12

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Selected Subjects

CONTINUED INSIDE

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Selected Subjects

Contents

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

Separate Parts In This Issue

Reader Aids

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

Lemons Grown in California and Arizona; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This amendment to rules and regulations of the marketing order allows handlers of organic lemons to ship 250 cartons per week of such lemons without regard to volume and size regulations under the order; permits the optional use of upward adjustment by handlers in Districts 1 and 3 up to 100 percent of their average weekly pick and; changes from eight to four the minimum number of successive weeks during which picks are interrupted by District 2 handlers before they may apply for a new prorate base. These actions provide lemon handlers with additional flexibilities to enable them to market their lemons more advantageously.

DATES: Effective August 1, 1985 through July 31, 1986. Comments due by August 14, 1985.

ADDRESS: Send two copies to: Docket Clerk, F&V, AMS, Room 2069-S, U.S. Department of Agriculture, Washington, D.C., 20250. Two copies of all written material shall be submitted and they will be made available for public inspection at the office of the Docket Clerk during regular business hours.

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

Section 910.180(d) of the rules and regulations established under the order prescribes procedures governing the exemption from order regulations of lemons handled in minimum quantities and certain types of shipments. This action would allow the handling of organic lemons without regard to volume and size requirements that may be issued under the order if certain safeguards are met. Under the amendment, each handler of organic lemons would be required to apply to the committee for exemption from such regulations and furnish necessary information to the committee. The amendment would allow handlers to ship up to 250 cartons of organic lemons each week to designated market outlets, e.g. health food stores. This action is designed to facilitate the marketing of organic lemons. A similar exemption for the handling of organic lemons has been in effect for the past two marketing seasons.

The marketing order provides that the prorate base of each handler be based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the order provides that handlers in such districts may request and be granted an upward adjustment in their average weekly pick to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season of the extra allotment received.

Marketing order 910 provides in § 910.53(h) that the percentage of adjustment specified in §§ 910.53(f)(1) and 910.153(e)(3), may be changed through informal rulemaking. Provision for 100 percent upward adjustment of average weekly pick of handlers in Districts 1 and 3 is currently in effect and such provision has been in effect since 1980. Continuance of such a provision would allow District 1 and 3 handlers the option of receiving a larger proportion of their allotment earlier in the season, and enable them to use their proportionate share of the marketing opportunity more advantageously.

This interim rule also changes from eight to four the minimum number of successive weeks during which picks are interrupted by District 2 handlers, before they may apply for a new prorate base. Under provisions of the marketing order, District 2 handlers who become eligible for a new prorate base may also apply for accelerated averaging of weekly picks and upward adjustments to receive additional allotment. Section 910.53(h) provides that the number of weeks specified in § 910.53(f)(2) may be changed through informal rulemaking. Such an amendment would afford District 2 handlers the opportunity to receive adjusted allotment to handle lemons on an accelerated basis. A similar rule has been authorized in past seasons.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in other public procedures, and postpone the effective date of this rule 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 rule is based and the effective date necessary to effectuate the declared policy of the Act. This interim final rule relieves regulations on the handling of lemons and handlers have been apprised of such provisions and the effective date. Interested persons were given an opportunity to submit information and views on these amendments at public meetings of the committee, at which the committee without opposition recommended implementation of such requirements. This rule provides for a 30 day comment period. Any comments received will be considered prior to finalization of the rule.

List of Subjects in 7 CFR Part 910

Marketing Agreements and Orders, Lemons, California, Arizona.

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. Section 910.153 is amended by adding the following language at the end of the last sentence in paragraph (a)(2) and revising the first sentence of paragraph (e)(3) to read as follows (this final rule expires July 31, 1986, and will not be published in the Annual Code of Federal Regulations):

§ 910.153 Prorate Bases and Allotments.

* * * * *

(e)(2) * * * Notwithstanding the provisions of this section any District 2 handler whose picks are interrupted for 4 successive weeks or more, during the period August 1, 1985 through July 31, 1986, may apply for a new prorate base, for accelerated averaging of weekly picks, and for upward adjustment as provided herein.

(3) *Granting of upward adjustment for District 1 and 3 applicants.*

Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided*, That, during the period August 1, 1985 through July 31, 1986, upon request of any such handler, the committee shall adjust such handler's average weekly pick in the amount requested but not to exceed 100 percent. * * *

3. Section 910.180 is amended by adding a new paragraph (d)(3) to read as follows (this final rule expires July 31, 1986, and will not be published in the Annual Code of Federal Regulations):

§ 910.180 Lemons not subject to regulation.

* * * * *

(d) Minimum quantities and types of shipments. * * *

(3) During the period August 1, 1985 through July 31, 1986, any person may be granted an exemption of up to 250 cartons per week, or an equivalent amount thereof, to market or distribute organic lemons to organic or health food wholesalers or retailers. Such lemons shall be exempt from volume and size requirements issued under this part. Persons shall file with the committee an application for exemption as described in paragraph (d)(1) of this section. Such persons shall also file weekly reports (LAC form 8) during each week in which such organic lemons are shipped. For purposes of this section, "organic lemons" means lemons which are produced, harvested, distributed, stored, processed and packaged without application of synthetically compounded fertilizers, pesticides or growth regulators. In addition, no synthetically compounded fertilizers, pesticides, or growth regulators shall be applied by the grower to the field or area in which the lemons are grown for 12 months prior to the appearance of flower buds and throughout the entire growing and harvest season for lemons.

Dated: July 10, 1985.

Thomas R. Clark,

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

[FR Doc. 85-16762 Filed 7-12-85; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Parts 915 and 944

Avocados Grown in South Florida and Imported Avocados; Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule with corrections.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which established maturity requirements for Florida avocados and imported avocados. Also, 2 clerical errors in the rule are being corrected. The rule is necessary to assure the shipment of ample supplies of mature avocados in the interest of producers and consumers.

EFFECTIVE DATE: August 14, 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 action 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.

The interim final rule was issued on May 17, 1985, and published in the Federal Register (50 FR 21033) on May 22, 1985. The rule added § 915.330 (Florida Avocado Maturity Regulation) under Marketing Order 915 establishing maturity requirements for Florida avocados effective May 22, 1985, and § 944.29 (Avocado Import Maturity Regulation) under Part 944 establishing maturity requirements for avocados imported into the United States effective May 28, 1985. Both §§ 915.330 and 944.29 are to remain in effect through April 30, 1986. The rule provided that interested persons could file public comments through June 21, 1985, none of which were received. The rule contained 2 clerical errors in Table 1 of § 915.330, and this action corrects such errors. The errors were made in the effective periods specifying the minimum weights and diameters for shipments of the Gorham and Tonnage varieties of avocados.

The Florida avocado regulation was based upon the recommendation of the Avocado Administrative Committee comprised of Florida avocado producers and handlers, and a public representative, and was issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The avocado import regulation (7 CFR Part 944) was issued under § 8e (7 U.S.C. 608e-1) of the act. It is found that this action will tend to effectuate the declared policy of the act.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Parts 915 and 944 continues to read as follows:

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

§ 915.330 [Corrected]

2. Section 915.330 is corrected by revising in Table 1, the effective period specified for the Gorham variety of 07–08–85 through 09–21–85, to read 07–08–85 through 07–21–85, and for the Tonnage variety of 08–19–85 through 09–25–85, to read 08–19–85 through 08–25–85.

3. The interim final rule published in the Federal Register (50 FR 21033) adding §§ 915.330 and 944.29 is adopted as a final rule, with the specified corrections incorporated therein.

Dated: July 10, 1985.

Thomas R. Clark,

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

[FR Doc. 85–16698 Filed 7–12–85; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 85–003]

Reservation of Space for Quarantine of Animals and Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS) (1) by providing a mechanism for raising the amount of the reservation fees for certain animals and birds, (2) by revising the provisions for forfeitures of reservation fees, (3) by specifying the place and time for acceptance of reservation cancellation notices, and (4) by providing for cancellation fees under certain circumstances. This action is necessary to more fully utilize the space at quarantine facilities maintained by VS and to reduce losses incurred as a result of the failure to utilize space which has been reserved.

EFFECTIVE DATE: August 14, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Allan A. Furr, VS, APHIS, USDA, Room 846, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain, among other things, provisions concerning the importation of certain animals and birds (the term animals is defined in the regulations to include poultry but not birds). These provisions include the requirements in § 92.4 that in order to import certain animals or birds into the United States, an importer or an importer's agent ("agent") must quarantine the animals or birds in a quarantine facility for a specified period of time. Section 92.4 also contains provisions for obtaining and cancelling reservations for space in quarantine facilities maintained by Veterinary Services (VS).

In a document published in the Federal Register on December 4, 1984 (49 FR 47402–47405), the Department proposed to amend the regulations for obtaining and cancelling reservations for space in quarantine facilities maintained by VS (1) by providing a mechanism for raising the amount of the reservation fees for certain animals and birds, (2) by revising the provisions for forfeitures of reservation fees, (3) by specifying the place and time for acceptance of reservation cancellation notices, and (4) by providing for cancellation fees under certain circumstances.

Comments were solicited in response to the proposal for a 30-day period ending January 3, 1985. Six comments were received. These comments were from importers, brokers, and a public interest group. Three commenters supported the proposal in its entirety. A fourth commenter supported the proposal with one exception. The other two commenters objected to several provisions of the proposal. The comments submitted have been carefully considered and are discussed below. Based on the reasons set forth in the proposal and this document, the provisions of the proposal have been adopted in the final rule except as explained below.

Amount of Reservation Fee

Prior to the effective date of this document, § 92.4(a)(4) of the regulations provided, among other things, that, in order to reserve space at a quarantine facility maintained by VS, the importer or agent must, at the time a request to reserve space is made, pay (a) $80.00 for each lot of poultry or birds; (b) $130.00 for each horse; and (c) $240.00 for each lot of any other animals.

It was proposed to amend § 92.4 to require that an importer or agent pay a reservation fee for each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, in an amount estimated by the veterinarian in charge to be 25 percent of the cost of providing care, feed, and handling during quarantine; except that the reservation fee would be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals.

None of the commenters objected to the provisions requiring that the reservation fee be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals. However, two commenters objected to the proposed change to require that the reservation fee be no less than 25 percent of the cost of providing care, feed, and handling during quarantine. In support of the objection, it was asserted that a minimum of 25 percent of the cost of providing care, feed, and handling during quarantine could be too high, that it could tie up working capital for extended periods of time without expense on the part of USDA, and that it could create a hardship on persons importing large numbers of animals. It was suggested that the minimum of 25 percent be amended to reflect a smaller percentage for larger shipments. One commenter suggested the following graduated schedule:

Estimated cost of care, feed, and handling of animals	Reservation fee (percent)
$10,000 or less	25
$10,001 to $100,000	20
$100,001 to $300,000	12
$300,001 to $500,000	8
$500,001 to $1,000,000	6
Over $1,000,000	4

The purposes of the reservation fees and forfeiture provisions, as indicated in the proposed rule at 49 FR 47403, are to:

> * * * discourage importers or their agents from making frivolous reservations, encouraging importers and their agents to present animals for entry into the quarantine facility on time, defray some of the costs incurred by Veterinary Services when personnel and materials are allocated to a quarantine facility because space has been reserved and the reserved space is not used, and recover some of the revenue lost when space at a quarantine facility is reserved and the reserved space is not used and other potential users of the facility are denied the opportunity to use the space.

After a review of the comments, it has been determined that the minimum amount of 25 percent of the cost of feed, care, and handling could be more than is necessary to accomplish these purposes. Further, it has been determined that a maximum amount of $2,500 would be sufficient to be used in lieu of the 25 percent figure to accomplish the purposes set forth above in the quoted materials (with the exception that the reservation fee shall be no less than

$80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals). Therefore, § 92.4(a)(4)(i) is amended to read as follows:

(4) (i) For each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, the importer or the importer's agent shall pay or ensure payment of a reservation fee of $2,500 or the amount estimated by the veterinarian in charge of the quarantine facility to be 25 percent of the cost of providing care, feed, and handling during quarantine, whichever is less; *Except* that the reservation fee shall be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals.

Letter of Credit

One commenter suggested that reservation fees in excess of $2,000 be allowed to be made by "bank letter of credit." It has been determined that the use of a letter of credit from a commercial bank could adequately accomplish the purpose of the reservation fee if the letter of credit were an irrevocable letter of credit, regardless of whether the reservation fee exceeds $2,000. Allowing the use of an irrevocable letter of credit from a commercial bank would allow an importer to make arrangements with a commercial bank which would assure the Department of payment of the reservation fee. Therefore, § 92.4(a)(4)(ii) of the final rule provides, in part, that any importer or importer's agent shall pay the reservation fee by check or U.S. money order, or shall ensure payment of the reservation fee by irrevocable letter of credit from a commercial bank.

The regulations also provide that any reservation fee shall be applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid. Consistent with these provisions, the final rule provides further that if an irrevocable letter of credit from a commercial bank is utilized, the effective date on such letter of credit shall run to 30 days after the date the animals or birds are scheduled to be released from quarantine. This is necessary in order to allow time for determining the total cost of providing care, feed, and handling during quarantine and allow the Department to draw against the letter of credit if necessary.

The final rule also contains provisions for collecting expenses incurred for services received, a forfeited reservation fee, or a cancellation fee if a letter of credit is used.

Cancellation of Reservations

Prior to the effective date of this document, § 92.4(a)(4)(vi) provided:

Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry the lot of animals, the lot of poultry or birds or the horse for which the reservation fee was paid; except that if the importer or the importer's agent cancels the reservation by notifying the veterinarian in charge of the quarantine facility at least 72 hours prior to the beginning of the time for importation as prescribed in the permit or as arranged with the veterinarian in charge of the quarantine facility if no permit is required, the reservation fee shall be returned to the individual who paid the reservation fee.

It was proposed to amend the regulations to provide for forfeiture of the reservation fee if the animals or birds are not presented for quarantine within 24 hours after the designated time of arrival unless: (i) Written notice of cancellation from the importer or agent is received by the office of the veterinarian in charge of the quarantine facility (the addresses of the quarantine facilities may be found in telephone books applicable to the locations of the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782) during regular business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals and birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or (ii) services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

One commenter objected to the proposed "5 day cancellation period" for horses. The commenter disagreed with the Department's assertion that five days would allow more time for a rebooking. He asserted that agents almost always can quickly arrange for a substitution in the event of a last minute cancellation. No changes are made based on this comment. Based on experince, it has been determined that a 72 hour period is often not long enough to allow importers to respond to opportunities to fill cancelled space. Further, it appears that requiring 5 days advance notice of cancellation for horses is necessary to discourage importers or agents from making frivolous reservations, and to allow a sufficient amount of time for the Department to make reasonable efforts to allow other importers an opportunity to use the cancelled space.

Cancellation Fee

It was further proposed to amend § 92.4 to provide that in situations in which a reservation fee is to be returned (other than certain situations explained below), a $40.00 cancellation fee shall be deducted from the reservation fee. It had been determined that a cancellation fee of $40.00 is necessary in order to allow the Government to recover administrative costs incurred in refunding a reservation fee.

The proposal also contained provisions for cancellation without forfeiture of the reservation fee or without deduction of a cancellation fee if the Deputy Administrator determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requisite period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

Two commenters objected to the proposed cancellation fee. The objections were based on the assertion that the amounts that the Government collects as a result of forfeitures more than compensate for administrative costs incurred in refunding a reservation fee. It was asserted further that the bulk of the paperwork is done by the importers' agents and that an additional fee would be difficult to justify to their clients. No changes are made based on these comments. The cancellation fee represents administrative costs incurred in refunding a reservation fee and does not include costs for any activities performed by brokers. All of the monies collected for feed, care, and handling plus any forfeitures of the reservation fees do not provide any excess funds to cover the administrative costs incurred in refunding a reservation fee.

Miscellaneous

Also, nonsubstantive changes are made for purposes of clarity.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." Based on information compiled by the Department, it has been determined that this action will not result in a significant annual effect on the economy; 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 have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will, in some cases, increase the fee required to be paid by an importer or agent in order to reserve quarantine space for animals and birds in a quarantine facility maintained by Veterinary Services. The fee paid for such space will be applied against the expenses incurred for services received by the importer or agent in connection with the quarantine for which the fee to reserve space was paid. Also, any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation fee was paid, will be returned to the individual who paid the reservation fee. Therefore, the only cost which importers or agents who actually use the reserved space will incur as a result of the adoption of this rule will be an increase in the opportunity cost on the prepayment of the reservation fee. In this case, the importer or agent could have invested the amount of the increase in the fee. However, in most instances, this opportunity cost is negligible.

An importer or agent would only incur more than an opportunity cost (1) when a reservation fee is forfeited because of a failure to present for entry the animals or birds for which the fee to reserve space was paid, or (2) when a $40.00 cancellation fee is deducted from the payment of a reservation fee to cover administrative costs.

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

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended as follows:

1. The authority for Part 92 is revised to read as set forth below and the authority citations following all the sections in Part 92 are removed:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. Footnote 2 in § 92.4(d)(1)(iv) is redesignated footnote 3.

3. In § 92.4, paragraph (a)(4) is revised to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes;[1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

(a) * * *

(4)(i) For each lot of animals or birds to be quarantined in a quarantine facility maintained by Veterinary Services, the importer or the importer's agent shall pay or ensure payment of a reservation fee of $2,500 or the amount estimated by the veterinarian in charge of the quarantine facility to be 25 percent of the cost of providing care, feed, and handling during quarantine, whichever is less; *Except* that the reservation fee shall be no less than $80.00 for each lot of birds or poultry, no less than $130.00 for each horse, and no less than $240.00 for each lot of any other animals.

(ii) At the time the importer or the importer's agent requests a reservation of quarantine space, the importer or importer's agent shall pay the reservation fee by check or U.S. money order or ensure payment of the reservation fee by an irrevocable letter of credit from a commercial bank (the effective date on such letter of credit shall run to 30 days after the date the animals or birds are scheduled to be released from quarantine); except that anyone who issues a check to the Department for a reservation fee which is returned because of insufficient funds shall be denied any further request for reservation of a quarantine space until the outstanding amount is paid.

(iii) Any reservation fee paid by check or U.S. money order shall be applied against the expenses incurred for services received by the importer or importer's agent in connection with the quarantine for which the reservation was made. Any part of the reservation fee which remains unused after being applied against the expenses incurred for services received by the importer or the importer's agent in connection with the quarantine for which the reservation was made, shall be returned to the individual who paid the reservation fee. If the reservation fee is ensured by a letter of credit, the Department will draw against the letter of credit unless payment for services received by the importer or importer's agent in connection with the quarantine is otherwise made at least 3 days prior to the expiration date of the letter of credit.

(iv) Any reservation fee shall be forfeited if the importer or the importer's agent fails to present for entry, within 24 hours following the designated time of arrival, the horse, the lot of birds, or the lot of other animals for which the reservation was made: *Except* that a reservation fee shall not be forfeited if:

(A) Written notice of cancellation from the importer or the importer's agent is received by the office of the veterinarian in charge of the quarantine facility [2] during regular business hours (8:00 a.m. to 4:30 p.m. Monday through Friday, excluding holidays) no later than 5 days for horses or 15 days for other animals or birds prior to the beginning of the time of importation as specified in the import permit or as arranged with the veterinarian in charge of the quarantine facility if no import permit is required (the 5 or 15 day period shall not include Saturdays, Sundays, or holidays), or

(B) The Deputy Administrator, Veterinary Services, determines that services, other than provided by carriers, necessary for the importation of the animals or birds within the requested period are unavailable because of unforeseen circumstances as determined by the Deputy Administrator, Veterinary Services, (such as the closing of an airport due to inclement weather or the unavailability of the reserved space due to the extension of another quarantine).

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[2] The addresses of USDA quarantine facilities may be found in telephone directories listing the facilities or by contacting Import-Export Animals and Products Staff, Veterinary Services, APHIS, U.S. Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782.

(v) If the reservation fee was ensured by a letter of credit and the fee is to be forfeited under paragraph (a)(4)(iv) of this section, the Department will draw against the letter of credit unless the reservation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

(vi) When a reservation is cancelled in accordance with paragraph (a)(4)(iv)(A) of this section and the provisions of paragraph (a)(4)(iv)(B) of this section do not apply, a $40.00 cancellation fee shall be charged. If a reservation fee was paid, the cancellation fee shall be deducted from any reservation fee returned to the importer or the importer's agent. If the reservation fee was ensured by a letter of credit, the Department will draw the amount of the cancellation fee against the letter of credit unless the cancellation fee is otherwise paid at least 3 days prior to the expiration date of the letter of credit.

* * * * *

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

J. K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-16759 Filed 7-12-85; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 85-057]

Change in Disease Status of Great Britain; Because of Viscerotropic Velogenic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the regulations concerning the importation into the United States of carcasses of certain birds and poultry, and parts or products thereof, and of certain eggs by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of countries declared to be free of viscerotropic velogenic Newcastle disease (VVND). It has been determined that VVND has been eradicated from Great Britain. The effect of this action is to relieve certain restrictions on the importation into the United States from Great Britain of carcasses of certain birds and poultry, and parts or products thereof, and of certain eggs.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel S. Richeson, Import-Export Animals and Products Staff, VS, APHIS, USDA, Room 843, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8172.

SUPPLEMENTARY INFORMATION:

Background

On February 22, 1985, an interim rule was published in the **Federal Register** (50 FR 7327) which amended the regulations in 9 CFR Part 94 by adding Great Britain (England, Scotland, Wales, and the Isle of Man) to the list of countries considered to be free of viscerotropic velogenic Newcastle disease (VVND). The interim rule became effective on the date it was signed, February 19, 1985.

Comments were solicited for 60 days following publication. Four comments were received. They were from representatives of the United States poultry industry. Two of the commenters favored the adoption of the interim rule. The other two commenters objected to the addition of Great Britain to the list of VVND-free countries based on the assertion that the change would result in allowing Great Britain to move hatching eggs and poultry to the United States under conditions less stringent than those imposed by Great Britain on the movement of such articles from the United States to Great Britain. No changes are made based on these comments.

The sole criteria under § 94.6 of the regulations concerning whether to include a country in the list is whether or not the country is considered to be free of VVND. As indicated in the interim rule at 50 FR 7327:

> Based on extensive surveys conducted by the government of Great Britain, it has been determined that VVND has been eradicated from Great Britain, and that there is no reason to believe that VVND exists in Great Britain. Further, Great Britain has an effective program (including ongoing surveys, and quarantine requirements on the importation of birds and poultry) for helping to ensure that VVND does not become established in Great Britain.

The issue raised by the commenters in opposition to the interim rule is irrelevant to the determination as to whether Great Britain should be listed in § 94.6 as a country considered to be free of VVND.

Executive Order 12291 and Regulatory Flexibility Act

This action has been reviewed in accordance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action will not have a significant annual effect on the economy; 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 have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that the amounts of carcasses of poultry and birds, or parts or products thereof, or eggs that will be imported into the United States from Great Britain as a result of this action will be less than one percent of the amounts of these items utilized in the United States annually. Further, the importation of any of these items from Great Britain is not the primary activity of any business in the United States.

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

List of Subjects in 9 CFR Part 94

Animal diseases, Exotic Newcastle disease, Imports, Livestock & livestock products, Meat & meat products, Milk, Poultry & poultry products.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, the interim rule amending § 94.6 of 9 CFR Part 94 which was published at 50 FR 7327 on February 22, 1985, is adopted as a final rule.

Authority: 19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

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

J.K. Atwell,

Deputy Administrator, Veterinary Services.

[FR Doc. 85-16758 Filed 7-12-85; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 85-NM-12-AD; Amdt. 39-5099]

Airworthiness Directives; Aerospatiale (SUD NORD) Nord 262A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires certain modifications to correct unsafe conditions in the windshield and engine anti-icing control circuits on certain Nord Model 262A airplanes. The modifications will ensure that warning is displayed for the inoperative windshield deicing system and will prevent a single fault from affecting both engine anti-icing systems.

DATE: Effective August 22, 1985.

ADDRESSES: The service bulletins specified in this AD may be obtained upon request to Aerospatiale, Service Commercial N262, Boite Postale 159, 36003 Chateauroux, France, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The French Civil Aviation Authority (DGAC) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of possible unsafe conditions in the operation of the original windshield and turbine engine anti-icing control circuitry of the Nord Model 262 series airplane. Instances have occurred where the windshield heating system's transfer relay coil circuit has shorted and caused unannounced failure of the windshield heating system failure warning light. Additionally, single failures of the engine anti-icing control circuitry have resulted in the deicing system of both engines not operating. Aerospatiale issued Nord Service Bulletin Nos. 30-14 and 30-15, which provide corrective measures for the conditions.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires compliance with the Nord service bulletins was published in the **Federal Register** on March 1, 1985 (50 FR 8337).

Interested parties have been afforded an opportunity to participate in the making of this amendment. The one comment received was from an operator who supported the NPRM, but noted that airplanes modified in accordance with Supplemental Type Certificate (STC) SA2369SW incorporate a different windshield and engine anti-ice system, and are equipped with Pratt and Whitney PT6-45 engines. Since the modifications required by the proposal do not apply to airplanes incorporating this STC, the commenter suggested that the final rule reflect correct applicability. The FAA acknowledges this comment and has revised the applicability statement of the final rule to exempt those airplanes which have incorporated the STC.

After careful consideration of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted.

It is estimated that 4 airplanes will be affected by this AD, that it will take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Material cost is estimated to be $2,064 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $24,256.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model Nord 262A series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Aerospatiale (SUD NORD): Applies to the Nord Model 262A series airplanes which have not incorporated STC SA2369SW, certificated in any category. Compliance required within 90 days after the effective date of this airworthiness directive (AD), unless already accomplished.

To prevent undected system failures or malfunctions in the windshield and turbine engine anti-icing systems, accomplish the following:

A. Install additional fuses in the windshield anti-icing control circuitry for all windshield panels in accordance with Nord Service Bulletin No. 30-14, dated September 29, 1971 (which constitutes Nord modification No. 733), on Nord Model 262A series airplanes having serial numbers 8 through 20, 22 through 27, 29 through 35, 37 through 42, 47 through 50, 54, 56, 69, 74, and 84.

B. Accomplish modifications to the turbine engine anti-icing control circuitry described in the planning section, paragraph I.C. of Nord Service Bulletin No. 30-15, dated October 29, 1971, as revised August 27, 1974 (which constitutes Nord modification No. 669). Accomplish the modifications in accordance with the Section II, Accomplishment Instructions, of the service bulletin on Nord Model 262A series airplanes having serial numbers 4 through 27, 29 through 35, 37 through 42, 47 through 50, 54, 56, 57, 69, and 84.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, Aircraft Certification Division, FAA, Northwest Mountain Region.

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

This amendment becomes effective August 22, 1985.

Issued in Seattle, Washington, on July 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16668 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-ASW-15; Amdt. 39-5089]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale (SNIAS) Model AS 350 and AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspection and repair or replacement, as necessary, of the fuselage frame at the fuselage tailboom interface on Aerospatiale Model AS 350 and AS 355 series helicopters. The AD is prompted by reports of fuselage frame cracks at the fuselage tailboom interface which could cause tailboom failure and consequent loss of control of the helicopter.

EFFECTIVE DATE: July 26, 1985.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable service information may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75051, Attention: Customer Support.

A copy of Service Document 53–10–45, page 2, is contained in the Rules Docket, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Manager, Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium, APO NY 09667, telephone number 513.38.30; or R.T. Weaver, Helicopter Policy and Procedures Staff, ASW–110, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 877–2548.

SUPPLEMENTARY INFORMATION: The FAA has determined that there have been reports of fatigue cracks up to 2 inches long in the fuselage frame at the intersection with the tailboom on certain Aerospatiale Model AS 350 and AS 355 helicopters which could result in tailboom failure and loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires inspection of the fuselage frame at the fuselage tailboom intersection for cracks and replacement, as necessary, on Aerospatiale Model AS 350 and AS 355 series helicopters.

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

The FAA has determined that this regulation involves a cost per inspection of $280 with 141 rotorcraft affected for a total cost of $39,480 per year. Therefore I certify that this action: (1) Is not a "major rule" under Executive Order 12291, and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (FAR) as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

Societe Nationale Industrielle Aerospatiale (SNIAS): Applies to all Aerospatiale Model AS 350 and AS 355 series helicopters certificated in all categories.

Compliance is required as indicated (unless already accomplished).

To prevent possible failure of the fuselage to tailboom interface frame, accomplish the following:

(a) For helicopters which have 1,150 hours' or more total time in service on the effective date of this AD, inspect in accordance with paragraph (c) within the next 50 hours' time in service.

(b) For those helicopters which have less than 1,150 hours' total time in service on the effective date of this AD, inspect in accordance with paragraph (c) before reaching 1,200 hours' time in service.

(c) Remove the tailboom from the fuselage in accordance with the Model AS 350 and AS 355 maintenance manual, or FAA-approved equivalent, as appropriate.

(1) Visually inspect the aft fuselage frame at the fuselage tailboom interface for cracks. Conduct the visual inspection on all accessible frame areas with special emphasis in frame flange radii and at bolt holes.

(2) Conduct dye penetrant inspections of areas of suspected cracks that cannot be verified by a visual inspection.

(d) Replace any cracked frames.

(e) Reinstall the tailboom in accordance with the appropriate Model AS 350 or AS 355 maintenance manual, or FAA-approved equivalent, after completion of the inspection and rework of paragraph (c) and (d).

(f) Repeat the inspections required in paragraph (c) at intervals not to exceed 1,200 hours' time in service from the last inspection.

(g) An alternate method of compliance with this AD and adjustment of repetitive compliance times may be approved by the Manager, Aircraft Certification Division, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106 or by the Manager, Aircraft Certification Office, AEU–100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium. Adjustments in Compliance time may be approved upon recommendations of the FAA aviation safety inspector.

(h) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the inspections required by this AD may be accomplished.

This amendment becomes effective July 26, 1985.

Issued in Fort Worth, Texas, on June 28, 1985.

F.E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 85–16667 Filed 7–12–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–NM–10–AD; Amdt. 39–5101]

Airworthiness Directives; Short Brothers Ltd. Model SD3–60 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires the replacement of rivets in the bottom section of fuselage frame 475 on certain Short Brothers Ltd. Model SD3–60 airplanes. This action is necessary to ensure that adequate strength capability exists to satisfy the loads imposed by ditching.

DATE: Effective August 22, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM–113; telephone (206) 431–2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires the replacement of rivets in the bottom section of frame 475 on certain SD3–60 airplanes was published in the **Federal Register** on March 19, 1985 (50 FR 10976).

Interested parties have been afforded an opportunity to participate in the making of this amendment. No comments were received.

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

It is estimated that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Repair parts are estimated to be nominal. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $7,920.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model SD3-60 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

Short Brothers Ltd: Applies to Model SD3-60 airplanes as listed in Short Brothers Ltd. Service Bulletin SD360-53-11, Revision 1, dated November 1984, certificated in any category. Compliance is required within twelve months after the effective date of this AD, unless previously accomplished. To prevent structural failure under ditching conditions, accomplish the following:

A. Install Cherrymax rivets in the bottom section of fuselage frame 475 in accordance with Short Brothers Ltd. Service Bulletin SD360-53-11, Revision 1, dated November 1984.

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

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

This amendment becomes effective August 22, 1985.

Issued in Seattle, Washington, on July 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16674 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-15-AD; Amdt. 39-5100]

Airworthiness Directives; British Aerospace Model BAe 146 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection, modification, and repair, if necessary, of the fuselage skin under the wing-to-fuselage fairings on certain BAe Model 146 airplanes. This action is necessary because chafing of the fuselage skin resulting from metal-to-metal contact of the fairing has been reported. Chafing reduces the structural integrity of the fuselage skin and may result in failure and subsequent airplane depressurization.

DATES: Effective August 22, 1985. Compliance required within the next 100 landings after the effective date of this AD (unless already accomplished).

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, Box 17414, Dulles International Airport, Washington, D.C. 20041, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Standardization Branch, ANM-113; telephone (206) 431-2979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain BAe 146 airplanes.

Chafing of the fuselage skin resulting from metal-to-metal contact of the fairings has been reported between frames 23 and 25 under the front wing-to-fuselage fairings, on post-Modification HCM00301A and B airplanes. Chafing reduces the structural integrity of the fuselage skin and may result in failure and subsequent airplane depressurization.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive that requires inspection; repair, if necessary; and application of anti-chafe tape on certain BAe Model 146 airplanes was published in the **Federal Register** March 27, 1985 (50 FR 12035).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received: one from the manufacturer and one from an operator. Both commenters addressed an error concerning the modification numbers listed in the AD. The commenters noted that the suffix letters, "A" and "B," identify the modification alternatives, not separate modifications. It was suggested that the AD specify Modification "HCM00301A *or* HCM00301B," not "HCM00301A *and* HCM00301B." The same is true with Modification HCM00432A and HCM00432B. The manufacturer has issued a revision to the service bulletin to clarify this point. The FAA acknowledges the error and the final rule has been revised accordingly. Revision 1 to the service bulletin has also been included in the final rule.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $640.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model 146 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.89; and 49 CFR 1.47.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to all Model BAe 146 airplanes certificated in any category on which Modification HCM00301A or B has been accomplished, and on which Modification HCM00432A or B has not been accomplished. Compliance is required within the next 100 landings after the effective date of this airworthiness directive (AD). To detect and prevent chafing of the fuselage skin, accomplish the following, unless previously accomplished:

1. Inspect the fuselage skin beneath the wing-to-fuselage fairings for chafing, repair if necessary, and apply anti-chafe tape in accordance with British Aerospace Service Bulletin 53–5 dated August 15, 1984, or Service Bulletin 53–5, Revision 1, dated April 19, 1985.

2. Repeat the inspection required by paragraph 1., above, at intervals not to exceed 1000 landings until Modification HCM00432A or B is incorporated.

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

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

This amendment becomes effective August 22, 1985.

Issued in Seattle, Washington, on July 8, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85–16673 Filed 7–12–85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-2]

Alteration of Glasgow, MT, Control Zone and Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the control zone and transition area at Glasgow, Montana, to enlarge the control zone extensions and reduce the size of the 700′ transition area. This action is necessary to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM–535, Federal Aviation Administration, Docket No. 85–ANM–2, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The telephone number is (206) 431–2530.

SUPPLEMENTARY INFORMATION: .

History

On April 19, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to enlarge the control zone extensions and reduce the size of the 700′ transition area of Glasgow, Montana (50 FR 15577).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations enlarges the control zone extensions and reduces the size of the 700′ transition area at Glasgow, Montana. The control extensions are required due to recent amendments to instrument approach procedures at Glasgow International Airport. The reduction of the 700′ transition area is permitted due to cancellation of instrument approach procedures at Valley Industrial Park Airport.

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

List of Subjects in 14 CFR Part 71

Control zones/Transition areas/Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1.The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); (14 CFR 11.69); 49 CFR 1.47.

2. By amending §§ 71.171 and 71.181 as follows:

Glasgow, Montana Control Zone—(Revised)

"Within a 5-mile radius of the Glasgow International Airport (lat. 48°12′48″N, long. 106°37′06″ W); within 3 miles each side of the Glasgow VOR/DME 327° radial, extending from the 5-mile radius zone to 8.5 miles northwest of the VOR/DME; and within 3 miles each side of the Glasgow VOR/DME 127° radial, extending from the 5-mile radius zone to 8.5 miles southeast of the VOR/DME; and within 3 miles each side of the Milk River NDB 106° bearing, extending from the 5-mile radius zone to 8.5 miles east of the NDB".

Glasgow, Montana, Transition Area—(Revised)

"That airspace extending upward from 700 feet above the surface within an 11-mile radius of the Glasgow VOR/DME; and that airspace extending upward from 1,200 feet above the surface starting at lat. 48°40′00″ N, long.106°00′00″ W; to lat. 48°32′00″ N, long.105°50′00″ W; to lat. 48°03′00″ N, long.105°50′00″ W; to lat. 48°03′00″ N, long. 106°10′00″ W; to lat. 47°53′00″ N, long. 106°22′30″ W; to lat. 48°15′00″ N, long. 107°07′00″ W; to lat. 48°40′00″ N, long. 107°07′00″ W; thence to point of beginning, excluding that area designated as the Wolf Point, Montana, 1,200 foot transition area".

Issued in Seattle, Washington, on June 21, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16671 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ANM-10]

Establish Transition Area, Quincy, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action provides controlled airspace from 700 feet above the surface for aircraft executing a new instrument approach procedure at Quincy Municipal Airport. The area will be shown on aeronautical charts enabling pilots to circumnavigate the area or, otherwise, comply with instrument flight rules (IFR) during instrument flight conditions.

EFFECTIVE DATE: 0901 GMT, September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Ted Melland, Airspace & Procedures Specialist, ANM-533, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2533.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1985, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Quincy, Washington, 700 foot transition area (50 FR 18877).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. During the comment period more accurate geographical coordinates for the airport location were published. The change is not considered significant and, therefore, except for the geographical coordinate changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations establishes a 700 foot transition area to provide controlled airspace for aircraft executing a new instrument approach procedure to Quincy Municipal Airport.

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

List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) amends Part 71 of the FAR (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.69); 49 CFR 1.47.

2. By amending § 71.181 as follows:

Quincy, Washington Transition Area—(New)

"That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Quincy Airport (lat. 47°12'34.8" N long. 119°50'19" W), excluding the Moses Lake, Washington, transition area."

Issued in Seattle, Washington, on July 2, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-16672 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 401 and 422

Availability of Information and Records to the Public; Fees for Providing Information and Records; Procedures and Appeals

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: The Social Security Administration (SSA) announces changes in the fees it charges for providing records from its files and record related services. These changes conform SSA's fee schedule to that of the Department of Health and Human Services (HHS). The rules also implement the discretion given the Secretary of Health and Human Services by section 2207 of the Omnibus Budget Reconciliation Act of 1981 to charge the full cost of providing certain information and records. The rules do not change SSA's longstanding policy of generally not charging an individual for information needed to assure that our records concerning her or him are correct. In preparing these amendments, we deleted from SSA's rules several provisions concerning Medicare information. The Health Care Financing Administration (HCFA) has published separate regulations governing the availability of Medicare information and records.

We have also clarified the rules for handling requests for information about individuals under the Privacy Act and the Freedom of Information Act (FOIA) and incorporated HHS' rules on who has authority to release or deny records in this revised material.

EFFECTIVE DATE: These revised regulations are effective beginning July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7519.

SUPPLEMENTARY INFORMATION:

Introduction

These regulations were published as proposed rules September 20, 1983, at 48 FR 42830. They revise SSA's rules in 20 CFR Part 422, Subpart E, on the availability of records and information to the public under the FOIA. These changes are needed to remove material made obsolete by the creation of HCFA, to clarify the rules for handling requests for records under the FOIA, to conform SSA's fee schedule for providing records and record related services under the FOIA to the revised HHS fee schedule, to announce a fee schedule under which we will charge the full cost of providing certain records, and to revise SSA's rules on who can release or deny a record. These provisions affect the fees for and the routing of requests for information covered by 20 CFR Part 401, the rules on the availability of personal information contained in program records. The substantive disclosure rules for such information have not been changed. The new rules also do not change SSA's longstanding policy of generally not charging an individual for information needed to assure that our records concerning her or him are correct (see Subpart D of Part 401, and see §§ 422.125 and 422.440 as amended by these regulations).

These rules revise Subpart E of 20 CFR part 401, Appeals, to clarify the procedures on how an individual can appeal, under the Privacy Act, a decision denying that individual access to her or his own records.

Health Care Financing Administration

In March, 1977, SSA's Bureau of Health Insurance became part of a new agency, the Health Care Financing Administration (HCFA). As a result SSA is no longer responsible for the Medicare information and reports described in 20 CFR 422.426(b) (1) and (2) and 422.433 through 422.435. HCFA published final regulations which govern the availability of its Medicare (title XVIII) information and records on November 12, 1981 at 46 FR 55695. The HCFA regulations supersede the former §§ 422.426(b) (1) and (2) and 422.433 through 422.435. The remaining material in former § 422.426 is incorporated in the revision to § 422.416. Therefore, we have removed those sections.

Freedom of Information Act

The Freedom of Information Act (FOIA) permits any person to see and get a copy of any Federal agency's records unless the material is within a category of records which the FOIA exempts. Under the FOIA, we are generally required to let members of the public see and get a copy of instructional manuals issued to our employees, general statements of policy, and other materials, such as Social Security Rulings, which are used in processing claims but which are not published in the **Federal Register**. We have rewritten sections of the regulations on how we comply with the FOIA to reflect several significant conforming changes. In final rules published on May 12, 1982, at 47 FR 20309, HHS limited the authority to release or deny SSA records to the Director, Office of Information (SSA), her or his designee, or as otherwise provided by regulations. In §§ 422.426 and 422.444 we set out this internal delegation of authority.

In addition, we have reorganized the material on processing requests for records and on administrative appeals.

Conforming Changes to Fee Schedule for Providing Records for Program Purposes

Section 422.440 incorporates the fee provisions of 45 CFR Part 5, which sets out the fees we will charge for providing records under the FOIA for program purposes. Program related requests would include requests for records which must be disclosed under the Social Security Act (the Act) and requests for records which will be used for a purpose directly related to the administration of a program under the Act. We have established four broad criteria we will consider in deciding whether a proposed use is so related:

(a) Whether the record will be used to pursue some benefit under the Act;

(b) Whether the record is needed solely to verify the accuracy of information obtained in connection with a program administered under the Act;

(c) Whether the record is needed in connection with an activity which has been authorized under the Act; and

(d) Whether the record is needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or under the provisions of section 218 of the Act.

Our experience is that most program related requests will fall within one of these criteria. However, we will also consider, on a case by case basis, those requests which do not meet these criteria but whose purposes are claimed to be program related.

For furnishing records under the FOIA for program purposes, we are providing that our fee schedule is the schedule in the HHS FOIA regulations, 45 CFR Part 5, which we are already required to follow. The current HHS fee schedule was published as a final rule on September 22, 1982, at 47 FR 41751. Briefly, the fees are as follows:

Manual searches for records increased from $3 to $10 per hour;

Photocopying standard size pages remains at 10 cents per page;

Photocopying odd-size pages, etc., remains at actual cost except that the charge for an employee's time is now limited to no more than $10 per hour;

Certification or authentication of a record increased from $3 to $10 for each service; and

Forwarding materials to destination increased from no charge for postage to actual cost for postage.

The minimum billing amount is changed from five dollars to the cost of sending a bill, i.e., if the bill is less than it would cost us to prepare and send the bill and to set up controls on the amount due, we would not bill the requester. However, where a requester makes multiple separate requests, we will usually add the costs incurred and periodically bill the requester an aggregate amount for the total services rendered to date.

Changes in the HHS FOIA fee schedule are currently under consideration. Any future changes in the HHS FOIA fee schedule will automatically apply to SSA records requested for program purposes, unless HHS provides otherwise. In the final rule we have made references to the HHS fee schedule less specific ("45 CFR Part 5" instead of "45 CFR 5.61(a) (1) through (8) and (b)") so that our reference will not be outdated by future revisions of the HHS regulation. We have also deleted Exception 2 from § 422.441(b), because that exception was based on 45 CFR 5.61(a)(9) and is covered by our broadened reference to 45 CFR Part 5. It is still true, as Exception 2 stated in the proposed rule, that we will use the fee schedule in 45 CFR 5.61(a) (1) through (8) and (b) whenever disclosing, under the FOIA, information other than records of Social Security number holders, wage earners, employers, or claimants.

Charging Full Cost for Information To Be Used for a Non-Program Purpose

On August 13, 1981, section 2207 of the "Omnibus Budget Reconciliation Act of 1981" became effective. That provision added section 1106(c) to the Act, which permits the Secretary to charge requesters the full cost of supplying information requested to comply with the Employee Retirement Income Security Act of 1974, or ". . . for any other purpose not directly related to the administration of the program or programs under . . . [the Social Security] Act", notwithstanding the fee limitations under the Privacy Act, FOIA, or "any other provision of law". In new § 422.441 we describe how we will implement this provision.

We will consider as non-program related all requests not found to be program related, such as (but not limited to) requests for earnings information for use in computing private pension benefits, or for use in establishing the existence and duration of an employment relationship.

For requests categorized as non-program related we will charge the full cost (direct and indirect) of providing the requested information as allowed by law. The fee schedule for non-program related requests is set forth in § 422.441.

We have revised § 422.125(e) to conform to §§ 422.440 and 422.441.

Setting Limit on Fee

We have added a new § 422.442, similar to HHS section 45 CFR 5.62, stating that when someone sends us a request we assume the requester agrees to pay for the services needed to locate and send a record to the requester. However, the requester will be able to put a limit on the amount she or he is willing to spend. We will notify the requester if it appears the costs will exceed that limit and give the requester the opportunity to decide if she or he wants us to continue searching for the requested record. Also, before we start work on a request under § 422.441 we will generally notify the requester of our exact or estimated charge for the information, unless it is clear that the requester has a reasonable idea of the cost (the proposed rule did not mention this fact).

Section 422.442 also states that if the fee will be unusually large or if the requester has failed to pay a previous bill we may ask the requester to pay the estimated fee, or a deposit, before continuing to search for the requested record or before we send it to the requester. In those instances we will notify the requester shortly after receiving the request that an advance payment or deposit is needed. This will apply to any request for a record.

Waiver or Reduction of Fees in the Public Interest

New § 422.443 describes our policy on waiving or reducing a fee in the public interest. We will follow the HHS criteria in section 45 CFR 5.63 when making such determinations.

Effect of HHS Delegations and Fee Schedule

The HHS regulations on fees are binding on SSA under 45 CFR 5.11. We are using them to establish SSA's fees for providing any records requested under the FOIA. These are the same fees described in section 422.440. We are also following the HHS rules published on May 12, 1982, regarding who has authority to release or deny a record. These officials are listed in §§ 422.426 and 422.444.

Changes to 20 CFR Part 401

We have changed several cross-references in 20 CFR Part 401 and removed a sentence from § 401.125 to reflect the changes to Subpart E of Part 422. We have also revised Subpart E of Part 401. The revisions limit Subpart E to describing how an individual can appeal under the Privacy Act a decision denying that individual access to her or his own records, those of the individual's minor child, or those of a person for whom the individual is legal guardian. This subpart formerly included procedures for appealing decisions denying requests for disclosure of information about other persons, which we process under the FOIA. The changes reflect that policy.

Comments Received on Proposed Rules

We received one letter of comments, which recommended five changes in the proposed rules. A summary of the comments follows, with our responses.

Comment: Proposed § 422.416(b)(3) (§ 422.416(b)(1)(iii) in the final regulations) goes beyond what the FOIA allows us to exempt from disclosure, and should be deleted. The commenter does not give a reason for this opinion.

Response: We agree that § 422.416(b)(1)(iii) may overstate exemption (b)(5) of the FOIA in one respect. Our proposed rule could be read to indicate incorrectly that we will withhold predecisional memoranda in their entirety, despite the presence of separable factual portions. We have added a phrase to indicate that we will not withhold separable factual portions.

Comment: Section 422.426, which provides that generally only SSA's Freedom of Information Officer may determine under the FOIA whether to release any record in SSA's control and possession, is too restrictive. We should allow individual components of SSA to release "routine" documents.

Response: That is our policy. Any material listed specifically in regulations or in the Index of Administrative Manuals and Instructions to Staff (FOIA Index) as disclosable may be disclosed by any office that has a copy of the material. We have added a sentence to § 422.426 cross-referring to §§ 422.410, 422.430, and 422.432, where some of these materials are listed.

Comment: Section 422.429, which says we will determine whether to provide a requested record within 10 working days after the appropriate official receives the request, is contrary to the FOIA, which requires us to count those 10 days from receipt by the agency.

Response: Section 422.428 clearly spells out where and to whom FOIA requests should be sent. A request made in accordance with that section has the best assurance we can give of prompt and proper handling. Other employees who may receive a request for a record and cannot fill the request have instructions to forward it immediately to an appropriate official, but handling these requests is not their primary job. We believe, therefore, that it is reasonable for SSA to treat misdirected requests as received by the agency, within the meaning of the FOIA, at the time the request has been received by an appropriate official identified in § 422.428. This interpretation of the FOIA's 10 day rule has been in HHS and SSA regulations for several years. Similar interpretations also appear in the FOIA implementing regulations of several other Federal agencies.

Comment: The regulations should tell the reader what to do if we fail to act on his or her FOIA request for a record.

Response: We agree and have added a sentence to § 422.449 explaining that, for purposes of that section, our failure to act within the time limits in § 422.429(a) or in § 422.447(b) is equivalent to denial of the request by the Commissioner or a designee. The section explains that the requester may ask a U.S. district court to review that denial.

Comment: The HHS fee schedule for providing records under the FOIA, adopted by SSA in § 422.440(b), is too high; SSA should not adopt it. The commenter does not give a reason for this opinion.

Response: The HHS fee schedule is binding on SSA under 45 CFR 5.11. The rationale for the increases made in the HHS fee schedule on September 22, 1982, is discussed in the preamble to the final regulation changing the fee schedule (47 FR 41751).

Regulatory Procedures

Executive Order 12291—We have determined that these regulations do not meet any of the criteria specified in E.O. 12291 for a major regulation. The only costs involved are the fees which will be charged for supplying the requested information or materials. These fees will not have an annual effect on the economy of $100 million or more or otherwise meet the threshold of the Executive Order. We estimate the total increase in our fees charged per year to be about $8 million, spread over about 175,000 requests, almost all non-program. The only large definable category of requesters is pension funds, for whom, under our current estimates, the average increase in our charges will be, at most, between $33 and $46 per pension applicant. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small businesses or small entities because they impose fees only on those requesting information and materials. In view of the figures cited under *Executive Order 12291*, above, we do not expect enough information requests by small businesses or small entities for the fees to have a significant economic impact on those requesters. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802-13.814, Social Security Programs)

List of Subjects

20 CFR Part 401

Administrative practice and procedure, Aid to families with dependent children, Black lung benefits, Freedom of information, Medicare, Old-age, survivors and disability insurance, Privacy, Supplemental security income (SSI).

