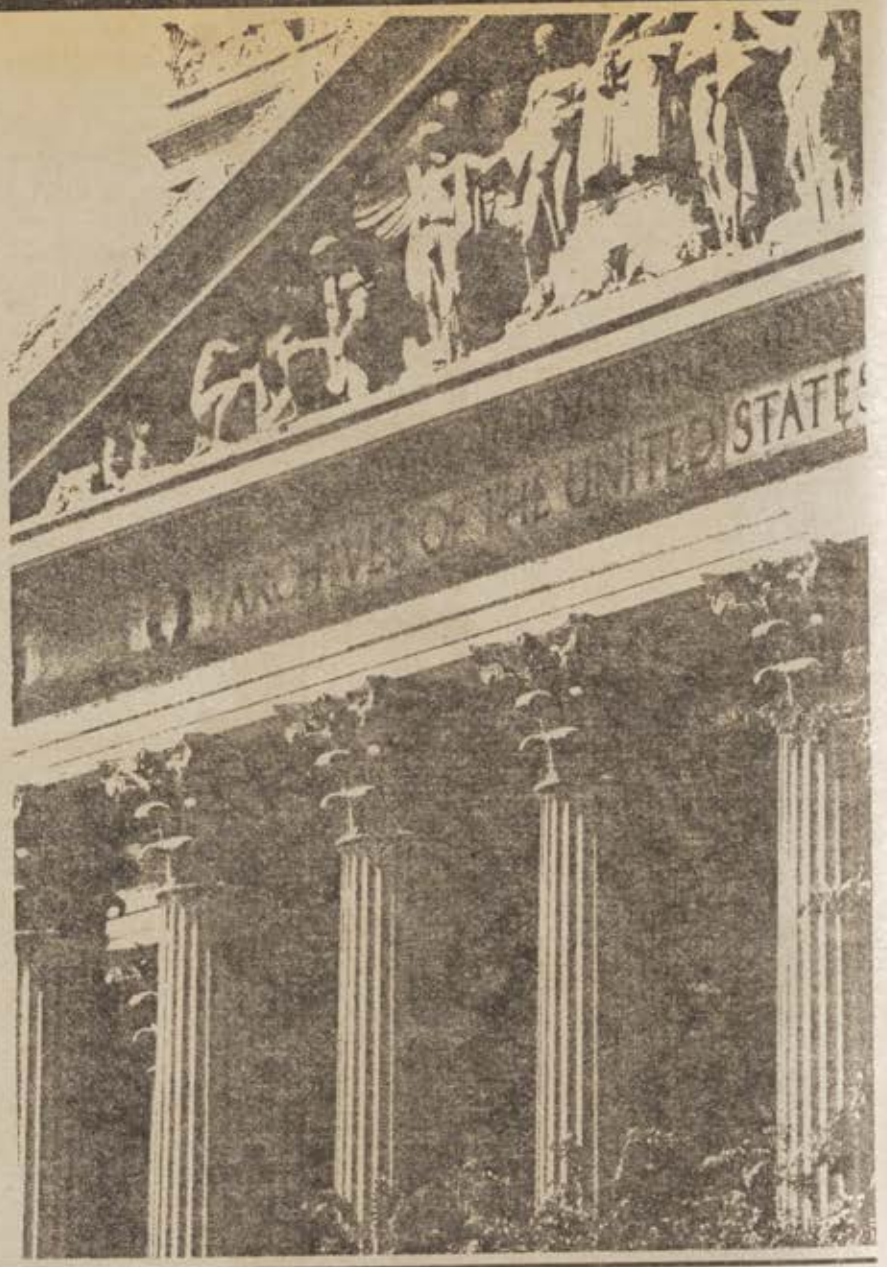
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