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (Government agencies), Social security.

Dated: March 1, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 21, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 401—[AMENDED]

The authority citation for 20 CFR Part 401 continues to read as follows:

Authority: Secs. 205, 1102, and 1106 of the Social Security Act; 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53 Stat. 1398, as amended, sec. 290, 66 Stat. 234; (42 U.S.C. 405, 1302, 1306; 8 U.S.C. 1360); sec. 413(b) of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 794; 30 U.S.C. 923, 5 U.S.C. 552a (Privacy Act); 5 U.S.C. 552 (Freedom of Information Act), as amended by Pub. L. 94-409; 90 Stat. 1241; 26 U.S.C. 6103, as amended by Pub. L. 94-455, 90 Stat. 1667 (Tax Reform Act of 1976), unless otherwise noted.

§ 401.100 [Amended]

1. In 20 CFR Part 401, § 401.100 is amended by revising the cross-reference from "§§ 422.428 and 422.436 of this chapter and 45 CFR Parts 5 and 5b" to "§§ 422.426 and 422.428 of this chapter and 45 CFR Parts 5 and 5b".

§ 401.125 [Amended]

2. In 20 CFR Part 401, §401.125 is amended by revising the cross-reference from "§422.440" to "§§ 422.440 and 422.441" and by deleting the last sentence.

3. In 20 CFR Part 401, §§ 401.500 and 401.510 are revised to read as follows:

§ 401.500 Which decisions are covered.

This subpart describes how to appeal a decision made under the Privacy Act concerning your request for correction of a record or for access to your records, those of your minor child, or those of a person for whom you are the legal guardian. We generally handle a denial of your request for information about another person under the provisions of the FOIA (see Part 422, Subpart E of this chapter). This subpart applies only to written requests.

§ 401.501 Appeals after denial of access.

If, under the Privacy Act, we deny your request for access to your own record, those of your minor child, or those of a person for whom you are the legal guardian, we will advise you in writing of the reason for that denial, the name and title or position of the person responsible for the decision, and your right to appeal that decision. You may appeal the denial decision to the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235, within 30 days after you receive the notice denying all or part of your request, or, if later, within 30 days after you receive materials in partial compliance with your request. If we refuse to release a medical record because you did not designate a representative (§ 401.410) to receive the material, that refusal is not a formal denial of access and, therefore, may not be appealed to the Commissioner. If you file an appeal, either the Commissioner or a designee will review your request and any supporting information submitted and then send you a notice explaining the decision on your appeal. The decision must be made within 20 working days after your appeal is received. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the circumstances in § 422.429 is met. You will be notified in writing of any extension, the reason for the extension, and the date by which your appeal will be decided. The notice of the decision on your appeal will explain your right to have the matter reviewed in a Federal district court if you disagree with all or part of the decision.

PART 422—[AMENDED]

4. The authority citation for 20 CFR Part 422 continues to read as follows:

Authority: Secs. 205, 218, 221, 1102, 1869, and 1871, 53 Stat. 1368, as amended, 64 Stat. 514, as amended, 68 Stat. 1081, as amended, 49 Stat. 647, as amended, 79 Stat. 330, 331; sec. 5 of Reorganization Plan No. 1 of 1953, 67 Stat. 18, 631; 42 U.S.C. 405, 418, 421, 1302, 1395ff, and 1395hh, unless otherwise noted.

In 20 CFR Part 422, paragraph (e) of § 422.125 is revised to read as follows:

§ 422.125 Statement of earnings; resolving earnings discrepancies.

* * * * *

(e) *Detailed earnings statements.* (1) A more detailed statement of earnings will be furnished upon request, generally without charge, where the request is program related under § 422.440(a). See § 422.440 for possible fees.

(2) If the request for a more detailed statement of earnings is not program related under § 422.440(a), a charge will be imposed according to the schedule of fees set out in § 422.441.

* * * * *

5. In 20 CFR Part 422, the Table of Contents for Subpart E is revised as follows:

Subpart E—Availability of Information and Records to the Public

Sec.

Authority: Secs. 205, 1102, and 1106 of the Social Security Act, 53 Stat. 1368, as amended, 49 Stat. 647, as amended, 53, Stat. 1398, as amended, 42 U.S.C. 405, 1302, and 1306; section 413(b) of the Federal Coal Mine Health and Safety Act of 1969, 83 Stat. 749, 30

U.S.C. 923, 5 U.S.C. 552 (Freedom of Information Act); 5 U.S.C. 552a (Privacy Act).

6. Section 422.416 and its heading are revised to read as follows:

§ 422.416 Availability of records.

(a) *What records are available.* Section 552 of 5 U.S.C. also known as the Freedom of Information Act (FOIA), permits any person to see, and get a copy of, any Federal agency's records unless the material is exempt from mandatory disclosure as described in paragraph (b) of this section. Under the FOIA, we are also required to make available to the public the instructional manuals issued to our employees, general statements of policy, other materials, such as Social Security Rulings, which are used in processing claims and which are not published in the **Federal Register**, and an index of these manuals and materials.

(b) *What records are not available.* (1) The FOIA exempts certain classes of records from disclosure. Most of these are described at 45 CFR Part 5, Subpart F, in the regulations of the Department of Health and Human Services (HHS, formerly the Department of Health, Education, and Welfare). Those most likely to apply to information in the Social Security Administration's (SSA's) records are:

(i) Records specifically exempted from disclosure by statute;

(ii) All or part of SSA's investigative manuals or other materials the disclosure of which could materially assist in the violation of any law or regulation;

(iii) Deliberative material (and factual material which would tend to reveal such deliberative material) contained in SSA's inter-agency or intra-agency predecisional memoranda or letters the disclosure of which could adversely affect free and candid discussion within HHS or with another agency or otherwise harm the decision-making process of HHS or another agency; and

(iv) Requested information concerning a person other than the requester, the disclosure of which would not benefit the public to a degree which outweighs that person's right of privacy.

(2) However, unless a statute prohibits disclosure, we will generally supply material which is exempt from mandatory disclosure if we determine that disclosure is in the public interest and is not inconsistent with our obligations of confidentiality and the efficient administration of our programs.

7. Section 422.420 is revised to read as follows:

§ 422.420 Creation of records.

We are not required to create new records merely to satisfy a request. For example, we are not required to program computers to provide data in a particular form or to compile selected items from records, provide statistical data, ratios, proportions, percentages, etc. If these data have already been compiled and are available, we will supply the record when appropriate fees are paid, as provided in § 422.440 and 422.441. This does not mean that we will never help you get information that does not already exist in our records. However, diverting staff and equipment from other responsibilities may not always be possible.

§ 422.426 [Removed]

8. Section 422.426 is removed.

9. A new § 422.426 is added which reads as follows:

§ 422.426 Who may release a record.

Except as otherwise provided by regulation, only the Director, Office of Information, SSA, or her or his designee may determine whether to release any record in SSA's control and possession. This official is SSA's Freedom of Information Officer. Sections 422.410, 422.430, and 422.432 list some of the materials for which a determination to release has been made.

10. A new § 422.427 is added to read as follows:

§ 422.427 How to request a record.

You may request a record in person, by telephone, or by mail. (However, see §§ 422.444 through 422.449 for an explanation of your appeal rights.) Any request should reasonably describe the record you want. If you have detailed information which would assist us in identifying that record, please submit it with your request. You should mark the outside of any envelope used to submit your request as a "Freedom of Information Request", no matter how your request may be categorized for fee purposes. (Sections 422.440–422.443 explain our fees.) The staff at any Social Security office can help you prepare this request.

11. Section 422.428 is revised to read as follows:

§ 422.428 Where to send a request.

(a) You may send your request for a record to: (1) The Director, Office of Information, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, or (2) the Public Affairs Director of the appropriate HHS Regional Office. The locations and service areas of these offices are as follows:

Region I—John F. Kennedy Federal Building, Government Center, Boston, MA 02203. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

Region II—26 Federal Plaza, Federal Building, New York, NY 10007. New York, New Jersey, Puerto Rico, Virgin Islands.

Region III—3535 Market St., Philadelphia, PA 19101. Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia.

Region IV—101 Marietta Tower, Atlanta, GA 30323. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

Region V—300 South Wacker Drive, Chicago, IL 60606. Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Region VI—1200 Main Tower, Dallas, TX 75202. Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

Region VII—601 East 12th Street, Kansas City, MO 64106. Iowa, Kansas, Missouri, Nebraska.

Region VIII—19th and Stout Streets, Denver, CO 80294. Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

Region IX—Federal Office Building, 50 United Nations Plaza, San Francisco, CA 94102. Arizona, California, Hawaii, Nevada, Guam, Trust Territory of Pacific Islands, American Samoa.

Region X—2901 3rd Avenue, Seattle, WA 98121. Alaska, Idaho, Oregon, Washington.

(b) If you send your request to one of the offices described in paragraph (a) of this section and the record you are requesting is elsewhere, that office will forward your written request to the proper office. If you send your request to any other office and the record you are requesting is elsewhere, that office may send your request to the Director, Office of Information, a Public Affairs Director, or the proper office.

§ 422.432 [Amended]

12. In § 422.432 the word "Bureau" wherever it appears is changed to "Office".

§§ 422.433, 422.434 and 422.435 [Removed]

13. Sections 422.433, 422.434, and 422.435 are removed.

14. A new § 422.433 is added which reads as follows:

§ 422.433 Health care information.

We have some information about health care programs under titles XVIII and XIX (Medicare and Medicaid) of the Social Security Act. We follow the rules in 42 CFR Part 401 in determining whether to provide any portion of it to a requester.

15. Section 422.436 is redesignated as § 422.429 and revised to read as follows:

§ 422.429 How a request for a record is processed.

(a) Within 10 working days from the date a request is received by the appropriate official (see § 422.428(a)), we will make a determination as to whether the requested record will be provided. This 10-day period may be extended by written notice up to 10 additional working days when one or more of the following situations exist:

(1) The office processing the request needs to locate and then obtain the record from another facility;

(2) We need to locate, obtain, and appropriately examine a large number of records which are requested in a single request; or

(3) The office processing the request needs to consult with another agency or HHS office which has a substantial interest in the subject matter of the request. This consultation shall be conducted with all practicable speed.

(b) If an extension is made, we will notify you, explain why the additional time is needed, and tell you the date by which we expect to make a decision on your request.

16. Section 422.440 is revised to read as follows:

§ 422.440 Fees for providing records and related services for program purposes.

(a) *Program purposes described.* (1) We consider a request to be program related if the information must be disclosed under the Social Security Act. For example, section 205(c)(2)(A) of the Act (42 U.S.C. 405(c)(2)(A)) requires that we provide certain information upon request to a worker, her or his legal representative, her or his survivor, or the legal representative of the worker's estate. That information is the amounts of the worker's wages and self-employment income and the periods during which they were paid or derived, as shown by our records.

(2) We also consider a request to be program related if the requester indicates the needed information will be used for a purpose which is directly related to the administration of a program under the Social Security Act.

(i) The major criteria we consider in deciding whether a proposed use is so related are:

(A) Is the information needed to pursue some benefit under the Act?

(B) Is the information needed solely to verify the accuracy of information obtained in connection with a program administered under the Act?

(C) Is the information needed in connection with an activity which has been authorized under the Act?

(D) Is the information needed by an employer to carry out her or his taxpaying responsibilities under the Federal Insurance Contributions Act or section 218 of the Act?

(ii) We will consider on a case by case basis those requests which do not meet these criteria but are claimed to be program related.

(b) *When we charge.*—If we determine the request for information is program related, we may or may not charge for the information. For example, as stated in § 422.125, we generally will not charge you for information needed to assure the accuracy of our records on which your present or future Social Security benefits depend. In addition, we generally will not charge for furnishing information under section 205(c)(2)(A) of the Act. However, if we do charge for a program related request (for example, if more detailed information or special services are requested) we will use the fee schedule in 45 CFR Part 5 if information is being disclosed under the FOIA and the fee schedule in 45 CFR 5b.13 if access to the information is being granted under the Privacy Act. (Exception: If the request is for purposes of administering employee benefits covered by the Employee Retirement Income Security Act of 1974 (ERISA), even if the request is covered by section 205(c)(2)(A) of the Act, we will charge under § 422.441.)

(c) *Fee schedule.* Our fee schedule for providing records and related services for program purposes under the FOIA is the same as that in 45 CFR Part 5.

(d) *If billing would cost more than the service.* Generally we will not charge you a fee when the cost of the service is less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and periodically bill the requester for the services rendered.

(e) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 422.410.

17. New §§ 422.441 through 422.443 are added to read as follows:

§ 422.441 Fees for providing information and related services for non-program purposes.

(a) *General.* Section 1106(c) of the Social Security Act permits the Secretary to require requesters of information to pay the full cost of supplying the information where the information is requested to comply with the Employee Retirement Income Security Act of 1974 (ERISA), or "... for any other purpose not directly related to the administration of the program or programs under ..." the Social Security Act. This may be done notwithstanding the fee provisions of the FOIA and the Privacy Act or any other provision of law. As used in this section—

(1) Full cost includes the direct and indirect costs to SSA (including costs of duplication) of providing information and related services under section 1106(c) of the Act; and

(2) Full cost of an employee's time includes fringe benefits and overhead costs such as rent and utilities.

(b) *Non-program related requests.* We consider a request for information which does not meet or equal any of the criteria in § 422.440 to be non-program related. (Whether a request for information about an individual is made by that individual or by someone else is not a factor.) In responding to these requests, or requests for ERISA purposes, we will charge the full cost of our services as described in paragraph (c) of this section.

(c) *Fee schedule.* Our fee schedule for non-program related requests is:

(1) *Manual searching for records.* Full cost of the employee's time.

(2) *Photocopying, or reproducing records such as magnetic tapes or punch cards.* Full cost of the operator's time plus the full cost of the machine time and the materials used.

(3) *Use of electronic data processing equipment to obtain records.* Our full cost for the service, including computer search time, computer runs and printouts, and the time of computer programmers and operators and other employees.

(4) *Certification or authentication of records.* Full cost of certification or authentication.

(5) *Forwarding materials to destination.* If you request special arrangements for forwarding the material, we will charge you the full cost of this service (e.g., you request express mail or a commercial delivery service). If no special forwarding arrangements are requested, we will charge you the full cost of the service including the U.S. Postal Service cost.

(6) *Performing other special services.* If we agree to provide any special services you request, we will charge you the full cost of the time of the employee who performs the service, plus the full cost of any machine time and materials that the employee uses.

(7) *If billing would cost more than the service.* Generally we will not charge you a fee when the cost of the service is

less than the cost of sending you a bill. However, where an individual, organization, or governmental unit makes multiple separate requests, we will total the costs incurred and bill the requester for the services rendered.

(d) *Fee for copies of printed materials.* When extra copies of printed material are available, the charge is generally 1 cent per page. If the material may be purchased from the Superintendent of Documents, the charge is that set by the Superintendent. The Superintendent's address is in § 422.410.

(e) *Charging when requested record not found.* We may charge you for search time, even though we fail to find the records, if you request that we continue the search after we have informed you that it is unlikely to be productive. We may also charge you for search time if the records we locate are exempt from disclosure.

§ 422.442 Procedure on assessing and collecting fees for providing records.

(a) We will generally assume that when you send us a request, you agree to pay for the services needed to locate and send that record to you. You may specify in your request a limit on the amount you are willing to spend. If you do that or include with your request a payment that does not cover our fee, we will notify you if it appears that the fee will exceed that amount and ask whether you want us to continue to process your request. Also, before we start work on your request under § 422.441 we will generally notify you of our exact or estimated charge for the information, unless it is clear that you have a reasonable idea of the cost.

(b) In most cases, where we charge you a fee under § 422.440, we will send your bill along with or following release of the requested records.

(c) If the fee will be unusually large, if you have failed to pay previous bills, or if we are charging you a fee under § 422.441, we may ask you to pay the estimated fee, or a deposit, before we continue searching for the requested records or before we send them to you. If so, we will notify you shortly after receiving your request. In such cases the administrative time limits in §§ 422.429 and 422.447 will begin only after we have reached an agreement over payment of the fee.

(d) Payment of fees will be made by check or money order payable to "Social Security Administration".

§ 422.443 Waiver or reduction of fees in the public interest.

We may waive or reduce the fees provided for by §§ 422.440 and 422.441 if we determine it is in the public interest to do so. This will generally be done if furnishing the record can be considered as primarily benefiting the general public. This determination may be made only by one of the officials described in §§ 422.444 and 422.447(b). If we deny all or part of your request for a fee waiver or reduction, you may appeal that decision under § 422.447. When appealing a decision, you should specify the manner in which release of the record will benefit the general public.

§§ 422.444, 422.448, and 422.452 [Removed]

18. Sections 422.444, 422.448, and 422.452 are removed.

19. New §§ 422.444, 422.445, 422.447, and 422.449 are added to read as follows:

§ 422.444 Officials who may deny a request.

Except as provided by regulation, only the Director, Office of Information, SSA, or her or his designee is authorized to deny a written request to obtain, inspect, or copy any Social Security record. However, for instances in which the request may involve records of SSA and another part of HHS the determination is made by the HHS FOIA Officer.

§ 422.445 How a request is denied.

(a) *Oral requests.* If we cannot comply with your oral request because the Director of the Office of Information (or designee) has not previously made a determination to release the record you want, we will tell you that fact. If you still wish to pursue your request, you must put your request in writing.

(b) *Written requests.* If you make a written request and the information or record you requested will not be released, you will receive an official denial in writing. The denial notice will explain why the request was denied (for example, the reasons why the requested document is subject to one or more clearly described exemptions), will include the name and title or position of the person who made the decision, and will explain your appeal rights.

§ 422.447 How to appeal a decision denying all or part of a request.

(a) *How to appeal.* If all or part of your written request was denied, you may request that the Commissioner of Social Security, 6401 Security Boulevard, Baltimore, Maryland 21235 review that determination. Your request for review:

(1) Must be in writing;

(2) Must be mailed within 30 days after you received notification that all or part of your request was denied or, if later, 30 days after you received materials in partial compliance with your request; and

(3) May include additional information or evidence to support your request.

(b) *How the review is made.* After reviewing the prior decision and considering anything else submitted, the Commissioner or designee will affirm or revise all or part of that decision. The Commissioner (or a designee) will affirm a denial only after consulting with the appropriate SSA official(s) and the Office of the General Counsel and obtaining the approval of the Assistant Secretary for Public Affairs, HHS, or a designee. The decision must be made within 20 working days after your appeal is received. The Commissioner or a designee may extend this time limit up to 10 additional working days if one of the situations in § 422.429(a) exists, provided that, if a prior extension was used to process this request, the sum of the extensions may not exceed 10 working days. You will be notified in writing of any extension, the reason for the extension, and the date by which your appeal will be decided.

(c) *How you are notified of the Commissioner's decision.* The Commissioner or a designee will send you a written notice of the decision explaining the basis of the decision (e.g., the reasons why an exemption applies) and including the name and title or position of the person who made the decision. If any part of your request remains unsatisfied the notice will also advise you of your right to seek court review.

§ 422.449 U.S. district court action.

If the Commissioner or a designee, upon review, affirms the denial of your request for records, in whole or in part, you may ask a U.S. district court to review that denial. See 5 U.S.C. 552(a)(4)(B). If we fail to act on your request for a record or for review of a denial of such a request within the time limits in § 422.429(a) or in § 422.447(b), that is equivalent to denial of your request by the Commissioner or a designee for purposes of this section.

[FR Doc. 85-16639 Filed 7-12-85; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 170

[T.D. ATF-207; correction]

Stills; Miscellaneous Provisions; Correction

AGENCY: The Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision): correction.

SUMMARY: This document corrects errors made in FR Doc. 85–13421, published in the **Federal Register** on June 5, 1985, at 50 FR 23680, which implemented section 451 of the Deficit Reduction Act of 1984, Pub. L. 98–369, 98 Stat. 818.

FOR FURTHER INFORMATION CONTACT: J.R. Whitley, ATF Tax Specialist, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION:

§ 170.43 [Corrected]

Paragraph 1. In the right-hand column of page 23682 in § 170.43 in the last sentence of paragraph (a) remove the word "part" and insert, in its place, the word "subpart".

§ 170.45 [Corrected]

Par. 2. In the righ-hand column on page 23682 in § 170.45 in the definition *"Distilling"* in the last line of the column remove the word "operation" and insert, in its place, the word "operations".

§ 170.47 [Corrected]

Par. 3. In the left-hand column of page 23683 in the heading of § 170.47 in the fourth line from the bottom of the column remove the word "requirements" and insert, in its place, the word "requirement".

§ 170.55 [Corrected]

Par. 4. In the right-hand column of page 23683, paragraph (a) of § 170.55 is corrected and an OMB control number is added to the end of the section to read as follows:

§ 170.55 Registry of stills and distilling apparatus.

(a) *General.* Every person having possession, custody, or control of any still or distilling apparatus set up shall, immediately on its being set up, register the still or distilling apparatus, except that a still or distilling apparatus not used or intended for use in the distillation, redistillation, or recovery of distilled spirits is not required to be registered. Registration may be accomplished by describing the still or distilling apparatus on the registration or permit application prescribed in this chapter for qualification under 26 U.S.C. Chapter 51 or, if qualification is not required under 26 U.S.C. Chapter 51, on a letter application, and filing the application with the regional director (compliance) of the region in which the still or distilling apparatus is located. Approval of the application by the regional director (compliance) will constitute registration of the still or distilling apparatus.

* * * * *

(Reporting and recordkeeping requirements in paragraph (a) approved by the Office of Management and Budget under control number 1512–0341)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1355, as amended (26 U.S.C. 5179))

Signed: July 3, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85–16774 Filed 7–12–85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Extension of Deadline for Submission of Program Amendments to the Alaska Permanent Program

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

ACTION: Final rule.

SUMMARY: OSM is announcing its decision to extend the deadline for Alaska to (1) promulgate rules governing the training, examination and certification of blasters and (2) to develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation. On April 29, 1985, Alaska requested an additional extension of time, until August 2, 1985, to submit a blaster training program.

All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) are required to develop and adopt a blaster certification program within twelve months after program approval or within twelve months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause. In accordance with the State's request, the Director is granting the State an extension of time, until August 2, 1985, to submit a proposed blaster certification program.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 261–5824.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Alaska's program, the applicable date is 12 months after approval of the State program, or May 2, 1984.

On February 29, 1984, Alaska advised OSM that it would be unable to meet the May 2, 1984 deadline and requested an additional twelve months to develop and adopt a blaster certification program. On May 14, 1984, the Director announced his decision to extend Alaska's deadline until May 2, 1985 (49 FR 20284).

On April 29, 1985, the State advised OSM that it had developed draft regulations, identified training options, prepared two blaster certification examinations, and drafted an application form. However, the State indicated that additional time would be needed to review the program materials and to refine the identification of training options. Thus, the State requested an extension of the deadline for submission until August 2, 1985.

In the May 28, 1985, **Federal Register** (50 FR 21625), OSM proposed an extension until August 2, 1985 for Alaska to submit a proposed blaster certification program. Public comment was sought on the proposal for 30 days ending June 27, 1985. No comments were submitted to OSM during the comment period.

Director's Decision

In accordance with the State's request, the Director has decided to extend the deadline for Alaska to submit a proposed blaster training program until August 2, 1985. This extension will allow the Alaska Department of Natural Resources, Division of Mining, to refine its draft blaster training and certification program.

Additional Determinations

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

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

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

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

List of Subjects in 30 CFR Part 902

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

Dated: July 9, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 902—ALASKA

1. The authority citation for Part 902 continues to read as follows:

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

2. 30 CFR Part 902 is amended by revising § 902.16 to read as follows:

§ 902.16 Required program amendments.

Pursuant to 30 CFR 732.17, Alaska is required to submit for OSM's approval the following proposed program amendments by the dates specified.

(a) By August 2, 1985, Alaska shall submit for OSM's approval

(1) Rules governing the training, examination and certification of blasters and

(2) A program to examine and certify all persons who are directly responsible for the use of explosives in surface coal mining operation.

(b) Reserved.

[FR Doc. 85-16711 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 642 and 657

Facilities Engineering; Removal of Regulations

AGENCY: Department of the Army, DoD.

ACTION: Removal of regulations.

SUMMARY: Army regulations AR 420-74, Facilities Engineering, Natural Resources—Land, Forest and Wildlife Management (32 CFR Part 642) and AR 420-76, Facilities Engineering, Pest Management Program (32 CFR Part 657) are rescinded from the Code of Federal Regulations because they do not directly affect the public.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Donald M. Bandel, Office of the Assistant Chief of Engineers, Facilities Engineering Division, Buildings and Grounds Branch, (DAEN-ZCF-B), Washington, DC 20314. (202) 272-0593.

SUPPLEMENTARY INFORMATION: The Department of the Army has determined that AR 420-74 and AR 420-76 do not directly affect the public. These regulations provide internal operating policy guidance for the operation and maintenance of Army installations and implement directives issued by higher headquarters.

List of Subjects

32 CFR Part 642

Environmental protection, Federal buildings and facilities, Natural resources.

32 CFR Part 657

Federal buildings and facilities, Pesticides and pests.

PARTS 642 AND 657—[REMOVED]

Accordingly, 32 CFR Part 642 and 32 CFR Part 657 are hereby removed.

Paul W. Taylor

Colonel, Corps of Engineers Executive Director, Engineer Staff.

[FR Doc. 85-16773 Filed 7-12-85; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-19]

Regatta; New Jersey Offshore Grand Prix

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being established for the annual New Jersey Offshore Grand Prix Regatta being sponsored by the New Jersey Offshore Powerboat Racing Association. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

EFFECTIVE DATE: This regulation is effective on July 17, 1985.

FOR FURTHER INFORMATION CONTACT: Lt. D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: On May 28, 1985, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** for this regulation (50 FR 21625). Interested persons were requested to submit comments, and no comments were received. This regulation is being made effective in less than 30 days from the date of publication. There was not sufficient time remaining in advance of the event to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are Lt. D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The annual New Jersey Offshore Grand Prix is a powerboat race held off the New Jersey coastline between Asbury Park and Seaside Park. This event is sponsored by the New Jersey Offshore Powerboat Racing Association and is well known to the boaters and residents of this area. This event is traditionally held each year on the third

Wednesday in July. Because of the annual nature of this event the Coast Guard has decided to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations. Thereafter, the Coast Guard will provide the public with full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. The event is sanctioned by the American Powerboat Association and the Union of International Motorboating. Approximately 80 powerboats ranging from 18–45 feet in length will race in various classes at distances from 60 to 156 nautical miles. Race headquarters will be located at Jenkinson's Pavilion, in Point Pleasant. Race participants will exit Manasquan Inlet between 9:00–9:30 a.m. on race day escorted by race committee patrol vessels. An extensive Regatta Patrol under the control of the Coast Guard Patrol Commander will supervise this event in conjunction with vessels provided by the race sponsor and other local government agencies. A Safety Voice Broadcast will be issued by the Coast Guard to properly notify boaters of this event and the regulations issued for its control. In order to provide for the safety of life and property, the Coast Guard will regulate the movement of vessels and establish anchorages for spectator vessels prior to and during this event.

Discussion of Comments

No comments were received.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible. Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulation

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 133 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.306 to read as follows:

§ 100.306 New Jersey Offshore Grand Prix.

(a) *Regulated Area:* The Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all of the navigable waters of the United States from Asbury Park, New Jersey, latitude 40 degrees, 14 minutes north; southward to Seaside Park, New Jersey lâtitude 39 degrees, 55 minutes north, from the New Jersey shoreline seaward to the limits of the Territorial Sea. The race course area extends from Asbury Park to Seaside Park from the shoreline, seaward to a distance of 8.4 nautical miles.

(b) *Effective Period:* This regulation will be effective from 8:00 a.m. to 5:00 p.m. on July 17, 1985 and thereafter annually on the third Wednesday in July unless otherwise specified in the Third District Local Notice to Mariners and in a **Federal Register** Notice. The approved rain dates for the 1985 event are July 18 or 19, 1985.

(c) *Special Local Regulations:*

(1) The regulated area shall be closed intermittently to general navigation during the effective period. No person or vessel may enter or remain in the regulated area while it is closed unless participating in the event or authorized by the sponsor or regatta patrol personnel.

(2) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(3) The spectator fleet shall be held in spectator anchorage areas marked by patrol vessels. The sponsor provided boats shall fly colored pennants to aid in their identification. Spectator anchorages areas are established as follows:

(i) *Asbury Park, NJ south to Manasquan Inlet, NJ.* The spectator fleet will be held behind (west of) a line running north to south from the Asbury Park Convention Center to the north jetty at Manasquan Inlet. At the Asbury Park Convention Center the spectator fleet shall be held behind a line north of the Convention Center Pier. These lines will be set up by the Coast Guard Patrol Commander on the day of the race.

(ii) *Seaside Heights.* The spectator fleet shall be held behind a line south of the Seaside Funtown Pier. This line shall be set by the Coast Guard Patrol Commander on the day of the race.

(4) No spectator, press or commercial fishing boats shall cross the race course without the permission of the Patrol Commander. Those vessels wishing to cross the race course shall obtain permission to do so by contacting the nearest Coast Guard patrol vessel.

(5) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period.

(6) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol pesonnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(7) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: July 3, 1985.

P.A. Yost,

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

[FR Doc 85-16771 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-5-FRL-2859-7]

Designation of Areas of Air Quality Planning Purposes; Attainment Status Designations; Michigan

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving the State of Michigan's request to redesignate to attainment the portion of the Wayne County secondary nonattainment area

outside the current primary TSP nonattainment boundaries (excluding Trenton) and the Monroe County secondary TSP nonattainment area. This approval is based on sufficient representative monitoring data which show that the NAAQS have been attained.

USEPA is disapproving the State of Michigan's request to: (1) Reduce the size of the primary Total Suspended Particulate (TSP) nonattainment area in Wayne County; (2) change portions of the secondary nonattainment area within the current primary nonattainment boundaries to attainment; and (3) change the Trenton area from secondary nonattainment to attainment. These final disapprovals are based on a lack of sufficient information to show: (1) That an implemented control strategy which USEPA has fully approved is responsible for the air quality improvement; (2) that the monitors are representative of all high concentration areas; and (3) that the NAAQS will be maintained.

EFFECTIVE DATE: The action is effective September 13, 1985.

Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 S. Dearborn Street, Chicago, Illinois 60604

Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48821

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On March 14, 1983, the Michigan Department of Natural Resources (MDNR) submitted a request pursuant to Section 107 of the Clean Air Act to redesignate certain portions of Wayne and Monroe Counties for TSP. The request seeks a substantial reduction in size of the current primary and secondary nonattainment areas in Wayne County and a redesignation of the secondary nonattainment area in Monroe County to attainment. In response to comments provided by USEPA in a letter dated July 25, 1983, MDNR submitted additional information on December 1, 1983. MDNR provided technical support materials prepared primarily by the Wayne County Department of Health which include eight quarters of TSP monitor data (1981 and 1982) for all sites in Wayne County.

On August 3, 1984 (49 FR 31091), USEPA published a notice of proposed rulemaking which provided a 30-day comment period. On October 16, 1984, USEPA announced an extension of the public comment period for an additional 45 days. Only the National Steel Group submitted public comments (dated August 27, 1984 and September 14, 1984).

The National Steel Group's comments pertain to USEPA's proposed disapproval of the redesignation from primary nonattainment to secondary nonattainment for the area surrounding their Ecorse steel-making plant. USEPA's technical support document of December 31, 1984, contains a detailed summary of National Steel's comments and USEPA's responses. USEPA's responses to National Steel's comments are summarized below:

Comment: The Clean Air Act requires USEPA to take final action on a redesignation proposal within 60 days of the State's submission. In this case, over 500 days elasped between the original submission and USEPA's proposed action. "Athough the legal consequences of such unreasonable delay is not the subject of these comments, it is fundamentally unfair and extremely prejudicial to the affected regulatory community for USEPA to frustrate a State's action by simply sitting on the proposal," particularly where air quality data show that a redesignation is appropriate.

Response: USEPA responded to the original request (dated March 14, 1983) with a letter requesting additional information on July 25, 1983. Prior to the USEPA response, USEPA had informed the commentor, during a meeting on April 18, 1983, and by a letter dated May 19, 1983, that additional information was needed to support the proposed redesignation for the area surrounding their Ecorse facility. MDNR responded to USEPA's July 1983 letter on December 1, 1983. Neither MDNR nor Great Lakes Steel (National Steel Group) provided additional information for the area around the Ecorse plant. Therefore, USEPA's position with respect to the proposed redesignation was stated soon after submittal of the original request, and any delay in proposing rulemaking action should not have adversely affected the regulated community.

In addition, the commentor lists several objections to the statement in the proposed rulemaking action that USEPA "does not believe that there is sufficient information available to show that a federally enforceable control strategy is responsible for the air quality improvement, that the monitors are representative of all high concentration areas, or that the NAAQS will be maintained."

Comment: Permanent closing of major emitting sources and the implementation of Wayne County fugitive dust control programs can have the practical impact of an USEPA approved strategy and, therefore, justify the State's redesignation. This is particular true in light of the economic recovery in the Wayne County area and the continued monitored compliance with the TSP NAAQS near the Ecorse plant during this period.

Response: USEPA did not receive either specific information on permanent source shutdowns in this area or a demonstration that such closings and/or the County fugitive dust control programs were responsible for the observed air quality improvement at the Ecorse monitor site.

Also, the Wayne County fugitive dust control programs are not incorporated into the Michigan TSP SIP and are not federally enforceable. However, the programs are enforceable by the State. USEPA does not have a factual basis to conclude that previous violations will not reoccur.

Comment: There are at least 10 quarters of ambient data supporting the State's action. In fact, the original request was overly conservative. The data support redesignation for a much broader area. Concerning the representativeness of the existing monitor data, USEPA should not now be questioning the adequacy of the existing TSP networks. It is arbitrary and capricious to question the representative nature of the air quality data. Unless USEPA has monitor or modeling data that show a violation of the TSP primary NAAQ, the area in Wayne County does not meet the definition of a nonattainment area set forth in the Clean Air Act.

Response: It is unusual to rely on a single monitor for supporting a redesignation of a multiple source area. USEPA needs evidence that this monitor adequately portrays the air quality for the entire area and is representative of worst-case impacts and conditions. USEPA has not received such information from the commentor or MDNR. With respect to boundaries of the proposed nonattainment area, the usual practice is to define a multiple source problem area, as one area, because attainment throughout the area is dependent on the interaction of all the sources. USEPA has not received a demonstration that existing sources in the area to be redesignated are an independent problem, and do not significantly contribute to violations elsewhere in the general area. USEPA has evidence of primary nonattainment (based on current monitoring data) within Wayne County, and has not received evidence that past monitored violations will not reoccur. Therefore, the Wayne County primary nonattainment area meets the definition of nonattainment area as defined in section 171 of the Clean Air Act.

Comment: The Scheme of section 107 of the Clean Air Act is one of cooperative State and Federal action. Because USEPA does not have a substantive basis to reject the State proposal, USEPA should defer to the State's determination. Therefore, USEPA should approve the State's proposal that is supported by more than ample air monitoring data.

Response: As noted in previous responses, USEPA believes that portions of the proposed redesignation do not conform with USEPA's policy on section 107 redesignations. Therefore, USEPA has a substantive basis for disapproving portions of the State's request.

USEPA has reviewed Michigan's requested redesignations of Wayne and Monroe Counties and prepared comments on these requests. (USEPA Technical Support Document, December 31, 1984.) In summary, USEPA is today taking the following rulemaking actions:

Approval

USEPA is approving the State of Michigan's request to redesignate to attainment the portion of the Wayne County secondary nonattainment area outside the current primary TSP nonattainment boundaries (excluding Trenton) and the Monroe County secondary TSP nonattainment area. In accordance with USEPA's rural fugitive dust policy, the secondary nonattainment areas is southwestern Wayne County and Monroe County (near site 82–949) can be redesignated to attainment, based on data from other monitors in the area which are representative of this non-industrial area. In addition, USEPA has determined that emissions from this area do not contribute to nonattainment elsewhere.

Disapproval

USEPA is disapproving the State of Michigan's request to reduce the size of the primary TSP nonattainment area. USEPA does not believe that there is sufficient information available to show that a federally enforceable control strategy is responsible for the air quality improvement, that the monitors are representative of all high concentration areas, or that the NAAQS will be maintained.

USEPA is disapproving the State of Michigan's request to change portions of the secondary nonattainment area (those portions lying within the current primary boundaries) and the Trenton area to attainment, because there is not sufficient monitoring data or other information available to show that the standards are attained, and will be maintained in this area. USEPA notes that the proposed attainment area contains major TSP industrial sources. USEPA did not receive specific information on the ambient impact of these sources on the attainment status of this area.

Under section 107(d), the Administrator has promulgated the NAAQS attainment status of each area of every State. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These areas designations may be revised whenever the data warrant.

Under 5 U.S.C. 605(b), the Administrator has certified that redesignations do not have significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

(Sec. 107(d) of the Act, as amended (42 U.S.C. 7404))

Dated: June 25, 1985.

Lee M. Thomas,

Administrator.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Part 81 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7404.

§ 81.323 [Amended]

2. Section 81.323 is amended in the table for "Michigan—TSP". The entry for Wayne County (AQCR 123) and Monroe County (AQCR 124) are revised to read as follows:

MICHIGAN—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
AQCR 123: Except subareas defined				X
St. Clair County: R17E, T6N, Sections 2–4, 9–11, 14–16, 21, 22 and 28		X		
Wayne County:				
a. Area included within: Lake St. Clair to 8 Mile Road to Schaefer Road to McNichols Road to Greenfield Avenue to Schoolcraft Avenue to Evergreen Road to Joy Road to Telegraph Road to Ford Road to Beech-Daly Road to Cherry Hill Road to Inkster Road to Carlysle Street to Middle Belt Road to Van Born Road to Wayne Road to Ecorse Road to Haggerty Highway to Tyler Road to Belleville Road to I-94 to Rawsonville Road to Oakville-Waltz Road to Will-Carlton Road to west Road to Allen Road to Gilbraltor Road east (extended to Tenton Channel)		X		
b. Area included within: Lake St. Clair Moross Road to 7 Mile Road to Van Dyke Road to 8 Mile Road to Wyoming Road to 7 Mile Road to Schaefer Road to Fenkell Road to Greenfield Avenue to Joy Road to Southfield Expressway to Ford Road to Telegraph Road to Cherry Hill Road to Beech-Daly Road extended to Michigan Avenue to Inkster Road to Carlysle Street to Middle Belt Road to Van Born Road to Wayne Road to Pennsylvania Road to Middle Belt Road to Sibley Road to Telegraph Road to King Road to Grange Road to Sibley Road to Jefferson Avenue to Bridge Street (Gross Ile) extended to Detroit River	X			
AQCR 124: (Michigan Portion) Except subareas defined by following townships				X
Monroe County: a. Starting where Sandy Creek empties into Lake Erie, northwest to Maple Avenue (extended NNE), southwest to Elm Avenue, west to Herr Road, south to Dunbar Road, and east to Plum Creek (which empties into Lake Erie)	X			

[FR Doc. 85–16732 Filed 7–12–85; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-17

[FPMR Bulletin D-206]

Work Space Management Reform Implementation

AGENCY: Public Buildings Service, GSA.

ACTION: Final rule.

SUMMARY: This Bulletin provides information on implementation of the new FPMR Temporary Regulation on Work Space Management Reform, especially those sections of the Temporary Regulation which establish a supplemental space policy.

DATES:

Effective date: This Bulletin is effective July 15, 1985.

Expiration date: December 31, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Kogan, (202) 566-1875, or Gary A. Knoke, (202) 535-8474, of the Space Management Division.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this Bulletin will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purpose of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, this Bulletin is added to the Appendix at the end of Subchapter D.

July 3, 1985.

GSA Bulletin FPMR D-206—Public Buildings and Space

TO: Heads of Federal Agencies.

SUBJECT: Work Space Management Reform Implementation.

1. *Purpose:* This bulletin provides information on implementation of the new FPMR Temporary Regulation especially those sections of the Temporary Regulation which establish a supplemental space policy.

2. *Expiration date.* This bulletin expires December 31, 1985.

3. *Background.* The new Temporary Regulation implements elements of Executive Order 12411, Government Work Space Management Reform, and Executive Order 12512, Federal Real Property Management. Under the new Regulation, each Federal agency is required to achieve an average office space utilization rate of 135 square feet per person by 1990 and to prepare an annual work space management plan which will be reviewed by the GSA and the Office of Management and Budget (OMB).

The regulation recognizes agency differences by establishing a supplemental space policy wherein agencies may deduct certain non-workstation office space when calculating office utilization rates. The amount of supplemental space for a given agency/bureau will be developed by the agency and a GSA contractor.

4. *Scope.* GSA plans to implement the supplemental space policy by issuing a contract under which the contractor will conduct policy workshops for client agencies, process supplemental space cases, and coordinate the overall project. GSA will perform all data entry into GSA information systems and provide formal issuances to agencies. Client agencies must supply the narrative justification and space data from which the supplemental space factors are developed. This process is estimated to require three months for contract award from the date of publication of the Temporary Regulation in the **Federal Register** and an additional 6 months for contract completion.

William F. Sullivan,

Commissioner, Public Buildings Service.

[FR Doc. 85-16708 Filed 7-12-85; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 416, and 435

[OMB-006-F]

Medicare and Medicaid Programs; OMB Control Numbers for Collections of Information Contained in HCFA Regulations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: In accordance with regulations published by the Office of Management and Budget (OMB) on March 31, 1983, implementing the provisions of the Paperwork Reduction Act (PRA) of 1980, this final rule adds additional OMB control numbers to the display in 42 CFR Chapter IV of currently valid OMB control numbers for approved "collections of information" contained in HCFA regulations.

This regulation also informs the public of the removal of several incorrect effective date notes in the Code of Federal Regulations (CFR) that reporting and recordkeeping requirements identified in certain previously published regulations required OMB's approval under the PRA before implementation.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Matt Plonski, (301) 594-9710.

SUPPLEMENTARY INFORMATION:

I. Control Numbers

Background

On March 31, 1983, to implement the provisions of the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), OMB published final rules in the **Federal Register** (48 FR 13666) which added to title 5 of the CFR a new Part 1320, Controlling Paperwork Burdens on the Public. Under those rules, agencies are required, in the case of "collections of information" published in regulations, to publish the OMB control number in the **Federal Register**. The control number provides a way for the public to know whether a paperwork burden an agency seeks to impose has been approved by OMB.

On February 7, 1984, we established at 42 CFR 400.310, a display of currently valid OMB control numbers (49 FR 4476).

Provisions of This Regulation

This regulation updates the display of control numbers in 42 CFR 400.310 by adding recently approved items.

We will periodically update the list of sections of HCFA regulations that contain collections of information and their assigned control numbers as we receive notices of approval from OMB.

Waiver of Proposed Rulemaking and of Delay in Effective Date

This regulation is intended merely to add to the display in 42 CFR Chapter IV, additional OMB control numbers for approved information collection requirements contained in HCFA regulations. This regulation is technical in nature and to publish it in proposed form or to delay the effective date is unnecessary and would serve no useful purpose. We, therefore, find good cause to waive notice of proposed rulemaking and the usual 30-day delay in effective date.

II. Withdrawal of Recordkeeping Requirements

Under the provisions of the PRA, we are required to state in the preamble to final rules whether regulations contain reporting and recordkeeping requirements and whether these requirements have been approved by OMB for implementation.

In documents published in the **Federal Register** on August 5, 1982 (47 FR 34096) and October 1, 1982 (47 FR 43648), we indicated that regulations at 42 CFR 416.43 (Conditions for coverage), 435.113 (Individuals ineligible for AFDC) and 435.122 (Individuals ineligible for SSI) contained reporting and recordkeeping requirements and that a separate notice would be published when OMB approved these requirements.

As a result of these statements, the Office of the Federal Register added effective date notes at the end of these sections of the CFR to the effect that the public is not required to comply with these requirements until OMB approval is received and notices are published in the **Federal Register**.

We have reviewed these requirements and find that they are not subject to approval by OMB using criteria contained in their final rule of March 31, 1983. Therefore, we are removing the effective date notes.

III. Impact Analyses

As noted above, this regulation is technical in nature and merely adds to the display in 42 CFR Chapter IV, additional OMB control numbers for approved information collection requirements contained in HCFA regulations, and removes editorial notices that are not applicable. Therefore, the Secretary has determined that this document does not meet the criteria for a major rule as defined in section 1(b) of Executive Order 12291. In addition, the Secretary certifies under 5 U.S.C. 605(b) as enacted by the Regulatory Flexibility Act (Pub. L. 96-354), that this document would not have a significant economic impact on a substantial number of small entities.

IV. List of Subjects

42 CFR Part 400

Definitions, OMB control numbers, Reporting and recordkeeping requirements.

42 CFR Part 416

Ambulatory surgical centers, Assignment, Contracts (agreements), Medicare, Physicians, Reporting requirements, Surgical procedures.

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (agreements—State plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Chapter IV is amended as follows:

PART 400—INTRODUCTION: DEFINITIONS

The authority citation for Part 400 reads as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

Section 400.310 is amended by adding in numerical order by CFR section, the following additional sections that contain collections of information and their OMB control numbers.

§ 400.310 Display of Currently Valid OMB Control Numbers

Sections in 42 CFR that contain collections of information	Current OMB control No.
405.1121, 405.1122, 405.1123, 405.1124, 405.1125, 405.1126, 405.1127, 405.1128, 405.1136, 405.1137	0938-0364
405.1202, 405.1221, 405.1223, 405.1228, 405.1229	0938-0365
405.1315, 405.1316, 405.1317	0938-0368
405.1716, 405.1717, 405.1720, 405.1721, 405.1722, 405.1736	0938-0336
442.307, 442.308, 442.309, 442.311, 442.313, 442.314, 442.318, 442.319, 442.320	0938-0370

PART 416—AMBULATORY SURGICAL SERVICES

1. The authority citation for Part 416 reads as follows:

Authority: Secs. 1102, 1832(a)(2), 1833, 1863, and 1864 of the Social Security Act (42 U.S.C. 1302, 1395k(a)(2), 1395l, 1395aa).

2. The reporting and recordkeeping requirement in § 416.43 is confirmed as effective July 15, 1985, and therefore the effective date note following the section will be removed.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

1. The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The reporting and recordkeeping requirement in § 435.113 is confirmed as effective July 15, 1985, and therefore the effective date note following the section will be removed.

3. The reporting and recordkeeping requirement in § 435.122 is confirmed as effective July 15, 1985, and therefore the effective date note following the section will be removed.

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; 13.774, Medicare—Supplementary Medical Insurance)

Dated: January 12, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: February 22, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-16640 Filed 7-12-85; 8:45 am]

BILLING CODE 4120-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 515 and 522

[APD 2800.12 CHGE14]

General Services Administration Acquisition Regulation; Application of Thresholds to Contracts With Options

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) Chapter 5, is amended to add section 515.804-2 and to revise section 515.805-5 and 522.805 in order to provide clarification on determining the contract value when applying the thresholds for cost and pricing data, field pricing support, and equal opportunity preaward clearance to contracts with options. Miscellaneous editorial changes are made in various sections in Subparts 515.8 and 522.8. The intended effect is to improve the regulatory coverage.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Shirley Scott, Office of GSA Acquisition Policy and Regulations (VP), (202) 523-3782.

SUPPLEMENTARY INFORMATION:

Background

On April 18, 1985, the General Services Administration published in the **Federal Register** (50 FR 15463), GSAR Notice No. 5-88 inviting comments from interested parties on these proposed changes to the regulations and provided a 30-day comment period. No public comments were received. Comments received from various elements within GSA have been analyzed, reconciled, and incorporated, when applicable, into the final rule.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule. The

General Services Administration (GSA) certifies that this document will not have a significant economic effect on a substantial number of small entities under the Flexibility Act (5 U.S.C. 601 et. seq.). The regulation only clarifies the application of an existing requirement of the Federal Acquisition Regulation. Accordingly, no regulatory flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 515 and 522

Government procurement.

1. The authority citation for Parts 515 and 522 reads as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 515 is amended by adding new Section 515.804-2 and 515.804-6, and by removing Section 515.804-70 as follows:

PART 515—CONTRACTING BY NEGOTIATION

Subpart 515.8—Price Negotiation

* * * * *

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3. Section 515.803-70 is amended by revising the introductory text and paragraphs (f) and (g) to read as follows:

515.803-70 Cost-reimbursement contracts (construction contracts).

The consideration and discussions during negotiations of construction contracts shall include, to the extent necessary to resolve uncertainties, such matters as—

* * * * *

(f) The time for completion, liquidated damages (if specified), insurance, and bonds; and

(g) The fixed fee and the basis upon which its amount was predicated. Factors (a) through (f) affect the amount of the fee.

4. Section 515.804-2 is added to read as follows:

515.804-2 Requiring certified cost or pricing data.

When determining the contract amount for purposes of applying the threshold at FAR 15.804-2 for requesting certified cost and pricing data, the value of the contract plus any priced options shall be considered. Exercise of a priced option is not considered a price adjustment and does not require submission of cost and pricing data.

5. Section 515.804-3 is revised to read as follows:

515.804-3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) Pursuant to FAR 15.804-3(i), the head of the contracting activity, as defined in GSAR 502.1, is authorized to waive the statutory requirement for the submission of certified cost or pricing data.

(b) Requests for waiver will be submitted by the contracting director to the head of the contracting activity. Before submitting a waiver request, action will be taken at levels above the contracting officer to negotiate for the submission of the required cost or pricing data, or a formal determination made by the contracting director documenting the contract file with the reasons for not undertaking such higher level negotiations.

(c) The request for waiver will include a draft determination and finding that addresses: (1) Pertinent circumstances of the procurement necessitating the waiver of the requirement for certified cost or pricing data, (2) the price analysis techniques to be used if the award cannot be foregone, (3) the steps taken by higher authority to obtain the essential cost or pricing data, and (4) the practicability of obtaining the Government's requirements from other sources.

6. Section 515.804-6 is added to read as follows:

515.804-6 Procedural requirements.

Whenever an offeror refuses to provide the required cost or pricing data, the contracting officer shall refer the matter to the contracting director for resolution (see FAR 15.804-6(e)). Upon referral by the contracting officer, action will be taken by the contracting director to negotiate for the submission of the required cost or pricing data, unless the head of the contracting activity determines, in writing, not to undertake such higher level negotiations and the determination is documented in the contract file.

515.804-70 [Removed]

7. Section 515.804-70 is removed.

8. Section 515.805-5 is revised to read as follows:

515.805-5 Field pricing support.

(a) Contracting officers may request field pricing support on a case-by-case basis whenever assistance is required to evaluate price reasonableness. Within GSA, "field pricing support" is provided by the Assistant Inspector General-Auditing, or the Regional Inspector General-Auditing, as appropriate.

(b) When determining the contract amount for purposes of applying the threshold at FAR 15.805-5 for requesting field pricing support, the value of the contract plus any priced options shall be considered.

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

9. Section 522.803 is revised to read as follows:

522.803 Responsibilities.

The contracting officer shall submit any questions under FAR 22.803(d) to assigned legal counsel for resolution. Questions that cannot be resolved by counsel will be referred to the head of the contracting activity for resolution.

10. Section 522.804-1 is revised to read as follows:

522.804-1 Nonconstruction.

In addition to the requirements of FAR 22.804, each contractor and subcontractor who serves as a depository of Government funds in any amount, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes in any amount, shall develop a written affirmative action compliance program for each of its establishments within 120 days from the start of its first such Government contract or subcontract.

11. Section 522.804-70 is revised to read as follows:

522.804-70 Reports and other required information.

Nonexempt contractors shall submit information reports in accordance with the Equal Opportunity clause on Standard Form 100, Equal Employment Opportunity Employer Information Report EEO-1, to the Joint Reporting Committee with an information copy to the contracting officer within 30 days after award of a contract unless a report has been submitted within the 12 months preceding the award date. Subsequent reports will be submitted annually on or before March 31 (see 41 CFR 60-1.7). If additional information is required regarding the submission of the EEO-1 report, contact the Office of Federal Contract Compliance Programs (OFCCP) regional office.

12. Section 522.805 is revised to read as follows:

522.805 Procedures.

(a) When determining the contract amount for purposes of applying the threshold at FAR 22.805(a) for requesting preaward EEO reviews, the value of the contract plus any priced option shall be considered. A contract modification exercising an option is not considered new effort and does not require a preaward clearance.

(b) Requests for preaward reviews under FAR 22.805(a)(5) shall be made by the contracting officer directly to the Office of Federal Contract Compliance Programs, Employment Standards Administration, U.S. Department of Labor, for the region in which the contract is to be performed.

Dated: July 1, 1985.

Allan W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 85-16709 Filed 7-12-85; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 50713-5113]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) has determined that an emergency exists in the groundfish fishery of the Gulf of Alaska. Information has just come to light that noncompliance by certain fishermen with previous closures by the Secretary of the sablefish fishery in the Gulf of Alaska has occurred, and that further such noncompliance may be imminent. This new information has made it critical that doubts about the legal validity of these closures be resolved immediately, in order to ensure that the closures can be enforced, thereby preventing serious harm to the sablefish resources of the Gulf of Alaska. This action specifically authorizes the Secretary to close fishing for single species of groundfish, thus resolving this legal issue and assuring the enforceability of these closures.

EFFECTIVE DATE: This rule is effective from July 10, 1985.

ADDRESS: The environmental assessment prepared for this action may be obtained from Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Chief, Fishery Management Operations Division, Alaska Region, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the fishery conservation zone (3-200 miles offshore) of the Gulf of Alaska is managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and was implemented December 1, 1978 (43 FR 52709, November 14, 1978). It has been amended twelve times. The Council has adopted an amendment (Amendment 14), which is currently under consideraton by NMFS for implementation by the Secretary.

The rules that implement the FMP for fishing by vessels of the United States appear in 50 CFR Part 672. Section 672.20(b) provides as follows:

(1) If the Regional Director [for the Alaska Region, NFMS[determines that the OY [optimum yield] for any [groundfish] species in any regulatory area or district [of the Gulf of Alaska] will be reached, the Secretary shall issue a field order pursuant to § 672.22(a) prohibiting fishing for all species in that fishing area, except that the Secretary shall not prohibit, under this section, fishing for sablefish by fishing vessels using longline gear unless the Regional Director determines that the OY for sablefish in that fishing area will be reached.

(2) Fishing for species of groundfish by vessels of the United States in the applicable regulatory area contrary to any field order issued under this paragraph is prohibited from the effective date of such field order except that fishing for sablefish with longline gear is not prohibited until the effective date of a field order prohibiting longline fishing for sablefish in that fishing area.

Section 672.22(a) prescribes the procedures for issuance of field orders by the Secretary.

Under these provisions, the Regional Director has found that the 1985 OY for sablefish in the Southeast Outside, East Yakutat, and West Yakutat districts, the Central Area, and the Western Area of the Gulf of Alaska has been reached. Accordingly, acting under authority delegated by the Secretary, the Regional Director published field orders (notices) closing these districts and areas to sablefish fishing for the remainder of 1985 on March 18 (Southeast Outside and East Yakutat districts, 50 FR 11368, March 21, 1985), May 15 (West Yakutat District, 50 FR 20795, May 20, 1985), May 23 (Central Area, 50 FR 21852, May 29, 1985), and June 25 (Western Area, 50 FR 26774, June 28, 1985). The argument can be made, however, that § 672.20(b), quoted above, requires closure of all fishing for groundfish in an area or district when the sablefish OY for that area or district has been reached.

During the past two weeks, NMFS has discovered that several significant violations of the 1985 closures may already have taken place. The ability of NOAA to take appropriate enforcement action has been inhibited by the concern that the arguable inconsistency of the closures with § 672.20(b) would be raised as a defense. The same concern threatens to affect the Agency's response to a number of other apparent violations of the closures that have been detected. More significantly, word of the Agency's difficulty in these cases has reached fishermen who have been complying with the closure notices. These fishermen now perceive themselves to be in a situation in which their competitors who have not complied may benefit from such noncompliance, to the detriment of those who have complied. Representatives of these fishermen have informed NMFS that, unless the validity of these closure notices is clarified promptly, they will consider themselves to be under no obligation to continue their compliance with them, and will resume fishing for sablefish in the areas and districts closed by the notices.

The difficulties now being encountered by the Agency in enforcing these closures, together with the threat of additional noncompliance with them unless these difficulties are resolved, raises the immediate danger of serious harm to sablefish resources in the Gulf of Alaska. These sablefish stocks are currently depressed to levels that are insufficient to produce maximum sustainable yield (MSY). This is reflected in the OYs that have been prescribed for these stocks in the FMP, which are low enough to allow rebuilding of the stocks to levels that will produce MSY. The additional mortality that would be inflicted on these stocks by noncompliance with the closures of the magnitude that has been threatened could seriously reduce the capacity of these resources to sustain viable commercial fisheries for years to come. The Magnuson Act thus requires the Secretary to take prompt action to eliminate this threat by resolving immediately all uncertainty about the validity of these closures.

One way in which to accomplish this would be to close all groundfish fishing in the areas and districts that they cover. While this would eliminate uncertainty about the closures' validity, it would also lead to the serious economic harm to the U.S. fishing industry that led the Secretary to limit the scope of the closures in the first place. This harm would be especially great in the Central Area of the Gulf of Alaska. In this area, various U.S. groundfish trawl fisheries have been developing and expanding rapidly in recent years. Closure of these fisheries at this developmental stage before the OYs of their target species are reached would cause severe financial loss to those already engaged in harvesting, processing, and supporting these fisheries and would discourage future investment in them. As was noted above, this result would be contrary to the Magnuson Act, which specifically includes as one of its purposes the encouragement of development by the U.S. fishing industry.

Thus, the only acceptable way to resolve the question of the validity of the closures is to amend § 672.20(b) to authorize such closures specifically. Under this amendment, when the Regional Director finds that the OY for groundfish species in a district or area has been reached, the Secretary will normally be required to close fishing for only that particular species in that district area. The Secretary would be required to close or limit fishing for other species as well only when this would be necessary to comply with the requirement of Magnuson Act section 301(a)(1) that fishery conservation and management measures prevent overfishing. This would be necessary, for example, when, in fishing for other groundfish species, the expected incidental catch of the species for which OY has been attained would reduce the long-term capacity of the fully-harvested species to produce MSY. This does not currently appear to be the case for sablefish in the Gulf of Alaska, although the abundance of these sablefish stocks is sufficiently low that special care will have to be taken to prevent covert targeting on sablefish in continued fishing for other groundfish species.

This action amends § 672.20(b) in the manner just described. Because of the imminence of harm to Gulf of Alaska sablefish resources unless it takes effect immediately, the amendment is being promulgated as an emergency regulation under section 305(e) of the Magnuson Act. It will thus be in effect for 90 days, with the possibility of renewal for an additional 90 days with the concurrence of the Council. During this period, the Secretary will undertake a separate rulemaking proceeding, allowing full opportunity for prior public comment, to establish a long-term resolution of the problems that have made this emergency rule necessary.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Assistant Administrator also finds that the reasons described above justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of section 553 (b) and (d) of the Administrative Procedure Act.

The Assistant Administrator has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided in section 8(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the regular procedures of that order.

The Assistant Administrator prepared an environmental assessment (EA) for this action and concluded that there will be no significant impact on the human environment. A copy of the EA is available from the address listed above.

This rule does not contain a collection of information requirement and therefore is not subject to the provisions of the Paperwork Reduction Act.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

Dated: July 10, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 672 is amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.20, paragraph (b) is revised, effective from July 10, 1985 until October 8, 1985, to read as follows:

§ 672.20 Optimum yield.

* * * * *

(b) Notices of closure.

(1) If the Regional Director determines that the OY for any species in any regulatory area or district in Table 1 of paragraph (a) of this section has been or will be reached, the Secretary will issue a notice under § 672.22(a) closing fishing for that species in that area or district, and declaring that species in that area or district to be a prohibited species as defined in paragraph (d) of this section. During the time that such a closure is in effect, the operator of every vessel regulated by this Part will minimize the catch of that species in the applicable area or district.

(2) If, in making a determination under paragraph (b)(1) of this section, the Regional Director also determines that continued fishing for other groundfish species in the area or district concerned may lead to overfishing of the species for which the OY has been or will be reached, the Secretary will, in the notice required by that paragraph, also prohibit or limit such fishing for other groundfish species in a manner that will prevent overfishing of the species for which the OY is taken.

* * * * *

[FR Doc. 85-16749 Filed 7-10-85; 4:03 pm]
BILLING CODE 3510-22-M

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50 CFR Part 672

[Docket No. 50713-5113]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), confirms his previous determinations that the optimum yield (OY) for sablefish in all regulatory areas and districts of the Gulf of Alaska for 1985 has been harvested. Under a new emergency regulation specifically authorizing such closures, the Secretary of Commerce (Secretary) therefore closes fishing for sablefish in the Gulf of Alaska for the rest of 1985. This notice is necessary to resolve doubts about the validity of previous closures of this fishery that predate the emergency rule. These doubts have caused difficulty in enforcement of those previous closures, and have raised the likelihood of widespread noncompliance with them by sablefish fishermen. This action is intended to prevent the harm to sablefish stocks that could result from these problems with the previous closures.

DATES: This notice is effective from noon, Alaska Daylight Time, July 12, 1985, until midnight, Alaska Standard Time, December 31, 1985.

ADDRESS: The data upon which this notice is based are available for public inspection during business hours (8:00 a.m. to 4:30 p.m. weekdays) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Chief, Fishery Management Operations Division, Alaska Region, NMFS), 907-586-7230; or Patrick J. Travers (Alaska Regional Counsel, NOAA), 907-586-7414.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) governs that fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations governing U.S. fishing vessels under the FMP appear at 50 CFR Part 672. The FMP specifies the OYs for individual groundfish species and species groups on an annual basis, as required under the Magnuson Act. In the case of sablefish, a separate OY is specified for each of the regulatory areas and districts of the Gulf of Alaska, which are defined at § 672.2.

Until now, § 672.20(b) has required that, when the Regional Director determines that the OY for sablefish in a regulatory area or district is harvested, the Secretary must close fishing for all groundfish species in that area or district for the rest of the year. In a series of notices effective on March 18 (50 FR 11368, March 21, 1985), May 15 (50 FR 20795, May 20, 1985), May 23 (50 FR 21852, May 29, 1985), and June 25 (50 FR 26774, June 28, 1985) of this year, the Regional Director announced that the OY for sablefish in the areas and districts of the Gulf of Alaska for 1985 had been harvested. Based upon his findings, the Secretary in the same notices closed fishing for sablefish in these areas and districts, ultimately closing fishing for this species in the entire Gulf of Alaska. At the time these notices were issued, NMFS was aware of a legal question concerning their validity. This question arose because the notices closed only fishing for sablefish, while § 672.20(b), under which the notices were issued, arguably authorized only closure of fishing for all groundfish species in the affected areas and districts. The Secretary declined to follow this interpretation of § 672.20(b), because to do so would have caused serious economic harm to fisheries for Gulf of Alaska groundfish other than sablefish, frustrating their development, contrary to the Magnuson Act.

During June 1985, a trawl vessel was apprehended in Sitka, Alaska, having on board 36 tons of sablefish that were admittedly caught in violation of these closures. There was also evidence that several other significant violations of the closures had taken place. In attempting to take appropriate enforcement action in response to these violations, NOAA has been seriously inhibited by the concern that inconsistency of the closures with § 672.20(b) would be raised as an effective defense to such action. More significantly, fishermen who were complying with the closures, upon learning that their competitors who violated them might not be subject to effective sanctions, began to threaten to resume fishing for sablefish in the Gulf of Alaska themselves. Such massive noncompliance with the closures would raise the danger of serious harm to Gulf of Alaska sablefish stocks, which are currently depressed at levels that are insufficient to produce maximum sustainable yield.

In response to this problem, the Secretary has today published an emergency regulation under section 305(e) of the Magnuson Act. This emergency rule changes § 672.20(b) to authorize specifically the closure by the Secretary of fishing for a single species of groundfish in an area or district when the OY for that species in that area or district has been harvested. Closure or limitation of fishing, through incidental catches, for other groundfish species in that area or district would be required only when necessary to prevent overfishing of the fully harvested species.

Under the emergency rule, the Regional Director hereby confirms his findings in the earlier notices cited above that the OY for sablefish for 1985 in all regulatory areas and districts of the Gulf of Alaska has been harvested. He also finds that continued fishing for other groundfish species in these areas and districts will not lead to overfishing of sablefish. The OY for sablefish throughout the Gulf of Alaska was specified at levels well below those at which overfishing would occur. It is not expected that the additional sablefish mortality that will occur through incidental catches in fisheries for other groundfish species during the rest of 1985 will cause the total harvest of sablefish for the year to approach overfishing levels.

Based upon the Regional Director's findings, the Secretary closes fishing for sablefish under the emergency rule in all regulatory areas and districts of the Gulf of Alaska until midnight, Alaska Standard Time, December 31, 1985. During the time this closure is in effect, sablefish will be a prohibited species for purposes of § 672.20(d), and the operator of each U.S. vessel fishing for groundfish in any area or district of the Gulf of Alaska must minimize its catch of sablefish.

This closure will become effective when this notice is filed for public inspection with the Office of the Federal Register and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

This action is required by § 672.20(b) and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Reporting and recordkeeping requirements.

(16 U.S.C. 1801 *et seq.*)

Dated: July 10, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-16750 Filed 7-10-85; 4:03 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to govern the establishment of regular nonappropriated fund wage schedules for U.S. citizens who are Federal Wage System employees in foreign areas. Wage schedules established under this methodology will provide rates of pay representative of the entire geographic area from which the employees are recruited.

DATE: Comments on the proposed methodology and resulting rates must be submitted on or before August 14, 1985.

ADDRESS: Send or deliver written comments to Reginald M. Jones, Jr., Assistant Director for Pay Programs, Compensation Group, OPM, Room 3353, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632-7830.

SUPPLEMENTARY INFORMATION: OPM establishes regular nonappropriated fund wage schedules and rates for U.S. citizens who are wage employees in foreign areas. The methodology and instructions for the nonappropriated fund schedules have been published in subchapter S-11 in Federal Personnel Manual Supplement 532-2, and cover subjects such as the effective date of annual schedule adjustments, area of application and agency coverage.

No changes are being made in the longstanding practices followed in constructing and issuing the nonappropriated fund foreign area wage schedules. Regulatory language previously published in FPM Supplement 532-2 will be incorporated into Part 532 of Title 5, Code of Federal Regulations.

The 1985 nonappropriated fund foreign area schedules will be issued as soon as final regulations are published and will be effective retroactive to the first day of the first pay period beginning on or after April 6, 1985. Application of the prescribed methodology would result in scheduled rates for calendar year 1985 as follows:

NA grades	NA rates				
	1	2	3	4	5
1	3.66	3.81	3.96	4.11	4.27
2	4.03	4.20	4.37	4.54	4.70
3	4.42	4.60	4.78	4.97	5.15
4	4.77	4.97	5.17	5.37	5.57
5	5.13	5.33	5.53	5.75	5.98
6	5.45	5.68	5.89	6.12	6.35
7	5.75	6.00	6.25	6.48	6.73
8	6.10	6.36	6.62	6.88	7.13
9	6.47	6.74	7.01	7.28	7.55
10	6.82	7.11	7.38	7.67	7.95
11	7.16	7.46	7.76	8.07	8.37
12	7.50	7.84	6.15	8.46	8.76
13	7.87	8.19	8.51	8.84	9.18
14	8.20	8.54	8.90	9.24	9.58
15	8.53	8.90	9.26	9.61	0.97

NL grades	NL rates				
	1	2	3	4	5
1	4.02	4.19	4.36	4.53	4.69
2	4.44	4.62	4.80	4.99	5.17
3	4.86	5.06	5.26	5.46	5.67
4	5.25	5.47	5.69	5.91	6.13
5	5.55	5.79	6.03	6.27	6.51
6	5.96	6.21	6.45	6.68	6.94
7	6.32	6.60	6.87	7.13	7.40
8	6.73	7.01	7.29	7.58	7.86
9	7.13	7.42	7.71	8.01	8.31
10	7.49	7.83	8.14	8.44	8.75
11	7.89	8.21	8.54	8.88	9.20
12	8.26	8.62	8.96	9.31	9.64
13	8.65	9.01	9.36	9.72	10.10
14	9.03	9.41	9.80	10.16	10.54
15	9.39	9.80	10.18	10.57	10.97

NS grades	NS rates				
	1	2	3	4	5
1	4.89	5.09	5.29	5.50	5.70
2	5.26	5.48	5.70	5.92	6.14
3	5.64	5.88	6.12	6.35	6.59
4	6.00	6.25	6.50	6.75	7.00
5	6.29	6.55	6.81	7.08	7.34
6	6.61	6.89	7.17	7.44	7.72
7	6.96	7.27	7.57	7.86	8.15
8	7.33	7.63	7.93	8.23	8.54
9	7.75	8.09	8.42	8.73	9.06
10	8.18	8.51	8.85	9.20	9.55
11	8.61	8.97	9.33	9.68	10.04
12	9.02	9.39	9.79	10.15	10.53
13	9.43	9.84	10.23	10.62	11.02
14	9.85	10.26	10.68	11.08	11.49
15	10.25	10.68	11.10	11.52	11.96
16	10.68	11.12	11.58	12.02	12.46
17	11.11	11.58	12.03	12.50	12.96
18	11.54	12.02	12.50	12.98	13.47
19	11.95	12.46	12.96	13.46	13.95

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM is proposing to amend 5 CFR Part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346.

2. Section 532.235 is added to read as follows:

§ 532.235 Regular nonappropriated fund wage schedules in foreign areas.

(a) The Office of Personnel Management shall issue regular nonappropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. These schedules shall provide rates of pay for nonsupervisory, leader, and supervisory employees.

(b) Schedules shall be—

(1) Computed on the basis of a simple average of all regular nonappropriated fund wage area schedules defined for the 48 contiguous states and the District of Columbia in effect on the first Sunday in January; and

(2) Effective on the first Sunday in January of each year.

(c) Payline rates for each nonsupervisory grade shall be derived by computing a simple average of each payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors shall be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) Notice of final rates will be published in the **Federal Register.** Due to yearly adjustments these rates will not be codified in this subsection since the rates would be obsolete by the time they are published.

[FR Doc. 85-16747 Filed 7-12-85; 8:45 am]

BILLING CODE 6325-01-M

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5 CFR Part 532

Prevailing Rate Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to govern the establishment of regular appropriated fund wage schedules for U.S. citizens who are Federal Wage System employees in foreign areas and certain U.S. possessions. Wage schedules established under this methodology will provide rates of pay representative of the entire geographic area from which the employees are recruited.

DATE: Comments on the proposed methodology and resulting rates must be submitted on or before August 14, 1985.

ADDRESS: Send or deliver written comments to Reginald M. Jones, Jr., Assistant Director for Pay Programs, Compensation Group, OPM, Room 3353, 1900 E Street, NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Allan Summers, (202) 632-7830.

SUPPLEMENTARY INFORMATION: OPM establishes regular appropriated fund wage schedules and rates for U.S. citizens who are wage employees in foreign areas. The methodology for establishing foreign area schedules was initially approved on May 23, 1974, in consultation with the Federal Prevailing Rate Advisory Committee (FPRAC). Using identical methodology approved by OPM, the Department of Defense establishes wage schedules for Guam and Midway and the Department of Transportation establishes wage schedules for American Samoa. The methodology and instructions have been published in subchapter S-11 in Federal Personnel Manual Supplement 532-1, and cover subjects such as the effective date of annual schedule adjustments, area of application and agency coverage.

These proposed regulations implement the procedure, initiated in 1984, under which the foreign area appropriated fund schedules and the schedules for Guam, Midway and American Samoa were computed on the average of all 135 appropriated fund regular schedules rather than on the average of 23 schedules as obsolete material in Federal Personnel Manual Supplement 532-1 currently provides. The proposed regulations will ensure that the foreign area wage schedules are more representative of the actual area of recruitment since a review showed that only 4 percent of the wage grade employees in foreign locations were recruited from the areas represented by the 23-area schedules. No other changes are made in the longstanding practices followed in constructing and issuing foreign area wage schedules. Regulatory language previously published in FPM Supplement 532-1 will be incorporated into Part 532 of Title 5, Code of Federal Regulations. The 1985 appropriated fund foreign area schedules will be issued as soon as final regulations are published and will be effective retroactive to the first day of the first pay period beginning on or after April 1, 1985. Application of the 135 area methodology would result in scheduled rates for calendar year 1985 as follows:

WG grade	WG				
	1	2	3	4	5
1	6.49	6.76	7.03	7.30	7.57
2	6.92	7.21	7.50	7.79	8.08
3	7.34	7.65	7.96	8.26	8.57
4	7.77	8.09	8.41	8.74	9.06
5	8.16	8.50	8.84	9.18	9.52
6	8.58	8.94	9.30	9.66	10.01
7	9.00	9.38	9.76	10.13	10.51
8	9.43	9.82	10.21	10.61	11.00
9	9.84	10.25	10.66	11.07	11.48
10	10.26	10.69	11.12	11.55	11.97
11	10.68	11.12	11.56	12.01	12.45
12	11.08	11.54	12.00	12.46	12.92
13	11.49	11.97	12.45	12.93	13.41
14	11.90	12.40	12.90	13.39	13.89
15	12.31	12.82	13.33	13.85	14.36

WL grade	WL				
	1	2	3	4	5
1	7.14	7.44	7.74	8.04	8.33
2	7.61	7.93	8.25	8.56	8.88
3	8.08	8.42	8.76	9.09	9.43
4	8.54	8.90	9.26	9.61	9.97
5	8.98	9.35	9.72	10.10	10.47
6	9.44	9.83	10.22	10.62	11.01
7	9.91	10.32	10.73	11.15	11.56
8	10.37	10.80	11.23	11.66	12.10
9	10.83	11.28	11.73	12.18	12.63
10	11.29	11.76	12.23	12.70	13.17
11	11.74	12.23	12.72	13.21	13.70
12	12.18	12.69	13.20	13.71	14.21
13	12.64	13.17	13.70	14.22	14.75
14	13.09	13.64	14.19	14.73	15.28
15	13.54	14.10	14.66	15.23	15.79

WS grade	WD-WN pay level		WS				
			1	2	3	4	5
1			9.57	9.97	10.37	10.77	11.77
2			10.00	10.42	10.84	11.25	11.67
3	1		10.43	10.86	11.29	11.73	12.16
4	2		10.85	11.30	11.75	12.20	12.66
5	3		11.24	11.71	12.18	12.65	13.12
6	4		11.66	12.15	12.64	13.12	13.61
7	5	1	12.09	12.59	13.09	13.60	14.10
8	6	2	12.51	13.03	13.55	14.07	14.59
9	7	3	12.92	13.46	14.00	14.54	15.08
10	8	4	13.34	13.90	14.46	15.01	15.57
11	9	5	13.77	14.34	14.91	15.49	16.06
12	10	6	14.31	14.91	15.51	16.10	16.70
13	11	7	15.00	15.63	16.26	16.88	17.51
14		8	15.81	16.47	17.13	17.79	18.45
15		9	16.75	17.45	18.15	18.85	19.54
16			17.82	18.56	19.30	20.04	20.79
17			19.02	19.81	20.60	21.39	22.19
18			20.34	21.19	22.04	22.89	23.73
19			21.80	22.71	23.62	24.53	25.44

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Loretta Cornelius,

Acting Director.

Accordingly, OPM proposing to amend 5 CFR Part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority for Part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346.

2. Section 532.233 is added to read as follows:

§ 532.233 Regular appropriated fund wage schedules in foreign areas and certain U.S. possessions.

(a) The Office of Personnel Management will issue regular appropriated fund wage schedules for U.S. citizens who are wage employees in foreign areas. The Department of Defense will issue wage schedules for employees in Guam and Midway and the Department of Transportation will issue wage schedules for employees in American Samoa. These schedules shall provide rates of pay for nonsupervisory, leader, supervisory and production facilitating employees.

(b) Schedules shall be—

(1) Computed on the basis of a simple average of all regular appropriated fund wage area schedules in effect on December 31; and

(2) Effective on the first day of the first pay period that begins on or after January 1 of the succeeding year.

(c) Payline rates for each nonsupervisory grade shall be derived by computing a simple average of each payline rate for each of the 15 grades of all nonsupervisory wage rate schedules designated in paragraph (b) of this section.

(d) Through the use of the payline rates derived under the schedule averaging process, the step rates for each of the 15 grades of the nonsupervisory schedule and all scheduled pay rates for leaders and supervisors shall be developed by using the standard formulas established in 5 CFR 532.203, Structure of regular wage schedules.

(e) The rates of pay for production facilitating employees shall be set identical to that of regular supervisory grades as established in the table below.

WD nonsupervisory level	WN supervisory level	=	Second rate of WS grade
1		=	3
2		=	4
3		=	5
4		=	6
5	1	=	7
6	2	=	8
7	3	=	9
8	4	=	10
9	5	=	11
10	6	=	12
11	7	=	13
	8	=	14
	9	=	15

(f) Notice of final rates will be published in the **Federal Register**. Due to yearly adjustments these rates will not be codified in this subsection since the rates would be obsolete by the time they are published.

[FR Doc. 85-16748 Filed 7-12-85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 999

Specialty Crops—Import Regulations; Proposed Changes in Raisin Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This is a proposal to change grade requirements for imported Thompson Seedless and Monukka raisins, and to include grade requirements for Golden Seedless raisins in the import regulation. This proposal is pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, which requires raisins offered for importation into the United States to meet the same or comparable requirements applied to domestic raisins under a Federal marketing order. Changes in the domestic grade requirements for packed seedless raisins under the Federal marketing agreement and order program for California raisins, and other factors, necessitate changes in the requirements for imported Thompson Seedless and Monukka raisins pursuant to that act.

DATE: Comments must be received by August 26, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2069, South Building, Washington, D.C. 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Telephone Number (202) 447-5053.

SUPPLEMENTARY INFORMATION: This proposal has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified a "non-major" rule under criteria contained therein.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposal will not have a significant economic impact on a substantial number of small entities.

The raisin import regulation (7 CFR 999.300) is effective pursuant to the requirements of section 8e of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674). That section requires the Secretary of Agriculture to issue, after reasonable notice, grade requirements on imported raisins which are the same as, or comparable to, those applied to domestic raisins under the marketing agreement and Order No. 989, both as amended (50 FR 1830). The marketing agreement and order regulate the handling of raisins produced from grapes grown in California and also are effective under the same act.

Changes in the domestic requirements for packed seedless raisins under the marketing agreement and order became effective November 15, 1984 (49 FR 33992), and pertain to tolerances for maturity, pieces of stem, and substandard and undeveloped raisins prescribed in the effective U.S. Standards For Grades of Processed Raisins (7 CFR 52.1841-52.1858). At that time, the minimum percent of well-matured or reasonably well-matured raisins was increased from 55 percent to 62.5 percent. On November 15, 1985, that percentage will increase from 62.5 percent to 70 percent. Also, effective November 15, 1984, the tolerances for pieces of stem, and undeveloped and substandard raisins, in U.S. Grade B, in lieu of U.S. Grade C tolerances, became effective for select and mixed-sized packed raisins. The tolerances for those factors for midget-sized raisins remained at the U.S. Grade C level. The changes were effectuated to improve the quality of those raisins and improve their competitiveness in domestic and foreign markets.

During the development of the raisin import regulation in 1972 the Department found that foreign drying and processing techniques differed from those used in California, and that the resulting foreign produced Thompson Seedless raisins were lighter in color and softer than domestically produced raisins. Because of these variations, it was determined that the application of the requirements for color, stems, and capstems under the marketing order for California Thompson Seedless raisins to foreign produced Thompson Seedless raisins was not practicable and that a comparable standard was necessary.

Therefore, a finding was made under the act that there were variations in the characteristics between the domestic and imported commodity warranting establishment of different standards for imported raisins based on comparability. The requirements on imported raisins: (1) Exempted those raisins from color requirements; (2) permitted not more than two pieces of stem per 2.2 pounds in lieu of the marketing order requirements of not more than 4 pieces of stem per 6 pounds; and (3) permitted not more than 50 capstems for 1.1 pounds in lieu of 35 capstems per pound.

The color requirements in effect under the U.S. Standards for Grades of Processed Raisins (7 CFR 52.1841–52.1858) when the import regulation was issued in 1972 were not as flexible as the color requirements currently in effect. The standards then in effect did not permit inspectors to recognize color variations in domestic and imported Thompson Seedless raisins, and in the absence of the color exemption, the lighter colored Thompson Seedless raisins offered for importation would not have met the same requirements as those imposed on domestic raisins under the marketing order. The current standards for both domestic and imported raisins offer inspectors a greater degree of flexibility in recognizing color variations, and the color exemption no longer is necessary and is proposed to be deleted.

With regard to capstems and pieces of stem, very few lots of imported raisins have failed solely because of excessive pieces of stem and/or capstems. Moreover, imported raisins can be and often are processed to the same extent as California raisins against the tighter domestic tolerances for pieces of stem and capstems, and the reasons originally justifying the different tolerances for pieces of stem and capstems because of the tenderness of the imported product no longer seem to exist. The proposals hereinafter set forth prescribe tolerances for those factors which are the same as those applied to domestic raisins under the marketing order.

The raisin import regulation currently prescribes requirements for Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Monukka raisins, and Currant raisins. In recent years, however, increasing quantities of Golden Seedless raisins similar to those produced in California have been imported. Therefore, import requirements for this varietal type of raisin are proposed to be added to the import regulation. The proposed requirements are the same as those applied under the marketing order.

List of Subjects in 7 CFR Part 999

Food grades and standards, Imports, Dates, Walnuts, Prunes, Raisins, and Filberts/Hazelnuts.

PART 999—[AMENDED]

1. The authority citation for 7 CFR 999.300 continues to read as follows:

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

2. Section 999.300 is amended by revising paragraph (a)(2) and paragraph (b) to read as follows:

§ 999.300 Regulation governing importation of raisins.

(a) * * *

(2) "Varietal type" means the applicable one of the following: Thompson Seedless raisins, Muscat raisins, Layer Muscat raisins, Currant raisins, Monukka raisins, and Golden Seedless raisins.

* * * * *

(b) *Grade and size requirements.* The importation of raisins into the United States is prohibited unless the raisins are inspected and certified as provided in this section. Except as provided in paragraph (e)(2) of this section, no person may import raisins into the United States unless such raisins have been inspected and certified by a USDA inspector as to whether or not the raisins are of a varietal type, and if a varietal type, as at least meeting the following applicable grade and size requirements, which requirements are the same as those imposed upon domestic raisins handled pursuant to Order No. 989, as amended (Part 989 of this chapter):

(1) With respect to Thompson Seedless raisins—the requirements of U.S. Grade C as defined in the effective United States Standards of Grades of Processed Raisins (§§ 52.1841–52.1858 of this title): *Provided,* That at least 70 percent, by weight, of the raisins shall be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized raisin lots, the raisins shall at least meet the U.S. Grade B tolerances for pieces of stem, and undeveloped and substandard raisins, and small (midget) sized raisins shall meet the U.S. Grade C tolerances for those factors;

(2) With respect to Muscat raisins—the requirements of U.S. Grade C as defined in said standards;

(3) With respect to Layer Muscat raisins—the requirements of U.S. Grade B as defined for "Layer or Cluster Raisins with Seeds" in said standards, except for the provisions therein relating to moisture content;

(4) With respect to Currant raisins—the requirements of U.S. Grade B as defined in said standards;

(5) With respect to Monukka raisins—the requirements for Thompson Seedless Raisins prescribed in paragraph (b)(1) of this section, except that the tolerance for moisture shall be 19 percent rather than 18 percent;

(6) With respect to Golden Seedless raisins—the requirements prescribed in paragraph (b)(1) of this section for Thompson Seedless raisins and the color requirements for "colored" as defined in said standards.

Dated: July 10, 1985.

Thomas R. Clark,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 85-16697 Filed 7-12-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 341

Certificates of Citizenship

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: The Immigration and Naturalization Service is experiencing backlogs in the processing of applications for certificates of citizenship and feels that the present regulation mandating an interview in all cases has created some of the burden. This proposed revision would not require an interview in certain cases and would allow the application to be remoted for processing.

DATE: Comments must be received on or before September 13, 1985.

ADDRESS: Please submit written comments in duplicate to the Director of Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

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

For Specific Information: Raymond R. Jaroneski, Jr., Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–5014.

SUPPLEMENTARY INFORMATION: The current regulation at 8 CFR 341.2(a) provides for each applicant for citizenship to be interviewed even though the application is approvable based on its supporting documents. The Service feels that this is a major delaying factor in the adjudication of these applications. One of the goals in the Commissioner's FY '85 Priorities Management System is to eliminate the naturalization backlogs and streamline adjudication of applications by revising regulations that will allow the remoting of certain applications.

This regulation change would allow those applications submitted by applicants living in the United States that are accompanied by either the Department of State Form FS240 (Report of Birth Abroad of A Citizen of the United States); an unexpired United States passport issued initially for a full five/ten year period to the applicant as a citizen of the United States; or by verification of the applicant's parents' naturalization, to be remoted for processing. In all other instances, the applications would be processed by the Service office having jurisdiction over the application and interviews would continue to be conducted.

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

This is not a major rule within the meaning of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 341

Administrative practice and procedure, Citizenship and naturalization.

PART 341—CERTIFICATES OF CITIZENSHIP

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for section 341 continues to read as follows:

Authority: Secs. 103 and 341 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1452).

2. Section 341.2 would be amended by revising paragraph (a) to read as follows:

§ 341.2 Examination upon application.

(a) *Personal appearance of claimant and parent or guardian.*

(1) *Testimony not required.* An application received at a Service office having jurisdiction over the applicant's residence will be processed without the need for interview if accompanied by one or more of the following:

(i) A State Department Form FS-240 (Report of Birth Abroad of a Citizen of the United States);

(ii) An unexpired United States passport issued initially for a full five/ten year period to the applicant as a citizen of the United States;

(iii) Or the applicant's parents' naturalization records.

In these cases, a preponderance of the evidence will be considered to have been met and the application will be processed on such evidence. This does not preclude a supervisory officer from requiring an interview, described in paragraph (a)(2) of this section if there is a question of reliable evidence.

(2) *Testimony required.* Each claimant, when notified to do so, shall appear in person before an assigned officer for examination under oath or affirmation upon the application. A person under 18 years of age must have a parent or guardian apply, appear, and testify for the applicant unless one is unavailable and the district director is satisfied that the claimant is old enough to provide reliable testimony. The same rule will apply for incompetent applicants. In all cases reliable testimony should be obtained. At the examination the claimant and the acting parent or guardian, if necessary, shall present testimony and evidence pertinent to the claim to citizenship and shall have the right to meet any evidence adverse thereto and to cross-examine witnesses called by the Government.

* * * * *

Dated: June 27, 1985.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-16775 Filed 7-12-85; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 343a

Naturalization and Citizenship Papers Lost, Mutilated, or Destroyed; New Certificate in Changed Name, Certified Copy of Repatriation Proceedings

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule would eliminate a mandated interview in the processing of applications for the replacement of naturalization and citizenship papers that have been lost, mutilated or destroyed or where a name change has occurred. An interview would only be required when the reviewing officer determines it advisable. This change will decrease backlogs in the adjudications program and provide better service to the public by permitting the remoting of these applications.

DATE: Comments must be received on or before September 13, 1985.

ADDRESS: Please submit written comments in duplicate to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, D.C. 20536.

FOR FURTHER INFORMATION CONTACT:

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

For Specific Information: Raymond R. Jaroneski, Jr., Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633-5014.

SUPPLEMENTARY INFORMATION: The Commissioner of the Immigration and Naturalization Service has determined and directed in his FY '85 Priorities the elimination of backlogs in the Examination units by focusing on those applications now requiring an interview, regardless of the apparent bona fides of the case. This rule would permit those readily approvable cases to be sent to the remote site to be processed without an inteview.

This will alleviate some of the burden placed upon the field offices by ensuring that resources are applied in the most efficient manner to those cases requiring a more intensive examination.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This order would not be a major rule within the definition of section 1(b) of E.O. 12291.

List of Subjects in 8 CFR Part 343a

Citizenship and naturalization.

Accordingly, it is proposed to amend Chapter 1 of Title 8 of the Code of Federal Regulations as follows:

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

1. The authority for 8 CFR Part 343a continues to read as follows:

Authority: Secs. 103 and 343 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103 and 1454).

2. Section 343a.1 would be amended by revising paragraph (c) to read as follows:

§ 343a.1 Application for replacement of or for new naturalization or citizenship paper.

* * * * *

(c) *Disposition.* The applicant shall only be required to appear in person before an assigned officer for interrogation under oath or affirmation in those cases that require such an interrogation as determined by the reviewing officer. If an application for a new certificate of naturalization, citizenship, or repatriation is approved, the new certificate shall be issued and delivered in person upon the applicant's signed receipt therefor. When an application for a new declaration of intention is approved, the new declaration of intention shall be issued and the original delivered to the applicat upon signed receipt therefor. If an application for a new certified copy of the proceedings under the Act of June 25, 1936, as amended or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, there shall be issued a certified positive photocopy of the record of the proceedings filed with the Service. When subsequent to the naturalization or repatriation the applicant's name has been changed by marriage, the certification of the positive photocopy shall show both the name in which the proceedings were had and the changed name. The new certified copy shall be personally delivered to the applicant, upon his or her signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

3. Section 343a.2 would be amended to read as follows:

§ 343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

A certificate of naturalization or citizenship in a Service file which was surrendered on a finding that a loss of United States nationality had occurred directly or through a parent by reason of section 404 (b) or (c) of the Nationality Act of 1940 or section 352 of the Immigration and Nationality Act and which finding is no longer valid in view of *Schneider* v. *Rusk*, 377 U.S. 163, or a certificate of naturalization or citizenship in a Service file which was surrendered on a finding that loss of United States nationality had occurred pursuant to section 401(e) of the Nationality Act of 1940 or section 349(a)(5) of the Immigration and Nationality Act and which finding is no longer valid in view of *Afroyim* v. *Rusk*, 387 U.S. 253, or a certificate of citizenship in a Service file which was surrendered on a finding that loss of United States nationality had occurred pursuant to section 301(b) of the Immigration and Nationality Act, the provisions of which were extended by section 301(c) of the same Act to persons born after May 24, 1934, and which finding is no longer valid in view of the amendment of section 301(b) on October 27, 1972, Public Law 92–584, may be returned to the person to whom it was issued, notwithstanding the fact that he or she has since been naturalized or repatriated in the United States or abroad. If, after having been surrendered to the Department of State or to this Service, the certificate has been lost, mutilated, or destroyed as a result of either Service action or the action of that Department, a replacement certificate may be issued in the name shown in the surrendered certificate without fee and without requiring the submission of Form N–565. A surrendered certificate shall not be regarded as mutilated and a replacement shall not be issued solely because of holes made in it to accommodate an Acco fastener, unless the citizen declines to accept the return of the surrendered certificate in that condition and insists upon issuance of a replacement. When it is desired that the replacement certificate be furnished in a name other than the one shown in the surrendered certificate, the regular application procedure with payment of fee must be followed. The naturalized person shall be required to appear in person, if within the United States, before a Service representative for the return of the certificate.

Dated: June 27, 1985.

Harriet B. Marple,

Acting Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85–16776 Filed 7–12–85; 8:45 am]

BILLING CODE 4410-10-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 561, 563, and 571

[No. 85–504]

Classification of Assets

Correction

In FR Doc. 85–15838, beginning on page 27290 in the issue of Tuesday, July 2, 1985, make the following corrections:

1. On page 27291, in the second column, in the second complete paragraph, twenty-first line, "Controller" should read "Comptroller".

2. On page 27293, in the first column, in paragraph 3 of the amendatory language, "§ 561.16C" should have read "§ 561.16c".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 85–AWP–17]

Proposed Alteration and Redefinition of the Bakersfield, CA, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the transition area at Bakersfield, California, as a result of the required name and identification change of the Bakersfield Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) facility to the Shafter VORTAC. The name and identification change was initiated in connection with the general policy to change the name of navigational aids bearing the same name as the airports which they serve if the aid is not located on the airport. This action will provide the change in the definition of the existing Bakersfield, California, Transition Area.

DATES: Comments must be received on or before August 31, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP–530, P.O Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

The official docket may be examined in the Office of the Western-Pacific, Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas H. Schmidt, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536–6655.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to the Airspace Docket No. 85-AWP-17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide alteration and redefinition of the Bakersfield, California, Transition Area to accommodate the name and identification change of the Bakersfield VORTAC to Shafter VORTAC. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Bakersfield, California, Transition Area—[Revised]

"That airspace extending upward from 700 feet above the surface beginning at lat. 35°20'00" N., long. 118°49'45" W.; direct to lat. 35°48'30" N., long. 119°12'00" W.; direct to lat. 35°46'00" N., long. 119°18'30" W.; direct to lat. 35°35'50" N., long. 119°15'00" N.; direct to lat. 35°32'30" N., long. 119°18'50" W.; direct to lat. 35°13'50" N., long. 118°58'45" W.; thence to the point of beginning; that airspace extending upward from 1200 feet above the surface beginning at lat. 36°00'00" N., long. 118°45'00" W.; direct to lat. 35°05'00" N., long. 118°45'00" W.; direct to lat. 35°05'00" N., long. 120°05'00" W.; direct to lat. 35°43'50" N., long. 120°05'00" W.; direct to lat. 35°43'50" N., long. 119°30'00" W.; direct to lat. 36°00'00" N., long. 119°30'00" W.; thence to the point of beginning."

Issued in Los Angeles, California, on July 1, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-16665 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-AWP-19]

Proposed Alteration and Redefinition of the Fresno, CA, Transition Area and Fresno Air Terminal Control Zone, Fresno, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter and redefine the transition area at Fresno, California, as a result of the required name and identification change of the Fresno Very High Frequency Omni-directional Radio Range and Tactical Air Navigational Aid (VORTAC) facility to the Pinedale VORTAC. The name and identification change was initiated in connection with the general policy to change the name of navigational aids bearing the same name as the airports which they serve, if the aid is not located on the airport. This action will provide the change in the definition of the existing Fresno, California, Transition Area and Fresno Air Terminal, Fresno, California, Control Zone.

DATE: Comments must be received on or before August 31, 1985.

ADDRESS: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, AWP-530, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007.

The official docket may be examined in the Office of the Western-Pacific Regional Counsel, Room 6W14, at 15000 Aviation Boulevard, Hawthorne, California.

An informal docket may be examined during normal business hours at the Airspace and Procedures Branch, Room 6E4, at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas H. Schmidt, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration (FAA), 15000 Aviation Boulevard, Hawthorne, California 90261; telephone (213) 536-6655.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to the Airspace Docket No. 85-AWP-19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 15000 Aviation Boulevard, Hawthorne, California 90261. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to §§ 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to provide alteration and redefinition of the Fresno Air Terminal, Fresno, California, Control Zone and Fresno, California, Transition Area to accommodate the name and identification change of the Fresno VORTAC to Pinedale VORTAC. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the FAR as follows:

1. The authority citation for Part 71 is revised to read as follows:

Authority: 49 U.S.C. 1348(a) and 1354(a); 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

2. Section 71.171 is amended as follows:

Fresno Air Terminal, Fresno, California, Control Zone—[Revised]

"Beginning at lat. 36°45'30" N., long. 119°37'30" W.; to lat. 36°44'00" N., long. 119°36'30" W.; to lat. 36°42'10" N., long. 119°39'20" W.; to lat. 36°43'20" N., long. 119°40'30" W.; thence clockwise via the 5-mile radius circle of the Fresno Air Terminal (lat. 36°46'36" N., long. 119°43'03" W.) to lat. 36°49'40" N., long. 119°47'30" W.; to lat. 36°52'20" N., long. 119°49'30" W.; to lat. 36°54'00" N., long. 119°46'20" W.; to lat. 36°51'30" N., long. 119°44'30" W.; thence clockwise via the 5-mile radius circle to the point of beginning."

3. Section 71.181 is amended as follows:

Fresno, California, Transition Area—[Revised]

"That airspace extending upward from 700 feet above the surface beginning at lat. 36°39'00" N., long. 119°25'00" W.; direct to lat. 36°36'00" N., long. 119°27'40" W.; direct to lat. 36°41'30" N., long. 119°38'00" W.; direct to lat. 36°40'00" N., long. 119°43'40" W.; direct to lat. 36°39'30" N., long. 119°52'30" W.; direct to lat. 36°37'50" N., long. 119°55'25" W.; direct to lat. 36°40'45" N., long. 119°58'00" W.; direct to lat. 36°50'30" N., long. 119°50'55" W.; direct to lat. 36°54'00" N., long. 119°50'25" W.; direct to lat. 36°54'45" N., long. 119°46'30" W.; direct to lat. 36°51'30" N., long. 119°44'30" W.; thence clockwise via the 5-mile radius circle centered on the Fresno Air Terminal (lat. 36°46'36" N., long. 119°43'03" W.); to lat. 36°45'30" N., long. 119°37'30" W.; to the point of beginning. That airspace extending upward from 1200 feet above the surface beginning at lat. 37°29'00" N., long. 119°15'00" W.; to lat. 36°49'00" N., long. 118°46'00" W.; to lat. 36°39'00" N., long. 118°46'00" W.; to lat. 36°39'00" N., long. 119°09'00" W.; to lat. 36°00'00" N., long. 118°45'00" W.; to lat. 36°00'00" N., long. 119°30'00" W; to lat. 37°02'00" N., long. 120°18'00" W.; to the point of beginning."

Issued in Los Angeles, California, on July 5, 1985.

H.C. McClure,

Director, Western-Pacific Region.

[FR Doc. 85-16666 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-5]

Proposed Amendment to Douglas, WY, Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the 700' transition area at Douglas, Wyoming. This is necessary due to the relocation of the Converse County Airport, Douglas, Wyoming. This action will ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. The area will be depicted on aeronautical charts enabling pilots to circumnavigate the area or otherwise comply with instrument flight rules.

DATE: Comments must be received on or before September 13, 1985.

ADDRESSES: Send comments on the proposal to: Manager, Airspace and Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-5, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Art Corwin, Airspace and Procedures Specialist, ANM-532, Federal Aviation Administration, Docket No. 85-ANM-5, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the 700' transition area at Douglas, Wyoming, due to the relocation of Converse County Airport, Douglas, Wyoming. The intended effect of this action is to ensure segregation of aircraft operating in instrument weather conditions and other aircraft operating in visual weather conditions. There will be no change to the overlying 1200' transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Transition area, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.69).

2. By amending § 71.181 as follows.

Douglas, Wyoming, Transition Area—(Amended)

That airspace extending upward from 700' above the surface within a 10.5-mile radius of the Converse County Airport, Douglas, Wyoming, (Lat. 42° 47' 46" N/Long. 105° 23' 08" W); and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at a point at lat. 43° 14' 00" N/long. 105°28'01"W., east along the south edge of V-26 to lat. 43° 28' 30" N/long. 104° 30' 00" W., to lat. 43° 00' 00" N/long. 104° 30' 00" W., east to the Wyoming-Nebraska State boundary, south to the north edge of V-100, west to the west edge of V-19, northwest to lat. 42° 27' 30" N/long. 105° 52' 05" W; thence to point of beginning, excluding the Casper, Wyoming, and Cheyenne, Wyoming, transition areas.

Issued in Seattle, Washington, on July 2, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16670 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-3]

Proposed Alteration of Control Zone, Troutdale, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the description of the Troutdale, Oregon (Portland-Troutdale Airport), control zone by deleting reference to the 154 degree radial of the Portland VORTAC. Due to recent change to the Portland, Oregon, control zone description (84-ANM-16), action is necessary to redescribe that portion of the Troutdale control zone which abuts the Portland control zone. This proposed action provides the revised description.

DATE: Comments must be received on or before August 26, 1985.

ADDRESS: Send comments on the proposal to: Airspace & Procedures Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's Office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace & Procedures Specialist, ANM-534, Federal Aviation Administration, Docket No. 85-ANM-3, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2534.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANM-3." the postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date will be considered before taking action on the proposed rule. The proposal contained in this notice may be change in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, 17900 Pacific Highway South, Seattle, Washington 98168, both before and after the closing date of comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, ANM-530, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to redefine the west boundary of the Troutdale control zone. A recent amendment to the Portland control zone which reduced the size of the control zone extension east of Portland International Airport caused loss of needed controlled airspace west of the Portland-Troutdale Airport at the point these control zones abut. This proposed action provides the revised description by deleting reference to the 154 degree radial of the Portland VORTAC as the western boundary of the Troutdale control zone. This proposed action also changes the name of the LAKE LOM to the LAKER LOM.

Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

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

List of Subjects in 14 CFR Part 71

Control zones, Aviation safety.

The Proposed Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.65); 49 CFR 1.47.

2. By amending § 71.171 as follows:

Troutdale, Oregon, Control Zone—(Revised)

That airspace bounded on the north and west by a 5-mile radius area centered on the Portland-Troudale Airport (lat. 54° 33′30″N/ long. 122° 23′ 49″W), on the south and east by a line parallel to and 3 miles southwest and northeast of the 119 degree bearing from the LAKER LOM (lat. 45°32′38″ N/long. 122°27′49″ W) extending from the LOM to 8 miles southeast. This control zone is effective during the specific dates and times established in advance by a Notice to Airman. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on June 12, 1985.

Leroy A. Keith,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-16669 Filed 7-12-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9194]

Buckingham Productions, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Dr. Barry Bricklin, among other things, to cease representing that he used his expertise as a psychologist and expert in the psychological aspects of dieting to test and evaluate weight control programs and products in the same way similarly qualified experts normally would. Also, respondent would be prohibited from representing that consumers can eat as much food as they want and still lose weight without also giving specified disclosures about weight reduction; and from making claims about "usual" or "average" weight loss, or the efficacy or performance of weight reduction or weight control products or programs without competent and reliable survey or other scientific evidence that substantiates the representation. Further, respondent would be required to maintain records of substantiation for three years; file compliance reports with the Commission at specified times; and notify the Commission of the discontinuance of his present employment and any future employment in similar areas.

DATE: Comments must be received on or before Sept. 9, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/B-407, Washington, D.C. 20580 (202) 376-8720.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record, as of July 9, 1985, for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Weight control products and programs, Trade practices.

Before Federal Trade Commission

[Docket No. 9194]

Agreement Containing Consent Order to Cease and Desist

In the Matter of Buckingham Productions, Inc., a corporation, trading and doing business as Rotation Diet Center; Furlong-Elliot Corp., a corporation; Freedom Center, Inc., a corporation; Plaza Business Services, Inc., a corporation; N.F. Rotation, Inc., a corporation; Rotation-Freedom Diet, Inc., a corporation; Howard Elliot, individually and as an officer of said corporations; Gail Elliot, individually; Judy Ruthrauff, individually and as an office of said corporations; Dorothy Woolslager, individually and as an officer of said corporations; Benito Ventresca, individually and as an officer of said corporations; Dr. Barry Bricklin, individually.

The agreement herein, by and between Dr. Barry Bricklin, individually, hereafter sometimes referred to as respondent and counsel for the Federal Trade Commission, is entered in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Dr. Barry Bricklin is an individual whose address is 470 General Washington Road, Wayne, Pennsylvania 19087.

Respondent Dr. Barry Bricklin possesses an expertise in psychology, and in the physiological and phychological aspects of dieting, superior to that generally acquired by ordinary individuals. For his part, Dr. Barry Bricklin aided in the promotion and sale of respondents' weight reduction and/or weight control programs and products by providing as an expert in the field endorsements of the efficacy of the products and programs that appear in respondents' advertisements.

2. Respondent has been served with a copy of the complaint issued by the Federal Trade Commission charging him with violations of sections 5 and 12 of the Federal Trade Commission Act.

3. Respondent admits all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondent, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of §3.25(f) of the Commission's Rules, the Commission may without further notice to respondent, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right he might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondent has read the complaint and the order contemplated hereby. He understands that once the order has been issued, he will be required to file one or more compliance reports showing that he has fully complied with the order. Respondent further understands that he may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I

It is ordered that expert respondent Dr. Barry Bricklin, individually and through any corporate entity over which he now or hereafter exercises control, and his corporate successors and assigns, in connection with the endorsing, advertising, offering for sale, sale, or distribution of any weight reduction or weight control product, program or service, in or affecting commerce, as "commerce" is defined in the Federal Trade Commisssion Act, does forthwith cease and desist from:

(A) Representing in advertising, directly or by implication, that any consumer can eat any quantity of food and still lose weight or maintain that weight loss, without an accompanying and proximate, clear and prominent disclosure that the consumer's weight loss or ability to maintain that weight loss depends on a reduction in caloric intake in the short term and an overall reduction in caloric intake over the long term.

(B) Representing in advertising, directly or by implication, the usual or average weight loss, or range of weight loss, obtained or obtainable from any such weight reduction or weight control product, program or service, unless at the time of making such representation expert respondent Dr. Barry Bricklin prossesses and relies upon competent and reliable survey or other scientific evidence that substantiates the representation.

(C) Making any representation in advertising, directly or by implication, regarding the efficacy or performance of any weight reduction or weight control product, program or service, the content or mode of action of any weight reduction or weight control product, program or service, unless at the time of making such representation expert respondent Dr. Barry Bricklin possesses and relies upon competent and reliable survey or other scientific evidence that substantiates the representation.

For purposes of Part I of this Order, "competent and reliable" evidence shall mean an actual exercise of expert respondent Dr. Barry Bricklin's expertise in evaluating weight reduction and/or weight control programs and products with respect to which he is expert, in the form of an examination or testing of the programs and products at least as extensive as someone with a similar degree of expertise would normally conduct in order to support the conclusions presented in the representation.

II

It is further ordered that for three years from the date that the representations to which they pertain are last disseminated, expert respondent Dr. Barry Bricklin shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon to substantiate any such representation.

2. All test reports, studies, surveys, or other materials in his possession or control that contradict, qualify, or call into question such representation.

III

It is further ordered that expert respondent Dr. Barry Bricklin shall promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment and that, for a period of 10 years from the date of service of this Order, expert respondent Dr. Barry Bricklin shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or weight control product, program, or service, and of his affiliation with a new business or employment in which his own duties and responsibilities involve the advertising, endorsing, promotion, offering for sale, sale, or distribution of any weight reduction or weight control product, program or service, with each such notice to include expert respondent Dr. Barry Bricklin's new business address and a statement of the nature of the business or employment in which expert respondent Dr. Barry Bricklin is newly engaged as well as a description of expert respondent Bricklin's duties and responsibilities in connection with the business or employment.

IV

It is further ordered that expert respondent Dr. Barry Bricklin, and his corporate successors or assigns, shall, within sixty (60) days after service of this Order, and also one (1) year thereafter, file with the Commission a report, in writing, setting forth in detail the manner and form in which he has complied with this Order.

Analysis Of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dr. Barry Bricklin.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charges that Dr. Barry Bricklin, a clinical psychologist, developed some of the basic principles upon which the Rotation diets were offered by others for sale to the public. Dr. Bricklin possesses an expertise in psychology, and in the psychological aspects of dieting, superior to that generally acquired by ordinary individuals. Dr. Bricklin had a continuing role in the marketing of the Rotation diets by providing advice and serving as the Director of the programs' Professional Advisory Board. He also endorsed the diets in advertisements in which he was depicted as an expert in dieting.

The complaint alleges that Dr. Bricklin authorized endorsements for which he was compensated that were false, misleading and unsubstantiated. He implied that consumers can eat unlimited quantities of food four days a week and, regardless of how much they eat on those four days, still lose substantial amounts of weight on the Rotation diets. Based on his expertise, Dr. Bricklin knew or should have known that such representations were false and misleading. He also made "usual" weight loss claims for the diets which implied that he had actually exercised his expertise in evaluating the diets by examining or testing the diets as someone else with a similar degree of expertise would do in order to support such weight loss claims. Dr. Bricklin is charged with failing to exercise his expertise by not possessing and relying on a reasonable basis for such weight loss claims.

The consent order contains various provisions designed to remedy the alleged advertising violations.

Part I of the order prohibits Dr. Bricklin from representing that consumers could eat as much food as they wanted and still lose weight without also disclosing that weight loss or maintenance of weight loss depends on a reduction of caloric intake over the long and short term. He is also prohibited from making claims about "usual" or "average" weight loss, or about the efficacy or performance of any weight reduction or weight control product or program without first relying on competent and reliable evidence as substantiation. This provision requires Dr. Bricklin to evaluate the product or program by examining or testing them at least as extensively as a similarly qualified expert would normally do to support conclusions presented in advertising.

Part II of the order requires Dr. Bricklin to maintain records of all substantiation related to the requirements of the order for three (3) years after the dissemination of any advertisements. These records may be inspected by Commission staff upon request.

Part III requires Dr. Bricklin to notify the Commission of the discontinuance of his present employment and of his affiliation with a new business or employment. It also requires that for a period of ten (10) years, he notify the Commission of each affiliation with a new business or employment whose activities, or his own duties include advertising, endorsing, promoting or selling any weight reduction or weight control product or program.

Part IV requires Dr. Bricklin to file a compliance report with the Commission sixty (60) days after the Order is served, and also one (1) year thereafter.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 85-16787 Filed 7-12-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. 1, Subchapter C

[Docket No. 85N-0043]

Parenteral Drug Products Containing Benzyl Alcohol or Other Antimicrobial Preservatives; Intent and Request for Information; Extension of Time for Comments

AGENCY: Food and Drug Administration.

ACTION: Extension of time for comments.

SUMMARY: The Food and Drug Administration (FDA) is extending the period for comments to September 1, 1985, for the notice of intent and request for information published in the Federal Register of May 15, 1985 (50 FR 20233) concerning parenteral drug products containing benzyl alcohol or other antimicrobial preservatives. This action responds to a request from the Parenteral Drug Association (PDA) to permit sufficient time for interested parties to fully develop their comments on this matter. This notice lets interested persons know that there has been an extension of time for submitting comments.

DATE: Comments by September 1, 1985.

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

FOR FURTHER INFORMATION CONTACT: Richard L. Arkin, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: On May 15, 1985, FDA published a notice of intent in the **Federal Register** (50 FR 20233) which announced that the agency is considering proposing a rule that would (1) prohibit the use of any antimicrobial preservative or, alternatively, certain specific antimicrobial preservatives in single-dose parenteral drug products for human use; and (2) require the labeling of multiple-dose parenteral drug products for human use which contain any antimicrobial preservative or certain specific antimicrobial preservatives to bear a caution about use in newborn infants. The notice stated that FDA is considering this action because of reports linking the use of parenteral drug products containing an antimicrobial preservative, particularly bacteriostatic water for injection and bacteriostatic sodium chloride injection preserved with benzyl alcohol, to morbidity and mortality among low-weight newborn infants. The notice also stated that its purpose is to (1) give interested persons an opportunity to submit comments on these possible actions; (2) request information and data on related issues and problems; and (3) discuss the agency's policy regarding required labeling warnings for bacteriostatic water for injection and bacteriostatic sodium chloride injection.

The agency has received a request from PDA to extend the comment period to September 1, 1985. This extension was requested to permit PDA sufficient time to develop their comments on this matter.

Because the May 15 notice was a request for comments on possible agency action as well as a request for information on the subject matter of the notice, the agency concludes that it is in the public interest to extend the comment period to permit full development of comprehensive comments as requested by PDA.

Accordingly, the date of receipt of comments concerning the notice of intent discussed above is extended to September 1, 1985.

Interested persons may, on or before September 1, 1985, submit to the Dockets Management Branch (address above) written comments concerning the notice of intent. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 10, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16677 Filed 7-10-85; 10:31 am]

BILLING CODE 4160-01-M

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21 CFR Part 357

[Docket No. 81N-0060]

Orally Administered Drug Products for the Treatment of Fever Blisters for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85-14440 beginning on page 25156 in the issue of Monday, June 17, 1985, make the following correction:

1. On page 25158, in the third column, in the first complete paragraph, in the second line, "1985" should read "1986".

BILLING CODE 1505-01-M

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21 CFR Part 357

[Docket No. 81N-0064]

Deodorant Drug Products for Internal Use for Over-the-Counter Human Use; Tentative Final Monograph

Correction

In FR Doc. 85-14439 beginning on page 25162 in the issue of Monday, June 17, 1985, make the following correction:

1. On page 25164, in the second column, under **References**, in reference (2), in the second line, "Tables" should read "Tablets".

BILLING CODE 1505-01-M

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21 CFR Parts 610 and 660

[Docket No. 84N-0205]

Additional Standards for Diagnostic Substances for Laboratory Tests; Proposed Amendment of Additional Standards for Reagent Red Blood Cells

Correction

In the issue of Monday, June 24, 1985, on page 25995 in the second column, a correction to FR Doc. 85-13979 appeared. The first correction was inaccurate and should have appeared as follows:

1. On page 24545, in the first column, in § 660.33, in the second line from the bottom, "$\bar{K}$, k" should read "K, $\bar{k}$".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Proposed Modifications to the Wyoming Permanent Regulatory Program; Extension of Comments

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

ACTION: Reopening of public comment period.

SUMMARY: OSM is reopening the period for review and comment on modified portions of the Wyoming permanent regulatory program. On October 23, 1984 (49 FR 42579), OSM announced a public comment period and procedures for requesting a public hearing on the substantive adequacy of proposed amendments to the Wyoming permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted by Wyoming on September 21, 1984. The amendments submitted by Wyoming are modifications to several definitions and to procedures applicable to surface coal mining operations concerning the areas of alluvial valley floors, valid existing rights, liability insurance and bonding. OSM is reopening the comment period to allow the public an opportunity to comment on supplemental material relating to the proposed amendment submitted by Wyoming on June 10, 1985.

DATE: Written comments not received on or before 4:00 p.m. on July 30, 1985 will not necessarily be considered.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Copies of the supplemental material submitted by Wyoming and other relevant documents are available for review at the Casper Field Office and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM Casper Field Office listed above or one of the following:

Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5124, 1100 "L" Street, NW., Washington, D.C. 20240

Wyoming Department of Environmental Quality, Land Quality Division, Herschler Office Building, 122 W. 25th Street, Cheyenne, Wyoming 82002

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644, Telephone: (307) 261-5824.

SUPPLEMENTARY INFORMATION: The general background on the permanent regulatory program, the State program approval process, the Wyoming program, and the conditional approval can be found in the Secretary's Findings and conditional approval published in the November 26, 1980 **Federal Register** (45 FR 78637-78634).

On September 21, 1984, the State of Wyoming submitted to OSM amendments to its approved permanent regulatory program. The first amendment proposed by the Wyoming Department of Environmental Quality revises the following definitions found at Chapter I of the Wyoming regulations: bond, essential hydrologic functions, material damage to the quantity or quality of water, subirrigation or flood irrigation agricultural activities, unconsolidated streamlaid deposits, undeveloped rangeland, substantially disturb and valid existing rights.

The second amendment proposed revisions to procedures applicable to surface coal mining operations. The State has proposed revisions to Chapter XIII of the Wyoming rules addressing: revised pre-application determinations relating to alluvial valley floors, bonding provisions, liability insurance requirements and evaluation criteria for valid existing rights determinations.

The October 23, 1984 **Federal Register** announced receipt of the modification by OSM as well as a public comment period. In that same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held.

On May 10, 1985, the State of Wyoming was notified of four issues that were identified as a result of OSM's review of the September 21, 1984 submission. The four deficiencies were as follows: Chapter I, inadequate definition on bond; Chapter I, incomplete definitions of individual soil horizons; Chapter I, inclusion of a definition of valid existing rights which has been remanded by the U.S. District Court; and Chapter XIII, use of an inappropriate bonding scheme.

On June 10, 1985, Wyoming submitted additional material in response to OSM's concerns of May 10, 1985, and to further clarify the proposed amendment submitted on September 21, 1984. Copies of the additional material are available in the OSM Administrative Record. OSM is reopening the comment period in order to allow the public an opportunity to review and comment on the additional material submitted to OSM by the State on June 10, 1985.

Specifically, OSM is seeking comment on whether the material submitted by Wyoming on June 10, 1985, together with the proposed amendment, satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17 and are no less effective than the Federal regulations.

List of Subjects in 30 CFR Part 950

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

Dated: July 3, 1985.

Arthur W. Abbs,

Acting Assistant Director, Program Operations and Inspection.

[FR Doc. 85-16712 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGO9-85-10]

Special Anchorage Area; Niagara River, Youngstown, NY

Correction

In FR Doc. 85-16023 beginning on page 27623 in the issue of Friday, July 5, 1985, make the following correction:

§ 110.85 [Corrected]

On page 27624, in the second column, in §110.85(a), in the eleventh line, "43°4'15.5" should read "43°14'15.5".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

Revision of Patent Fees; Correction

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule on the revision of patent fees that appears at page 25896 in the **Federal Register** of Friday, June 21, 1985 (50 FR 25896). This action is necessary to correct a typographical error.

DATES: Comments on the proposed rule must be submitted on or before July 18, 1985; a public hearing will be held on July 18, 1985, at 9:00 a.m. Requests to present oral testimony should be received on or before July 15, 1985.

ADDRESS: Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, Room CP3 11D27. The hearing will be held in Room 328, on the 3rd floor of Building 2, Crystal Mall, located at 1921 Jefferson Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz at (703) 557-1610.

The following correction is made in FR Doc. 85-15156 appearing on 25896 in the issue of June 21, 1985:

1. On page 25896, in the first column, in the first complete paragraph, in the third line from the end of the paragraph, "the estimated cost" should read, "the estimated average cost."

Dated: July 10, 1985.

Donald J. Quigg,

Acting Commissioner of Patents and Trademarks.

[FR Doc. 85-16807 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-16-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2858-4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Ohio State Implementation Plan (SIP) for ozone for the Monarch Marking Systems plant in Montgomery County, Ohio. This proposed revision consists of an emission reduction plan (bubble) which will result in a decrease in both the annual and daily allowable volatile organic compound (VOC) emissions at this facility.

USEPA's proposed action is based upon a revision request and technical support documentation which was submitted by the State.

DATE: Comments on this revision and on the proposed USEPA action must be received by August 14, 1985.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Debra Marcantonio, at (312) 886-6088, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886-6088.

SUPPLEMENTARY INFORMATION: On September 25, 1984, the Ohio Environmental Protection Agency (OEPA), submitted a revision to its ozone SIP for the Monarch Marking Systems plant. This facility is located in Montgomery County, an urban nonattainment area for ozone. Ohio's ozone SIP for this county was approved on October 31, 1980 (45 FR 72122), and on June 29, 1982 (47 FR 28097).

The SIP revision includes an alternative emission reduction plan (bubble) for three adhesive coater/laminators at the Monarch Marking Systems plant. USEPA compared the revision with USEPA's Proposed Emissions Trading Policy Statement, which was published in the **Federal Register** on April 7, 1982 (47 FR 15076). This policy statement sets forth general principles for creation, banking, and use of emission reduction credits and encourages the use of emission trading to achieve more flexible, rapid, and efficient attainment of the NAAQS. The April 7, 1982, statement noted that, until USEPA takes final action on its policy statement, State actions involving emission trades would be evaluated under the provisions set forth in the proposed statement.

Under the 1982 statement, the appropriate trading baseline for nonattainment areas having an adequate attainment demonstration is the amount of emissions allowed by the USEPA-approved SIP, provided the use of that baseline does not undermine the demonstration of attainment that USEPA approved for the area in question. Montgomery County is such an area for ozone.

The Monarch bubble used the applicable SIP limit as the trading baseline. The plant is currently involved in the manufacturing of pressure sensitive labels and labeling machines. The coating operations associated with this emission reduction program are currently subject to Ohio Administrative Code (OAC) Rule 3745-21-09(F) [2.9 pounds volatile organic compounds (VOC) per gallon of coating excluding water], which USEPA approved into the SIP on October 31, 1984 (45 FR 72122).

Based on extensive research, Monarch has replaced several solvent-based adhesives used at P009 with 100% solid hot melt adhesives now used at K002 and K003. These two hot melt laminators now emit zero VOC emissions. However, Monarch was unsuccessful in converting all of the solvent-based adhesives used at laminator K001 to high solid and/or water-borne adhesives. Therefore, Ohio requested that this bubble revision be approved. This revision will allow the plant to use the emission reductions (beyond the SIP limit) obtained from the replacement of P009 with the two hot melt laminators to offset increased emissions (above the SIP allowable) at laminator K001.

As shown by the table below, the difference between the current SIP (RACT) allowable emissions and the proposed allowable emissions from K001 and P009 (or K002 and K003 after the replacement) represents a decrease in annual allowable VOC emissions of 79.7 tons per year. These emission reductions from P009 (109 tons/yr) represents over three times the emission reduction credits needed to allow K001 to operate at its current level above the SIP limit.

As noted earlier, for USEPA to allow use of the applicable SIP limit as the trading baseline, that baseline must not undermine the USEPA-approved attainment demonstration. In the demonstration that USEPA approved for Montgomery County, Ohio, the State assumed that the total VOC emissions from Monarch would be reduced to 5 tons per year (TPY). This is approximately 39 TPY lower than the emissions required of K001 under the SIP limit and 68 TPY lower than the emissions permitted for the affected lines under the bubble. Thus, without some adjustment to the demonstration, the use of the SIP limit as the baseline would permit greater emissions than assumed in the demonstration.

However, the demonstration also assumed that these and other reductions would produce a margin of reductions that could accommodate emissions from several new sources and thereby remove the need to offset such new emissions. The State has agreed to reduce this growth margin by the difference between the 5 TPY that the State assumed would be emitted and the 73 TPY that the bubble will allow from K001 and P009's replacements, K002 and K003 (i.e., by 68 TPY).

With this reduction in the area's growth margin, the total emissions assumed in the demonstration to occur in Montgomery County will remain the same and the bubble's reliance on the applicable SIP limit as the trading baseline will not undermine the demonstration. For this reason, USEPA believes that, with this adjustment to the demonstration, the Monarch bubble will not interfere with timely attainment and maintenance of the ozone standard in Montgomery County.

MONARCH MARKING SYSTEMS

Laminators OEPA source number	Current SIP limitation lbs of VOC per gallon/lbs per day/tons per yr.	Bubble Allowable lbs of VOC per day/tons per year	Emission reductions or emissions in excess of the SIP lbs per day/ton per year
K001	[1] 2.9/395/43.7	[2] 660/73	+265/+29.3
P009 (now replaced with K002 and K003)	[3] 2.9/838/109	[4]	-838/-109
Total	2.9/1,233/152.7	660/73	[5] -573/-79.7

[1] The 1977 RACT allowable was 80 tons per year. 43.7 tons per year represents the current RACT allowable based on current production rates 395 lbs/day is based upon maximum daily production.

[2] In addition, the source cannot exceed 3.83 pounds of VOC per gallon of coating employed, excluding water, as calculated on a yearly volume-weighted average.

[3] These limits are no longer applicable since the source was shutdown.

[4] No limit but the technology produces zero VOC emission.

[5] This bubble will result in a decrease in the SIP allowable emissions of 79.7 tons of VOC per year. In addition, the actual emissions have been reduced from 640 tons of VOC per year in 1979 to 73 tons per year in 1983.

The State of Ohio has issued a variance for source K001 and permits for sources K002 and K003. These variances and permits contain the emission limits proposed as part of this bubble. In addition, they outline daily recordkeeping requirements and quarterly reporting requirements.

Although the variances and permits each expire three years after final approval by USEPA, the emission limitations and other requirements contained therein will, through renewal of the variances and permits, remain the enforceable SIP beyond the expiration dates under State law. USEPA is specifically proposing to approve not only the permits and variances but also the emission limitations and other permit requirements mentioned above, in advance of their inclusion in renewal permits and variances.

USEPA is proposing to approve this revision to the ozone SIP for the Monarch Marking Systems plant because this revision reduces the total pounds of allowable VOC for the paper coating lines on a daily basis. The annual emission limitation adopted by Ohio represents additional limitations on source operation consistent with the technical basis of the attainment demonstration for the Dayton urbanized area.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Ozone, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7642.

Dated: March 28, 1985.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 85–16734 Filed 7–12–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-10-FRL-2859-8]

Approval and Promulgation of State Implementation Plan; Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking addresses the State Implementation Plan (SIP) revision submitted on September 27, 1984, by the State of Washington Department of Ecology (WDOE) pursuant to the requirements of Part D of the 1977 Clean Air Act (hereinafter referred to as the Act). In today's action EPA is proposing to approve the addition of an inspection and maintenance (I/M) program to the existing plan because this addition will strengthen the control requirement contained in the SIP. The program is scheduled is to start on July 1, 1985, and will be tied to vehicle registration. Upon final approval by EPA, the Spokane I/M program will become a federally enforceable part of the SIP as required by the Act.

DATE: Comments must be postmarked on or before August 14, 1985.

Comments should be addressed to: Laurie M. Karl, Air Programs Branch M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

ADDRESSES: Copies of the materials submitted to EPA may be examined during normal business hours at:

Air Programs Branch (10A–85–9), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101

State of Washington, Department of Ecology, 4224 6th Avenue, SE., Rowe Six, Building # 4, Lacey, Washington 98504

State of Washington, Department of Ecology, North 4601 Monroe, Suite 100, Spokane, Washington 99205

FOR FURTHER INFORMATION CONTACT: Loren C. McPhillips, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone No. (206) 442–4233, (FTS) 399–4233.

SUPPLEMENTARY INFORMATION:

I. Background

In 1979 the Spokane Regional Planning Conference prepared a carbon monoxide (CO) attainment strategy for the greater Spokane area as required by the Act. That plan was approved by EPA on March 22, 1982 (47 FR 12166). Basically, the plan required the expeditious implementation of several measures including transit improvements and a parking ban. These measures were projected to bring the Spokane area into attainment prior to December 31, 1982. The plan also included a provision for the implementation of an I/M program contingent upon attainment of the CO standard by the end of 1982.

Air quality monitoring data collected in 1983 and 1984 clearly demonstrated that, in spite of the implementation of the adopted control strategies, the Spokane area did not attain the CO standards as projected. According to State of Washington legislation, the state rules and regulations for I/M, and the contingency provision contained in the original SIP, an I/M program is now required in the Spokane area. After conducting a series of public hearings, WDOE proposed and adopted the specific language necessary to implement an I/M program in Spokane in order to fulfill these requirements.

II. I/M Program Description

The I/M program in Spokane will be identical to the one in Seattle. Vehicles that are registered in the identified zip codes will have to successfully pass an emission test or receive a waiver in order to be registered by the State.

The mandatory I/M program will start on July 1, 1985, and will be run by a local contractor. WDOE will be responsible for the quality assurance aspects of the program. The program design meets the EPA requirements for program effectiveness and will be enforced through vehicle registration. EPA is taking this action because it strengthens the control requirements contained in the SIP. A detailed program description is contained in the SIP and can be reviewed at the locations mentioned in the "**ADDRESSES**" section.

III. Proposed Rulemaking Action

EPA is proposing to approve the addition of a mandatory vehicular inspection and maintenance program to the current CO plan for the Spokane area. This proposed approval is based on review of the SIP revision submitted by WDOE to EPA on September 27, 1984, and the technical support document submitted to EPA by WDOE on January 11, 1985, and a technical support document created by EPA on April 4, 1985.

Interested parties are invited to comment on all aspects of this proposed approval of the Washington SIP revision. Comments should be submitted, preferably in triplicate, to the address listed in the front of this notice. Public comments postmarked by August 14, 1985 will be considered in any final action EPA takes on this proposal.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under sections 110 and 172 of the Act will not have significant impact on a substantial number of small entities (46 FR 8709, January 27, 1981).

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

Authority: 42 U.S.C. 7401–7642.

Dated: May 17, 1985.

Ernesta B. Barnes,

Regional Administrator.

[FR Doc 85-16773 Filed 7-12-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Rulemaking Petition

AGENCY: National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

ACTION: Denial of rulemaking petition.

SUMMARY: This notice denies a petition filed by Mr. Michael R. Morrison to establish a Federal motor vehicle safety standard requiring vehicles to maintain structural integrity of the frame and to remain free of corrosion for at least 12 years after the first sale. The petition relates the history of Mr. Morrison's corrosion problems with his 1978 Datsun 280Z, but contains no information indicating an industry-wide problem relating to motor vehicle safety. In 1980, the agency denied a similar rulemaking petition by Fiat Motors of North America, Inc., because vehicle corrosion did not appear to be a significant safety problem for the automobile industry as a whole. Current data available to the agency still indicate that vehicle corrosion is not a significant safety problem for the automobile industry.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: Mr. Morrison filed a petition on January 30, 1985, requesting the agency to establish a Federal motor vehicle safety standard requiring motor vehicles to maintain structural integrity and to remain free from corrosion for at least 12 years after the first sale. The petitioner related the history of corrosion problems with his own automobile, a 1978 Datsun 280Z, and stated that rust is evident on the frame and undercarriage. He also said that automobile repair shops have told him that corrosion is a recognized problem with his year, make, and model of vehicle, as well as with earlier model years. No supporting data were submitted to show that an industry-wide problem with vehicle corrosion exists which could affect motor vehicle safety and could provide the basis for proposing a safety standard.

This rulemaking petition was submitted in conjunction with a petition to conduct an investigation of corrosion and, if justified, to order the recall and remedy of all 1978 Datsun 280Z automobiles. NHTSA has denied this petition. First, no data were submitted to support the finding that a defect related to motor vehicle safety existed. Second, NHTSA has investigated similar models of 1971–73 and 1974–75 Datsun automobiles for alleged front undercarriage rust. This investigation was closed in September 1983 with the following conclusion: "There is no engineering defect with safety implications associated with corrosion of the front undercarriage present in the subject vehicles." Third, a review of the consumer complaint files revealed only three reports of undercarriage corrosion in Datsun 280Z vehicles, two 1977 models and one 1978 model. Neither report involved a front suspension collapse or separation and neither referred to an accident.

In 1980, the agency denied a similar rulemaking petition by Fiat Motors of North America, Inc., because vehicle corrosion did not appear to be a significant safety problem for the automobile industry as a whole (45 FR 13248). The agency treated the Fiat petition as seeking rulemaking to cover structural rust in vehicles generally. Structural rust refers to rust of unibody undercarriages, vehicle chassis, and floor pans in the area of seat belt mountings and driver's seats. The Morrison petition also requests rulemaking concerning general structural rust.

Before deciding to deny Fiat's petition, the agency consulted a wide range of sources to gather information on the safety effects of rust and corrosion. NHTSA requested Indiana University to search its accident files collected as part of a study into the causes of accidents. The analysis showed that rust and corrosion may have caused three out of 2,258 accidents. However, corrosion was considered a certain cause of an accient in only one case which involved corrosion of the electrical system. The University of North Carolina, at NHTSA's request, searched police reports of all accidents in North Carolina for a part of 1971 and all of 1973 through 1978. A total of 772,816 police reports were examined. Rust or corrosion was listed as a possible cause of the accident in only two cases.

Finally, before issuing a decision on the Fiat petition, NHTSA's Office of Defect Investigations searched its files for all consumer letters received by this agency that pertain to rust or corrosion problems. A total of 2,726 such letters were found and reviewed. Of this total, there were 338 complaints of structural rust. Based on an average population of about 100 million cars at any given time, these 338 complaints represent approximately one complaint for every 300,000 cars sold. Stated another way, owners complained about structural rust in 0.0003 percent of the vehicles.

Upon receiving the Morrison petition, the Office of Defect Investigations prepared a list of consumer complaints received after the agency denied the Fiat petition in 1980. The list showed that 2,214 complaints concern some type of rust or corrosion. Of this total, 91 complaints appear to indicate some degree of structural rust. Using an average vehicle population of 100 million cars, these 91 complaints represent approximately one complaint for every one million vehicles sold. The agency recognizes the limitations inherent in using raw consumer complaint data. However, the agency believes that these data indicate that structural rust may be less of a problem now than it was prior to 1980. There is no evidence to suggest that the problem has increased. The agency's examination of the data suggests again that structural rust is not a widespread problem, but, instead, occurs very infrequently.

In addition, most domestic and foreign manufacturers of automobiles currently sold in the United States cover vehicle corrosion in their warranties for a period ranging from two years up to five or more years. Given the minimal safety problem shown in current data and the corrosion resistance warranties offered by automobile manufacturers, this appears to be an appropriate area in which to allow the marketplace to function without governmental intervention. If later data suggest that the problem has become widespread, the government could then take appropriate regulatory steps.

Based on the foregoing, Mr. Morrison's petition for initiation of a rulemaking proceeding to promulgate a safety standard regarding automobile corrosion is denied.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on July 9, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-16724 Filed 7-10-85; 3:08 pm]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Federal Administrative Procedure Sourcebook

The Office of Chairman of the Administrative Conference of the United States announces the publication of its *Federal Administrative Procedure Sourcebook*. The *Sourcebook* in intended to serve as a basic introduction and reference book for agency personnel (lawyers and nonlawyers), practicing attorneys, researchers in administrative law or public administration, and anyone else who needs to know about most important procedural statutes affecting federal agencies. It discusses briefly each stutute's purpose, operation, legislative history, relevant case law, implementing regulations and bibliographical resources. The 900-page *Sourcebook* contains the full text of each law, citations, relevant executive orders and interpretive materials.

The fifteen statutes covered include the Administrative Procedure Act, Freedom of Information Act, Ethics in Government Act, Federal Tort Claims Act, Government in the Sunshine Act, Claims and Debt Collection Acts, Equal Access to Justice Act, Privacy Act, Contract Disputes Act, and National Environmental Policy Act. Among its interpretive materials are the *Attorney General's Manual on the Administrative Procedure Act*, the Department of Justice's *Short Guide to the Freedom of Information Act*, and numerous model rules from Justice, OMB, GAO, and other lead agencies.

The Office of the Chairman has a limited supply of copies for distribution to federal agencies and others who have a special need or interest. To request a coopy, write or telephone the Administrative Conference, 2120 L Street, NW., Suite 500, Washington, D.C. 20037, (202) 254-7065. Additional copies may be purchased from the Government Printing Office.

Richard K. Berg,
General Counsel.
July 10, 1985.

[FR Doc. 85-16716 Filed 7-12-85; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of the Performance Review Board; Addition

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document amends the list of Performance Review Board members published June 18, 1984, 49 FR 24910, as amended November 21, 1984, 49 FR 45889, and March 14, 1983, 50 FR 10292.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street & Independence Avenue, SW., Washington, DC 20250 (202-447-6905).

The membership of the U.S. Department of Agriculture's Performance Review Board is amended by adding the name of Robert L. Thompson and Wilson Scaling.

John R. Block,
Secretary.
July 9, 1985.

[FR Doc. 85-16699 Filed 7-12-85; 8:45 am]
BILLING CODE 3410-01-M

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Office of Grants and Program Systems announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.

Date: August 8-9, 1985

Time: 8:15 a.m.-4:30 p.m., August 8, 1985, 8:30 a.m.-10:00 p.m., August 9, 1985

Place: The Governors Court Hotel, 1776 Grant Street Denver, Colorado

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will meet with the Joint Council on Food and Agricultural Sciences to examine issues associated with increasing public/private sector interaction and discuss system responses to Science and Education priorities.

Contact person for agenda and more information: Marshall Tarkington, National Agricultural Research and Extension Users Advisory Board; Room 316-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447-3684.

Done in Washigton, D.C., this 8th day of July 1985.

Marshall Tarkington,
Executive Secretary.

[FR Doc. 85-16761 Filed 7-12-85; 8:45 am]
BILLING CODE 3410-MT-M

DEPARTMENT OF COMMERCE

International Trade Administration

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Regents of the University of California et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be reviewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No. 84–293. Applicant: Regents of the University of California, Riverside, CA 92521. Instrument: Electromagnetic Soil Conduct Meter, Model EM 38. Date of Denial Without Prejudice To Resubmission: February 28, 1985.

Docket No. 85–010. Applicant: University of Rochester, Rochester, NY 14627. Instrument: Carbon Dioxide Laser with Power Supply, Model GN–802–GP/GE. Date of Denial Without Prejudice to Resubmission: April 18, 1985.

Docket No. 85–029. Applicant: University of Minnesota, Minneapolis, MN 55414–2196. Instrument: Anemometer. Date of Denial Without Prejudice to Resubmission: February 28, 1985.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–16729 Filed 7–12–85; 8:45 am]

BILLING CODE 3510-DS-M

[A–122–501]

Rock Salt From Canada: Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that rock salt from Canada is being, or is likely to be, sold in the United States at less tha fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation on all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by September 20, 1985.

EFFECTIVE DATE: July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Mary J. Jenkins, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377–176.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminary determined that rock salt from Canada, except that sold by Potash Company of America, Inc., is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673b(b)) of the Tariff Act of 1930, as amended (the Act). The margins preliminarily found for the companies investigated are listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by September 20, 1985.

Case History

On January 28, 1985, we received a petition filed by the International Salt Company, on behalf of the U.S. industry producing rock salt. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of rock salt from Canada are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on February 19, 1985 (50 FR 7808). On March 20, 1985 (50 FR 11257), the ITC found that there is a reasonable indication that imports of rock salt from Canada are materially injuring, or are threatening material injury to, a United States industry.

The petition alleged that several Canadian companies produced rock salt for export to the United States. We found that Domtar, Inc. and Morton Thiokol, Inc. (Morton) accounted for more than 70 percent of imports to the United States during the period of investigation. Questionnaires were presented to counsel representating both companies on March 12, 1985. We received responses from Domtar, Inc. and Morton on April 30, 1985, and supplemental responses on various dates. On May 15, 1985, we received a voluntary response from counsel representing the Potash Company of America, Inc. (PCA).

Scope of Investigation

The product under investigation is rock salt, in bulk and packaged form, as currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 420.9400 and 420.9600, respectively.

Since the respondents produced and exported more than 70 percent of the rock salt from Canada during the period of investigation, we limited our investigation to them.

We investigated sales of rock salt from Canada during the period from August 1, 1984, to January 31, 1985.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of rock salt from Canada to represent the United States price for sales by Morton and PCA for the merchandise sold to unrelated purchasers prior to its importation into the United States. We calculated purchase price based on f.o.b. mine prices. For Morton, we made deductions where appropriate for freight and handling charges of rock salt after sale was made to customers. We did not deduct freight, maintenance and handling charges which were incurred prior to sale of the merchandise.

Exporter's sale price (ESP) was used to represent the United States price for Domtar and Morton's sales of rock salt to unrelated purchasers after importation of rock salt into the United States. We calculated ESP based on f.o.b. stockpile, and f.o.b. delivered sales prices. We made deductions where appropriate, for freight, U.S. duty and handling charges. For Morton and Domtar, we made deductions for credit cost and indirect selling expenses in the United States.

Both Domtar and Morton requested that we used weighted averages to compute United States price. We have computed determine United States price on a sale by sale basis. We preliminarily that neither the variation in the prices nor the number of price adjustments is sufficient to warrant the use of sampling or a weighted average to compute United States price.

Foreign Market Value

As provided in section 773(a)(1) of the Act, we used f.o.b. mine, f.o.b. stockpile, and f.o.b. delivered home market prices to unrelated home market purchasers by Domtar, Morton and PCA to determine foreign market value. In calculating foreign market value we made currency conversions from Canadian dollars to U.S. dollars using the certified quarterly exchange rate, in accordance with § 353.56(a)(1)(2) of the Commerce Regulations. For Domtar and Morton we made deductions where appropriate for freight and handling charges. In accordance with § 353.15(b) of the Commerce Regulations we made a circumstances of sale adjustment for differences in credit in the two markets for comparisons involving purchase price calculations. For ESP comparisons we deducted home market credit, and we made an offset to Domtar's indirect selling expenses up to the amount of indirect selling expenses in the United States. We did not offset indirect selling expenses for Morton because Morton submitted approximations of the indirect selling expenses and not actual expenses. Comparisons were made at the same level of trade in the United States and the home market. Domtar and Morton's charges for freight and handling of merchandise from their mine to their depot or stockpiles and maintenance expenses of the rock salt at their stockpile locations were not deducted where these charges were incurred prior to the sale of the merchandise.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of rock salt from Canada, except that sold by PCA, which are entered, or withdrawn from warehouse, for consumption, on or after the date of the publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturers	Dumping margins (percent)
Domtar, Inc	27.22
Morton Thiokol, Inc	7.97
Potash Co. of America	[1] 0.00
All other manufacturers/producers and exporters	17.65

[1] Excluded.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on August 23, 1985, at the United States Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 16, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

July 8, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-16726 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DS-M

[Case No. 626]

Piher Semiconductores, S.A.; Order Amending Temporary Denial of Export Privileges

In the matter of Piher Semiconductores, S.A., Avda San Julian, s/n Apartado Correos 177, Granallers (Barcelona), Spain.

As an amendment of the Order of February 25, 1982, 47 FR 9044 (March 3, 1982) Temporarily Denying Export Privileges, Piher International Corp. has been authorized to make certain exports to Canada, Singapore, and Hong Kong. Such authorization for Canada and Singapore was issued first in the Order of April 9, 1982, 47 FR 16819 (April 20, 1982), and has been extended without interruption at several-month intervals, most recently by the Order of April 3, 1985, 50 FR 14002 (April 9, 1985). An authorization for certain exports to Hong Kong was added by the Order of June 19, 1985, 50 FR 26242 (June 25, 1985).

At the same time that Piher International Corp. first applied for its authorization for Canada and Singapore, it also moved that it be deleted from the list of related parties named in Paragraph III of the Order of February 25, 1982. Consideration of that motion is still continuing. Each authorization for certain exports to Canada, Singapore, and Hong Kong provided that Piher International Corp. could apply for an extension thereof if serous economic hardship would be caused by a failure of such extension coupled with a continuing consideration of its motion for its deletion from the list of related parties.

Piher International Corp. has now applied for an extension of its authorization to make certain exports to Canada, Singapore, and Hong Kong, asserting that failure to obtain the extension will entail serious economic hardship.

Based on the representations made by Piher International Corp., I find that its application for an extension of its authorization to make certain exports is justified, and that granting this extension will not jeopardize the purpose of the Order of February 25, 1982.

Accordingly, it is hereby ordered that the Order of February 25, 1982 is further amended by excepting, from its denial of export privileges, Piher International Corp., with addresses at 903 Feehanville Drive, Mt. Prospect, Illinois 60056, and at Post Office Box 91969, Chicago, Illinois 60680, insofar as Piher International Corp. exports variable resistors and potentiometers to its customers in Canada, Singapore, and Hong Kong in fulfillment of shipments scheduled through September 1985 in the documents filed by Piher International Corp. in support of its Application for this extension and in support of its Application for the Order of June 19, 1985, provided all such exports are G-DEST under the Export Administration Regulations (15 CFR Parts 368-399

(1984)). Piher International Corp. may apply for an extension of this Amendment to shipments scheduled after September 1985 should a continuing consideration of its aforesaid motion for its deletion from the list of related parties entail serious economic hardship if such an extension is not issued.

This Amendment of the Order is effective July 1, 1985.

Dated: July 8, 1985.

Thomas W. Hoya,

Hearing Commissioner.

[FR Doc. 85-16725 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Stephen W. Mitchell a.k.a. Lee Stevens (P364)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name Stephen W. Mitchell, AKA Lee Stevens.

b. Address 15 Amity Place, Staten Island, New York 10303.

2. Type of Permit: Public Display/Traveling Show.

3. Name and Number of Marine Mammals: California Sea Lion (*Zalophus californianus*) 3.

4. Type of Take: Captive Maintenance

5. Location of Activity: Present Stock of Beached/Stranded Rehabilitated

6. Period of Activity: one (1) year

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northeast Region 14 Elm Street, Federal Building, Gloucester, Massachusetts.

Regional Director, National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, Florida.

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California.

Dated: July 8, 1985

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16218 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

The North Pacific Fishery Management Council will convene a public meeting, August 12-14, 1985, at the Alyeska Resort in Girdwood, South of Anchorage, at 2 p.m. The Council will discuss how to revise the Gulf of Alaska Groundfish Fishery Management Plan to increase the Council's management flexibility and responsiveness to the rapidly evolving fisheries in the Gulf. Also the Council will discuss specific objectives and strategies for the Gulf groundfish fisheries.

The Council's Permit Review Committee will meet August 15-16, at Alyeska, to review public comments to the Council's proposed policy on the review of joint ventures and allocations and the conditioning of permits. For further information, contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Dated: July 9, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16720 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

Regional Fishery Management Councils; Public Meeting

The Chairpersons and Executive Directors of the eight Regional Fishery Management Councils (Councils) and representatives of the National Marine Fisheries Service (NMFS) will convene a public meeting at the Alderbrook Inn, Union, WA; July 29-31, 1985. The Councils will consider draft issues and discussion papers prepared by the Council/NOAA Task Group as part of its evaluation of the effectiveness of the present fishery management process in achieving the goals of the Magnuson Act. Other matters to be considered include adequacy of NMFS resource assessment and data acquisition activities in support of Council planning and management responsibilities, Magnuson Act amendments, Council and NMFS FY86 budgets, and other matters.

For further information, contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: July 10, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-16721 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Thomas F. Albert

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222).

1. Applicant:

a. Name: Dr. Thomas F. Albert (P282A), Senior Scientist.

b. Address: Department of Conservation & Environmental Protection, North Slope Borough, Box 69, Barrow, Alaska 99723.

2. Type of Permit: Scientific Research and Scientific Purposes.

3. Name and Number of Marine Mammals: bowhead whale (*Balaena mysticetus*) 60; gray whale (*Eschrichtius robustus*) 15; beluga whale (*Delphinapterus leucas*) 30; bearded seal

(*Erignathus barbatus*) 30; ringed seal (*Phoca hispida*) 100.

4. Type of Take: Specimen materials will be collected from dead stranded or subsistence harvested animals.

5. Location of Activity: Alaska.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: July 8, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation.

[FR Doc. 85-16768 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; NMFS, Northeast Fisheries Center (P77#14)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name, NMFS, Northeast Fisheries Center.

b. Address, Woods Hole, Massachusetts 02543.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Unspecified Marine Mammals.

4. Type of Take: To collect specimen materials from, and to tag unspecified Marine Mammals taken incidentally in legal fishing operations and in joint venture fisheries within the Fishery Conservation Zone.

5. Location of Activity: Atlantic Ocean and Gulf of Mexico.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.;

Regional Director, Southeast Region National Marine Fisheries Service, Koger Boulevard, St. Petersburg, Florida 33702; and

Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930-3799.

Dated: July 8, 1985.

Richard B. Roe, *Director,*

Office of Protected Species and Habitat Conservation.

[FR Doc. 85-16769 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Charges for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

July 9, 1985.

The Chairman of the Committee for the Implementation of textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued a directive to the Commissioner of Customs implementing the terms of an amendment to the bilateral agreement between the Governments of the United States and the Republic of Korea, described below. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, notes have been exchanged further amending the bilateral agreement to charge an overshipment of man-made fiber luggage in Category 670pt. (only T.S.U.S.A. numbers 706.4144 and 706.4152), which occurred during the 1984 agreement year, over a period of three years in increments of 256,990 pounds per year during the 1985, 1986 and 1987 agreement years. With the application of 3.5 percent swing, the 1984 luggage limit is 26,496,000 pounds.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the *Tariff Schedules of the United States Annotated (1985)*.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16727 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DR-M

Names of Officials Authorized To Issue Export Visas for Certain Cotton, Wool, and Man-made Fiber Textile Products Produced or Manufactured in the Republic of Maldives

July 9, 1985.

Under the terms of the cotton, wool, and man-made fiber apparel export visa arrangement of December 29, 1981 and March 22, 1982, between the Governments of the United States and the Republic of Maldives, the Government of the Republic of Maldives has notified the United States Government that six officials are authorized to issue export visas for the textile and apparel products subject to the terms of the bilateral agreement. The purpose of this notice is to advise the public of the names of such officials. The following is a complete list of officials of the Government of the Republic of Maldives who are currently authorized to issue export visas:

Mohamed Zahir
Mohamed Shareef
Hassan Adam
Ali Ibrahim
Ahmed Firaq
Raziyya Mohamed

Walter C. Lenahan,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-16728 Filed 7-12-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Education Benefits Board of Actuaries; Meeting

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: A meeting of the board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et. sep.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill. Persons desiring to (1) attend the DoD Education Benefits Board of Actuaries meeting or (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Ms. Kathy Greenstreet at 696-5793 by August 5, 1985. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 12, 1985, 9:00 a.m. to 4:00 p.m.

ADDRESS: Room 1E801, the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Toni Hustead, Executive Secretary, Defense Manpower Data Center, 4th floor, 1600 Wilson Boulevard, Arlington, VA 22209 (202) 696-5869.

Dated: July 10, 1985.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-16701 Filed 7-12-85; 8:45 am]

BILLING CODE 3810-01-M

Armed Forces Epidemiological Board; Open Meeting

1. In accordance with section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board Subcommittee on Disease Control.

Date of Meeting: 9 August 1985.

Time: 0900-1600 hours.

Place: Conference Room 3092, Walter Reed Army Institute of Research, Walter Reed Army Medical Center, Washington, DC.

Proposed Agenda: To review policies relative to HTLV-III antibody positivity.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, DASG-AFEB, Room 2D455, Pentagon, Washington, DC 20310-2300, (202)695-9115.

Dated: July 8, 1985.

Robert F. Nikolewski,
Col, USAF, BSC, Executive Secretary.

[FR Doc. 85-16772 Filed 7-12-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Conduct of Employees

Section 207(f), title 18, United States Code, authorizes the Secretary of Energy to waive the post-employment restrictions of subsection (a) of section 207, title 18, United States Code, to permit a former employee with outstanding qualifications in a scientific, technological, or other technical discipline to make appearances before or communications to the Government in connection with a particular matter which requires such qualifications where it has been determined that such a waiver would serve the national interest.

It has been established to my satisfaction that Donald M. Kerr, Jr., former Deputy Assistant Secretary for Energy Technology and Deputy Assistant Secretary for Defense Programs, has an outstanding and unique combination of a wide range of knowledge of both theoretical and applied physics and broad experience in management and administraiton of complex technological programs. I am further satisfied that it serves the national interest to permit him, in his capacity as Director of Los Alamos National Scientific Laboratory, to appear before and communicate with officials of the Department of Energy and other Government agencies with respect to administration of the Laboratory pursuant to contractual arrangements for its operation by the University of California, Dr. Kerr's current employer. I am satisfied that these activities are in a scientific or technological field and require the qualifications stated.

I have, therefore, waived the post-employment prohibitions of subsection (a) of section 207, title 18, United States Code (in consultation with the Director of the Office of Government Ethics), with respect to contact by Dr. Kerr with employees of the Department of Energy or other Government agencies to permit him, in his capacity as Director of Los Alamos National Scientific Laboratory, to undertake the stated activities on behalf of his current employer, the University of California.

Dated: June 25, 1985.

John S. Herrington,
Secretary of Energy.

[FR Doc. 85-16781 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); Restriction of Eligibility

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: DOE announces that it plans to award a Grant to Cornell University, School of Electrical Engineering in the amount of $99,000. The Statutory Authority authorizing the use of a grant award is Pub. L. 95-91, DOE Organization Act, and Pub. L. 93-577, Federal Non-Nuclear Energy Research and Development Act.

[Grant No. DE-FG03-85SF15784]

Scope of Project

Cornell University proposes to develop "A Posture Coordinating Strategy for Electrical Utility Systems".

A posture coordination strategy is the maneuvering of system control variables in a coordinated manner to achieve a desirable operating condition. System posture refers to the system generator/load set-point values, and the grid network configuration. There is no current research addressing the topic of a-priori maneuvering of system-set points for the purpose of achieving an optimal posture in anticipation of expected contingencies or threats to system integrity. As utility grid systems become more tightly interconnected, as transmission levels are stressed, there is a need for policy with respect to emergency operations. With the complexities that interconnected grid systems entail, it is imperative that strategies for coping with unforeseen demands upon systems be developed. The DOE is vitally interested in the methodology for coping with stresses on the system and the need to establish an equilibrium for utility load management and has determined that this award to Cornell University, School of Electrical Engineering on a restricted eligibility basis is appropriate.

FOR FURTHER INFORMATION CONTACT: Aundra Richards, U.S. Department of Energy, San Francisco Operations Office, Contracts Management Division, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, July 1, 1985.

Donald W. Pearman, Jr.,

Acting Manager.

[FR Doc. 85-16704 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 85-11-NG]

Dome Petroleum Corp.; Order Granting Blanket Authorization To Import Natural Gas for Spot or Short-Term Sales

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on July 2, 1985, the ERA Administrator issued an opinion and order authorizing Dome Petroleum Corporation (DOME) to import up to 50 Bcf of Canadian natural gas per year for short-term or spot market sales without separate ERA proceedings on individual transactions. The gas will be imported over a two-year term beginning on the date of first delivery. Quarterly reports on all short-term or spot sales are to be filed with the ERA.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas, Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9482.

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C. on July 3, 1985.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

[ERA Docket No. 85-11-NG; DOE/ERA Opinion and Order No. 85]

Dome Petroleum Corp.; Order Granting Blanket Authorization to Import Natural Gas From Canada

July 2, 1985.

I. Background

On May 1, 1985, Dome Petroleum Corporation (Dome) filed an application with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, for blanket authorization to import Canadian natural gas for short-term or spot market sales. The applicant requested blanket authority to import up to 50 Bcf per year of Canadian natural gas for a two-year period beginning on the date of first delivery. Dome is a North Dakota corporation and a wholly-owned subsidiary of Dome Petroleum Limited, a Canadian corporation.

Dome proposes to import the natural gas as a broker for U.S. purhasers and Canadian suppliers or as an importer on its own behalf for sale to U.S. purchasers. The imported gas would be supplied by various Canadian suppliers and sold on a short-term or spot market basis to U.S. purchasers, including industrial or agricultural users, electric utilities, pipelines, and distribution companies. Dome states that it intends to use existing facilities to transport the gas and expects that the majority of the short-term or spot market sales made to U.S. purchasers will be used to displace higher-priced energy supplies.

Under the blanket authority requested, Dome wants to be able to import the gas pursuant to individual spot sales contracts without a specific ERA regulatory proceeding and approval prior to execution of each spot sale contract. Dome proposes to report the details of each short-term or spot market sale made during each calendar quarter within 40 days following the close of the calendar quarter. The report would include import and sale prices, volumes, duration of the agreements, contract adjustment and take provisions, the Canadian suppliers, the U.S. purchasers, and a description of the markets served.

Dome maintains that the proposed import is in the public interest since the specific terms of each short-term or spot market sale will be freely negotiated and responsive to current market conditions for natural gas, and that efficient allocation of natural gas in the marketplace is thereby ensured.

II. Interventions and Comments

A notice of Dome's application was issued on May 10, 1985, inviting protests and motions to intervene to be filed by June 20, 1985.[1] Five motions to intervene were filed. Motions to intervene without comment were filed by the following companies: Northwest Pipeline Corporation, a potential transporter of Dome's spot market gas; Consolidated Gas Transmission Corporation, a potential competitor in markets that may be supplied with the spot market gas; Michigan Consolidated Gas Company, a potential customer for the spot market gas; and Northern Natural Gas Company, Division of InterNorth, Inc., a potential competitor and transporter of the gas.

While not opposing Dome's application, Pacific Gas Transmission Company (PGT), a potential competitor and transporter of the gas, urged in its motion to intervene that the ERA consider implementing some safeguards, beyond the proposed, periodic after-the-fact reporting system, to ensure that the interests of all gas consumers in the markets affected are protected. PGT expressed concern that without additional safeguards, market-oriented terms for long-term supplies favorable to gas consumers may be adversely affected. PGT stated that Dome's "blanket proposal," like those made in previous blanket authorization cases, did not provide specific information, such as contract terms, identity of buyers, and markets served, upon which its competitiveness could be judged.

There was no opposition to any of the motions to intervene, and no requests

[1] 50 FR 20923, May 21, 1985.

for further proceedings. This order grants intervention to all movants.

III. Decision

Dome's application has been reviewed to determine if it conforms with Section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there has been a finding that the import "will not be consistent with the public interest." [2] In making this finding, the ERA Administrator is guided by the statement of policy issued by the DOE relating to the regulation of natural gas imports.[3] Under this policy, the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

In its motion to intervene, PGT expressed concern that Dome's proposed after-the-fact periodic reporting of individual sales under the blanket authorization may not be an adequate safeguard to protect the interests of consumers in the markets affected. In particular, PGT wanted to assure that market-response terms for long-term supplies of natural gas are not adversely affected. PGT requested additional safeguards to protect the interests of gas consumers because the details of each spot market sale would be known until after the sale was consummated.

The ERA believes that the competitiveness of an import is of prime concern. The policy of this agency is to promote competition, and to foster the new and positive competitive forces which the applicant's import would bring to its marketplace. The ERA made a decision on PGT's concerns when it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation, Northwest Alaskan Pipline Company, and Tenngasco Exchange Corporation and LHC Pipeline Company.[4] In those orders, we found that there was no need for the government to protect long-term, firm imports against competition from short-term spot imports. Long-term suppliers have options available to meet such competition which they can exercise without government assistance or interference.

The ERA also noted in its prior orders in blanket import authorization cases that the nature of spot sales arrangements—as quick, short-term spot transactions—necessitates that if they are to be approved at all, they must be reviewed as a group on a blanket basis using information presented about the type of transaction and the circumstances under which such transactions would be undertaken.[5] The ERA determined in those cases that limiting the term of the authorization to two years, coupled with a requirement to report quarterly the details of each spot market sale consummated, would provide adequate and timely opportunity to review the impact of a blanket authorization for protection of the public interest. PGT has not presented any new evidence or arguments in this case to change that position. Therefore the ERA concludes that such safeguards will provide adequate protection in this case against unintended and unanticipated effects that might be inconsistent with the public interest.

The fact that each spot sale will be voluntarily negotiated, short-term and market responsive, as asserted in Dome's application, provides assurance that the transactions will be competitive, and in the public interest. Spot sales are designed to respond to a changing market and would not take place at all if the gas was not marketable, not competitive, and not needed.

As set forth in the gas import policy guidelines, the need for an import is recognized to be a function of its competitiveness. Under Dome's import proposal, the gas would not be sold on the spot market if it was not needed. No intervenor has challenged the need for the gas.

In evaluating short-term, spot arrangements in previous cases, the ERA has taken the position that security of supply is not an issue of significance.[6] Since Dome's imported gas would be sold to U.S. purchasers under the same type of short-term, spot arrangements, the ERA concludes that security of supply is not a significant issue in this case.

After taking into consideration all information in the record of this proceeding, I find that the authorization requested by Dome is not inconsistent with the public interest and should be granted.[7]

Order

For the reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. Dome Petroleum Corporation (Dome) is authorized to import up to 50 Bcf per year for a term of two years beginning on the date of first delivery.

B. Dome shall notify the ERA in writing of the date of the first delivery of gas authorized in Ordering Paragraph A within two weeks after deliveries begin.

C. Dome shall file with the ERA in the month following each calendar quarter, quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

D. The motions to intervene as set forth in this Opinion and Order, are hereby granted, subject to the administrative procedures in 10 CFR Part 590, provided that participation of the intervenors shall be limited to matters specifically set forth in their motions to intervene and not herein specifically denied, and that the admission of such intervenors shall not be construed as recognition that they might be aggrieved because of any order issued in these proceedings.

Issued in Washington, D.C., July 2, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-16779 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

[2] 15 U.S.C. 717b.

[3] 49 FR 6684, February 22, 1984.

[4] *See Cabot Energy Supply Corporation*, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1 ERA ¶ 70,124); *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 26, 1985 (1 ERA ¶ 70,585); and *Tenngasco Exchange Corporation and LHC Pipeline Company*, DOE/ERA Opinion and Order No. 80, issued May 6, 1985 (1 ERA ¶ 70,596).

[5] *Supra*, note 4.

[6] *Supra*, note 4.

[7] Because the proposed importation of natural gas will use existing facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

[ERA Docket No. 85-06-NG]

The U.S. Natural Gas Clearinghouse, Ltd.; Final Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on July 5, 1985, the ERA Administrator issued an opinion and order granting The U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) a blanket authorization to import natural gas from Canada for short-term or spot-market sales without separate ERA proceedings on individual transactions. The order authorizes Clearinghouse to import up to 1 Bcf of natural gas per day for a term of two years (up to 730 Bcf) beginning on the date of first delivery either as a broker for Canadian suppliers and U.S. purchasers or as an importer on its own behalf. The ERA is to be notified of the date of first delivery within two weeks after the occurrence. To facilitate evaluation of individual transactions, the order also requires Clearinghouse to file with the ERA quarterly reports of the details of each sale of the gas imported under this authorization.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

Robert J. Groner (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9482

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing) U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6667.

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

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

SUPPLEMENTARY INFORMATION:

[ERA Docket No. 85-06-NG; DOE/ERA Opinion and Order No. 86]

The U.S. Natural Gas Clearinghouse, Ltd.; Order Granting Authorization to Import Canadian Natural Gas for Short-Term and Spot Markets.

July 5, 1985.

I. Background

On February 27, 1985, The U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) filed with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), pursuant to Section 3 of the Natural Gas Act, an application for blanket authorization to import Canadian natural gas for short-term, spot sales.[1] The applicant requested blanket authority to import up to 1 Bcf of natural gas per day (up to a total of 1.46 Tcf over the entire term) for a term of four years beginning on the date of approval of its application. The applicant proposes to import gas from reliable Canadian producers pursuant to subsequently negotiated, individual short-term sales contracts without each being subjected to a specific ERA regulatory proceeding. The applicant requests authority to import for its own account as well as for the accounts of its Canadian producer/marketer clients and U. S. purchaser clients, acting as agent for sellers and purchasers.

II. Procedural History

On March 11, 1985, the ERA issued a notice of the application, inviting protests, motions to intervene and written comments by April 15, 1985.[2] Seventeen motions and notices to intervene were received by the ERA.[3] Three parties, ANR Pipeline Company (ANR), Mesa Petroleum Co. (Mesa), and Railroad Commission of Texas (RCT), protested the application. Four parties, ANR, Mesa, RCT, and Panhandle Eastern Pipe Line Company (Panhandle), requested additional procedures. Seven parties, ANR, Mesa, RCT, Niagara Mohawk Power Corporation (Niagara Mohawk), Pacific Gas Transmission Company (PGT), Panhandle, and Transcontinental Gas Pipe Line Corporation (Transco), made substantive comments.

ANR proposed that the ERA deny Clearinghouse's blanket authorization and require Clearinghouse to apply for specific authority for each proposed transaction. ANR requested full evidentiary hearings if the application is not denied. In addition, ANR suggested that if broad range, blanket or generic authorizations of spot imports are to be considered, a general rulemaking proceeding should be utilized.

Mesa protested the application because its approval would confer upon Clearinghouse the right to sell its Section 3 authorization. Mesa contended that such a brokering of Section 3 entitlements is impermissible under the statute and such fees paid in the brokering should not be a legitimate utility expense collectible in the cost of service of the purchasing customers. In the event that the ERA determines not to reject the Clearinghouse application, Mesa also requested that the ERA hold an evidentiary hearing.

The RCT protested the application and requested further procedures because it believed the Clearinghouse application provided insufficient information to enable it to be determined to be in the public interest, as required by section 3 of the Natural Gas Act.

Niagara Mohawk expressed concern that the information provided in the Clearinghouse application was too vague to support an evaluation. Niagara Mohawk also noted the substantial quantity of gas Clearinghouse sought to import and suggested that the ERA should consider the current excess deliverability of domestic gas which is causing market disorders.

PGT was concerned that the proposed after-the-fact periodic reporting to the ERA of individual transactions by Clearinghouse was not, by itself, an appropriate safeguard to assure protection of the interests of all gas consumers in the markets affected, particularly to ensure that such blanket imports do not adversely affect long-term gas supplies. PGT, noting the volume and term restrictions of the Canadian policy on spot market sales,[4] asked that the ERA consider limiting the term of the proposed project to two years and authorizing lessor volumes.

Panhandle stated that the Clearinghouse application does not present any of the concrete details or facts necessary for proper evaluation by participants or the ERA, and sought prior notice requirements for each particular transaction under any blanket authorization. Panhandle requested additional procedures to determine the details of potential Clearinghouse transactions, the compliance of such transactions with the DOE's policy guidelines, the impact of such transactions on existing long-term projects for importation of Canadian gas, and the procedural requirements necessary to make spot market imports consistent with the Natural Gas Act.

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[1] Clearinghouse is a Houston, Texas-based, limited partnership. The Gas Clearinghouse Operating Company is the general partner and the six limited partners are subsidiary corporations of the following natural gas pipelines: Colorado Interstate Gas Company, The Columbia Gas System, Inc., El Paso Natural Gas Company, Houston Natural Gas Corporation, Transco Energy Company, and United Energy Resources, Inc.

[2] 50 FR 10533, March 15, 1985.

[3] Intervenors are: Algonquin Gas Transmission Company; ANR Pipeline Company; CNG Development Company; CNG Producing Company; Consolidated Gas Transmission Corporation; El Paso Natural Gas Company; Mesa Petroleum Company; Niagara Mohawk Power Corporation; Northern Natural Gas Company, Division of InterNorth, Inc.; Northwest Pipeline Corportion; Pacific Gas Transmission Company; Pacific Interstate Transmission Company; Panhandle Eastern Pipe Line Company; Public Service Electric and Gas Company; Railroad Commission of Texas; Texas Eastern Transmission Corporation; and Transcontinental Gas Pipe Line Corporation.

[4] National Energy Board (NEB) Regulatory Procedures and Informa-Gas Export Orders (NEB File: 1537-1, dated October 2, 1984). NEB Part VI Regulations permit the Board to issue short-term orders for the export of natural gas up to a total of 106 Bcf for such orders in any 12-month period and a maximum term for any such order not to exceed 24 months commencing on November 1 of any year.

Transco expressed concern that the points of entry for requested imports were not identified in the application. To prevent the possibility that volumes of gas imported under the requested authorization would compete for available pipeline capacity, Transco suggested that any order issued in this docket be conditioned by assigning a lower priority for the transportation of short-term, interruptible imports than for firm import volumes through any point of entry facilities. Transco offered as an alternative to the Clearinghouse application a proposal for a generic blanket import program available to all that desire to import Canadian natural gas on a short-term or spot basis.

On May 13, 1985, after a review of the information in the record, the ERA issued a procedural order to all parties providing opportunity for comments on its proposal to limit approval of the applicant's blanket authorization to a term of two years and to a maximum volume of 730 Bcf during the two-year term, consistent with recent orders granting other blanket authorizations.[5] The order required comments to be filed and served on all parties by June 10, 1985, and responses to be filed and served by June 25, 1985. The order requested that the parties review the proposed restrictions on the term and volumes to be imported under this blanket arrangement and their earlier comments on the application. If any opposition to the restricted proposal continued, the order required the parties to restate that opposition in order for it to be taken into consideration in the final decision. The order provided that previously filed comments could be incorporated by reference and thus restated in any additional comments.

Only the applicant and four intervenors, RCT, Mesa, Panhandle, and Niagara Mohawk, submitted additional comments. No new issues were raised by the intervenors in their comments to the procedural order, nor did the intervenors making additional comments change their position from their previous comments on the application. The four intervenors stated that the modification of the import proposed by the ERA does not cure the lack of specific information needed to fully evaluate the application.

In its response, Clearinghouse stated that it did not oppose the ERA's decision to limit its blanket authorization to a period of two years. Clearinghouse requested that the ERA grant the authorization on the grounds that the proposed imports will clearly be competitive—asserting that if a particular spot sale of Canadian gas is priced too high, the markets will either continue buying from their current supplier or will buy from a Clearinghouse competitor offering lower-priced gas. Clearinghouse also responded that the intervenors' comments provided no basis for distinguishing its proposed import arrangement from the import arrangement approved by the ERA in *Tenngasco*,[6] in terms of flexibility granted and the ability to act as agent or principal in a particular situation.

III. Decision

The application filed by Clearinghouse has been evaluated in accordance with the Administrator's authority to determine if the proposed import arrangement meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [7] The Administrator is guided by the DOE's natural gas import policy guidelines.[8] Under these guidelines, the competitiveness of an import arrangement in the market served is the primary consideration for meeting the public interest test.

The parties intervening in this case raised a number of issues related to the competitiveness of the proposed import. However, most of those issues relate to concerns that imports made under the blanket authorization will be too competitive rather than not competitive in the markets served.

Niagara Mohawk, both in its original intervention and, by reference, in its comments in response to the procedural order, expressed concern that the ERA should evaluate whether the requested import authorization can be justified given the current excess of domestic deliverability of gas and the present market disorder. Niagara Mohawk contended that the ERA must consider the prevention of further market disruptions potentially caused by short-term, interruptible sales skimming the large industrial customers from present suppliers.

Niagara Mohawk's concern over justification for the new import authorization in a time of excess domestic deliverability gives the impression it wants to insulate its market from potential competition. Such concern may be normal for a supplier faced with the loss of customers. However, the DOE strongly supports the establishment of a spot market, and the competition such short-term, spot sales bring to the marketplace.[9] The addition of spot sales to a surplus market places downward pressure on prices and encourages pipelines and distributors to continue to renegotiate their arrangements to make them more competitive and market-responsive.

Mesa contended that the proposed import would give Clearinghouse the right to sell its section 3 authorization and that such a brokering of section 3 entitlements is impermissible under the Natural Gas Act. Mesa argues that approval of the proposed import would be an impermissible delegation of authority to Clearinghouse, which, acting as an agent, would determine which transactions meet the public interest standard of section 3.

The ERA, in granting authorizations which permit importers to act as agents, has not delegated any section 3 authority. Rather, the ERA has determined that a finding of public interest does not rely on whether title to the gas has been taken. The nature of the proposed transaction must be evaluated. Here, as in *Tenngasco*, the nature of spot sales arrangements—that each spot sale is voluntarily negotiated, short-term, and generally executed on an interruptible, best-efforts basis—provides assurance that such transactions will be consistent with the policy guidelines and in the public interest. Whether Clearinghouse takes title to the imported gas in a contract term not material to this consideration. As stated in the policy guidelines, "[t]he market, not government, should determine the price and other contract terms of imported gas." [10]

Niagara Mohawk, Mesa, RCT, and Panhandle expressed concern that there is not sufficient information on individual transactions in the application to ascertain that they are not inconsistent with the public interest. Spot market sales are quick, short-term

[5] *See Cabot Energy Supply Corporation*, DOE/ERA Opinion and Order No. 72, issued February 26, 1985 (1 ERA ¶ 70,124); *Northwest Alaskan Pipeline Company*, DOE/ERA Opinion and Order No. 73, issued February 28, 1985 (1 ERA ¶ 70,585); *Tenngasco Exchange Corporation and LHC Pipeline Company*, DOE/ERA Opinion and Order No. 80, issued May 6, 1985.

[6] *See supra* note 5.

[7] 15 U.S.C. 717b.

[8] 49 FR 6684, February 22, 1984.

[9] In *Increasing Competition in the Natural Gas Market; Second Report Required by Section 123 of the Natural Gas Policy Act of 1978*, submitted in January 1985, the DOE observed that an active spot market will allow the natural gas market to allocate risks efficiently and will help minimize price and supply fluctuations as the market moves from a tightly regulated environment toward fully competitive market conditions. *See* Summary, pp. S-1 and S-5, and Chapter 6, p. 75.

[10] 49 FR 6685, February 22, 1985.

transactions designed to adapt gas sales to changing market conditions. The series of spot sales transactions proposed by Clearinghouse can be evaluated and found to be in the public interest without knowing the precise terms of each sale, inasmuch as each sale is freely negotiated and would take place if the gas was marketable, competitively priced, and needed. It is not essential to know in advance the terms of each sale as long as the parameters of each sale are known. Establishment of a quarterly reporting requirement and limitation of the authorization to two years provide sufficient safeguards of the public interest in this type of arrangement.

Accordingly, the motions for further proceedings, including evidentiary hearings, to determine the details of specific proposed transactions in this proposed import are denied.

Panhandle and PGT, in its initial comments, expressed similar concerns. Both requested the ERA to consider what impacts short-term proposals have on the maintenance of competitive terms for long-term, firm supplies of Canadian gas in the markets which would be affected. Both requested the ERA to provide safeguards to assure protection of the interests of all gas consumers in the markets affected and not just the interests of a particular short-term buyer. Finally, both expressed concerns that the proposed quarterly report to be submitted by the applicants does not reserve to the ERA the ability to determine that the import policy guidelines will be satisfied in each import transaction.

The ERA made a decision on the concerns raised by Panhandle and PGT when it authorized the blanket import arrangements requested by Cabot Energy Supply Corporation, Northwest Alaskan Pipeline Company, Tenngasco Exchange Corporation and LHC Pipeline Company,[11] and Dome Petroleum Corporation.[12] In those orders we found there was no need to protect long-term, firm imports against competition from short-term, spot imports. Panhandle and PGT have not submitted any additional evidence or arguments which cause us to change this position. We continue to believe that such arrangements enhance competition in the marketplace and that quarterly reporting requirements adequately safeguard the public interest.

In sum, the ERA find that the parties opposing the import have failed to raise issues or present evidence which would support finding that the proposed or modified import arrangement is not competitive, or that would support disapproval of the authorization on other grounds. This modified version of the applicant's request for authorization represents an opportunity to test the use of imported natural gas for short-term, spot imports as a supplemental supply for the domestic spot market. Under this blanket import authority, Clearinghouse will be able to import, within fixed parameters, Canadian natural gas for subsequently executed individual short-term sales contracts negotiated in the competitive atmosphere of the domestic spot market. The ERA, through review of the contract sales information submitted by Clearinghouse in its required quarterly reports, will be able to evaluate the impact of the individual transactions on the markets served.

Moreover, the policy guidelines recognize that the need for an import is a function of competitiveness. Under the proposed import, Clearinghouse customers will only purchase gas to the extent they need such volumes. The security of the import supply is not a major issue because the gas is to be purchased on a short-term, interruptible basis.

After taking into consideration all the information in the record of this proceeding, I find that granting the blanket authorization to import up to 730 Bcf of Canadian gas over a term of two years for sale in the domestic short-term, spot market is not inconsistent with the public interest.[13]

Order

For reasons set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. The U.S. Natural Gas Clearinghouse, Ltd. (Clearinghouse) is authorized to import up to 730 Bcf of natural gas from Canada for a term of two years beginning on the date of first delivery.

B. Clearinghouse shall notify the ERA in writing of the date of first delivery of natural gas imported under Ordering Paragraph A above within two weeks after the date of such delivery.

C. With respect to the imports authorized by this Order, Clearinghouse shall file with the ERA in the month following each calendar quarter, quarterly reports indicating, by month, whether sales have been made, and if so, giving the details of each transaction. The report shall include the purchase and sales prices, volumes, any special contract price adjustments, take or make-up provisions, duration of the agreements, ultimate sellers and purchasers, transporters, points of entry, and markets served.

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

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-16780 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

[11] *See supra* note 5.

[12] DOE/ERA Opinion and Order No. 85, issued July 2, 1985.

[13] Because the proposed importation of gas will use existing pipeline facilities, DOE has determined that granting this application clearly is not a Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*) and therefore an environmental impact statement or environmental assessment is not required.

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Tuesday, May 28, 1985 (50 FR 21648).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW. Washington, DC 20585, (202) 252-2308.

Vartkes Broussalian, Department of Energy Desk Officer, Office of

Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., July 10, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE Forms Under Review by OMB

Form number (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
ERA-166	Public Utility Regulatory Policies Act Annual Report on Electric and Gas Utilities.	Extension	Annually	Mandatory	State Regulatory Authorities.	130	1,560	ERA-166 collects data on the progress of State regulatory authorities and certain non-regulated electric and gas utilities in considering and making determinations with respect to the standards established by PURPA. Data are published by the ERA in an annual report to the President and Congress.
ERA-718R	Annual Report of International Electric Export/Import Data.	Extension	Annually	Mandatory	Public utilities and other entities holders of Export Authorization and Presidential Permits.	34	340	ERA-718R collects electrical import/export data from entities authorized to export electric energy, to construct, connect, operate, or maintain facilities for the transmission of electric energy at an international boundary as required by 10 CFR 205.308 and 205.325. The data are also used by EIA for publications.
FERC-515	Hydropower License—Declaration of Intention; FERC 515.	Extension	On occassion.	Mandatory	Natural gas end users	3	240	To carry out the requirements of Part I, Section 23(b) of the Federal Power Act, the Declaration of Intention is filed by a prospective hydropower developer on a stream other than defined as U.S. jurisdictional waters, thereby causing the Commission to establish whethor or not it has jurisdiction over the proposed projects.

[FR Doc. 85–16778 Filed 7–12–85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Restriction of Eligibility for Grant Award

AGENCY: Energy Research Office, DOE.

ACTION: Notice of Restriction of Eligibility for Grant Award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b), it is restricting eligibility for grant awards to two universities for the upgrading and the refueling of a critical facility and the upgrading of a nuclear reactor laboratory, respectively.

FOR FURTHER INFORMATION CONTACT: Harold H. Young, ER–44, U.S. Department of Energy, Washington, D.C. 20545, 301/353–3995.

SUPPLEMENTARY INFORMATION: Over the past years DOE has used grants to provide funding to universities with reactor and nuclear facilities utilized for research and training purposes. Upgrading these facilities is part of DOE's effort to support nuclear science and engineering development and education. The program also assists in defraying operating costs associated with making the universities' facilities and equipment more modern and productive for research and training and for making such facilities available to other educational institutions without these facilities. DOE will award grants to the following institutions:

Ohio State University (OSU)—Nuclear Reactor Laboratory Upgrade
Rensselaer Polytechnic Institute (RPI)—Critical Facility Upgrade and Refuel

Eligibility for grant awards is being restricted to the above universities since it would be impractical to seek other submissions for this work since it is being done by and for the universities with their financial support. These grants will cover an approximate two year period beginning July 1985 and will provide OSU $125,000 and RPI $233,938.

Issued in Chicago, Illinois on June 28, 1985.

Nell W. Fraser,

Assistant Manager for Acquisition and Assistance.

[FR Doc. 85–16777 Filed 7–12–85; 8:45 am]

BILLING CODE 6450-10-M

Federal Energy Regulatory Commission

[Project Nos. 6903–001 et al.]

Hydroelectric Applications (Batten Kill Hydro Associates et al.), Applications Field With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1. a. Type of Application: Minor License.

b. Project No.: 6903–001.

c. Date Filed: October 31, 1984.

d. Applicant: Batten Kill Hydro Associates.

e. Name of Project: Middle Greenwich.

f. Location: Batten Kill River in Washington County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Robert E. Hedden, Synergics, Inc. 410, Severn Avenue, Suite 409, Annapolis, MD 21403.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed would consist of: (1) An existing 10-foot-high, 235-foot-long, concrete gravity spillway dam; (2) a 9-acre reservoir with no usable storage at elevation 320.0 feet M.S.L.; (3) an existing 150-foot-long, 20-foot-wide, 10-foot-deep power canal; (4) an existing powerhouse to be rehabilitated and to contain one turbine-generator with a rated capacity of 400 kW; (5) a tailrace channel; (6) a 150-foot-long transmission line; and (7) appurtenant facilities. The project would produce up to 2,300,000 kWh annually. The project dam and facilities are currently owned by the Village of Greenwich and Karlson Glass Works. This license application was filed pursuant to a preliminary permit, Project No. 6903-000, held by the Applicant.

k. Purpose of Project: Energy produced at the project would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

2. a. Type of Application: Preliminary Permit.

b. Project No.: 9106-000.

c. Date Filed: April 12, 1985.

d. Applicant: City of Tacoma.

e. Name of Project: A. J. Wiley.

f. Location: On land administered by the Bureau of Land Management on the Snake River, near the town of Bliss, in Gooding and Twin Falls Counties, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Paul Nolan, City of Tacoma, Department of Public Utilities, P.O. Box 11007, Tacoma, WA 98411.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 8807, Date Filed: December 19, 1984.

k. Description of Project: The proposed project would consist of: (1) A 100-foot-high earthfill embankment dam creating a reservoir with a surface area of 625 acres and a storage capacity of 24,000 acre-feet at elevation 2,735 feet; (2) a powerhouse containing three generating units with a combined capacity of 86 MW and an average annual generation of 485 GWh; and (3) a 3-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $1,500,000. No new roads would be constructed or drilling conducted during the feasibility study.

l. Purpose of Project: Power would be used by the City of Tacoma's Light Division.

m. This notice also consists of the following standard paragraphs: A8, B, C, D2.

3. a. Type of Application: Preliminary Permit.

b. Project No.: 9153-000.

c. Date Filed: May 1, 1985.

d. Applicant: Alternative Energy Management, Inc.

e. Name of Project: Perry Project.

f. Location: On the Delaware River near Perry, Jefferson County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. L. Joe Hamman, P.O. Box 67151, Topeka, KS 66667.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 9148-000, Date Filed: May 1, 1985, Comment Due Date: August 5, 1985.

k. Description of Project: The proposed project would utilize the U.S. Corps of Engineers' Perry Dam and Lake, and consist of: (1) A new 325-foot-long steel penstock approximately 22.5 feet in diameter; (2) a new powerhouse located on the south side of an existing stilling basin with an installed capacity of 5 MW; (3) a proposed 34.5-kV transmission line approximately 8 miles long; and (4) appurtenant facilities. Applicant estimates the average annual generation to be 14,500 MWh. All energy will be sold to a local utility company.

l. This notice also consist of the following standard paragraphs: A8, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

4a. Type of Application: Exemption from Licensing (5MW).

b. Project No.: 7452-001.

c. Date Filed: October 2, 1984.

d. Applicant: Resources I, Inc.

e. Name of Project: Clear Creek Power.

f. Location: On Clear Creek in Baker County, Oregon, within Wallowa-Whitman National Forest, near the town of Halfway.

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. 2705 and 2708).

h. Contact Person: Mr. Jack Crocker, Rt. 1, Box 144, Halfway, Oregon 97834.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) An 18-inch-diameter, 40-foot-long perforated pipe buried in the streambed at an elevation of 4,351 feet; (2) an 18-inch-diameter, 18,000-foot-long buried penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 522 kW operating under a head of 999 feet; and (4) a 500-foot-long, 12.5-kV transmission line tying into an Idaho Power Company line. The estimated average annual energy output would be 4,018 MWh.

This application has been accepted for filing as of September 21, 1983, the submittal date of the Applicant's originally accepted exemption application pursuant to Eagle Power Co. et al., 28 FERC ¶ 61,061, issued July 18, 1984.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project power would be sold to Idaho Power Company.

l. This notice also consists of the following standard paragraphs: A9, B, C and D3a.

5a. Type of Application: Preliminary Permit.

b. Project No.: 9058-000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: Green Point Hydroelectric.

f. Location: On Green Point Creek within the Mount Hood National Forest in Hood River County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 30-foot-long diversion dam at an elevation of 1,430 feet; (2) a 50-inch-diameter, 10,375-foot-long pipeline; (3) a powerhouse containing one or more generating units with a total rated capacity of 5,200 kW; and (4) two 1,500-foot-long transmission lines. Applicant estimates the average annual energy production to be 24,808 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. A 500-foot-long road would be constructed during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

6 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 9079-000.

c. Date Filed: April 1, 1985.

d. Applicant: Mark A. Vaughn.

e. Name of Project: Upper Spears Stream.

f. Location: On Spears Stream in the Town of Peru, in Oxford County, Maine.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Mark A. Vaughn, Worthley Pond Road, West Peru, ME 04290.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed project would consist of: (1) A proposed 4-foot-wide by 8-foot-long by 3-foot-high diversionary structure; (2) a proposed two-foot-high by 3-foot-wide steel intake grate; (3) a proposed 600-foot-long, 15-inch-diameter PVC penstock; (4) a proposed 10-foot-wide by 14-foot-long powerhouse to contain an installed generating capacity of 50 kW; (5) a proposed 750-foot-long, 7,200 volt overhead transmission line; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation will be 144,277 kWh.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

l. Purpose of Project: An exemption , if issued, gives the Exemptee priority of Control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

7a. Type of Application: Amendment of Small Conduit Exemption.

b. Project No.: 6812-001.

c. Date Filed: March 8, 1985.

d. Applicant: Sheep Creek Irrigation Company.

e. Name of Project: Sheep Creek Hydro Project.

f. Location: On Sheep Creek in Daggett County, Utah.

g. Filed Pursuant to: Section 30 of the Federal Power Act.

h. Contact Person: Mr. Albert H. Neff, Executive Secretary, Sheep Creek Irrigation Company, Manila, Utah 84046.

i. Comment Date: August 12, 1985.

j. Description of Project: The proposed Project No. 6812-001 would supersede Projects Nos. 6812-000, 6813-000, and 6914-002; would utilize a new intake structure and pipeline penstock, 54 inches in diameter and 3,920 feet long, with a branch leading to the Antelope Powerhouse, and a new continuing pipeline penstock, 48 inches in diameter and 6,880 feet long, leading to the South Valley Powerhouse; and would consist of: (1) The new Antelope Powerhouse to contain a turbine-generator unit rated at 1,000 kW; (2) the new South Valley Powerhouse to contain a turbine-generator unit rated at 3,610 KW; and (3) appurtenant facilities. Antelope Powerhouse would discharge into the Antelope Irrigation Canal and South valley Powerhouse would discharge into the South Valley Irrigation Canal. The Applicant estimates that the total average annual energy output would be 10,341,000 KWh.

k. Purpose of Project: Project energy would be sold to the Bridger Valley Electric Association.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 9112-000.

c. Date Filed: April 18, 1985.

d. Applicant: Bellows-Tower Hydro, Inc.

e. Name of Project: Whittelsey.

f. Location: Salmon River in Franklin County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Howard R. Doud, President, Bellows-Tower Hydro, Inc., Box 131, Dickinson Center, NY 12930.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high, 120-foot-long concrete gravity dam with; (2) new 1.83-foot-high wood flashboards; (3) a reservoir with a surface area of 2 acres, a storage capacity of 14 acre-feet, and a normal water surface elevation of 664 feet m.s.l.; (4) an existing intake structure; (5) a new 7-foot-diameter, 20-foot-long steel penstock; (6) a new powerhouse containing one generating unit with a capacity of 245 kW; (7) a new transmission line, 85 feet long; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 1,700,000 kWh. The existing dam is owned by the Village of Malone, New York.

k. Purpose of Project: Project power would be sold to Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Departing upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $12,000.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9154-000.

c. Date Filed: May 1, 1985.

d. Applicant: Alternative Energy Management, Inc.

e. Name of Project: Milford Project.

f. Location: On the Republican River near Junction City, Geary County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. L. Joe Hamman, P.O. Box 67151, Topeka, KS 66667.

i. Comment Date: August 12, 1985.

j. Competing Application: Project No. 9149-000, Date Filed: May 1, 1985, Comment Due Date: August 5, 1985.

k. Description of Project: The proposed project would utilize the U.S. Corps of Engineers' Milford Dam and Reservoir, and consist of: (1) A new 320-foot-long steel penstock approximately 14.5 feet in diameter; (2) a new powerhouse located on the north edge of an existing stilling basin with an installed capacity of 10 MW; (3) a proposed 34.5-kV transmission line approximately 4-miles long; and (4) appurtenant facilities. Applicant estimates the average annual generation to be 14,920 MWh. All energy will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A8, B, C, & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

10 a. Type of Application: Preliminary Permit.

B. Project No.: 9209-000.

c. Date Filed: May 21, 1985.

d. Applicant: Aero Construction, Inc.

e. Name of Project: Canal Section Lock D Hydro Project.

f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Fulton, Itawamba County, Mississippi.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock D; a 650-foot-long and 20-foot-wide diversion channel; and would consist of: (1) A new powerhouse located on the east side of the lock in the diversion channel housing two 900-kW generators for a total installed capacity of 1,800 kW; (2) a proposed 12.47-kV transmission line approximately 100 feet long; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 13.2 GWh. All project energy would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9210–000.

c. Date Filed: May 21, 1985.

d. Applicant: Aero Construction, Inc.

e. Name of Project: Canal Section Lock E Hydro Project.

f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Fulton, Itawamba County, Mississippi.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ralph L Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock E; a 550-foot-long and 20-foot-wide diversion channel; and would consist of: (1) A new powerhouse located on the east side of the lock in the diversion channel housing two 900-kW generators for a total installed capacity of 1,800 kW; (2) a proposed 12.47-kV transmission line approximately 200 feet long; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 13.2 GWh. All project energy would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9211–000.

c. Date Filed: May 21, 1985.

d. Applicant: Aero Construction, Inc.

e. Name of Project: Canal Section Lock C Hydro Project.

f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Fulton, Itawamba County, Mississippi.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock C; a 1450-foot-long and 20-foot-wide diversion channel; and would consist of: (1) A new powerhouse located on the west side of the lock in the diversion channel housing two 750-kW generators for a total installed capacity of 1,500 kW; (2) a proposed 12.47-kV transmission line approximately 4500 feet long; and (3) appurtenant facilities. The Applicant estimates that the average annual generation would be 11.2 GWh. All project energy would be sold to a local utility company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9212–000.

c. Date Filed: May 21, 1985.

d. Applicant: Aero Construction, Inc.

e. Name of Project: Canal Section Lock B Hydro Project.

f. Location: On the Tennessee-Tombigbee Waterway Canal Section near Smithville, Itawamba County, Mississippi.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ralph L. Laukhuff, Forte and Tablada, Inc., P.O. Box 64844, Baton Rouge, LA 70896.

i. Comment Date: September 3, 1985.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Tennessee-Tombigbee Waterway Canal Section at Lock B; a 1900-foot-long and 20-foot-wide diversion channel located west of the lock; a 1500-foot-long and 20-foot-wide diversion channel located east of the lock; and involves two developments, sites A and B. The proposed two developments would consist of:

(A) Site A which would be located in the west diversion channel, and which would have: (1) A new powerhouse housing two 750-kW generators for a total installed capacity of 1500 kW; (2) a proposed 12.47-kV transmission line approximately 3000 feet long; and (3) appurtenant facilities.

(B) Site B which would be located in the east diversion channel, and which would have: (1) A new powerhouse housing a 750-kW generator; (2) a proposed 12.47-kV transmission line approximately 800 feet long; and (3) appurtenant facilities.

The Applicant estimates the total installed capacity of the two developments would be 2.25 MW and the average annual generation would be 18 GWH.

k. Purpose of Project: All project energy would be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $20,000.

14 a. Type of Application: Minor License.

b. Project No.: 8405-002.

c. Date Filed: April 29, 1985.

d. Applicant: Glen Hydro, Inc.

e. Name of Project: Glen Hydro.

f. Location: On the Mascoma River in Grafton County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Thomas B. Cronmiller, Sulloway Hollis & Soden, 9 Capitol Street, Concord, New Hampshire 03301.

i. Comment Date: September 6, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing 175-foot-long and 14-foot-high concrete gravity dam with a spillway crest elevation of 410.2 feet mean sea level, owned by the city of Lebanon; (2) new 3-foot-high flashboards; (3) an impoundment with a surface area of 7 acres; (4) an existing intake structure at the north abutment; (5) a new 8-foot-diameter and 3,100-foot-long steel penstock; (6) a new powerhouse with 3 turbine-generator units with a total installed capacity of 1,485 kW; (7) a new 13.2-kV and 300-foot-long underground transmission line; and (8) other appurtenances. Applicant estimates an average annual generation of 6,000,000 kWh. This application was filed within the preliminary permit term for the Lower Mascoma Project No. 8405.

k. Purpose of Project: Project energy would be sold to Granite State Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

15 a. Type of Application: Conduit Exemption.

b. Project No.: 8884-001.

c. Date Filed: March 11, 1985.

d. Applicant: Cleto McPherson.

e. Name of Project: George Creeks.

f. Location: At existing irrigation diversions on George Creek and North McDonald Creek in Park County, Montana.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708 as amended).

h. Contact Person: Roger Kirk, Hydrodynamics, Inc., P.O. Box 413, Red Lodge, MT 59068.

i. Comment Date: August 14, 1985.

j. Description of Project: The proposed project would consist of: (1) A 5,500-foot-long 8-inch-diameter pipe from the existing irrigation diversion on George Creek; (2) a 6,000-foot-long, 8-inch-diameter pipe from the existing irrigation diversion on North McDonald Creek; (3) a powerhouse containing one generating unit with a capacity of 100kW and an average annual generation of 440 MWh; and (4) a 100-foot-long trnasmission line.

Purpose of Exemption—An exemption, if issued, gives an Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

k. Purpose of Project: Project Power would be sold to the Montana Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

16 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8969-000.

c. Date Filed: February 22, 1985.

d. Applicant: Islandia, Inc.

e. Name of Project: Crocker Pond.

f. Location: Crocker Pond in Somerset County, Maine.

g. Filed Pursuant to: Section: 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Person: Mr. Andrew D. Friedman, Islandia, Inc., P.O. Box 607, Jackman, Maine 04945.

i. Comment Date: August 14, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 250-foot-long concrete gravity dam; (2) a reservior with a surface area of 227 acres, a net storage capacity of 360 acre-feet, and a normal water surface elevation of 1,466.5 feet m.s.l.; (3) a new intake structure; (4) a new PVC penstock with a diameter of 1.0 foot, and a length of 2,500 feet; (5) a new concrete and wood powerhouse containing one generating unit with a capacity of 50 kW; (6) a new underground transmission line 1,000 feet long, and (7) appurtenant facilities. The Applicant estimates the average annual generation would be 311,835 kWh. The existing dam is owned by Islandia, Inc.

k. Purpose of Project: Project power would be sold to the Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

m. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of the control, development, and operation of the project under the terms of exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

17 a. Type of Application: Minor License.

b. Project No.: P-9033-000.

c. Date Filed: March 19, 1985.

d. Applicant: Fallon Hydro Inc.

e. Name of Project: Erie Canal Lock 32.

f. Location: On the Erie Canal in the Town of Pittsfield, Monroe County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Timothy R. Fallon, Fallon Hydro Inc., 3 Maplewood Point, Ithaca, NY 14850.

i. Comment Date: September 4, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 206-foot-long, 31-foot-high integrated concrete gravity and uncontrolled ogee center spillway lock and dam structure; (2) a reservoir having a surface area of 37 acres, a storage capacity of 592 acre-feet, and a normal water surface elevation of 587.5 feet m.s.l.; (3) a proposed intake structure; (4) a proposed 55-foot-long, 6.5-foot-diameter steel penstock; (5) a proposed powerhouse containing 1 generating unit with an installed capacity of 530 kW; (6) a proposed 150-foot-long tailrace; (7) a proposed 550-foot-long, 15-kV transmission line; and (8) appurtenant facilities. The Applicant estimates the average annual generation would be 1,900,000 kWh. The existing lock and dam and project facilities are owned by the State of New York, Department of Transportation.

k. Purpose of Project: All project energy would be sold to the Rochester Gas and Electric Company.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

18 a. Type of Application: Minor License.

b. Project No.: 9035-000.

c. Dated Filed: March 11, 1985.

d. Applicant: Mountain West Hydro, Inc.

e. Name of Project: Clarence Creek.

f. Location: On Clarence Creek in Tillamook County, Oregon within the Siuslaw National Forest, near the town of Blaine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791–821(r).

h. Contact Person: Mr. David L. Browning, President, Mountain West Hydro, Inc., 2155 Christina NW., Salem, OR 97304.

i. Comment Date: September 4, 1985.

j. Description of Project: The proposed project would consist of: (1) A 4-foot-high, 24-foot-wide reinforced concrete diversion dam at elevation 8,340 feet; (2) an intake structure consisting of a .25-inch-fish screen and trashracks; (3) a 30-inch diameter, 1,280-foot-long partially buried steel penstock; (4) a 24-foot-long, 12-foot-wide powerhouse containing two generating units with a total rated capacity of 550 kW operating under a head of 250 feet; (5) a 4,760-foot-long buried transmission line, along Clarence Creek Road, tying into a Tillamook County Public Utility District line; and (6) a concrete tailrace discharging flows back into Clarence Creek. The estimated annual generation is 2,264 MWh. The estimated cost of the project is $586,500.

k. Purpose of Project: Project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 9056–000.

c. Dated Filed: March 27, 1985.

d. Applicant: Congeneration and Electric, Inc.

e. Name of Project: White River.

f. Location: On the White River within the Mount Hood National Forest in Wasco County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Drive, Gresham, OR 97030.

i. Comment Date: September 4, 1985.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high, 40-foot-long diversion dam at an elevation of 2260 feet; (2) a 108-inch-diameter, 120,770-foot-long pipeline; (3) a powerhouse containing one or more generating units with a total rated capacity of 4,650 kW; and (4) two 17,800-foot-long transmission lines. Applicant estimates the average annual energy production ot be 21,786 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Portland General Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

20 a. Type of Application: Preliminary Permit.

b. Project No.: 9057–000.

c. Date Filed: March 27, 1985.

d. Applicant: Cogeneration and Electric, Inc.

e. Name of Project: Middle Fork Willamette River.

f. Location: On the Middle Fork Willamette River, near the town of Oakridge in Lane County, Oregon.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Maxine Smith, Cogeneration and Electric, Inc., 1450 S.E. Orient Dr., Gresham, OR 97030.

i. Comment Date: September 4, 1985.

j. Description of Project: The proposed project would consist of: (1) An 11-foot-high, 60-foot-long divrsion dam at an elevation of 1,680 feet; (2) a 10-foot-deep, 40-foot-diameter, 11,000-foot-long canal; (3) two 875-foot-long, 108-inch-diameter pipelines; (4) a powerhouse containing one or more generating units with a total rated capacity of 10,990 kW; and (5) three 43,000-foot-long transmission lines. Applicant estimates the average annual energy production to be 60,645 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $77,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power is to be sold to Pacific Power and Light Co.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 9152–000.

c. Date Filed: March May 1, 1985.

d. Applicant: Alternative Energy Management, Inc.

e. Name of Project: Tuttle Creek Project.

f. Location: On the Big Blue River near Manhattan, Riley County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. L. Joe Hamman, P.O. box 67151, Topeka, KS 66667.

i. Comment Date: August 14, 1985.

j. Competing Application: Project No. 9155–000. Date Filed: May 1, 1985. Comment Due Date: August 5, 1985.

k. Description of Project: The proposed project would utilize the U.S. Corps and Engineers' Tuttle Creek Dam and Reservoir, and consist of: (1) A new 800-foot-long steel penstock approximately 18 feet in diameter; (2) a new powerhouse located on the south side of an existing stilling basin with an installed capacity of 14.75 MW; (3) a proposed 34.5–kV transmission line approximately 1 mile long; and (4) appurtenant facilities. Applicant estimates the average annual generation to be 56,690 MWh. All energy will be sold to a local utility company.

l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 9139–000.

c. Date Filed: April 29, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Manhan River Dam.

f. Location: Manhan River in Hampshire County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. John R. Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803.

i. Comment Date: September 4, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 8-foot-high, 100-foot-long concrete gravity dam; (2) a reservoir with a surface area of 100,000 square feet, a storage capacity of 500,000 cubic feet, and a normal water surface elevation of 125 feet USGS; (3) an existing concrete intake structure; (4) a new powerhouse containing two generating units with a capacity of 65 kW each for a total installed capacity of 130 kW; (5) a new transmission line, 200 feet long; and (6) appurtenant facilities. The Applicant estimates the average annual generation would be 570,000 kWh. The existing dam is owned by the Town of Easthampton, Massachusetts.

k. Purpose of Project: Project power would be sold to the Western Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $8,500.

23 a. Type of Application: Amendment of License.

b. Project No.: 1517-000.

c. Date Filed: October 19, 1984.

d. Applicant: Monroe City Corporation.

e. Name of Project: Upper Monroe Hydro Project.

f. Location: On Monroe Creek in Sevier County, Utah.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mayor Myron Madsen, Monroe City, Monroe, UT 84754.

i. Comment Date: August 16, 1985.

j. Description of Project: The project as licensed on July 1, 1940, consisted of (Subparagraph C):

C. All project works, consisting principally of 3,500 feet of 6-inch steel pipe line receiving water from Shingle Creek; 11,200 feet of 8-inch steel pipe line receiving water from First Left Hand Fork of Monroe Creek and the water diverted from Shingle Creek; a concrete and stone power house 17 by 22 feet (inside measurement) containing a Pelton water wheel directly connected to a 156-kva generator with overhung exciter, a switchboard and appurtenant apparatus; and a transmission line about 0.92 mile long, connecting the plant with the existing plant of Project No. 632.

An Order Amending License was issued on December 19, 1962, and states:

(B) The license for Project No. 1517 is hereby amended, effective as of October 1, 1961, as follows:

Paragraph I. Subparagraph C of Article 2 of the license is amended by adding thereto the following language after the words "Shingle Creek" appearing in line 4 therein.

12,980 feet of 8-inch diameter pipeline extending from the First Left Hand Power Plant up the main canyon of Monroe Creek to Service Berry Creek and thence up Service Berry Creek to an elevation comparable with the intakes on First Left Hand Fork and Shingle Creek;

The proposed amendment would consist of: (1) increasing the maximum flow rate from 1.7 cfs to 2.7 cfs since records show the additional 1.0 cfs is available more than 50% of the time; (2) replacing damaged pelton wheel and generator with new equipment having a rated capacity of 250 kW; and (3) providing appurtenant new facilities. The Applicant estimates that the average annual energy output would be 987,252 kWh.

k. Purpose of Project: Project energy would be utilized by the Applicant.

l. This notice also consists of the following standard paragraphs: B and C

m. *Agency Comments*—Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statues. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of an amendment to a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

24 a. Type of Application: Exemption (5MW or Less).

b. Project No.: 8364-000.

c. Date Filed: June 14, 1984.

d. Applicant: Iowa Electric Light and Power Company.

e. Name of Project: Anamosa Dam.

f. Location: On the Wapsipinicon River is Jones County, Iowa

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Contact Person: Ms. Eva Cram Iowa Electric Light and Power Company, P.O. Box 351, Cedar Rapids, Iowa 52406..

i. Comment Date: August 16, 1985.

j. Competing Application: Project No. 7842, Date Filed November 14, 1983.

k. Description of Project: The proposed project would consist of: (1) An existing 146.33-foot-long and 10.2-foot-high concrete dam surmounted with 1.83-foot-high flashboards; (2) an existing reservoir with a surface area of 120 acres and a storage capacity of 650 acre-feet at power pool elevation of 79.1 feet m.s.l.; (3) an exisiting forebay; (4) an existing powerhouse containing one proposed generating unit rated at 235 kW; (5) an existing tailrace; (6) an existing 200-foot-long transmission line, which extends from the existing powerhouse to the existing substation; and (7) appurtenant facilities. The estimated average energy output for the project is 1,330, 600-kWh.

l. Purpose of Project: Iowa Electric Light and Power Company would utilize the power generated in the service area.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

25 a. Type of Application: Major License.

b. Project No.: 8419-000.

c. Date Filed: July 9, 1984.

d. Applicant: City of Tacoma, Washington.

e. Name of Project: Howard Hanson Power.

f. Location: On Green River, within Mt. Baker-Snoqualmie National Forest lands, near Kanaskat, in King County, Washington.

g. filed Pursuant to: Federal Power Act, 16 U.S.C. §791(a)-825(r).

h. Contact Person: Mr. Paul J. Nolan, Director, City of Tacoma, Department of Public Utilities, Tacoma, WA 98411.

i. Comment Date: September 6, 1985.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers 960-foot-long, 235-foot-high Howard Hanson Dam and would consist of: (1) A new tower-type concrete intake structure located at the right abutment of the existing dam and connected to a new tunnel through a 30-foot-high shaft, (2) an 800-foot-long, 9.5-foot-diameter steel-lined concrete power tunnel; (3) a 400-square-foot inclined fish screen; (4) a 55-foot-long, 34-foot-wide powerhouse containing a single generating unit with an installed capacity of 10.5 MW at a head of 110 feet; (4) a tailrace; (5) a switch yard located adjacent to the powerhouse; and (6) a 950-foot-long, 230-kV transmission line connecting to an existing Puget Sound Power and Light Company transmission line.

The Applicant estimates that the average annual energy production would be 34.8 million kWh. The cost to construct the project would be $14.66 million in 1984 dollars..

k. Purpose of Project: The project power would be utilized by the City of Tacoma customers.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C.

26 a. Type of Application: Preliminary Permit.

b. Project No.: 9147-000.

c. Date Filed: May 1, 1985.

d. Applicant: Baltic Associates.

e. Name of Project: Baltic Mills.

f. Location: On the Shetucket River in New London County, Connecticut.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Thomas Forbes, P.O. Box 421, Mercer Island, Washington 98040.

i. Comment Date: September 6, 1985.

j. Description of Project: The proposed run-of-river project would consist of: (1) The existing 30-foot-high and 500-foot-long stone Baltic Mill Dam owned by the Baltic Mill; (2) a reservoir with a surface area of 500 acres and storage capacity of 2,000 acre-feet at normal maximum surface elevation of 100 feet mean sea level; (3) an existing 100-foot-wide and 1,000-foot-long power channel; (4) a new 10-foot-diameter and 25-foot-long penstock; (5) an existing powerhouse with a new 2,500-kW turbine-generator unit; (6) an existing 12.5-kV and 500-foot-long transmission line; and (7) other appurtenances. Applicant estimates an average annual generation of 9,200,000 kWh.

k. Purpose of Project: Project energy would be sold to the Town of Baltic.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 24 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be $100,000.

27 a. Type of Application: Preliminary Permit.

b. Project No.: 9170-000.

c. Date Filed: May 6, 1985.

d. Applicant: Great Western Power and Light, Inc.

e. Name of Project: G.W.P. #13 & Associates.

f. Location: On Boise River at the Bureau of Reclamation's Boise River Diversion Dam near the town of Boise, in Ada County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Jordan R. Walker, Great Western Power and Light, Inc., 484 East 300 North, Manti, UT 84642.

i. Comment Date: September 5, 1985.

j. Description of Project: The proposed project would consist of: (1) An existing 68-foot-high diversion dam; (2) a 500-foot-long penstock; (3) a powerhouse containing three generating units with a total rated capacity of 1500 kW; and (4) a 2,000-foot-long transmission line. Applicant estimates the average annual energy production to be 8,936 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of $23,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices on intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later then 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing to file a competing development application must submit to the Commission, or or before the specified comment date for the particular application, either a competing develoment application or notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representative.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions tó be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: July 9, 1985.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16581 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-558-000 et al.]

Diane L. Kuyper 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.

July 9, 1985.

Take notice that the following filings have been made with the Commission.

1. Diane K. Kuyper

[Docket No. QF85-558-000]

On June 17, 1985, Diane L. Kuyper, Box 246, Stickney, South Dakota 57375 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 wind powered unit is located in Stickney, South Dakota. The electric power production capacity of the facility is 35 kilowatts.

2. Zond Pacific Inc.

[Docket No. QF85-559-000]

On June 21, 1985, Zond Pacific Inc. (Applicant), of P.O. Box 12186, Lahaina, Maui, HI 96761 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 10 megawatt wind facility is located near the Honokahua and Honolua Valleys on the North point of the Island of Maui.

3. O'Brien Energy Systems Inc.

[Docket No. QF85-563-000]

On June 24, 1985, O'Brien Energy Systems Inc. (Applicant), Green and Washington Streets, Downingtown, Pennsylvania, 19335 submitted for filing an application for certification of a cogeneration facility as a qualifying facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a gas turbine-steam turbine combined cycle cogeneration plant. The primary energy source for the cogeneration facility will be natural gas. The power production capacity of the facility will be approximately 28 MW electrical, with average thermal output of 30,330 lbs/hr steam. The facility will be located at the manufacturing site of California Milk Producers, 11709 E. Artesia Boulevard, Artesia, California, 90701. Installation will begin in June 1986 with commencement of operation planned for June 1987.

4. American Alternate Energy, Ltd. (Portage County)

[Docket No. QF85-564-000]

On June 24, 1984, 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 Route 225, Portage County, Atwater Township, Ohio. 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 Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy 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 the comment date. 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. 85-16783 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-557-000 et al.]

Power Dam Corp. 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.

July 8, 1985.

Take notice that the following filings have been made with the Commission.

1. Power Dam Corp.

[Docket No. QF85-557-000]

On June 20, 1985, Power Dam Corp. (Applicant), of 2200 Fort Wayne National Bank Building, Fort Wayne, Indiana 46802, 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 is located in Defiance County, south of Defiance, Ohio. The hydroelectric facility is located on the Auglaize River and consists, in part, of five hydroelectric turbine/generators pits,into which two 650 kW turbine/generators will be installed. The electric power production capacity of the facility is estimated to be in excess of 1300 kW. The primary energy source is water.

A separte application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. American Alternate Energy, Ltd. (Lick Run Lyra Road)

[Docket No. QF85-543-000]

On June 19, 1985, American Alternate Energy, LTD. (Applicant) of 1000 Mapelwood 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 Lick Run Lyra Road, Scioto County,Vernon Township, Ohio. 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.

3. American Alternate Energy, Ltd. (School Road)

[Docket No. QF85-544-000]

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 School Road, Oakland County, Rochester Hills, Michigan. 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.

4. American Alternative Energy, Ltd. (Jackson Pike)

[Docket No. QF85-545-000]

On June 19, 1985, American Alternative 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 Jackson Pike, Franklin County, Township, Ohio. 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.

5. American Alternative Energy, Ltd. (Pontiac Avenue)

[Docket No. QF85-546-000]

On June 19, 1985, American Alternative 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.

6. American Alternative Energy, Ltd. (Hill Road)

[Docket No. QF85-547-000]

On June 19, 1985, American Alternative 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 Hill Road, Allegheny County, South Park, Township 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.

7. American Alternative Energy, Ltd. (K L Avenue)

[Docket No. QF85-548-000]

On June 19, 1985, American Alternative 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 K L Avenue, Kalamazoo County, Kalamazoo, Michigan. 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 Alternative Energy, Ltd. (Auten Road)

[Docket No. QF85-549-000]

On June 19, 1985, American Alternative 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 Auten Road, Gaston County, Gastonia, North Carolina. 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.

9. American Alternative Energy, Ltd. (New Burn Avenue)

[Docket No. QF85-552-000]

On June 19, 1985, American Alternative 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 New Burn Avenue, Wake County, Raleigh, North Carolina. 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.

10. American Alternate Energy, Ltd. (Sixth Avenue Extension)

[Docket No. QF85-554-000]

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 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.

11. American Alternate Energy, Ltd. (Suzerne County)

[Docket No. QF85-555-000]

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 Route #315, Suzerne County, Pittstown, 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.

12. American Alternate Energy, Ltd. (Jake Sears Road)

[Docket No. QF85-556-000]

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.

13. Dorchester Lumber Company, Inc.)

[Docket No. QF85-551-000]

On June 19, 1985, Dorchester Lumber Company, Inc., (Applicant) of Linkwood, Maryland 21835 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 at Linkwood, Maryland. The facility has one boiler to produce both heat and mechanical energy for utilization within plant processes such as kiln heating. Excess steam produced from the facility will be utilized to drive a condensing turbine-generating unit. The electric power production capacity of the facility will be 650 kW. The primary energy source is biomass, being produced from 100% production scrap, sawmill refuse, and combinations of dust and shavings. The installation of this system will begin in September, 1985.

14. General Conservation Company)

[Docket No. QF85-536-000]

On June 18, 1985, General Conservation Company (Applicant) of 396 Ferry Point Road, Pasadena, Maryland 21122 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 bottoming-cycle cogeneration facility will be located east of the No. 7 Sinter Plant at the Sparrows Point, Maryland plant of Bethleham Steel Corporation. It will consist of an economizer placed in a hot air duct of the sinter cooler to preheat feedwater being supplied to deaerator heaters, thereby releasing steam previously used for this purpose to generate electricity. The primary energy source will be heated air. Construction of the facility took place in 1984.

15. Signal Environmental Systems, Inc.

[Docket No QF85-537-000]

On June 18, 1985, Signal Environmental Systems, Inc., (Applicant) of Liberty Lane, Hampton, New Hampshire 03842 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 City of Bridgeport, Connecticut. The net electric power production capacity of the facility will be 62 MW. The primary energy source will be biomass in the form of municipal solid waste.

16. The City of New Martinsville, West Virginia

[Docket No. QF85-541-000]

On June 18, 1985, the City of New Martinsville (Applicant), of 203 Main Street, New Martinsville, West Virginia 26155 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 city of New Martinsville, West Virginia on the Ohio River approximately 50 miles downstream from Wheeling, West Virginia. The facility will be constructed at the Hannibal Locks and Dam and will consist of two horizontal Kaplan bulb hydroelectric turbine generators. The electric power production capacity of the facility will be 34 megawatts electric and will yield approximately 209,000,000 kilowatt-hours per year.

A separate application is required for a hydroelectric project license, preliminary permit or exemption for licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Standard Paragraphs

E. 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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 Commisson and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16782 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER80-259-008 et al.]

Kansas Gas and Electric et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. Kansas Gas and Electric

[Docket No. ER80-259-008]

July 9, 1985.

Take notice that on June 17, 1985, Kansas Gas and Electirc tendered for filing a refund report submitted on February 1, 1985.

Comment date: July 22, 1985, in accordance with Standard Paragraph H at the end of this notice.

2. Maine Yankee Atomic Power Company

[Docket No. ES85-46-000]

July 9, 1985.

Take notice that on June 28, 1985, Maine Yankee Atomic Power Company, (the "Company") tendered for filing an application, pursuant to section 204 of the Federal Power Act, seeking authority to issue on or before August 1, 1986, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate principal amount not exceeding $10,400,000 outstanding at any time.

Comment date: July 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Maine Electric Power Company, Inc.

[Docket No. ES85-47-000]

July 9, 1985.

Take notice that on June 28, 1985, Maine Electric Power Company Inc. (the "Company") tendered for filing an application, pursuant to section 204 of the Federal Power Act, seeking authority to issue on or before August 1, 1986, Bank Notes and Commercial Paper maturing one year or less after the date of issuance in an aggregate principal amount not exceeding $10,400,000 outstanding at any time.

Comment date: July 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Citizens Utilities Company

[Docket No. ES85-48-000]

July 5, 1985.

Take notice that on July 1, 1985, Citizens Utilities Company (Applicant) filed an application with the Federal Energy Regulatory Commission pursuant to section 204 of the Federal Power Act, in connection with provision of funds for the contruction, extension and improvement of public utility facilities through the issuance of approximately $14,000,000 in principal amount of industrial revenue bonds by the Tolleson Municipal Property Corporation, and requesting an order disclaiming jurisdiction with respect to, or alternatively authorizing the execution by the Company of a guarantee of certain obligations of its wholly-owned subsidiary Sun City Sewer Company under a Sewage Treatment and Transportation Services Agreement with the City of Tolleson, Arizona.

Comment date: July 18, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ES85-49-000]

July 9, 1985.

Take notice that on June 28, 1985, The Detroit Edison Company filed an application, pursuant to section 204 of the Federal Power Act, seeking authorization to issue short-term debt in the amount of $309 million and to assume obligations in the amount of $320 million to be issued pursuant to loan agreements and nuclear fuel purchase contract.

Comment date: July 26, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ES85-400-002]

July 8, 1985.

Take notice that on June 21, 1985, Virginia Electric and Power Company (VEPCO) tendered for filing six (6) copies of its revised rates and supporting costs data in Docket No. ER85-400-000 in compliance with the Commission's order dated May 23, 1985. In preparing this filing, the following in-service dates for the Bath County Pumped Storage Project were used: The first unit October 15, 1985, the second unit November 1, 1985, the third and fourth units November 15, 1985, the fifth unit December 1, 1985, and the sixth unit December 15, 1985.

In addition, VEPCO submits for filing four (4) copies of Schedule RC, two (2) copies of Schedule NC-RC, twenty (20) copies of Schedule RS, and two (2) copies each of revised Appendix E-Charges for Purchases and Appendix G-Charges for Reserve Capacity for Old Dominion Electric Cooperative.

This filing supports a revised total increase of $1.06 million for the Municipalities and $0.12 million for all Cooperatives other than Old Dominion Electric Cooperative as compared to the settlement rates in the Partial Settlement Agreement pending in Docket No. ER84-355-000. A $4.16 million increase is proposed for Old Dominion Electric Cooperative (ODEC) over the settlement revenue level proposed in Docket No. ER84-355-000, which was subsequently rejected by the Commission on April 16, 1985. However, since there is no proposed settlement with ODEC, this filing represents a $0.46 million increase in revenues based on the ODEC rates filed in Docket No. ER84-355-000 made effective June 1, 1984, subject to refund.

The Phase 1 level of this filing represents a $0.10 million increase for the Municipalities. For ODEC, revised Phase 1 rates indicate an increase of $1.30 million over the now rejected settlement rate level and a $(2.41) million decrease from the June 1, 1984 effective rates. All Cooperatives other than ODEC are unphased.

Comment date: July 19, 1985, in accordance with Standard Paragraph H at the end of this notice.

Standard Paragraph

E. 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16784 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-748-002 et al.]

ANR Pipeline Company et al.; Natural Gas Certificate Filings

July 9, 1985.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP 84-748-002]

Take notice that on June 21, 1985, ANR Pipeline Company (ANR) 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-748-002 a petition to amend the order issued April 19, 1985, in Docket No. CP 84-748-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize ANR to transport natural gas for Shepherd Oil, Inc. (Shepherd), for an extended term to expire December 31, 1986, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

ANR states that its current authorization to transport up to 5,040 dt equivalent of natural gas per day to Shepherd's Geismar plant in Jefferson Davis Parish, Louisiana expires on June 30, 1985. It is stated that Shepherd has advised ANR that in order to avoid interruption of service to Shepherd's industral facilities and the resultant economic disruptions, the transportation service must continue beyond June 30, 1985. Therefore, ANR and Shepherd have executed an amendment to the transportation agreement which extends the term of the transportation service until December 31, 1986, it is stated. ANR states that all other terms and conditions of the transportation remain the same.

Comment date: July 30, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Colorado Interstate Gas Company

[Docket No. CP85-381-001]

Take notice that on June 20, 1985, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-381-001 an amendment to its pending application filed in Docket No. CP85-381-000 pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing increases and decreases in peak day and annual entitlements, among other things, all as more fully set forth in the amendment which is on file with the commission and open for public inspection.

By the instant amendment CIG requests authority to add an 8-inch turbine meter run, at an estimated cost of $62,000, at the East Quincy meter station an existing delivery location to Public Service Company of Colorado (PSCo). CIG states that the additional facilities are necessary to accomodate PSCo's requested increase in the maximum daily volume obligation at East Quincy.

Common date: July 30, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice

3. Florida Gas Transmission Company

[Docket No. CP85-619-000]

Take notice that on June 17, 1985, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77001, Filed in Docket No. CP85-619-000 a request pursuant to § 157.212 of the Regulations under the Natural

Gas Act (18 CFR 157.212) for authorization to add an additional delivery point to Florida Public Utilities (FPU) in Sanford, Seminole County, Florida, under the certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Florida Gas states that the maximum deliveries at the proposed point would be 2,340 therms per hour and 39,000 therms per day. Also, Florida Gas explains that FPU's gas entitlement will not be increased in order to make deliveries at the additional point.

Florida Gas further states that the estimated $116,000 cost to construct the proposed facilities would be 100% reimbursed by FPU.

Comment date: August 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-615-000]

Take notice than on June 14, 1985, Northern Natural Gas Company, Division of InterNorth,. Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP 85-615-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to transport, on a firm basis for the account of Tennessee, a maximum daily quantity of 20,000 Mcf of gas produced from Matagorda Island Blocks (MAT) 711 and 712, offshore Texas. It is stated that Northern would accept such volumes for Tennessee's account at the interconnection in MAT 713 of the jointly-owned lateral pipeline facilities of Northern and Tennessee, which connect the MAT 712 production platform and the joinlty owned pipeline facilities of Northern, Southern Natural Gas Company, Natural Gas Pipeline Company of America, Florida Gas Transmission Company and Transcontinental Gas Pipe Line Corporation known as the 758 Lateral. It is further stated that Northern would redeliver thermally equivalent volumes for Tennessee's account to Houston Pipe Line Company (HPL) in Refugio County, Texas, for further transportation. Additionally, it is asserted that Northern would transport on a best-efforts basis volumes in excess of the maximum daily quantity (MDQ) that are delivered by Tennessee in MAT 713.

Northern proposes to charge Tennessee a cost of service based monthly transportation charge (MTC). It is explained that the agreement provides for an MTC of $132,240 for the firm service and 21.75 cents per Mcf of gas delivered in excess of the MDQ. It is further explained that since the agreement was executed, compression was installed on Matagarda offshore Pipeline System (MOPS) pursuant to Commission order issued in Docket No. CP83-186-002 and Northern has filed, in Docket No. CP85-247-000 for authorization to acquire Transco's ownership interest in the 758 Lateral. Northern proposes to charge Tennessee an MTC, based on an expanded MOPS, of $76,548 per month for the firm service and 12.59 cents per Mcf for overrun service. The proposed service, which it is indicated commenced August 31, 1984, on a best efforts basis pursuant to Part 284 of the Commission's Regulations, would continue for a primary term of eight years and from year to year thereafter.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Northwest Central Pipeline Corporation

[Docket No. CP85-620-000]

Take notice that on June 17, 1985, Northwest Central Pipeline Corproation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-620-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales tap for the direct interruptible sale of natural gas to Kleysteuber & Gillen, Inc., in Finney County, Kansas, for use in irrigation operations under the certificate issued in Docket No. CP82-479-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central States that such sale would not significantly affect its overall gas supply or have any detrimental effect on existing customers.

Northwest Central states that the projected volume of delivery through this point is approximately 8,800 Mcf per year and 53 Mcf on a peak day. Northwest Central estimates the cost of these facilities to be $5,080, which would be paid from available cash.

Comment date: August 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Northwest Pipeline Corporation

[Docket No. CP85-625-000]

Take notice that on June 19, 1985, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP85-625-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas for various heavy oil producers (Shippers), along with the construction and operation of certain facilities necessary therefore, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on a firm basis, up to 350,000 Mcf per day of natural gas which would be tendered by the Shippers to Northwest at an existing point of interconnection between the facilities of Westcoast Transmission Company Limited (Westcoast) and Northwest, located at the Canadian and U.S. international border near Sumas, Washington. Northwest would transport such gas through its existing mainline facilities and redeliver thermally equivalent volumes, less any gas retained as compensation for mainline fuel usage, to the proposed point of interconnection with Kern River Gas Transmission Company (Kern River) near Northwest's existing Muddy Creek compressor station in Lincoln County, Wyoming.

Northwest states that it anticipates that Shippers will enter into service agreements under Northwest's existing Rate Schedule T-3 to cover the proposed service. Since the distance from the receipt point at Sumas, Washington, to the redelivery point in Lincoln County, Wyoming, is approximately 1,049 miles, pursuant to the terms of Rate Schedule T-3, Northwest proposes that the Shippers would be charged the maximum commodity charge, currently 10.36 cents per MMBtu. The Rate Schedule T-3 demand charge is currently $3.7536 cents per month per MMBtu of contract demand. Northwest states that all Shippers must reimburse Northwest for its then effective fuel use requirements, including line loss and shrinkage associated with the transportation of the Shipper's gas on Northwest's mainline facilities. The currently effective mainline fuel reimbursement rate is 1.1 percent of the volumes tendered for transportation.

Northwest proposes to construct and operate two 22-inch mainline taps and one meter station with two 16-inch pipeline meter runs. Northwest states that the taps and meter station will be constructed within the station yard of Northwest's existing Muddy Creek compressor station in Lincoln County, Wyoming, and will connect Northwest's transmission facilities with Kern River at a point immediately adjacent to the Muddy Creek station yard. Northwest's estimated cost of facilities if $1,327,000.

Kern River, applicant in pending Docket No. CP85-552-000, is a newly formed company proposing to construct an 837-mile pipeline from Northwest's proposed interconnection to Kern County, California. Northwest's Shippers would be the same as Kern River's shippers.

Northwest states that as its customers have indicated they are willing to release 2,676,763 therms per day of firm contract demand, equal to approximately 257,000 Mcf a day in pipeline capacity. Northwest states that if Kern River and Northwest receive certificates and signed transportation agreements, Northwest will file an application requesting authorization for abandonment of portions of the firm service presently provided to its existing customers. Revenues from the proposed transportation service estimated to be $28,297,365 annually, would redound to the benefit of its other customers, according to Northwest.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Pontchartrain Natural Gas System

[Docket No. CP85-599-000]

Take notice that on June 10, 1985, Pontchartrain Natural Gas System (Applicant), First City Center, 1700 Pacific Avenue, LB10, Dallas, Texas 75201-4696, filed in Docket No. CP85-599-000 an application pursuant to Section 7(c) of the Natural Gas Act and Section 284.222 of the Commission's Regulations (18 CFR 284.222) for a blanket certificate of public convenience and necessity for authorization to transport, sell and assign volumes of natural gas in interstate commerce as if Applicant were an intrastate pipeline as defined in Subparts C,D, and E and § 284.203 of Part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that during the 12-month period ending March 31, 1985, it received within or at the state boundaries of Louisiana 1,925,194 million Btu of gas which was exempt from Commission jurisdiction by virtue of section 1(c) of the Natural Gas Act. During this same period, Applicant states that it received approximately 26,387,496 million Btu of gas from all sources of supply.

Applicant requests blanket authorization to make sales, pursuant to Subpart D of Part 284, and to enter into zero fee, mutually beneficial transportation/exchange arrangements pursuant to Subpart C of Part 284.

Applicant has not set forth any rate methodology for approval under § 284.222(e)(2) of the Commission's Regulation, but states that, in the future, if it elects to charge a transportation rate for services under the requested blanket certificate, it will file an application under § 284.222(e)(2) for approval of a rate methodology.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Texoma Interstate Pipeline Company

[Docket No. CP85-601-000]

Take notice that on June 10, 1985, Texoma Interstate Pipeline Company (Texoma), 3050 Post Oak Boulevard, Houston, Texas 77001, filed in Docket No. CP85-601-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to acquire, construct, and operate facilities for the transportation of natural gas in interstate commerce, to perform related transportation services, and to add and delete transportation receipt and delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texoma states that it is a general partnership formed for the purpose of acquiring, constructing, and operating interstate natural gas pipeline facilities and that it has three equal partners: HNG Texoma Gas Company, a subsidiary of Houston Natural Gas Corporation; Transok, Inc. (Transok), and NGPL-TIPCO, Inc., a subsidiary of Natural Gas Pipeline Company of America (Natural).

Texoma requests authority to acquire and operate as a new interstate pipeline a 212-mile portion of the former oil pipeline facilities of Texoma Pipeline Company that have been converted to gas service and are presently owned in separate segments by Natural, Transok, and Houston Pipe Line Company (HPL). Specifically, Texoma seeks to acquire (1) the 39-mile segment of 30-inch pipeline between Bryan County, Oklahoma, and Lamar County, Texas, owned by Natural and authorized for interstate service in Docket No. CP84-433-000, 29 FERC ¶ 61,073 (1984); (2) a 100-mile segment of 16 and 30-inch pipeline in Okalahoma, now part of Transok's intrastate system; and (3) a 73-mile segment of 30-inch pipeline in Texas, now part of HPL's intrastate system.

Texoma further requests authority to construct and operate 2,400 horsepower compression facilities at Allen, Oklahoma, and 2,600 horsepower compression facilities at Perryville, Texas, which, it is stated, would provide for an initial operating capacity of 370,000 Mcf per day for the new interstate pipeline.

Texoma also requests authority to construct and operate additional compression facilities, as needed, to expand its pipeline's capacity to 650,000 Mcf per day. These facilities would include 2,400 additional horsepower at Allen, Oklahoma, 11,400 additional horsepower at Perryville, Texas, and 15,200 horsepower at a new compression station at Paris, Texas.

Texoma estimates that the net cost for the acquisition of the pipeline facilities would be $74,870,847; that the cost of the construction of the facilities for initial operation of the pipeline would be $11,040,000; and that the cost of the construction of the additional facilities for full capacity operation of the pipeline would be $35,315,000. Texoma estimates that the cost of non-jurisdictional facilities that it intends to construct under § 2.55(a) of the Commission's regulations would be $3,951,000. Texoma states that the acquisition and construction of these facilities would be initially financed by capital contributions by the partners or their affiliates.

Texoma proposes to provide firm transportation service for various shippers with which it is negotiating. It asserts that Natural is seeking transportation for up to 170,000 Mcf of natural gas per day and that HNG Industrial Natrual Gas Company is seeking transportation for up to 100,000 Mcf per day. Texoma proposes a two-part, demand-commodity rate, and estimates an initial monthly demand rate of $2.81 per million Btu of contract demand and a commodity and overrun rate of 13.72 cents per million Btu, based on a contract demand of 370,000 Mcf per day. Texoma requests blanket authority to add and delete receipt and delivery points for its transportation services and states that it would file annual revisions to its transportation agreements to reflect changes in receipt and delivery points which occurred during the previous calendar year.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP85-563-000]

Take notice that on June 4, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP85-563-000 an application pursuant to section 7(c) of the Natural Gas Act and the regulations thereunder for a certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Southern Natural Gas Company (Southern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Applicant and Southern dated January 23, 1985, Applicant has agreed to transport up to 2,000 Mcf of gas per day on behalf of Southern. Applicant states that it would receive gas for Southern's account at existing points of interconnection with Texas Eastern Gas Pipeline Company (Texas Eastern) in Allen and Beauregard Parishes, Louisiana. It is indicated that Texas Eastern is presently transporting gas for Southern pursuant to Part 284 of the Commission's Regulations under Docket No. ST85-666 from West Cameron Block 250, offshore Louisiana, to receipt points mentioned. Applicant explains that it would redeliver gas to Southern at a point of interconnection with Southern in St. Mary Parish, Louisiana and that Southern would pay a monthly demand charge of $2,400.

Comment date: July 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-16785 Filed 7-12-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of May 24 Through May 31, 1985

During the Week of May 24 through May 31, 1985, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submission inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of May 24 through May 31, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
April 10, 1985	Economic Regulatory Administration, Houston, TX	HRZ-0254	Interlocutory. If granted: Carl L. Counts would be joined as a respondent in the proceeding involving a Proposed Remedial Order issued to Brazoria Energy, Inc. and Gerald W. Collum on October 5, 1984.
May 28, 1985	Ashland Oil, Inc., Pittsburgh, PA	HEE-0150	Exception from the Entitlements program. If granted: Ashland Oil, Inc. would receive an exception from the provisions of 10 CFR 211.67, which would modify its entitlements purchase obligations for the January 1981 Entitlements Notice.
Do.	C. W. Carey Oil Co., Kinston, NC	HEE-0151	Exception to the Reporting Requirements. If granted: C. W. Carey Oil Company would not be required to file form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Do.	Natural Resources Defense Council, Inc., Washington, D.C.	HFA-0290	Appeal of an Information Request Denial. If granted: The May 8, 1985 Freedom of Information Request Denial issued by the Office of Military Applications would be rescinded, and Natural Resources Defense Council, Inc. would receive access to "Abstracts of Weapons Data Reports, Volume 11, No. 6".

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of May 24 through May 31, 1985]

Date	Name and location of applicant	Case No.	Type of Submission
Do.	Wellen Oil, Inc., Washington, D.C.	HEF-0584	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 205, Subpart V, in connection with a June 25, 1984 Consent Order entered into with Wellen Oil, Inc.
May 29, 1985	University of California at Santa Cruz, CA	HFA-0291	Appeal of an Information Request Denial. If granted: The April 24, 1985 Freedom of Information Request Denial issued by the Office of Administrative Services would be rescinded, and the University of California at Santa Cruz would receive a waiver of fees.
May 31, 1985	Amcole Energy Corp., Washington, DC	HEF-0585	Implementation of Special Refund Procedures. If granted: The Office of Hearings and Appeals would implement Special Refund Procedures pursuant to 10 CFR Part 204, Subpart V, in connection with a September 24, 1984 Consent Order entered into with Amcole Energy Corporation.
May 31, 1985	Deiter Brothers Fuel Co., Inc., Bethlehem, PA	HEE-0152	Exception to the Reporting Requirements. If granted: Deiter Brothers Fuel Company, Inc. would not be required to file form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Do.	J. D. Street & Company, Inc., Hagelwood, MO	HRZ-0255	Interlocutory. If granted: The Proposed Remedial Order issued to J. D. Street & Company, Inc. (Case No. HRO-0064) on May 21, 1982, would be dismissed.

REFUND APPLICATIONS RECEIVED

[Week of May 24 to May 31, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case number
5/30/85	LARCO/Pioneer Petroleum	RF112-33
5/29/85	Point Landing/Kristensons-Petroleum, Inc.	RF112-8
5/30/85	McCarty/Dayton South Truck Plaza	RF143-7
5/29/85	Arkla Chemical/A. Tenenbaum Company, Inc.	RF153-1
5/28/85	LARCO/Utah Package Xpress, Inc.	RF112-28
5/31/85	Arkla Chemical/Stephens, Inc	RF153-2
5/31/85	LARCO/Salt River Project	RF112-36
5/31/85	Northwest Pipeline/Thriftway Company	RF116-2
5/31/85	Stinnes Interoil/Apex Oil Co.	RF125-4
5/31/85	LARCO/US Oil Company, Inc	RF112-35
5/31/85	Arkla Chemical/Scott Plumbing Company, Inc.	RF153-3
5/31/85	LARCO/Solo Oil	RF112-34
5/28/85	National Helium/Missouri	RQ3-197
5/28/85	Webster/Missouri	RQ48-198
5/28/85	Vickers/Missouri	RQ1-199
5/29/85	Gulf/Rex Paugh	RF40-3030
5/24/85	Seminole/Columbia Paving, Inc	RF111-12
5/24/85	LARCO/Big 8 Full Service Tire Center	RF112-26
5/24/85	LARCO/Town Pump	RF112-27
5/24/85	Amoco/Amoco Bay Harbor	RF21-12394
5/29/85	LARCO/Skyline Self Service	RF112-29

REFUND APPLICATIONS RECEIVED—Continued

[Week of May 24 to May 31, 1985]

Date received	Name of refund proceeding/name of refund applicant	Case number
5/29/85	LARCO/Redwood Self Service	RF112-30
5/29/85	LARCO/A&A Oil Company	RF112-32
5/29/85	Witco Chemical/Consolidated Oil Company	RF115-3
5/29/85	LARCO/Century Petroleum Corporation	RF112-31
5/28/85	Hertz/TRW, Inc	RF76-157
5/28/85	Hertz/Ford Motor Company	RF76-158
5/28/85	Kiesel/Biebel Brothers	RF126-14
5/30/85	Stinnes Interoil/Texaco Refining & Marketing, Inc.	RF125-3
5/10/85	J.A.L./Sidney Gitlitz	RF71-6

[FR Doc. 85-16688 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed; Week of June 7 Through June 14, 1985

During the Week of June 7 through June 14, 1985, the appeals and applications for exception of other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any persons who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occur first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

July 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 7 through June 14, 1985]

Date	Name and location of applicant	Case No.	Type of submission
June 10, 1985	American Federation of Government Employees, Lakewood, Colorado	HFA-0295	Appeal of an information request denial. If granted: The May 8, 1985, Freedom of Information Request Denial issued by the Inspector General would be rescinded, and the American Federation of Government Employees would receive acess to a copy of an investigative report on Jim Sullivan.
Do.	Fred K. Kleinback & Son,Inc., Green Lane, Pennsylvania	HEE-0154	Exception to a reporting requirement. If granted: Fred K. Kleinback & Son, Inc., would no longer be required to file form EIA-782B "Resellers/Retailers' Monthly Petroleum Productu Sales Report."
Do.	Government Sales Consultants, Annandale, Virginia	HFA-0296	Appeal of an information request denial. If granted: The May 15, 1985 Freedomn of Information Request Denial issued by the Bonneville Power Administration would be rescinded, and Government Sales Consultants would receive access to all losing proposals submitted for solicitation No. DE-AC79-85BP29346, Project Management System.
June 12, 1985	Millard A. Peake, Washington, D.C.	HEE-0155	Exception to a reporting requirement. If granted: Millard A. Peake would not be required to file form EIA-782B "Reseller/Retailers' Monthly Petroleum Product Sales Report."
June 13, 1985	Natural Resources Defense Council, Inc., Washington D.C.	HFA-0297	Appeal of an information request denial. If granted: The June 6, 1985 Freedom of Information Request Denial issued by the Office of Intelligence Resources and Analysis would be rescinded, and an additional search for document pertaining to locations of nuclear reactors in the Soviet Union would be undertaken.

REFUND APPLICATIONS RECEIVED

[Week of June 7 to June 14, 1985]

Date received	Name of refund proceeding name of refund applicant	Case number
6/4/85	Hertz/General Electric Corp	RF76-160
6/5/85	Gas Systems/Odessa LPG Transport.	RF162-1
6/7/85	Alkek/Adams/Defense Logistics Agency.	RF6-74
6/7/85	LARCO/Rollins Oil Company	RF112-158
6/10/85	Amoco/Middlebrook Oil Co	RF21-12396
6/10/85	Amoco/Bennett Corners Amoco	RF21-12395
6/10/85	Aminoil/A-C Gas Service	RF139-9
6/10/85	ARKLA Chemical/Pickens-Bond Construction Co.	RF153-9
6/10/85	Arkansas Louisiana/Albert Harper.	RF154-2
6/10/85	Arkansas Louisiana/Stephens Production Co.	RF154-1
6/10/85	Armour-Powerine Oil Co	RF167-1
6/10/85	Cross/Leible Auto Repair	RF147-2
6/10/85	J.A.L./Father & Son Auto Corp	RF71-7
6/11/85	Husky/Coors Road Husky	RF161-2
6/11/85	LARCO/Consolidated Freightways.	RF112-159
6/11/85	Shelter Creek Chevron/U.S. Postal Service.	RF163-1
6/11/85	Betts, Ken/U.S. Postal Service	RF164-1
6/11/85	Hal's Abel Chevron/U.S. Postal Service.	RF165-1
6/11/85	Pacifica Shell/U.S. Postal Service.	RF166-1
6/12/85	Arkla Chemical/DLM, Inc	RF153-10
6/13/85	APCO/Brooks APCO	RF83-134
6/13/85	Arkla Chemical/Chandler Trail Convoy.	RF153-11
6/13/85	LARCO/Towne Pump Stations	RF112-160
6/13/85	C.C. Dillion/Watkins 66 Service	RF148-3
6/13/85	C.C. Dillion/F.L. Thomas Enterprises.	RF148-4

NOTICE OF OBJECTION RECEIVED

[Week of June 7 through June 14, 1985]

Date	Name and location of applicant	Case No.
6/12/85	Keystone Fuel Oil Company Washington, DC.	HEE-0104

[FR Doc. 85-16689 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of May 27 Through May 31, 1985

During the week of May 27 through May 31, 1985, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Tampimex Oil International, Ltd., 5/28/85; HRO-0264, HRD-0274

The Office of Hearings and Appeals (OHA) issued a Decision and Order which dismissed, without prejudice, a Proposed Remedial Order (PRO) issued to Tampimex Oil International, Ltd. The PRO had alleged that Tampimex overcharged its customers by $14.3 million as the result of its failure to calculate correctly its maximum lawful selling price (MLSP) for gasoline.

Tampimex has based its imputed May 15, 1973 selling price (under the new item/new market rule) on the market prices for gasoline reported by *Platt's Oilgram Price Service*. The PRO noted that this method was not prescribed by the pricing regulations and substituted Tampimex own first sale price in calculating the firm's MLSP. The OHA found that Tampimex and the ERA had both used methodologies other than that established by the regulations and held that the ERA must either accept Tampimex's May 15, 1973 price calculation or determine that price in accordance with the DOE regulations. In the case of the Tampimex audit, that would have required the ERA to determine the price charged at Tampimex's nearest comparable outlet. Since the ERA did not follow either acceptable course of action, the PRO was dismissed without prejudice. Accordingly, Tampimex's Statement of Objections and Motion for Discovery were dismissed as well.

Requests for Exception

Formby Oil Company, 5/30/85; HEE-0123

Formby Oil Company filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting responsibility. Accordingly, exception relief was denied.

Franklin Oil Company, 5/30/85; HEE-0121

Franklin Oil Company filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting responsibility. Accordingly, exception relief was denied.

Petro Products, Inc., 5/30/85; HEE-0125

Petro Products filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller-Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting responsibility. Accordingly, exception relief was denied.

Motions for Discovery

Marathon Oil Company; Economic Regulatory Administration, 5/29/85; HRD-0035, HRD-0046

Marathon Oil Company and the Economic Regulatory Administration (ERA) each filed a Motion for Discovery in connection with a pending enforcement proceeding, *Marathon Oil Company*, No. HRO-0025 (Statement of Objections filed March 8, 1982). The enforcement proceeding concerns a Proposed Remedial Order issued to Marathon by ERA on October 28, 1981, in which ERA alleges that Marathon violated the regulations by (i) failing to compute its costs of crude oil for May 1973 and the months of measurement as the costs of its purchases in a given month (the methodology issue), (ii) including its June and July 1973 increased costs of crude oil in its base prices (the June/July 1973 crude oil cost issue), and (iii) including the imputed interest portion of its lease payments for equity status vessels in its marine transportation costs (the marine transportation issue).

In its Motion for Discovery, Marathon requested discovery with respect to each of the three alleged violations. With respect to the methodology issue, Marathon's request concerned the remedial action proposed by ERA, *i.e.*, that Marathon be required to make an adjustment to its May 1973 costs rather than recompute its costs for all months in the manner that ERA alleges is required by the regulations. In considering the request, the DOE determined that, if ERA were correct that a firm was required to compute its costs as the cost of its purchases in a given month, the most appropriate remedy is to require the firm to recompute its costs for each month on that basis. Accordingly, the DOE concluded that discovery related to the remedial action proposed by ERA was not relevant to the proceeding. In considering Marathon's request for discovery relating to the June/July 1973 crude oil cost issue, the DOE determined that the regulations clearly did not permit the inclusion of such costs in base prices and for that reason alone contemporaneous construction discovery was inappropriate. In considering Marathon's request for discovery with respect to the marine transportation issue, the DOE determined that the regulations clearly did not permit the inclusion of the cost of vessel financing in a refiner's marine transportation costs and for that reason alone contemporaneous construction discovery was inappropriate. In considering various other requests with respect to these issues, the DOE determined that discovery was not "necessary in order to obtain relevant and material evidence." Accordingly, Marathon's Motion for Discovery was denied. With respect to ERA's Motion for Discovery, ERA sought discovery regarding Marathon's accounting practices and Marathon's understanding of the regulations. In considering these requests, the DOE determined that the requested discovery would not produce evidence related to relevant issues of disputed fact. Accordingly, ERA's Motion for Discovery was also denied.

Telum, Inc., 5/30/85; BRD-1244

On September 30, 1980, Telum, Inc. (Telum) filed a Motion for Discovery with the Office of Hearings and Appeals (OHA). In its Motion, Telum requests administrative record and contemporaneous construction discovery regarding the meaning and application of both the "new item and new market rule" and the DOE regulatory term "firm".

In considering Telum's Motion, the OHA found that discovery concerning the term "firm" was both unnecessary and inappropriate, since the information sought was essentially of a legal nature. For similar reasons, much of the discovery request for materials regarding the new item and new market rule was denied. However, with respect to the term "service organization" contained within the rule, the OHA determined that Telum had established the requisite showing of ambiguity and inconsistent application sufficient to warrant granting contemporaneous construction discovery. Accordingly, contemporaneous construction discovery was granted concerning the term "service organization." In addition, the Economic Regulatory Administration was ordered to produce the administrative record for the term "firm" and for the "new item and new market rule."

Gordon Walz, John Cross, et al., Revere Petroleum, Richard Dobyns, 5/30/85; HRD-0275, HRD-0278

In connection with a Proposed Remedial Order (PRO) proceeding (Case No. HRO-0125), a Motion for Discovery was filed with the Office of Hearings and Appeals (OHA) by Gordon Walz, John Cross, *et al.* (joined parties). Subsequently, Revere Petroleum and Richard Dobyns (original parties) also filed a Motion for Discovery. In their Motions, the joined and original parties seek cross-discovery from each other regarding the relationship between themselves as well as information concerning the crude oil transactions which form the basis for the alleged PRO regulatory violations. In considering these Motions, the OHA determined that the joined parties' submission clearly demonstrated that production and examination of the requested documents would lead to relevant and material evidence, and the Motion was granted in its entirety. Similarly, several of the original parties' requests appeared to be designed to produce evidence relevant and material to the issues in the proceeding, and their requests were granted in part.

Interlocutory Order

Texaco Inc., 5/30/85; HRZ-0249, HRZ-0250

Texaco Inc. filed two motions in connection with its objections to a Proposed Remedial Order (PRO) that the Economic Regulatory Administration issued to it on May 1, 1979. The first motion sought dismissal of the overcharge claims in the PRO for a portion of the audit period, September through December 1976. OHA denied the motion, noting that in a 1981 decision it had rejected Texaco's arguments that the PRO did not make a *prima facie* case of a regulatory violation for that period. OHA also held that, even if the PRO were defective, the issues pertaining to the September through December 1976 period had been substantially developed in an earlier enforcement proceeding before OHA and that dismissal therefore would be inappropriate. The second motion sought reconsideration of two interlocutory orders issued in the Texaco proceeding that addressed the very large tract exception to the regulatory definition of property. The motion also sought an evidentiary hearing regarding that exception. OHA denied the motion, holding that Texaco had shown no basis for reconsideration of OHA's prior orders and that its evidentiary hearing request was untimely and did not meet the requirements of 10 CFR 205.199.

Implementation of Special Refund Procedures

Buck's Butane and Propane Service, Inc., 5/31/85; HEF-0043

On May 31, 1985, the Office of Hearings and Appeals of the Department of Energy (DOE) issued a final Decision and Order establishing procedures for the disbursement of $29,200 (plus accrued interest) obtained as a result of a Consent Order entered into by the DOE and Buck's Butane and Propane Service, Inc. (Buck's). The funds will be available to customers who purchased propane from Buck's during the period March 1974 through January 28, 1982. Successful applicants will receive refunds proportionate to the volume of propane they purchased from Buck's during the consent order period.

Refund Applications

Gulf Energy & Development Corp./Tesoro Petroleum Corp., 5/31/85; RF51-1

Tesoro Petroleum Corporation filed an Application for Refund based on the principles and procedures set forth in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). In seeking a portion of the funds remitted by Gulf Energy & Development Corporation (GEDC) and obtained as a result of a Consent Order between GEDC and the DOE, Tesoro limited its claim to the threshold refund level of $5,000. Accordingly, the DOE applied the presumption of injury methodology to the applicant's claim, and therefore granted Tesoro a refund of $5,000 plus accrued interest.

Seminole Refining, Inc./Haugabook Oil Company, 5/31/85; RF111-3

Haugabook Oil Company filed an Application for Refund for a portion of the monies obtained by the DOE through a consent order with Seminole Refining, Inc. (Seminole). In considering the request, the DOE found that Haugabook Oil Company had purchased a relatively small volume of No. 2 Fuel Oil from Seminole. Using a volumetric allocation methodology, the DOE determined that Haugabook's allocable share of the consent order fund was below the presumption of injury level of $5,000. The DOE decided, therefore, that Haugabook Oil Company would receive a refund equal to its allocable share, *i.e.*, $805, plus accrued interest in the amount of $594.

Texas Oil & Gas Corporation/Excel Corporation, 5/31/85; RF42-9

Excel Corporation filed an Application for Refund based on the principles and procedures set forth in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984). In seeking a portion of funds remitted by Texas Oil & Gas Corporation (TOGCO) and obtained as a result of a Consent Order between TOGCO and the DOE, Excel limited its claim to the threshold refund level of $5,000. Accordingly, the DOE applied the presumption of injury methodology to the applicant's claim, and granted Excel a refund of $5,000 plus accrued interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

Bob Malone's Gulf—RF40-2300
Billy's Gulf Service—RF40-2318
Jackson Gulf—RF40-2896
Don Anderson Oil Co.—HEE-0138
Howell Oil Company—RF40-3027
Northeast Utilities—RF76-0003

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-16679 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of June 3 Through June 7, 1985

During the week of June 3 through June 7, 1985, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Orders

Glen A. Martin, June 3, 1985, *BRO-1468*

Glen A. Martin objected to a Proposed Remedial Order (PRO) which was issued to him on July 28, 1981. In the PRO, the Economic Regulatory Administration found that he had sold crude oil from two producing tracts at prices in excess of those permitted by 10 CFR Part 212, Subpart D. The PRO alleged that each of the tracts constituted a single property, while Martin maintained that each tract constituted two separate properties. Martin had argued that because of continuous drilling clauses in the leases at issue, he held a right to produce in 1972 only for the developed portions of each tract. He therefore contended that each of the tracts were two properties based upon the portions that were developed before and after 1972. The DOE found no merit to these arguments, and held that each tract constituted a single property. The DOE also found that payments received by Martin pursuant to two crude oil option contracts violated the normal business practices rule, 10 CFR 212.62(c), and resulted in him receiving prices for crude oil that were in excess of those permitted by the regulations. The DOE also found that the remedial provisions of the PRO should be modified to provide that all monies remitted by Martin be distributed pursuant to the provisions of 10 CFR Part 205, Subpart V. The PRO, as modified, was issued as a final Remedial Order.

Strasburger Enterprises, Inc., June 4, 1985, *HRO-0139*

Strasburger Enterprises, Inc. objected to a Proposed Remedial Order (PRO) which was issued to it on March 4, 1985. In the PRO, the Economic Regulatory Administration (ERA) found that Strasburger had sold motor gasoline at prices in excess of those permitted by 10 CFR 212.93. The primary objections raised by Strasburger were that (i) the equal application rule applicable to reseller-retailers is procedurally invalid, (ii) there was no regulation covering sales of unleaded gasoline during the audit period, and (iii) the sequence of recovery of current increased product costs, banked increased product costs, and non-product costs used in the audit was improper. The DOE granted in part the firm's objection to the method ERA used to calculate the firm's bank of unrecouped increased product costs. The DOE found that while the ERA was correct that all current increased product costs must be recovered before any increased non-product costs, the regulations did not require firms to recover their banked product costs prior to recovering their non-product costs. Strasburger's other objections to the PRO were denied. Accordingly, the PRO was remanded to the ERA for recalculation of the overcharge amount in a manner consistent with the Decision and Order.

Interlocutory Order

Houston Oil and Refining, Inc.; ERA, June 4, 1985, HRZ-0253; HRZ-0252

On December 21, 1985, Houston Oil and Refining, Inc. (HOR) filed a motion to dismiss the Proposed Remedial Order (PRO) issued to the firm by the Houston Office of the the Economic Regulatory Administration (ERA). On February 28, 1985, the ERA filed a motion to join Joseph A. Imparato as a party to the enforcement proceeding originally initiated against HOR. In denying HOR's motion to dismiss, the Office of Hearings and Appeals (OHA) found that the PRO established a *prima facie* case of a regulatory violation, as required by 10 CFR 205.192(d), and that substantial factual and legal disputes existed which made dismissal at this time totally inappropriate. The OHA also found that the ERA, by asserting a *prima facie* case of liability against Imparato that arose out of the same regulatory violations alleged in the original PRO, had met the applicable standards for joinder. Finding that the record contained sufficient evidence of Imparato's active participation in and knowledge of the transactions which were the subject of the HOR PRO, the OHA granted the ERA's motion to join Imparato as a party to the enforcement proceeding.

Implementation of Special Refund Procedures

Warren Holding Company, June 4, 1985, HEF-0192

The Office of Hearings and Appeals issued a final Decision and Order setting forth procedures to be used in filing applications for refund from the settlement funds obtained by the DOE as a result of a consent order entered into with Warren Holding Company. The funds will be available to customers who purchased No. 2 heating oil and motor gasoline during the period November 1, 1973 through April 30, 1974, from several companies controlled by Warren Holding Company. Applications for refund must be postmarked within 90 days of the publication of the decision in the **Federal Register.** Specific information to be included in refund applications is discussed in the decision.

Refund Applications

The Hertz Corporation/Aluminum Company of America, et al., June 4, 1985, RF76-004 et al.

The DOE issued a Decision and Order concerning 83 Applications for Refund filed by firms who rented motor vehicles from The Hertz Corporation and incurred refueling charges as the result of returning the vehicles with less motor gasoline than when rented. Each of the firms elected to apply for a refund based on the formulae outlined in *The Hertz Corp.*, 12 DOE ¶ 85,113 (1984). In considering these applications, the DOE concluded that the applicants should receive a refund based upon the total volume of their motor gasoline purchased from Hertz in the form of refueling charges. The refunds granted in this proceeding total $177,919.

The Hertz Corporation HBE Corporation, et al., June 4, 1985, RF76-002 et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed by firms who rented motor vehicles from The Hertz Corporation and incurred refueling charges as the result of returning the vehicles with less motor gasoline than when rented. Each of the firms elected to apply for a refund based on the formulae outlined in *The Hertz Corp.*, 12 DOE ¶ 85,113 (1984). In considering these applications, the DOE concluded that the applicants should receive a refund based upon the total volume of their motor gasoline purchased from Hertz in the form of refueling charges. The refunds granted in this proceeding total $37,691.

Mountain Fuel Supply Company/Petrolane, Inc., June 5, 1985, RF118-1

Petrolane filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Mountain Fuel Supply Company. The DOE found that Petrolane paid above-market average costs during several months of the Mountain Fuel consent order period and, using a three-step competitive disadvantage methodology, the DOE calculated a range of Petrolane's competitive disadvantage. A refund of $10,616, was found to equitably compensate Petrolane for the harm it suffered as a result of Mountain Fuel's alleged overcharges. In addition, the firm received accrued interest which brought the total refund granted in this proceeding to $14,925.

Richards Oil Company/Defense Logistics Agency; Cargill, Inc., June 7, 1985, RF70-27; RF70-28

The DOE issued a Decision and Order concerning two Applications for Refund filed by firms who purchased fuel oil from Richards Oil Company. In considering these applications, the DOE concluded that the applicants should receive a refund in this proceeding of $70,858.71.

Seminole Refining, Inc./Baxter's Asphalt & Concrete, Inc., June 5, 1985, RF111-2

Baxter's Asphalt & Concrete, Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The DOE found that the firm purchased a relatively small amount of No. 5 fuel oil and, using the volumetric allocation methodology, determined that the firm's allocable share was below the presumption of injury level of $5,000. The DOE decided, therefore, that Baxter's Asphalt & Concrete, Inc. would receive a refund amount of $1,705 plus accrued interest.

Seminole Refining, Inc./Dixie Oil Company, Inc., June 7, 1985, RF111-5

Dixie Oil Co. Inc., filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The firm claimed a refund on the basis of its purchases of 296,231 gallons of refined products from Seminole during the consent order period. The DOE determined that Dixie's claim was below the presumption of injury level of $5,000. The DOE therefore granted Dixie a refund of $1,854.41 plus accrued interest.

Seminole Refining, Inc./The Milwhite Company, Inc., June 7, 1985, RF111-6

The Milwhite Co., Inc. filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. The firm claimed a refund on the basis of its purchases of 393,923 gallons of refined products from Seminole during the consent order period. The DOE determined that, as an end-user of the products involved, Milwhite was not required to make a detailed showing of injury. The DOE therefore granted Milwhite a refund of $2,465.96 plus accrued interest.

Standard Oil Company (Indiana)/Amcorp Oil Company, June 4, 1985, RF21-8174; RF21-8175; RF21-12379; RF21-12380

The DOE issued a Decision and Order concerning Applications for Refund filed in the Amoco refund proceeding by the current and the prior owners of Amcorp Oil Company. *See Office of Special Counsel*, 10 DOE ¶ 85,048 (1982). The refund applications pertain to purchases of Amoco motor gasoline made before Amcorp was sold to the current owners. In considering the applications, the DOE determined that the purchase agreement that transferred Amcorp to the current owners did not also transfer the prior owners' claim to a refund and that, in view of the restitutionary goals of Subpart V proceedings, the prior owner of Amcorp, rather than the current owner, should be granted a refund. The refund granted in this proceeding totalled $3,366.

Standard Oil Company (Indiana)/Amoco Bay Harbor, June 4, 1985, RF21-12394

The DOE issued a Decision and Order concerning duplicate refunds received by a retailer of Amoco motor gasoline who applied twice for refunds in the Amoco refund proceeding. The DOE directed that Amoco Bay Harbor return the second refund it received, together with a written explanation as to why it had not notified the DOE of the error. The DOE further provided that failure to file this additional information within 30 days would result in the rescission of the original refund.

Standard Oil Company (Indiana)/State of Maryland et al., June 4, 1985, RQ21-152 et al.

The States of Maryland, Utah and Indiana, and the Oglala Sioux Tribe (Sioux) of the Pine Ridge Reservation, South Dakota, filed proposed second-stage refund plans for the funds remaining in the DOE escrow accounts pursuant to consent orders with Standard Oil Company (Indiana) (Amoco) and Belridge Oil Company (Belridge). The OHA partially approved Maryland's proposed plan to use $449,024 ($446,223 from Amoco and $2,801 from Belridge) to fund traffic signal coordination, low-income residential weatherization, vanpool and furnace replacement programs. Funding for Maryland's proposed emergency medical services program was not approved. Utah's proposed plan to use $211,196 plus interest to conduct a canyon transportation study of the Wasatch Mountain range was rejected. A portion of Indiana's plan for $125,000 from Amoco to fund fuel saver van and low-income alternative home heating programs was approved. The OHA did not approve Indiana's request to use over $1 million to fund drunk driving and low-income assistance programs. Finally, the OHA disapproved a proposed plan by the Sioux Tribe to use $9,377 for administrative expenditures.

Dismissal

The following submission was dismissed:

Company Name and Case No.

Holden Oil Company, RF7-125

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-16690 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decision and Order; Week of June 3 Through June 7, 1985

During the week of June 3 through June 7, 1985, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order is available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 24, 1985.

Keystone Fuel Oil Company, Washington, D.C., HEE-0104, Crude Oil

Keystone Fuel Oil Company filed an Application for Exception from the provisions of 10 CFR Part 212. The exception request, if granted, would relieve Keystone of its obligation to remit to the DOE $2.7 million plus interest, pursuant to a Remedial Order issued to Keystone on July 13, 1984. On June 5, 1985, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 85-16685 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Orders Filed; Week of April 15 Through April 19, 1985

During the week of April 15 through April 19, 1985, the notices of objection to proposed remedial orders listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

June 28, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Cities Service Co., Tulsa, Oklahoma, HRO-0285, Crude Oil

On April 15, 1985, Cities Service Company, 110 West Seventh Street, Tulsa, Oklahoma 74119 filed a Notice of Objection to a Proposed Remedial Order which the DOE Office of Enforcement Programs issued to the firm on March 5, 1985. In the PRO the Office of Enforcement Programs found that during the period October 1, 1979 to January 27, 1981, Cities charged prices in sales of price-controlled crude oil that were in excess of the levels permitted under 10 CFR Part 212, Subpart D. According to the PRO the violation resulted in $257,530,553 of overcharges plus interest of $251,791,646 accrued through March 31, 1985.

Elk Trading Co., Inc. & Neal Davis Dallas, Texas, HRO-0286 Crude Oil

On April 17, 1985, Elk Trading Co., Inc. & Neal Davis (Elk) (Elk Trading Co., Inc. & Neal Davis) Suite 300 Bedford Office Park, Tuscaloosa, Alabama 35406, and the State of Texas (State of Texas) P.O. Box 12548, Capitol Station, Austin, Texas 78711, filed a Notice of Objection to a Proposed Remedial Order which the DOE Dallas District Office of Enforcement issued to the firm on March 11, 1985. In the PRO the Dallas District found that during the period May 1978 to December 1980, Elk charged prices for crude oil in excess of those permitted under 10 CFR Part 212. According to the PRO the layering violation resulted in $15,897,743 of overcharges.

Goldsberry Operating Co., Shreveport, Louisiana, HRO-0287, Crude Oil

On April 17 and 22, 1985, respectively, the State of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711, and Goldsberry Operating Co., 1200 American Tower, Shreveport, Louisiana 71101, filed Notices of Objection to a Proposed Remedial Order which the DOE Houston, Texas District Office of Enforcement issued to the firm on March 12, 1985. In the PRO the Economic Regulatory Administration found that during December 1973 through September 1980

Goldsberry charged prices in excess of ceiling prices in first sales of domestic crude oil in violation of 10 CFR 212.32, 212.54, 212.73 and 212.74. According to the PRO the violation resulted in $300,549 of overcharges.

[FR Doc. 85-16686 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $172,193.63 (plus accrued interest) in consent order funds to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving the DOE and Elm City Filling Stations, Inc. of New Haven, Connecticut.

DATE AND ADDRESS: Comments must be filed within 30 days of the publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0067.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by the DOE and Elm City Filling Stations, Inc. (Elm) of New Haven, Connecticut. This Consent Order settled possible pricing violations in Elm's sales of No. 6 residual fuel oil to its customers during the period November 1, 1973 through December 31, 1973.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the Elm escrow account. The DOE has tentatively established a presumption that none of Elm's direct customers were injured by the firm's pricing practices, and has therefore tentatively decided that no Elm first purchaser customers will be eligible for refunds in this proceeding. The DOE proposes that the Elm escrow funds be distributed to those downstream customers who purchased the Elm residual fuel oil from Elm's direct customers and who can establish that they were injured by Elm's alleged overcharges. Such customers will receive refunds based on the amount Elm allegedly overcharged its direct customers, according to DOE audit files. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Elm City Filling Stations, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0067.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the affects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement a special refund proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Elm City Filling Stations, Inc. (Elm) of New Haven, Connecticut.

I. Background

Elm is a "reseller" of "No. 6 residual fuel oil" as these terms were defined in 10 CFR 212.31. A Proposed Remedial Order (PRO) was issued to Elm on January 2, 1979. Subsequently, the OHA issued a Remedial Order (RO) to Elm which found violations of the Mandatory Petroleum Price Regulations in the amount of $219,797.00 with respect to the firm's sales of No. 6 residual fuel oil during the period November 1, 1973 through December 31, 1973 (the audit period). *See Elm City Filling Stations*, 8 DOE ¶ 83,031 (1981). In order to settle all claims and disputes between Elm and the DOE regarding these sales, Elm and the DOE entered into a Consent Order on September 1, 1981, in which Elm agreed to remit $141,454 to the DOE. Elm's payments, which total $172,193.63 ($141,454 in principal and $30,739.63 in interest accrued prior to the completion of payments), are currently being held in an interest-bearing escrow account pending distribution by the DOE.

The procedural regulations of the DOE set forth general guidelines by which the OHA may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who were injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settelement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

II. Proposed Refund Procedures

We have considered the ERA petition to implement a Subpart V proceeding with respect to the Elm Consent order fund and have determined that it is appropriate to establish such a proceeding. Insofar as possible, this fund should be distributed to those purchasers of Elm No. 6 residual fuel oil who were injured by the firm's alleged price violations. We therefore propose to accept applications from parties that can show that they were adversely affected by Elm's pricing practices during the consent order period.[1]

To this end, we plan to use information in the ERA audit file to help construct a refund mechanism. We recognize that this audit file does not provide conclusive evidence as to the

[1] In the present case, the consent order period is the same as the audit period, November 1, 1973 through December 31, 1973.

identity of all possible refund recipients or the amount of money they might be eligible for in a Subpart V proceeding. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). Nevertheless, the information it contains can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries experienced than would a distribution plan based solely on a volumetric approach. *See Marion Corp.*, 12 DOE ¶ 85,104 (1983). This approach is especially appropriate in the present case because the Elm Consent Order is limited to the same product and time period as the audit, the ERA audit was very narrow in scope, and Elm had very few customers during this period. Therefore, as in previous cases of this type, we propose that the alleged overcharge figures listed in the audit file be used in reaching a determination of how the funds in the escrow account should be distributed. *See Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Brown Oil Co.*, 12 DOE ¶ 85,028 (1984).

The ERA audit files indicate that there were only three direct purchasers of No. 6 residual fuel oil from Elm during the consent order period, each of which resold the fuel oil to the other petroleum marketers and to end-users: Amerada Hess Corporation (Hess), Metropolitan Petroleum, Inc. (Metropolitan), and JOC Oil Company (JOC). According to the RO And other documents in the audit file, JOC and Metropolitan were allegedly overcharged $7,339 and $217,577 respectively, but Hess was not overcharged. We therefore propose to adopt a rebuttable assumption that Hess was not injured by Elm's pricing practices during the consent order period. Hess would then be ineligible for a refund in this proceeding, unless it demonstrates that the audit findings were incorrect and that it was injured by Elm's pricing practices during the consent order period.[2]

We further propose to establish a rebuttable presumption that JOC and Metropolitan were not injured by Elm's pricing practices since they were spot purchasers of the Elm No. 6 residual fuel oil. During the period July 18, 1973 through December 31, 1973, JOC and Metropolitan made only four purchases of No. 6 residual fuel oil from Elm. This suggests that these firms were not regular customers of Elm. Also, the PRO describes the two purchases JOC and Metropolitan each made during the two month consent order period as "spot purchase and sales transactions." *See* PRO at 6. We therefore, tentatively find that JOC and Metropolitan were spot purchasers of the No. 6 residual fuel oil they brought from Elm during the consent order period.

As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97; *see also Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, JOC and Metropolitan must submit evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claim is based.[3] In the event that JOC or Metropolitan makes this showing, they would also have to make the showing required of resellers (as outlined below) in order to be eligible for a refund in this proceeding.

As indicated above, it is likely that JOC and Metropolitan passed on the Elm alleged overcharges to their respective customers. Consequently, these downstream customers may have been injured by Elm's pricing practices during the consent order period, and therefore may be eligible for a refund in this proceeding. Any such applicants must show that they were adversely affected by Elm's alleged overcharges, as outlined below.

We propose that any claimant who resold the Elm No. 6 residual fuel oil purchased from JOC or Metropolitan be required to demonstrate that it did not pass on to its customers price increases implemented by Elm. *See, e.g., Vickers*. In order to qualify for a refund, a reseller of Elm No. 6 residual fuel oil purchased from JOC or Metropolitan must show that when it sold this product it would have maintained its prices at the same level had Elm's alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that at the time it purchased No. 6 residual fuel oil from JOC or Metropolitan, market conditions would not permit it to increase its prices to pass through the additional costs associated with Elm's alleged overcharges to its customers. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we will adopt a presumption of injury with respect to small claims. The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). In the present case, we are proposing to adopt a presumption that reseller claimants seeking small refunds were injured by the pricing practices settled in the Elm Consent Order. This presumption is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many

[2] It would not further the purpose of this Subpart V proceeding and it would be contrary to the terms of the Elm Consent Order for us to attempt to adjudicate whether there has been an actual violation of the price regulations by Elm in its sales to Hess. *See, e.g., Kern Oil & Refining Co. v. Tenneco Oil Co.*, Fed. Energy Guidelines, Court Decisions, 1981–1984, ¶ 26,469 (Temp. Emer. Ct. App. 1983). However, in order for Hess to overcome the presumption we propose to establish, it will have to make a reasonable showing of the amount by which it was allegedly overcharged and that it absorbed the alleged overcharge. *See Standard Oil (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

[3] The ERA files also indicate that Hess was a spot purchaser of Elm No. 6 residual fuel oil. Accordingly, in order to be eligible for a refund, in addition to the showing previously outlined for Hess (t3see footnote 2), the firm must also rebut the presumption applicable to spot purchasers to be eligible for a refund.

times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of this presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently.

Under the presumption we are proposing to adopt, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes of No. 6 residual fuel that can be traced to Elm if its refund claim is based on purchases below a threshold level.[4] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In the present case, where the time period of the consent order is quite distant and refund amounts are likely to be fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to this presumption we are adopting, we are making a finding that downstream end-users or ultimate consumers (as defined in 10 CFR 211.51) of Elm No. 6 residual fuel oil purchased from JOC or Metropolitan, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Elm Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We have therefore concluded that end-users of No. 6 residual fuel oil need only document their purchase volumes from JOC or Metropolitan that can be traced to Elm in order to make a sufficient showing that they were injured by the Elm alleged overcharges.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweight the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

III. Calculation of Refund Amounts

We propose that the Elm consent order fund be divided between successful applicants as follows: First, the fund will be divided into two pools, one for JOC's customers and one for Metropolitan's, in proportion to the amount JOC and Metropolitan were allegedly overcharged by Elm. To calculate the size of these pools, the amount of alleged overcharges made to each of the two direct customers (JOC and Metropolitan) is divided by the total alleged overcharges made by Elm ($219,797). This fraction is then multiplied by the amount of funds remitted by Elm to the DOE ($172,193.63). The share of the Elm consent order fund initially attributable to each of the two direct customers is then $5,749 for JOC (\[$7,339 ÷ $219,797\] × $172,193.63) and $166,444 for Metropolitan (\[$212,458 ÷ $219,797\] × $172,193.63).

If JOC and Metropolitan fail to establish eligibility for a refund, these funds will then be distributed to JOC's and Metropolitan's customer in proportion to the amount they purchased from JOC or Metropolitan. *Cf. Office of Special Counsel*, 11 DOE ¶ 85,226 (1984). This distribution scheme presumes that the alleged overcharges by Elm that were passed on by JOC and Metropolitan were dispersed equally in those firms' sales. The OHA has referred to this presumption in the past as a volumetric refund amount. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

To determine the volumetric factors for JOC's and Metropolitan's customers, the share of the Elm consent order attributable to each of the two direct customers is divided by the total amount on No. 6 residual fuel oil sold by that firm during the Elm consent order period. *See Conoco Inc./Banco Properties, Inc.*, 12 DOE ¶ 85,117 at 88,362 (1984). This results in a refund amount for each gallon of No. 6 residual fuel oil purchased from JOC or Metropolitan during the consent order period.[5] The interest which has accrued on the money in the Elm escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to JOC, Metropolitan and Hess, and JOC and Metropolitan will be requested to assist us in identifying their customers who may have purchased the Elm No. 6 residual fuel oil. If appropriate, we also intend to publicize this proceeding in local newspapers in the areas where JOC and Metropolitan conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Elm City Filling Stations, Inc. pursuant to the Consent Order executed on September

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[4] We propose that any downstream retailer or reseller (including refiners acting in the capacity of resellers) who made only spot purchases from JOC or Metropolitan be presumed to have suffered no injury. In order to overcome this presumption, it will have to make the showing described in the discussion above.

[5] In the event that a downstream customer is able to document that the No. 6 residual fuel oil it purchased from JOC or Metropolitan was supplied entirely by Elm, its per gallon volumetric refund amount will be based on the amount that the applicable direct customer purchased from Elm. These volumetric amounts are equal to $0.005595 for JOC's customers ($5,749 divided by 1,027,459 gallons) and $0.18578 for Metropolitan's customers ($166,444 divided by 895,906 gallons).

1, 1981 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-16680 Filed 7-12-85; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties: $10,000 obtained as a result of a consent order into which the DOE entered with L & L Oil Company, a reseller of petroleum products located in Belle Chasse, Louisiana; $52,347.47 obtained as a result of a consent order into which the DOE entered with Lowe Oil Company, a reseller of petroleum products based in Clinton, Missouri; and $12,173.48 obtained as a result of a consent order into which the DOE entered with Moyle Petroleum Company, a reseller of petroleum products headquartered in Rapid City, South Dakota. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to case number HEF-0111 (L&L), HEF-0118 (Lowe), of HEF-0133 (Moyle).

FOR FURTHER INFORMATION CONTACT: Douglas Friedman, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties: $10,000 obtained by the DOE under the terms of a consent order entered into with L & L Oil Company, plus accured interest; $52,347.47 obtained by the DOE under the terms of a consent order entered into with Lowe Oil Company, plus accured interest;and $12,173.48 obtained by the DOE under the terms of a consent order entered into with Moyle Petroleum Corporation, plus accured interest. The funds are being provided to the DOE by L & L, Lowe, and Moyle to settle all claims and disputes between the firms and the DOE regarding the manner in which the firms applied the federal price regulations with respect to their sales of refined petroleum products during the respective consent order periods—November 1, 1973, through April 30, 1974, for L & L and Lowe, and March 1, 1979, thorugh June 30, 1979 for Moyle.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to 46 of L & L's customers, 3 of Lowe's and 22 of Moyle's, all of whom may have been overcharged. In order to obtain a refund, each claimant will be required to submit either a schedule of its monthly purchases from on of the three companies or a statement verifying that it purchased petroleum products from the appropriate company and is willing to rely on the data in the audit files. Certain firms will also be required to make specific demonstrations of injury. In addition, applications for refund will be accepted from purchasers not identified by the DOE audit. These purchasers will be required to provide specific documentation concerning the date, place, price, and volume of product purchased, the name of the firm from which the purchase was made, and the extent of any injury alleged. Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims in authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in these proceedings will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: June 28, 1985.

George B. Breznay,
Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Names of Firms: L & L Oil Company, Inc.; Lowe Oil Company; and Moyle Petroleum Company.

Date of Filing: October 13, 1983.

Case Numbers: HEF-0111; HEF-0118; and HEF-0133.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceedings in order to remedy the effects of alleged or actual violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with consent orders entered into with L&L Oil Company, Inc. (L&L), Lowe Oil Company (Lowe), and Moyle Petroleum Company (Moyle) (collectively referred to as the consent order firms).

I. Background

L&L, Lowe, and Moyle are all "reseller-retailers" of refined petroleum products as that term was defined in 10 CFR 212.31. L&L is located in Belle Chasse, Louisiana. Lowe's main office is in Clinton, Missouri. Moyle's headquarters are in Rapid City, South Dakota. A DOE audit of each firm's records revealed possible violations of the Mandatory Petroleum Price Regulations. 10 CFR Part 212, Subpart F. Subsequently, each firm entered into a separate consent order with the DOE. The consent orders refer to ERA's allegations of overcharges, but note that there were no findings that violations occurred. Additionally, the consent orders state that the consenting firms do not admit that they committed violations. A brief discussion of the pertinent matters covered by each consent order follows.

The L&L consent order covers the period November 1, 1973, through April 30, 1974. In a Notice of Probable Violation (NOPV) issued to the firm, ERA alleged that during that period, L&L committed possible pricing violations amounting to $95,299.15, with respect to its sales of No. 2 diesel fuel. In order to settle all claims and disputes between L&L and the DOE regarding the company's sales of No. 2 diesel fuel during the period covered by the NOPV, L&L and the DOE entered into a consent order on September 20, 1979. Under the terms of the consent order, L&L was to deposit $10,000 into an interest-bearing escrow account for ultimate distribution by the DOE. L&L remitted this sum on November 1, 1979.[1]

The Lowe consent order likewise covers the period November 1, 1973, through April 30, 1974. ERA issued a Proposed Remedial Order (PRO) to Lowe, in which the agency alleged that the company had committed possible pricing violations amounting to $81,943.09 on its sales of motor gasoline and motor oils between November 1973 and April 1974. In order to settle all claims and disputes between them regarding Lowe's sales of motor gasoline and motor oils during the period covered by the PRO, Lowe and the DOE entered into a consent order on September 1, 1981. The consent order required Lowe to deposit $52,347.47 into an interest-bearing escrow account for ultimate distribution by the DOE. The company fulfilled this requirement on September 14, 1981.[2]

The period covered by the Moyle consent order runs from March 1, 1979, through June 30, 1979. A DOE audit alleged that during the period, Moyle had committed possible pricing violations amounting to $24,346.98 on its sales of motor gasoline. To settle all claims and disputes between them concerning Moyle's sales of motor gasoline during the audit period, Moyle and the DOE entered into a consent order on December 31, 1980. The terms of the consent order required Moyle to deposit $12,173.48 into an interest-bearing escrow account for ultimate distribution by the DOE. The DOE received Moyle's check for the amount on January 15, 1981.[3]

This decison concerns the distribution of the funds in the three escrow accounts, including the accrued interest.

II Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who likely were injured by alleged overcharges or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (Vickers).

Our experience with subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will attempt to provide refunds to identifiable purchasers of refined petroleum products who may have been injured by L&L's or Lowe's pricing practices between November 1, 1973 and April 30, 1974, or by Moyle's pricing practices between March 1 and June 30, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identified Purchasers

The basic purpose of a special refund proceeding is to recompense parties who were injured as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we have decided to rely in part on the information contained in the DOE's audit files. Our experience with similar cases supports the use of this approach in Subpart V cases where many of the purchasers of a firm's products are identified in the audit file. *See, e.g., Marion Corp.*, 12 DOE ¶ 85,014 (1984) (*Marion*). Under these circumstances, a reasonably precise determination can be made regarding the identity of the allegedly overcharged parties and the amount of alleged overcharges each party suffered.

During the DOE's audit of L&L, 46 first purchasers were identified as having allegedly been overcharged. During the audit of Lowe, 3 first purchasers were similarly identified. In the audit of Moyle 22 first purchasers were identified as having allegedly been overcharged. In all three cases, ERA also alleged overcharges to customers who were not identified. We recognize that the DOE audit files do not necessarily provide conclusive evidence regarding the identity of all possible refund recipients or the appropriate refund for a particular firm. However, the information contained in those audit files may reasonably be used for guidance. *See Armstrong and Associates/City of San Antonio*, 10 DOE ¶ 85,050 at 88,259 (1983). In *Marion*, we stated that "the information contained in the . . . audit file can be used for guidance in fashioning a refund plan which is likely to correspond more closely to the injuries probably experienced than would a distribution plan based solely on a volumetric approach." 12 DOE at 88,031. In previous cases of this type, we have proposed that the funds in the escrow account be apportioned among the customers identified by the audit, other customers who can show injury, and downstream customers of either type of firm. *See, e.g., Bob's Oil Co.*, 12 DOE ¶ 85,024 (1984); *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). The first purchasers identified by the audit, with the share of the settlement allotted to each by ERA, are listed in Appendices B-1, B-3, B-4, C, and D.

Identification of first purchasers is only the first step in the distribution process. We must also determine whether the first purchasers were injured or were able to pass through the alleged overcharges. Besides considering the information which the audit file provides, we also propose the adoption of presumptions to be used in determining the level of a purchaser's injury. We propose to use these two methods to distribute the funds in the three escrow accounts. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process without incurring inordinate expenses and to enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. Therefore, as in previous special refund proceedings, we intend to adopt a presumption that claimants seeking small refunds were injured by the pricing practices of the company from which they purchased products. We also intend to adopt a rebuttable presumption that customers which made only spot purchases were not injured. In

[1] As of May 31, 1985, the L&L escrow account contained $17,768.96, including accrued interest.

[2] Including accrued interest, the Lowe escrow account contained $76,727.01 as of May 31, 1985.

[3] The Moyle escrow account contained $19,833.76 as of May 31, 1985, including accrued interest.

addition, we are making a proposed finding that end users suffered injury.

There are a variety of reasons for adopting the presumption that claimants seeking small refunds were injured. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore bore some impact of the alleged overcharges, at least initially. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could exceed the expected refund. Failure to allow simplified procedures could therefore deprive injured parties of the opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze detailed proof of what happended downstream of the initial impact.

Under the small-claims presumption, a claimant who is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Other refund decisions have expressed this threshold in terms of either purchase volumes or refund dollar amounts. In *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would more readily facilitate disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. This case merits the same approach.

Several factors determine the value of the threshold below which a claimant is not required to submit any further evidence of injury beyond volumes purchased. One of these factors is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low and the early months of the consent order period are many years past, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.; Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein. The record indicates that all the firms identified in the L&L and Moyle proceedings are eligible for small refunds, as are two of those identified in the Lowe proceeding. The one Lowe customer whose potential refund falls above the threshold purchased products in quantities that suggest that it is significantly larger than the other potential refund recipients.

A reseller or retailer which claims a refund in excess of $5,000 will be required to document its injury. While there are a variety of methods by which a firm can make such a showing, a firm is generally required to demonstrate that it maintained a "bank" of unrecovered costs, in order to show that it did not pass the alleged overcharges through to its own customers, and to show that market conditions would not permit it to pass through those increased costs.[4]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have been injured. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. We believe the same rationale holds true in the present case. The record in this proceeding reveals that those firms listed in Appendix B–4 made only spot purchases from L&L. We propose that firms on this list not receive refunds unless they present evidence which rebuts the spot purchaser presumption and establishes the extent to which they were injured as a result of their purchases of No. 2 diesel fuel from L&L during the consent order period.

As noted above, we are making a proposed finding that end users were injured by the alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period. They were therefore not required to base their pricing decisions on cost increases or to keep records which would show whether they passed through cost increases. Because of this, an analysis of the impact of the alleged overcharges on the final prices of goods and services which were not covered by the petroleum price regulations would be beyond the scope of a special refund proceeding. *See Office of Enforcement*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein. We therefore propose that end users of petroleum products sold by one of the consent order firms be required to document only their purchase volumes from the applicable firm to make a sufficient showing that they were injured by the alleged overcharges.[5]

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged overcharges. In the case of regulated firms, *e.g.*, public utilities, any overcharges incurred as a result of L&L's, Lowe's, or Moyle's alleged violations of the DOE regulations would routinely be passed through to their customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,539 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their applications a full explanation of the manner in which refunds would be passed through to their customers and of how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 plus interest will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for small amounts outweighs the benefits of restitution. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR § 205.286(b). The same principle applies here.

On the basis of the information in the record at this time, we propose to

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[4] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000 in order to avoid having to prove their injury. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,125 (1982) (Ada).

[5] If a firm is both a spot purchaser and an end user, it will be treated as an end user and not be required to make any showing of injury beyond that required by other end users.

distribute a portion of the escrow funds to those firms listed in Appendices B–1, B–2, C, and D. Refunds will be authorized for those firms in the amounts indicated, plus accrued interest to the date they receive refunds, provided they make any necessary showing of injury.[6] However, no addresses are available for the firms listed in Appendix B–2 and we therefore are unable to contact these firms directly. In an attempt to locate these firms, we will provide L&L and various petroleum dealers' and other trade associations with copies of this Proposed Decision and will publish a notice in the **Federal Register.** Information regarding the identity and location of each of these firms will be accepted for a period of 90 days following the date of publication of notice of a final Decision and Order in this proceeding in the **Federal Register.**[7] In addition, firms listed in Appendix B–4 may receive refunds if they can rebut the spot purchaser presumption.[8]

B. Refunds to Other Purchasers

In all three of the cases affected by this decision there were some first purchasers who were not identified by the ERA audit.[9] These firms, and downstream purchasers, may have been injured as a result of the consent order firms' pricing practices. If so, they would be entitled to a portion of the consent order funds provided by the company from which they made purchases. To help potential claimants not identified by ERA decide whether to apply for a refund, we propose to use a volumetric procedure. Under this procedure, a successful claimant's refund is determined by multiplying a factor, known as the volumetric refund amount, by the number of gallons of fuel[10] purchased by the claimant.[11] The volumetric refund amount is the average per gallon refund. Appendix A lists the volumetric amount relevant to each of the three proceedings. Potential applicants who were not identified by the ERA audit may use the listed figure to estimate the refunds to which they may be entitled. The volumetric presumption is rebuttable, however. A claimant which believes that it incurred a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. The presumptions and finding noted in Section A above apply also to applications submitted by claimants not identified by ERA. If valid claims exceed the funds available in a particular escrow account, all refunds will be reduced by a pro rata amount. Actual refunds will be determined after analyzing all appropriate claims.

C. Applications for Refund

In order to receive a refund, each claimant identified by ERA will be required to submit either a schedule of its monthly purchases of petroleum products from the appropriate consent order firm or a statement verifying that it purchased petroleum products from that firm and is willing to rely on the data in the audit file. A claimant must also indicate whether it has previously received a refund, from any source, with respect to the alleged overcharges identified in the ERA audits underlying these proceedings. Purchasers not identified by the ERA audit will be required to provide schedules of their monthly purchases of petroleum products from the applicable consent order firm. It they claim injury at a level greater than the volumetric level, they must document this injury. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

D. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in subsequent proceedings. However, we will not be in a position to decide what should be done with any funds remaining in a particular escrow account until the initial stage of the applicable refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It Is Therefore Ordered That:

The refund amounts remitted to the Department of Energy by L&L Oil Company, Inc. pursuant to the consent order executed on September 20, 1979, by Lowe Oil Company pursuant to the consent order executed on September 1, 1981, and by Moyle Petroleum Company pursuant to the consent order executed on December 31, 1980, will be distributed in accordance with the foregoing decision.

APPENDIX A

Consent order firm	Consent order period	Product	Amount available[1]	Volume sold (gallons)	Volumetric refund (per gal.)	Mimimum[2] purchase (gallons)
L & L	11/73–4/74	No. 2 diesel fuel	$303.53	218,770	$0.001387	10,812
Lowe	11/73–4/74	Motor oil	32,775.22	[3] 77,223	[3] 0.4244	[3] 36

[6] The share of the L&L escrow fund allocated to each firm listed in Appendices B–1, B–2, B–3, and B–4 represents 10.49 percent of the amount each was allegedly overcharged. Firms listed in Appendix C have been allocated shares of the Lowe escrow fund equal to 63.88 percent of the amount they were allegedly overcharged. In Appendix D, firms have been allotted shares of the Moyle consent order equal to 50 percent of the amount they were allegedly overcharged. These figures are consistent with the terms of the L&L, Lowe, and Moyle consent orders, which settled for 10.49 percent, 63.88 percent, and 50 percent, respectively, of the total amount of alleged overcharges.

[7] If we are unable to locate any firm listed in Appendix B–2, we will reserve any funds allocated to that firm for distribution in a subsequent proceeding.

[8] Purchasers identified in the ERA audit as having allegedly been overcharged may also submit information to show that they should receive refunds larger than those indicated.

[9] Appendix E contains a list of 306 Lowe customers. We will contact directly those for whom we can obtain addresses. We would appreciate assistance in locating the others.

[10] With Lowe, the volumetric system applies to sales of motor oil. Refunds will be based on the number of cases of motor oil purchased. Lowe customers should therefore substitute the work "case" for the word "gallon" and the term "motor oil" for the word "fuel."

[11] A purely volumetric approach is particularly appropriate in special refund proceedings where the DOE is unable to identify readily those persons who may be eligible to receive refunds. It has proved to be an administratively efficient method for determining what proportion of the available settlement funds should be awarded to each successful claimant. It also serves as a useful approximation of injury in the treatment of overcharged claimants who are unable to quantify their alleged injury, thereby allowing applicants to recover a meaningful refund for the volumes of product they have purchased.

APPENDIX A—Continued

Consent order firm	Consent order period	Product	Amount available[1]	Volume sold (gallons)	Volumetric refund (per gal.)	Minimum[2] purchase (gallons)
Moyle	3/79-6/79	Motor gasoline	4,389.92	1,229,205	0.003571	4,200

[1] This figure represents the amount of the settlement available for purchasers not identified by the ERA audit (excluding interest).
[2] The figure listed shows the purchase volume required for a claimant to receive a $15 refund.
[3] The numbers for Lowe represent cases, not gallons.

Appendix B-1.—*L & L Oil Company, Inc.*

First purchasers	Share of settlement[1]
A.W.I. Inc., 1229 Peters Road, Harvey, Louisiana 70058	$333.23
Atlantic & Pacific Marine Corp., 210 Veterans Memorial Boulevard, Metairie, Louisiana 70005	176.79
B.J., Inc., 3525 N. Causeway Boulevard, Metairie, Louisiana 70002	35.16
Diamond M. Drilling, Railroad Avenue, Morgan City, Louisiana 70380	1,374.50
Halliburton Services, 1010 Common Street, New Orleans, Louisiana 70112	544.53
Harvey Workover, Weeks Island Road, New Iberia, Louisiana 70560	78.73
Lee & Leon, Venice, Louisiana 70091	1,185.86
Louisiana Land & Exploration, 225 Baronne Street, New Orleans, Louisiana 70112	101.79
Mallard Well Service, 5918 Fairfield Avenue, Shreveport, Louisiana 71106	27.57
The Mayronne Corporation, 3824 Peters Road, Harvey, Louisiana 70058	126.51
Noble Drilling Company, 144 Canal Street, New Orleans, Louisiana 70130	648.65
Texaco, Inc., Texaco Building, New Orleans, Louisiana 70112	153.28
Westside Oil, 527 Destrahan Avenue, Harvey, Louisiana 70058	2,104.10

[1] Not including accrued interest.

Appendix B-2.—*L&L Oil Company, Inc., No Address Available*

First purchasers	Share of settlement[1]
Atchafalaya Workover	$77.70
B.R. Dredging	161.08
Centerville Petroleum Co	158.50
Dredge Manchac	802.35
Fritz Jahncke Services	518.50
P&A Well Service	18.55

[1] Not including accrued interest.

Appendix B-3.—*L&L Oil Company, Inc., Unmeritorious Distributions*

First purchasers	Share of settlement[1]
Coueuous & Sons	$13.49
Creppel Towing	1.57
James Dean Marine Division	.32
Dowell Chemical, 1010 Common Street, New Orleans, Louisiana 70112	11.49
Getty Oil Company, 225 Baronne Street, New Orleans, Louisiana 70112	3.36
Labor Services, Inc., 2332 Pailet Street, Harvey, Louisiana 70058	7.89
Lafitte Welding Works, Lafitte, Louisiana 70067	1.45
Lane Towing	7.72
Local Tugs, Inc	3.11
John Moterio	2.43
New Orleans Prestressed Co., Inc	9.52
Pertint Brothers	6.28
Talor Plumbing & Heating	.59
Total Services, Inc., 2605 Concord Road, Belle Chasse, Louisiana 70037	13.08
Ward Rig No. 16	10.37

[1] Not including accrued interest.

Appendix B-4.—*L & L Oil Company, Inc.*

Spot purchasers	Share of settlement[1]
Ayers Material, Inc	$186.74
C.F. Bean, Inc., 1 Shell Square, New Orleans, Louisiana 70112	54.57
Brown & Root, Belle Chasse, Louisiana 70037	304.38
Great Lakes Dredge & Dock Co., 2475 Canal Street, New Orleans, Louisiana 70119	29.38
Gulf South Dredging	52.59
Sala Dredging	20.25
Salathe Oil, 2226 Peters Road, Harvey, Louisiana 70058	43.72
John W. Smith Well Service	19.68
Jules Shebert's Marina Supply	41.65
Southern Pacific Railroad, 185 Spring Street, SW., Atlanta, Georgia 30303	67.34
Wheeler Dredging	156.13

[1] Not including accrued interest.

Appendix C.—*Lowe Oil Company*

First purchasers	Share of settlement[1]
Don's Texaco, Clinton, Missouri 64735	$589.60
Gibson Products, 3805 North Oak Trafficway, Kansas City, Missouri 64116	18,720.63
Jones Texaco, Warsaw, Missouri 65355	262.02

[1] Not including accrued interest.

Appendix D.—*Moyle Petroleum Company*

First purchasers	Share of settlement[1]
Black Hills Propane, Post Office Box 2860, Rapid City, South Dakota 57709	$16.36
Budget Rent-A-Car, Post Office Box 2950, Rapid City, South Dakota 57709	84.84
Bargain Barn, Piedmont, South Dakota 57769	1,220.46
Custer 66, 844 Rushmore Road, Custer, South Dakota 57730	167.35
Dale's 66, 1112 Fourth Street, Belle Fourche, South Dakota 57717	547.18
Hill City Super G, Post Office Box 365, Hill City, South Dakota 57745	486.47
Horse Thief Campground & Resort, Post Office Box 282, Hill City, South Dakota 57745	73.17
I-90 Super G, Sturgis, South Dakota 57785	[2]10.12
Jim's One Stop, 29 Main Street, Rapid City, South Dakota 57701	186.80
Kelly Company, South Boulevard, Wall, South Dakota 57790	58.38
Long's Resort, Hot Springs, South Dakota 57747	36.58
National Car Rental, Rapid City Regional Airport, Rapid City, South Dakota 57701	180.58
Norton's 66, Hot Springs, South Dakota 57747	266.20
Pactola Pines, Keystone Route, Post Office Box 3125, Rapid City, South Dakota 57701	75.50
Philtown 66, Post Office Box 777, Sturgis, South Dakota 57785	3,743.11
Rapid City Rent-A-Car, Route 2, Post Office Box 631, Rapid City, South Dakota 57701	189.14
Red Arrow Safari Camping, Route 9, Post Office Box 657, Rapid City, South Dakota 57701	32.69
Restway Travel Park, Rural Route 1, Post Office Box 39, Hermosa, South Dakota 57744	80.17
Rockerville Trading Post, Rockerville, South Dakota 57701	132.32
Somer Sun Resort, Post Office Box 185, Hot Springs, South Dakota 57747	93.40
Three Forks Inn, Keystone Route, Post Office Box 418, Rapid City, South Dakota 57701	83.28

Appendix D.—*Moyle Petroleum Company*—Continued

First purchasers	Share of settlement[1]
Trout Haven Campground, Nemo Route, Deadwood, South Dakota 57732	19.46

[1]Not including accrued interest.
[2]As noted in the body of the Proposed Decision, we do not intend to grant claims for less than $15.

Appendix E.—*Lowe Oil Company*

Customer Name	City and State
Walmart Discount Ctr	Bentonville, AR.
Miska Supply Company.	Cedar Rapids, IA.
Farm & Home Supply	Centerville, IA.
Ross & Sons Repair	Columbus Junction, IA.
Strum Auto Supply	Davenport, IA.
Fleetway Stores	Iowa City, IA.
Hanoco Oil	Leon, IA.
Quality Discount	Do.
McCarty Oil	Do.
Fleetway Stores	Muscatine, IA.
Dixon #1 Discount	Oskaloosa, IA.
Elliott Oil	Ottumwa, IA.
Perry Discount	Perry, IA.
Farm King Supply	Macomb, IL.
Goodyear Service Store.	Quincy, IL.
Illinois Oil Products	Rock Island, IL.
A.E. West Petroleum	Kansas City, KS.
Homelite Company	Lenexa, KS.
Neil's Garage	Louisburg, KS.
Quality Discount	Neodesha, KS.
C & C Inc.	Olathe, KS.
Willard IGA	Osawatomie, KS.
Caylor Bros	Do.
OK Bargain Store	Paola, KS.
Southerland Ben Franklin.	Do.
G&T Service	Pleasanton, KS.
Henkle Egg Company	Do.
Laughlin Bros	Stanley, KS.
Bob's Kwik Shop	Kearney, NE.
May Oil Company	Cowetta, OK.
Hill's Truck Service	Adrian, MO.
Mac's Discount	Do.
Gragg's Skelly	Appleton City, MO.
Fenimore Motors	Appleton, MO.
Warner Oil	Archio, MO.
Taylor's DX Service	Barnett, MO.
Riggert Tire Company	Belton, MO.
Compton Auto Parts	Do.
K.L. Brown Implement	Do.
Western Auto Store	Do.
Everetts DX Service	Bevier, MO.
O.K. Tire Company	Blue Springs, MO.
Four Trees Skelly	Boonville, MO.
Windmill Shell Service.	Do.
Mike's Sinclair	Do.
Herigon's Fina	Do.
Simmons & Sons Garage.	Do.
Lindsey Sinclair Service.	Burnswick, MO.
Bucklin Farm Supply	Bucklin, MO
Carl's Skelly Service	Butler, MO.
Billingsley DX	Do.
Matco Discount Center #109.	Do.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
Jensen Farm Store	Do.
Don Apco	Do.
Oklahoma Tire & Supply.	Do.
Bitner-Stark Pontiac	Do.
Bill's Champlin	Do.
Harry Cherry Service	Do.
Peabody Coal	Calhoun, MO.
Putnam Chevrolet	California, MO.
Norris MFA Service	Camdenton, MO.
Palace Standard	Do.
Camden Oil Company	Do.
Greenview Garage	Do.
Kinniston Hardware	Do.
Quality Discount	Carmeron, MO.
Ayers Oil Company	Canton, MO.
Auto Tire & Parts Company.	Cape Girardeau, MO.
Carroll's Vicker	Carrrollton, MO.
Matco Discount	Do.
Rays Apco	Cedar City, MO.
North Star Service	Do.
Oliver Oil Company	Centerview, MO.
Airways Vickers	Do.
Bob Station Service	Chillicothe, MO.
Rupp Oil Company	Do.
LeRoy's Apco	Climax Springs, MO.
Wilkerson Garage	Do.
Brigg's & Tillman	Clinton, MO.
James Brown	Do.
Bill's Apco	Do.
Hinken Apco	Do.
Clinton Chrysler Plymouth.	Do.
Jim's Saw Shop	Do.
Ray Odom	Do.
Ron's Auto Parts	Do.
Jay's Service Center	Do.
Keck Oil Company	Do.
Stewart Nattinger	Do.
Paul's Derby	Cole Camp, MO.
Bob's MFA	Do.
W&K Chevrolet	Do.
Cleo's Package Store	Do.
Marvins 66 Service	Do.
Weinberg's Conoco	Do.
Veals Skelly Service	Do.
Rogers Garage	Do.
Arnold's Auto Repair	Do.
Bud's Place	Do.
Help Apco Service	Columbia, MO.
Coleman's Apco	Do.
Skaggs Drug Company.	Do.
MFA Oil Company	Do.
Beary, Conner & Hawkins Distributors.	Do.
Creighton Oil Company.	Creighton, MO.
Hart's Sinclair	Edwards, MO.
Harbison Apco	Eldon, MO.
Miller's Auto Supply	Do.
Ivey Oil	Do.
Bob's Service	Do.
Ernie Jones Motor Company.	Do.
Allison Oil Company	Eldorado Springs, MO.
Interstate Apco	Emma, MO.
Opies Discount	Eugene, MO.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
Bill's Mobil Service	Do.
Doerhoff's Garage	Do.
Excelsior Springs Apco.	Excelsior Springs, MO.
Collier Store	Foster, MO.
Phil Fina	Fristoe, MO.
Pardue Apco	Fulton, MO.
Zook DX	Garden City, MO.
Mel's Apco	Do.
Yoder Oil Company	Do.
Ament's #3	Do.
Gilliam Trucking	Gilliam, MO.
Granby Auto Supply	Grandby, MO.
Hawks Standard Service.	Hamilton, MO.
L&L Champlin Service	Do.
Hannibal Farm Supply.	Hannibal, MO.
Bo's Oil Company	Harrisonville, MO.
Bill's Skelly	Do.
Bridges Chevrolet	Do.
Wingert Oil	Do.
McHenry Pontiac	Do.
Harvey Buick	Do.
Ament's #1	Do.
Ament's #2	Do.
Don's Truck Stop	Do.
Harold Cherry	Do.
Tractor Parts & Supply.	Do.
Frank & Ida's Coop	Henrietta, MO.
Higginsville Auto Supply.	Higginsville, MO.
Opfer & Deke	Do.
R&S Bargain	Do.
MFA Service	Do.
Brown & Eissler Implement.	Holden, MO.
Earl's Garage	Do.
Wee Discount	Do.
Lawler Oil Company	Do.
S & H Vickers	Do.
B & H Service	Houstonia, MO.
McGees Oil	Hume, MO.
Independence Auto Supply.	Independence, MO.
Mid States Oil	Jefferson City, MO.
Schanzmeyer Ford	Do.
Racker's 66	Do.
Gerbes Super Market #1.	Do.
Apache Flat	Do.
House of Bargains	Do.
Charlies North Star	Do.
Normans Auto Supply	Do.
Pike Oil Company	Do.
Jefferson Street Apco	Do.
Stan's Market	Kansas City, MO.
King Gas & Oil Company.	Do.
Ament's #5	Do.
A & M Auto Parts	Do.
Safeway Stores	Do.
McWilliams Liquidators.	Do.
Main Wholesale (Bargain City).	Do.
Skaggs Drug	Do.
Harry's Factory Outlet.	Do.
Skaggs Drug #168	Do.

Appendix E.—*Lowe Oil Company*—Continued

Customer Name	City and State
Coast to Coast Stores	Do.
Keytesville Itco	Keytesville, MO.
Ferguson Implement	Kingsville, MO.
Farm & Home Supply	Kirksville, MO.
Hilltop Fina Service	Knob Noster, MO.
Porters Service	Do.
Smiley's Mobil	Do.
King Oil (Mini Mart)	Lamonte MO.
Faulconer's Garage	Do.
Matco Discount Center.	Lees Summit, MO.
Tire City Discount	Do.
Glens Apco	Do.
G&W Sales	Do.
Junction Service	Leeton, MO.
Dicks Standard	Lexington, MO.
Matco Discount Center.	Do.
Mattingly Bros	Do.
Chuck's Standard	Do.
Pat's Quick Stop	Do.
Davis Oil Company (MFA).	Lincoln, MO.
Palo Store	Do.
Hurley's Skelly Service.	Livonia, MO.
Smith's Auto Parts	Louisiana, MO.
Troost Auto Parts	Do.
Save Way Oil	Lowry City, MO.
Oakley Johnson	Lucerne, MO.
Curt's Deeprock Service.	Macon, MO.
Brigg's & Cupp Chevrolet.	Marcelino, MO.
Dillion DX	Marshall, MO.
Earl Kays Motor	Do.
Owen Coop	Mayview, MO.
Franklin Garage	Do.
Sechrest Service	Medford, MO.
Farm & Home Supply	Memphis, MO.
Sherrell's Fina	Meta, MO.
Oasis Sales	Mobery, MO.
Rotert Bros. Service	Montrose, MO.
Robert Brothers	Do.
Lynn Meredith	Do.
Skagg's Auto Supply	Neosho, MO.
Wysong Motors Inc	Nevada, MO.
Ziajor Auto Supply	Osceola, MO.
Naus DX	Otterville, MO.
Gerbes Super Market	Pleasent Hill, MO.
Perry Service	Do.
D&S Apco	Do.
Central Coop Service	Do.
Bob's Apco	Do.
Hammons DX	Do.
Meyer's Service	Polo, MO.
Sell's Standard	Prairie Home, MO.
Raymore Service Center.	Raymore, MO.
Skaggs Drug #183	Raytown, MO.
Sam's Bargain City	Do.
Western Auto Store	Rich Hill, MO.
C.R. Morgan Oil	Do.
Red Star Oil Company.	Do.
Steuke Oil Company	Do.
L.W. McElroy	Do.
Carmichael Vickers	Richmond, MO.
J&7 Service	Roach, MO.
Jakes Skelly	Rockville, MO.
North Shore Shopping Center.	Rocky Mount, MO.
Campbell's Garage	Russellville, MO.
Ed's Garage	Do.
Skaggs Drug	Sedalia, MO.
Consumers Market	Do.
DLC Petroleum	Do.
W.T. Grant Store	Do.
Broadway Apco	Do.
Chamberlin Champlin	Do.
Kenney Dobson	Do.
Midwest Auto Stores	Do.
B&B Transmission	Do.
Sunrise DX	Do.
Routzong & Malmo	Do.
Kast MFA	Do.
Seneca Auto Supply	Seneca, MO.
Dennis Oil	Springfield, MO.
Keltner Enterprises	Do.
Missouri White Trucks.	Do.
Blocks Super Discount	St. Joseph, MO.
Viebrocks Auto Repair.	Stover, MO.
M&M Oil Company	Do.
Davis EZ Wash	Do.
Sousley's DX	Do.
Tim's Skelly	Do.
Lakeland Sinclair	Sunrise Beach, MO.
Powell Service	Do.
Lakeland Discount	Do.
J&B Service	Sweet Springs, MO.
Frazier Ford	Do.
Green's Skelly	Tipton, Mo.
Wolf's Repair Service	Do.
Irvin Oil Company	Trenton, MO.
Martin's Town & Country.	Do.
Barreth Oil	Union, MO
B&R Bargain Spot	Unionville, MO.
Urich Oil Company	Urich, MO.
Vogt Skelly	Do.
E.O. Graham	Do.
Kelsay Elevator	Do.
5 & 52 Apco	Versailles, MO.
Kenny's Apco	Do.
Orbit Car Wash	Do.
Gabriel Skelly	Do.
Clark's Apco	Do.
West Vue Service	Do.
Gerbes Support Market.	Do.
Clark's Retreading	Do.
Salzman's Fina	Do.
Yarnell's DX	Do.
Avey's Shell	Do.
Warrensburg Fina	Warrensburg, MO.
TG&Y Stores #475	Do.
Owings Sinclair	Do.
George Rusch Motors	Do.
Denny Gulf Service	Do.
B&B Motor Supply Inc..	Do.
Warrensburg Deeprock.	Do.
Steven's Sinclair	Do.
Hunts MFA	Do.
Paul Shinn Oil Company.	Warsaw, MO.
Jack's Apco	Do.
Smith's Center	Do.
Oklahoma Tire & Supply.	Do.
Webb City Auto Supply.	Webb City, MO.
Western Farm & Home.	West Plains, MO.
Ferguson Chevrolet	Windsor, MO.
Suhr Standard	Do.
Baskins Conoco	Do.
Sim's Apco	Do.
Ellis DX	Do.

[FR Doc. 85-16681 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding a consent order fund of $30,000 to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Leese Oil Company of Pocatello, Idaho.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. All comments should conspicuously display a reference to Case Number HEF-0583.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Indepedence Avenue, SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Consent Order entered into by Leese Oil Company (Leese) of Pocatello, Idaho. The Consent Order involves a particular audit period and a distinct consent order fund as set forth in the Proposed Decision. The Consent Order settled possible pricing violations in Leese's sales of motor gasoline to customers during the audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Leese pursuant to the Consent Order. The DOE has tentatively decided that the consent order fund should be distributed to those customers of Leese who establish that they were injured by Leese's alleged overcharges. Such customers will receive refunds proportionate to the volume of motor gasoline they purchased from Leese. However, Applications for Refund should not be filed at this time. Appropriate public noitice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in the proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, inthe Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Dated: July 2, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Leese Oil Company.

Date of filing: May 17, 1985.

Case Number: HEF-0583.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on May 17, 1985, requesting that the OHA implement a proceeding to distribute the funds received pursuant to a Consent Order entered into by the DOE and Leese Oil Company (Leese) of Pocatello, Idaho.

I. Background

Leese is a "reseller-retailer" of "motor gasoline," as these terms were defined in 10 CFR 212.31. An ERA audit of Leese's operations during the period August 1, 1979 through September 30, 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations.[1] In order to settle all claims and disputes between Leese and the DOE regarding sales of motor gasoline during the period August 1, 1979 through April 30, 1980 (the consent order period), the firm entered into a Consent Order with the DOE on October 20, 1983. Under the terms of the Consent Order, the firm agreed to deposit $30,000 in an interest-bearing escrow account pending distribution by the DOE. The Consent Order refers to the ERA allegations of overcharges, but notes that Leese does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers who were injured by Leese's alleged price violations. We therefore propose to establish a claim procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of any overcharges made by Leese during the consent order period.

Several of Leese's customers are likely to be petroleum product resellers, i.e., retailers and wholesalers. We propose that these firms (including refiners acting as resellers) be required to demonstrate that they did not pass on to their customers the price increases implemented by Leese. *See, e.g., Vickers*. In order to qualify for a refund, resellers of Leese motor gasoline must show that during the consent order period they would have maintained their prices for the motor gasoline at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showihg, a reseller should generally demonstrate that at the time it purchased motor gasoline from Leese, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices.[2] The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co. (Indiana)*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we will adopt certain presumptions. First, we will adopt a presumption that the alleged overcharges were dispersed equally in all sales of motor gasoline made by Leese during the consent order period. The OHA has referred to this presumption in the past as a volumetric refund amount. Second, we will adopt a presumption of injury with respect to small claims.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the

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[1] On November 12, 1982, Leese was issued a Remedial Order (RO) by the DOE, in which the firm was alleged to have overcharged its motor gasoline customers by $13,445.19 during the period August 1, 1979 though September 30, 1979. *Leese Oil Co.*, 10 DOE ¶ 83,015 (1982). In the RO, the DOE ordered Leese to pay the alleged overcharge amount, plus interest, and to conduct a self-audit for the period October 1, 1979 through April 30, 1980.

[2] All of the motor gasoline sales covered by the Consent Order occurred subsequent to the amendment of the retailer price rule that eliminated the bank requirement for retailers. *See* 10 CFR 212.93(a)(2), 44 FR 42542 (July 19, 1979) (effective July 15, 1979). Accordingly, retailers of Leese motor gasoline will not be required to submit bank information.

Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable tthe OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.[3] In the present case, the audit records identify only those customers who purchased motor gasoline from Leese during the period August 1, 1979 through September 30, 1979, and do not list alleged overcharge amounts for each customer. Consequently, the available information is insufficient to base refunds on the amount each individual applicant was allegedly overcharged during the consent order period. We therefore propose to use the volumetric method to allocate the consent order fund. To determine the volumetric factor, the consent order fund ($30,000) will be divided by the estimated total volume of motor gasoline sold by Leese during the audit period (3,870,194.85 gallons), resulting in a per gallon refund amount of $0.007752.[4] The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

The presumption that reseller claimants seeking smaller refunds were injured by the pricing practices settled in the Consent Order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information, and the cost to the OHA of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions for small claims is also desirable from an administrative standpoint because it allows the OHA to process a large number of refund claims quickly and use its limited resources more efficiently. Finally, we know that these smaller claimants purchased motor gasoline from Leese and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claims presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[5] Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose that the same approach be followed in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. Since the per gallon refund amount in the present case is fairly low, we believe that the establishment of a presumption of injury for all claims of $5,000 or less is reasonable. *See id.; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

In addition to the volumetric and small claims presumptions, we are making a finding that end-users or ultimate consumers were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) and cases cited therein. We have therefore concluded that end-users of motor gasoline purchased from Leese need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased motor gasoline consumed as fuel will not be considered as consumers for purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

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[3] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will therefore be allowed to file a refund application based on a claim that the impact of the alleged overcharges on that purchaser was greater than the pro rata amount determined by the volumetric presumption. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Sid Richardson Carbon and Gasoline Co./Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,164 (1984).

[4] Because the available ERA audit files do not list the volumes of motor gasoline sold by Leese during the entire consent order period, we have extrapolated sales figures from the available audit data.

[5] We propose that resellers who made only spot purchases from Leese be presumed to have suffered no injury. They would therefore be ineligible for any refund, even a refund at or below the threshold level. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,200 (1982). The same rationale holds true in the present case. Accordingly, in order to overcome the rebuttable presumption that they were not injured, any reseller claimants who were spot purchasers must submit additional evidence to establish that they were unable to exercise considerable discretion as to where and when they made the purchase(s) on which their refund claims are based.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations.[6] *See, e.g., Amoco; Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. We will publish copies of the proposed and final Decisions in the Federal Register. If appropriate, we also intend to publicize this proceeding in local newspapers in the areas where Leese conducted business.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is therefore ordered that: The refund amount remitted to the Department of Energy by Leese Oil Company pursuant to a Consent Order executed on October 20, 1983 will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-16687 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

[6] Under the volumetric refund level we propose to establish in this proceeding, an applicant must have purchased at least 1,935 gallons of motor gasoline from Leese during the consent order period in order to qualify for the minimum refund.

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for filing Applications for Refund from funds of $1,550,000 obtained from Good Hope Refineries and its subsidiary Gasland, Inc. in settlement of enforcement proceedings brought by DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund must be postmarked by October 15, 1985, should conspicuously display a reference to case number HEF-0211 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-2094.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order establishes procedures to distribute funds obtained as a result of two consent orders between Good Hope Refineries and the DOE. The consent orders settled all disputes between DOE and Good Hope and its subsidiaries concerning possible violations of DOE price regulations with respect to the firm's sales of covered petroleum products during the period August 1973 through July 1976.

Any members of the public who believe that they are entitled to a refund in this proceeding may file Applications for Refund. All Applications should be postmarked by October 15, 1985, and should be sent to the address set forth at the beginning of this notice. Applications for refunds must be filed in duplicate and these applications will be made available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: July 3, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Good Hope Refineries.
Date of Filing: October 13, 1983.
Case Number: HEF-0211.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement a specially designed process to distribute funds obtained at the resolution of an enforcement proceeding in order to remedy the effects of alleged or actual violations of DOE regulations. 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order that it had entered into with Good Hope Refineries (hereinafter referred to as Good Hope).

On April 18, 1985, we issued a Proposed Decision and Order tentatively setting forth procedures to distribute refunds to parties who were injured by Good Hope's alleged violations. In the proposed decision we described a two-stage process for the distribution of the funds made available by the Good Hope consent order. In the first stage, we would refund money to identifiable purchasers of covered products who may have been injured by pricing practices during the period August 19, 1973 through July 31, 1976. This decision describes the information that a purchaser of Good Hope petroleum products should submit in order to demonstrate eligibility to receive a portion of the consent order funds. After meritorious claims are paid in the first stage, a second stage refund procedure may become necessary. *See generally Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (hereinafter cited as *Amoco*) (refund procedures established for first stage applicants, second stage refund procedures proposed).

I. Jurisdiction

We have considered ERA's Petition for the Implementation of Special Refund Procedures and determined that it is appropriate to establish such a proceeding with respect to the Good Hope consent order fund. In our proposed decision and in other recent decisions, we have discussed at length our jurisdiction and authority to fashion special refund procedures. *See, e.g., Office of Enforcement, Economic Regulatory Administration: In re Adams Resources and Energy, Inc.*, 9 DOE ¶ 82,553 (1982). We have received no comments challenging our jurisdiction in this case. We will grant ERA's petition and assume jurisdiction over the distribution of the Good Hope consent order funds.

II. Background

From August 19, 1973 through July 31, 1976, Good Hope Industries, Inc. owned Good Hope Refineries, a crude oil refiner located in Metairie, Louisiana, and Gasland, Inc., a chain of motor gasoline stations operating in New England and the State of New York. The consent order covers all petroleum-related aspects of Good Hope Industries' operations. Several DOE audits of Good Hope's records revealed possible regulatory violations by the firm. In order to settle all claims and disputes between Good Hope and the DOE regarding the firm's compliance with DOE regulations during the period August 19, 1973 through July 31, 1976, Good Hope and the DOE entered into a consent order on July 31, 1979. Under the terms of the consent order, Good Hope was required to provide $15,000,000 in restitution, through: (i) Price rollbacks, (ii) reductions in its banks of unrecouped costs, and (iii) direct cash payments to the DOE. At the time it entered into the consent order, Good Hope was involved in bankruptcy proceedings. Since then Good Hope has fallen into arrears on its payments to the DOE. Enforcement of the Consent Order has been referred to the Department of Justice, and it is uncertain whether further payments will be received. To date, the DOE has received $1,550,000. This sum is being held in an interest-bearing escrow account established with the United States Treasury pending a determination of its proper distribution, and as of May 31, 1985, the Good Hope escrow account held $2,281,788 including interest. This Decision concerns the distribution of the funds in the escrow account, plus accrued interest.

III. Comments On Proposed Decision

GHR Companies, Inc., formerly Gasland, Inc., filed comments concerning the proposed decision issued in this case. The comments concerned the necessity of demonstrating the existence of cost banks in order to receive a refund. GHR asserts that the existence of banks was not a prerequisite to receiving a refund in a past OHA refund proceeding, *Palo Pinto Oil and Gas/Gulf Oil Corporation*, 10 DOE ¶ 85,049 (1983), and therefore should not be required in this case. This position is incorrect. In *Palo Pinto*, Gulf was denied a full refund despite the existence of very large cost banks, because many of Gulf's purchases were not made at above average market prices. Thus, this decision provides an instance in which cost banks standing alone were insufficient to prove injury. Contrary to the position of GHR, it does not stand for the proposition that cost banks are irrelevant to the question of injury. In fact, that decision states, "The absence of sufficient banks of unrecouped cost increases indicates that a firm was able to pass through increased product costs to its customers." *Palo Pinto* at 88,240. GHR's contention is therefore without merit. Lack of cost banks, or negative cost banks, has always been grounds for denying in full any refund. *Standard Oil Company (Indiana)/Suburban Propane Gas Corporation*, 13 DOE ¶ 85,030 (1985), *and cases cited therein*.[1]

Comments were also filed by Apex Oil Company, by several state governments, and by the National Council of Farmer Cooperatives. The states requested that any money remaining after the completion of first-stage refund proceeding be distributed to state governments. These comments will be considered at a later date.[2] The National Council of Farmer Cooperatives requested that we recognize the special status of cooperatives, which have in the past been deemed to be end-users rather than resellers in refund proceedings. We shall continue this treatment of cooperatives in the present refund proceeding.

IV. Refunds to Refined Product Purchasers

Insofar as possible, the consent order funds should be distributed to those customers of the consent order firms who were injured by the alleged price violations. In this case, the ERA audit file pertaining to the Consent Order lists the names of the customers who purchased refined products from the consent order firm, along with the pro rata amounts the ERA calculated the customers should be eligible to receive in a refund proceeding. This information is listed in the Appendix to this Decision and Order. However, we recognize that there may be other purchasers of petroleum products from these firms who were not listed in the ERA audit files and who may have been injured by the pricing practices of Good Hope during the relevant time period. We shall therefore accept applications from any party that can show injury resulting from the alleged overcharges.

Most of the identified customers of the consent order firms are resellers, i.e., retailers and wholesalers of refined petroleum products. Any claimants who resold petroleum products purchased from one of the consent order firms will be required to demonstrate that they did not pass on to their customers price increases implemented by the consent order firm. *See, e.g., Vickers*. In addition, the reseller must show that it maintained a "bank" of unrecovered increased costs.

As in many prior special refund cases, we will adopt a presumption of injury with respect to small claims. Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> [i]n establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The presumptions we will adopt in this case are used to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The presumption that claimants seeking smaller refunds were injured by the pricing practices settled in the Good Hope consent order is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost (to the firm) of gathering this factual information, and the cost (to the OHA) of analyzing it, may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumption is also desirable from an administrative standpoint, because it allows the OHA to process a large number of routine refund claims quickly, and use its limited resources more efficiently. Finally, these smaller claimants did purchase covered products from Good Hope and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged

[1] In addition, according to the audit file and the proposed decision, Gasland was a subsidiary of Good Hope during the consent order period. The allocated amount listed in the Appendix as relating to Gasland retail sales may belong not to Gasland, but to Gasland's customers. GHR will have to demonstrate that it is eligible to receive a refund despite its relation with the consent order firm.

[2] In its comments the State of Texas also objected to some aspects of the use of presumptions in awarding refunds. Because we have frequently considered, and ultimately rejected, identically worded comments in the past, we will not discuss them now.

overcharges, at least initially. The presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the presumptions we are adopting, a reseller or retailer claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level. Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consenting firm, or as a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We believe that the same approach should be followed here. In this case, we believe that the establishment of a presumption of injury for all claims of $5,000 is reasonable.[3] *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel: In the Matter of Conoco, Inc.*, 11 DOE ¶ 85,226 (1984) and cases cited herein.

In addition to the presumptions we are adopting, we are making a finding that end-users or ultimate consumers whose business is unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry membes of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Good Hope petroleum products need only document their purchase volumes from Good Hope to make a sufficient showing that they were injured by the alleged overcharges.[4]

We note that if a reseller or retailer made only spot purchases from Good Hope, it is not likely to have suffered an injury. As we have previously stated with respect to spot purchasers:

> [T]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers at 85,396–97. We believe the same rationale holds true in the present case. Accordingly, a spot purchaser which files a claim should submit specific and detailed evidence to establish that it was unable to recover the increased prices it paid for Good Hope petroleum products. *See Amoco* at 88.200.

IV. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. Although we recognize that the ERA audit files do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe that this information can be useful in fashioning a refund which will correspond closely to the injuries experienced. *Marion Corp.*, 12 DOE ¶ 85,014 (1984). Specifically, we note that the ERA attempted to ascertain the identities of the injured parties and the precise amount of injury after the completion of all of the audits covered by the consent order. The ERA found that Good Hope's alleged overcharges affected some customers more than others who purchased comparable volumes. In view of the others who purchased comparable volumes. In view of the record established by the ERA, refunds for the firms listed in the Appendix, who make the requisite showing set forth in Part III of this Decision, will equal the refund amounts calculated by the ERA. These refund amounts, which are listed in the Appendix represent a propated portion of the alleged overcharges by Good Hope. Successful applicants will also receive a pro rata share of the interest which has accrued since the deposit of the funds into escrow accounts.

A refund applicant who is not listed in the Appendix to this decision may receive a refund based upon a volumetric method of allocating refunds. Under this method, a volumetric refund amount is calculated by dividing the settlement amount by our estimate of the total gallonage of products covered by the consent order. An applicant who wishes to apply for a refund of greater than the threshold amount according to the volumetric method will also be required to provide evidence of injury. In the present case, the volumetric refund amount is $.000912 per gallon,[5] exclusive of interest. As of May 31, 1985, accumulated interest increased the volumetric refund amount to $.001342. Any applicant who establishes that it would receive a greater refund under the volumetric method than under the percentage method shall be entitled to the larger refund. *Marion Corp., supra.* In addition, as noted earlier, a customer who can show that it bore a disproportionate share of the impact of Good Hope's alleged overcharges may receive a refund larger than the volumetric level. *Standard Oil Co. (Indian)/Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984). Finally, if additional payments are received from Good Hope, the volumetric amount will be increased. Additional payments will be distributed to successful refund applicants when they are received. It will not be necessary to submit an additional application at that time.

As in previous cases, we will establish a minimum refund amount of $15.00 for first stage claims. We have found through our experience in prior refund cases that the cost of processing claims in which refund are sought for amount less than $15.00 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982).

V. Applications for Refund

After considering all of the comments received concerning the first stage proceedings tentatively adopted in our April 18, 1985 proposed decision, we have concluded that applications for refund should now be accepted from parties who purchased Good Hope petroleum products. An application must be in writing, signed by the applicant, and specify that it pertains to the Good Hope Refund Proceeding, Case Number HEF–0111.

An applicant should indicate from whom the covered product was purchased and, if the applicant is not a direct purchaser from Good Hope it should also indicate the basis for its belief that the petroleum product

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[3] Any claimant whose potential refund exceeds the threshold amount may elect to apply for a refund based on the threshold level.

[4] Agricultural cooperatives and public utilities are considered to be end-users for the purpose of refund applications. Utilities, however, must pass along any refund received to their customers through fuel adjustment clauses. Cooperatives are required to inform their members of any refunds received.

[5] According to the audit file, during the audit period Good Hope sold 1,699,975,030 gallons of covered petroleum products. $1,550,000 divided by 1,699,975,030 gallons equals $.000912/gallon.

purchased originated from Good Hope. Each applicant should report its volume of purchases by month for the period of time for which it is claiming it was injured by the alleged overcharges. [6] Each applicant should specify how it used the Good Hope petroleum product, such as whether it was a reseller or ultimate consumer. Applicants listed in the Appendix of this section decision should specify whether they wish to apply for refunds based on the volumetric or the percentage method.

If the applicant is a reseller applying for a refund of greater than $5,000, it should state whether it maintained banks of unrecouped product cost increases from the date of the alleged violation through January 27, 1981. An applicant who did maintain banks should furnish the OHA with a schedule of its cumulative banks calculated on a quarterly basis from November 1973 through January 27, 1981. If the applicant is a reseller, it must submit evidence to establish that it did not pass on the alleged injury to its customers. For example, a firm, may submit market surveys, or information about changes in its profit margins or sales volume to show that price increases to recover alleged overcharges were infeasible.

All applicants should report any past or present involvement as parties in DOE enforcement actions. If these actions have terminated, the applicant should furnish a copy of a final order issued in the matter. If the action is ongoing, the applicant should briefly describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status while its application for refund is being considered. *See* 10 CFR 205.9(d).

Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001. In addition, the applicant should furnish us with the name, position title, and telephone number of a person who may be contacted for additional information concerning the application.

All applications for refund must be filed in duplicate. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals, located in the Forrestal Building Room 1E-234, 100 Independence Avenue, SW., Washington, D.C. Any applicant that believes that its application contains confidential information must so indicate on the first page of its application and submit two additional copies of its application from which the confidential information has been deleted, together with a statement specifying why any such information is privileged or confidential.

All applications should be sent to: Good Hope Refineries Refund Proceeding, Office of Hearing, and Appeals, U.S. Department of Energy, 100 Independence Avenue, SW., Washington, D.C. 20585. Applications for refund of a portion of the Good Hope consent order funds must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**. *See* 10 CFR 205.286. All applications for refund received within the time limit specified will be processed pursuant to 10 CFR § 205.284.

VI. Distribution of the Remainder of the Consent Order Funds

In the event that money remains after all first stage claims have been disposed of, undistributed funds could be distributed in a number of different ways. However, we will not be in a position to decide what should be done with any remaining funds until the first stage refund procedures is completed.

It is therefore ordered that:

(1) Applications for Refund from the funds remitted to the Department of Energy by Good Hope Refineries pursuant to the consent order executed on July 31, 1979 may now be filed.

(2) All applications must be postmarked within 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: July 3, 1985.

George B. Brenzay,

Director, Office of Hearings and Appeals.

Appendix

Customer listed in audit file	*Percentage*[1]
Standard Oil Company (Ohio), 20600 Chagrin Blvd., Cleveland, OH 44122	4.6370
Coastal States Marketing, Inc., 9 Greenway Plaza, Houston, TX 77046	0.1555
Stillings Petroleum Corporation, P.O. Box 700328, Tulsa, OK 74170	0.2923
Continental Oil Company, P.O. Box 2197, Houston, TX 77252	5.2449
Allied Oil, P.O. Box 6479, Cleveland, OH 44101	3.2721
Texaco, Incorporated, 2000 Westchester Ave., White Plains, NY 10650	4.0074

Appendix—Continued

Customer listed in audit file	*Percentage*[1]
Wanda Petroleum, P.O. Box 53120, Houston, TX 77052	0.0560
Charter International Oil Co., P.O. Box 5008, Houston, TX 77012	1.3055
Consolidated Edison, 4 Irving Place, New York, NY 10003	6.9986
Cities Service Oil Company, P.O. Box 300, Tulsa, OK 74102	1.3287
Union Oil of California, 461 S. Boylston St., Los Angeles, CA 90017	0.8182
Texas Olefins, 2 Park West Plaza, Baytown, TX 77520	1.0336
Coral Petro, P.O. Box 19666, Houston, TX 77224	3.0205
Exxon Corporation, P.O. Box 2180, Houston, TX 77001	2.0854
Saber Petroleum, 1400 Smith Street, Suite 1700, Houston, TX 77002	3.8686
Apex Oil Company, 7930 Clayton Rd., St. Louis, MO 63117	8.0581
Thomas Reidy, 1100 Milam St., Suite 2170, Houston, TX 77002	2.0221
Systems Fuels, P.O. Box 61532, New Orleans, LA 70161	4.1188
Tauber Oil Company, P.O. Box 4645, Houston, TX 77210	3.8785
Amoco, 200 E. Randolph Drive, Chicago, IL 60601	17.8650
L&L Oil Company, Rt. 1, Box 367, Crown Point, LA 70072	0.0182
Ashland Petroleum, P.O. Box 391, Ashland, KY 41114	2.6550
Amerada Hess, 1185 Avenue of the Americas, New York, NY 10036	0.2985
Union Texas Petroleum, P.O. Box 2120, Houston, TX 77252	0.0839
Sun Oil, 100 Matonsford Road, Radnor, PA 19087	0.4633
Don Love, P.O. Box 262507, Houston, TX 77207	0.0108
Marathon Oil, 539 S. Main Street, Findlay, OH 45840	2.0872
Gulf Oil, P.O. Box 3725, Houston, TX 77001	3.2329
Allied Chemical, P.O. Box 2120, Houston, TX 77252	0.0778
Bulk Oil, USA, Inc., 425 Park Avenue, New York, NY 10025	1.5209
Agway, 333 Butternut Drive, DeWitt, NY 03214	0.3891
Triangle Refining Company, P.O. Box 3367, Houston, TX 77253	0.0862
Northwell Industries Corporation, 35 Pine Lawn Rd., Melville, NY 11747	0.4221
Kerr McGee, Kerr-McGee Center, Oklahoma City, OK 73125	0.0417
Tenneco Oil, P.O. Box 2157, Houston, TX 77002	0.0823
Bray Terminals, P.O. Box 174, Marcy, NY 13403	0.1592
Toro Petroleum Corporation, Houston, TX	0.1965
Howard Oil, Maspeth, New York	1.9837
Texas City Refineries, New York, NY	1.0336
Franks Fuel	0.5594
Petroleum Heat and Power	2.0776

[6] An applicant named in the Appendix to this decision applying for a refund of less than $5,000 may instead submit a statement verifying that it purchased Good Hope products, and is willing to rely on the data in the audit file. *Richards Oil Company*, 12 DOE ¶ 85,150 (1984). A $5,000 refund is equivalent to 0.322 percent share.

Appendix—Continued

Customer listed in audit file	Percentage[1]
International Trading Limited, New Orleans, LA	0.3409
Patchogue Oil, Brooklyn, NY	0.5416
Baysett Transportation, Birmingham, Alabama	0.0069
Hol Petroleum, New York, NY	0.0018
Point Landing Fuel, Harahan, LA	0.2034
Val Cap, Incorporated, Alice, TX	0.1456
HiOctane Terminal Company, Panama City, FL	0.1543
Gulf Coast Service Station, Westwego, LA	0.0568
Texas Star Oil Company, Corpus Christi, TX	0.0398
Pel-State Oil	0.0060
Koziol, Ware, MA	0.0013
Stafford	0.0032
Autotronic Systems, Houston, TX	0.0030
Timbros Service Stations, Middletown, CT	0.0127
Gasland, Inc., retail sales	6.6009
Total	100.0000

[1] Share of alleged overcharges.

[FR Doc. 85-16691 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Draft Supplemental Environmental Impact Statement Availability and Public Hearings; Blue River-Gore Pass Portion of the Hayden-Blue River Transmission Line Project, CO

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of Availability and Public Hearings for Draft Supplemental Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Western Area Power Administration (Western) U.S. Department of Energy (DOE), has issued for review and comment a draft supplemental environmental impact statement (EIS) for the proposed Blue River-Gore Pass Portion of the Hayden-Blue River Transmission Line Project, Colorado, DOE/EIS 0116-DS. The draft supplemental EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality regulations, 40 CFR 1500-1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, and as amended.

DATES: Written comments on the draft supplemental EIS are due no later than August 19, 1985.

FOR FURTHER INFORMATION CONTACT: For further information or copies of the draft supplemental EIS contact:

Mr. William C. Melander, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539, (303) 224-7231 or FTS 330-7231

Mr. Gary W. Frey, Director of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1527 or FTS 327-1527

Mr. Michael Kleinrock Office of Environmental Compliance, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6374 or FTS 252-6374

SUPPLEMENTARY INFORMATION:

Background Information

Western, in cooperation with the U.S. Forest Service, Bureau of Land Management, and Rural Electrification Administration (REA), has developed a draft supplemental EIS to assess the environmental effects of constructing, operating, and maintaining approximately 30 miles of 230/345-kV transmission line between the existing Gore Pass Substation northwest of Kremmling, Colorado, and a proposed new substation (not part of this action) near the Ute Pass Road. The project is part of the Hayden-Blue River 345-kV Transmission Line Project, the subject of a final EIS issued by the U.S. Department of Agriculture, REA, in July 1982. The action includes minor work at the Gore Pass Substation and at two taps, and also the removal of two existing transmission lines: A 69-kV line between Gore Pass Substation and Green Mountain Powerplant and a 115-kV between Green Mountain Powerplant and Blue River Tap. The purposes of the project are to provide additional transmission capacity into the areas of Gore Pass, Granby, Green Mountain, Dillon, Climax, Oak Creek, and Keystone, Colorado; and between the generation plants in western Colorado and the major load areas in eastern Colorado. Alternatives assessed include routing and design alternatives plus the alternatives addressed in the Hayden-Blue River final EIS, issued by the REA.

Copies of this statement have been provided to public and private agencies, organizations, and individuals which have expressed an interest in the project area. Copies of the draft supplemental EIS and the final EIS for the Hayden-Blue River Transmission Line Project are also available for public inspection at Western's Loveland-Fort Collins Area Office, 5555 East County Road 26, Loveland, Colorado; Western's Headquarters Office, Room 304, 1627 Cole Boulevard, Golden, Colorado; the Department of Energy's Office of Environmental Compliance, Room 3G-089, 1000 Independence Avenue, SW., Washington, DC; the Bureau of Land Management's Kremmling Resource Area Office, 1116 Park Avenue, Kremmling, Colorado; and the Forest Service's Dillion District Ranger's Office, 135 Colorado Highway 9, Silverthorne, Colorado.

Agencies and individuals are encouraged to review the draft supplemental EIS and comment on its adequacy, completeness, and accuracy. Comments received after the comment closing date may not be considered in the decisionmaking process. The draft supplemental EIS should be retained for possible use as part of the final supplemental EIS. If the public review requires only minor changes to the draft, then the final supplemental EIS will comprise: (1) The draft, (2) a record of public comments on the draft and the responses to the comments, and (3) necessary changes and corrections.

Public Hearings will be held and written as well as oral comments will be accepted. The public hearings will be held as follows:

Date	Location
Aug. 6, 1985	Community Building, Grand County Fairgrounds, Kremmling, Colorado.
Aug. 8, 1985	Silverthorne Lodge (northwest of the Interstate of Interstate 70 and Colorado Highway 9), Silverthorne, Colorado.

Informational exhibits about the project will be on display, and Western personnel will be available to answer questions from 6-7 p.m. at each of the locations prior to the start of the hearings. The public comment hearings will begin at 7 p.m. A certified court reporter will record the proceedings of each hearing. Copies of the hearings transcripts will be available for inspection at the Loveland-Fort Collins Area Office 2 weeks following the hearing.

Written comments on the draft supplemental EIS not presented at the hearings should be sent to: Mark N. Silverman, Area Manager, Loveland-Fort Collins Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, Colorado 80539, (303) 224-7201 or FTS 330-7201.

Issued at Golden, Colorado, July 3, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-16703 Filed 7-12-85; 8:45 am]

BILLING CODE 6450-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before August 29, 1985. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer. Comments on the item listed should be submitted to the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

EEOC Agency Liaison Officer: Margaret P. Ulmer, Financial Management Services, Room 386, 2401 E Street, NW. Washington, D.C. 20507; Telephone (202) 634-1947

OMB Reviewer: James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-6880.

Type of Request—Extension (No Change)

Title: Recordkeeping Requirements of Uniform Guidelines on Employee Selection Procedures.

Form Number: None.

Frequency of Report: None required.

Type of Respondent: Businesses/other institutions, State or local governments, farms.

Standard Industrial Classification (SIC) Code: Multiple.

Description of Affected Public: Any employer, labor organization, employment agency, covered by Federal equal employment opportunity laws.

Responses: 666,000.

Reporting Hours: 1,910,000.

Applicable under Section 3504(h) of Pub. L. 96-511: Not applicable.

Number of Forms: None.

Abstract—Needs/Uses: Data used by the EEOC and the co-signatories in investigating, conciliating, and litigating charges of employment discrimination, by complainants in establishing violations of Federal equal employment laws, and by respondents in defending against allegations of employment discrimination.

Dated: June 28, 1985.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 85-16707 Filed 7-12-85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 9, 1985

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Copies of this submission are available from the Commission by calling Doris R. Peacock, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503, (202) 395-7231.

Title: Survey of Radio Deregulation
Action: New
Estimated Annual Burden: 1,200 Responses; 7,200 Hours.

The Commission will randomly select 1,200 licensees to answer a survey questionnaire on a comparison of programming in 1980 and 1984.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-16738 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

American Communications and Television, Inc. et al.; Hearing Designation Order

In re Applications of:

	MM Docket No. 85-183
American Communications and Television, Inc.	File No. BPCT-840815KQ.
Cozzin Communication Corporation.	File No. BPCT-841004KG.
Gainesville Televison Group, Inc..	File No. BPCT-841005KT.
Gator Broadcasting Limited Partnership.	File No. BPCT-841005KV.
Central Florida Broadcasting Corporation.	File No. BPCT-841005KW.
Benjamin T. Perry and Poplar Apartments, Inc. d.b.a. Gainesville Telecasters, Ltd..	File No. BPCT-841005KZ

For Construction Permit, Gainesville, Florida.

Adopted: May 31, 1985.

Released: July 3, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of American Communications and Television, Inc. (American), Cozzin Communication Corporation (Cozzin), Gainesville Television Group, Inc. (GTGI), Gator Broadcasting Limited Partnership (Gator), Central Florida Broadcasting Corporation (Central), and Benjamin T. Perry and Poplar Apartments, Inc. d/b/a Gainesville Telecasters, Ltd. (GTL) for authority to construct a new commercial television station on Channel 61, Gainesville, Florida.[1]

2. Section 76.501(a)(2) of the Commission's Rules prohibits direct or indirect ownership of both a cable television system and a television broadcast station if the station would place a Grade B contour over any part of the service area of the cable television system. American has subsidiaries which have cable television franchises in McIntosh, Hawthorne, Reddick and Alachua, Florida. All of the above cities would be within the predicted Grade B contour of the proposed station. Consequently, American's application is inconsistent with the rule. American states that it will divest itself of any broadcast and/or cable facilities deemed necessary by the Commission in the event of grant of this application. This statement is not, on its face, the kind of unconditional pledge to divest that is normally filed under similar

[1] The deadline for filing amendments to the above-captioned applications was November 23, 1984. Cozzin Communication Corporation filed a petition for leave to amend and an amendment to its application on March 14, 1985. The amendment changes the ownership of non-voting stock. The petition and the amendment have been reviewed and good cause exists for accepting the amendment. The petition will be granted and the amendment accepted for filing for § 1.65 purposes only. On March 27, 1985, Gator also filed a petition for leave to amend accompanied by an amendment to its application. The amendment proposed a new transmitter site because of FAA rejection of its original site. Accordingly for good cause, the petition for leave to amend will be granted and the amendment accepted for § 1.65 purposes. Further, GTGI filed an amendment on January 7, 1985, updating its application and correcting some items in its application. GTGI did not request leave to amend. However, since applicants are required to keep their application accurate and current, the amendment will be accepted for § 1.65 purposes only. In the future, GTGI will be expected to follow carefully all procedural requirements.

circumstances. However, the applicant has not requested a waiver and the rule, on its face, proscribes the common ownership of the interests identified above. Under the circumstances, we will construe American's statement as a pledge to divest its cable interests in those communities receiving Grade B coverage from the proposed station. Accordingly, any grant of a construction permit to American will be appropriately conditioned.[2]

3. Section II, Item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. GTGI gave a negative answer to question 10, but did not include the required exhibit. Accordingly, GTGI will be required to file an amendment explaining the negative response to question 10, Section II, FCC Form 301, with the presiding Administrative Law Judge within 20 days after the release of this Order.

4. The effective radiated power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within each predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

5. No determination has been reached that the tower heights and locations proposed by American, Cozzin, Gator and Central would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

6. GTGI intends to mount its antenna on the existing tower of TV station WBSP, Ocala, Florida. The Commission's records show the height of that tower as 889 feet AGL (1049 feet AMSL), but the applicant specifies the tower height AGL as 932 feet (1049 feet AMSL). The Commission cannot determine whether the discrepancy is an error by the applicant or whether the applicant proposes to increase the tower height. If it is an error, the applicant must file an appropriate amendment to the presiding Administrative Law Judge within 20 days after the release of this Order; if the applicant proposes to increase the tower height, the presiding officer will specify an appropriate air hazard issue.[3]

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower heights and locations proposed by American Communications and Television, Inc., Cozzin Communication Corporation, Gator Broadcasting Limited Partnership, and Central Florida Broadcasting Corporation would each constitute a hazard to air naviagtion.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that the petitions for leave to amend filed by Cozzin Communications Corporation and Gator Broadcasting Limited Partnership on March 14, 1985 and March 27, 1985 respectively, are granted and the accompanying amendments are accepted for filing for § 1.65 purposes.

10. It is further ordered, that the amendment filed by Gainesville Television Group, Inc., on January 7, 1985, is accepted for filing for § 1.65 purposes.

11. It is further ordered, that, in event of a grant of American Communications and Television, Inc.'s application, the construction permit will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that it has divested itself of all interest in, and connection with the cable television systems in McIntosh, Hawthorne, Reddick, and Alachua, Florida.

12. It is futher ordered, that Gainesville Television Group, Inc. shall submit an appropriate amendment explaining its negative answer to question 10, Section II, FCC Form 301, to the presiding Administrative Law Judge within 20 days after the release of this Order.

13. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

14. It is futher ordered, that Gainesville Television Group, Inc., shall submit an appropriate amendment with respect to its proposed tower as noted in paragraph 6, to the presiding Administrative Law Judge within 20 days after the release of this Order.

15. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

16. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-16740 Filed 7-12-85; 8:45 am]

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[2] American stated in its application that its wholly-owned subsidiary, Micanopy Broadcasting Co., Inc., is an applicant for a new FM station in Micanopy, Florida. GTGI also indicates that one of its principals, Robert A. Bednarek has a limited partnership interest in Henweigh Partners, Ltd., an applicant for an FM station in the same proceeding for Micanopy, Florida. Micanopy would be within the Grade A contour of the proposed television stations. The Commission's records, however, show that both applications were dismissed on January 30, 1985, pursuant to a settlement agreement among the various competing applicants.

[3] GTGI would have to file FAA Form 7460-1 with the Federal Aviation Administration.

Focus Broadcast Communications, Inc., et al.; Hearing Designation Order

In re Applications of:

	MM Docket No. 85-184.
Focus Broadcast Communications, Inc.	File No. BPCT-842029KE.
Channel 60, Inc.	File No. BPCT-850107KE.
Hunt Partnership	File No. BPCT-850108LA.
Ridge Broadcasting Company, Inc.	File No. BPCT-850108LC.

For Construction Permit for New Television Station, Sebring, Florida.

Adopted: May 31, 1985.

Released: July 9, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it: (a) The above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 60, Sebring, Florida; (b) a petition for leave to amend filed by Focus Broadcast Communications, Inc.; and (c) related pleadings.

2. On February 28, 1985, the "B" cut-off date in this proceeding, Focus Broadcast Communications, Inc. (Focus), filed an amendment to its application containing the following statement:

> Focus Broadcast Communications, Inc. intends to operate its television station with an ERP of 5,000 kW visual and 500 kW aural from its present site. The revised contour maps, areas and population, will be forthcoming soon.

The actual Section V-C containing all the required exhibits and contour maps was filed, accompanied by a petition for leave to amend, on March 20, 1985. The latter filing proposed a new antenna system and substantially increased the area and population to be served by Focus. Ridge Broadcasting Company, Inc. (Ridge) and Channel 60, Inc. (Channel 60) filed oppositions to the petition for leave to amend. Both objectors essentially argue that Focus should not be allowed to enhance its comparative position after the cut-off date. Applicants may file amendments after the "B" cut-off date only upon a showing that good cause exists for the late filing. The test for good cause includes a showing that the amendment was prepared with due diligence, was not caused by a voluntary act of the applicant, and would not enable the applicant to gain a comparative advantage. See *Erwin-O'Connor Broadcasting Co.*, 22 FCC 2d 140 (Rev. Bd. 1970). Focus' good cause showing is limited to a self-serving statement that "good cause exists" because the amendment reflected its intentions as of the "B" cut-off date. Clearly Focus' statement falls short of the good cause requirement. The mere filing of a statement of its intent to amend its application did not change the technical parameters of Focus' original proposal. Without such essential information as the type of antenna system, radiation patterns and coverage area, neither the Commission's technical staff nor the other applicants could examine Focus' compliance with the Commission's Rules. Thus, while Focus' amendment will be accepted for informational purposes, Focus will not be allowed any comparative advantage that may accrue from its new engineering proposal.

3. Channel 60, Inc. filed amendments on March 20 and 27, 1985, after the "B" cut-off date.[1] Ridge filed an amendment on March 26, 1985. The three amendments supplied information required to be reported pursuant to Section 1.65 of the Commission's Rules. Accordingly, the amendments will be accepted for Section 1.65 purposes only.

4. No determination has been made that the tower heights and locations proposed by Channel 60, Inc., Hunt Partnership (Hunt) and Ridge[2] would not each constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.

5. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Section 73.3555(b) of the Commission's Rules states that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls one or more AM broadcast stations and the grant of such license will result in the Grade A contour of the proposed television station emcompassing the entire community of license of the AM broadcast station. Note 4 to this rule provides, *inter alia*, that applications for UHF television facilities ". . . will be handled on a case-by-case basis in order to determine whether common ownership operation or control of the stations in question would be in the public interest." David Eakin is President and owns 25% of the voting stock of Focus. He is also the station manager of Station WJCM(AM) Sebring, Florida. However, Mr. Eakin states that he will resign as manager of WJCM(AM), Sebring, Florida, prior to the commencement of operation of the television station if Focus is the successful applicant. Accordingly, any grant of a construction permit to Focus will be conditioned upon Mr. Eakin's severance of his connection with the licensee of the radio station.

7. Hunt stated, in its environmental narrative statement, that it believes that its proposed site is available, but that it has not made the necessary arrangements to provide reasonable assurance that the site is available. Under those circumstances, an issue will be required to determine whether the applicant has reasonable assurance that its proposed site will be available.

8. Section V-C, Item 10, FCC Form 301, requires an applicant to submit the area and population within its predicted Grade B contour. Hunt has not done so. Hunt, therefore, will be required to submit an amendment showing the required information, within 20 days of the release of this Order, to the presiding Administrative Law Judge.

9. Section II, Item 6(b), FCC Form 301, asks whether the applicant or any party to the application has any interest in or connection with an application for a broadcast station pending with the Commission. An affirmative response requires an explanation in the form of an exhibit. Hunt responded affirmatively and indicated that the required explanation was furnished in its Exhibit II-1, but no such exhibit was filed with the application. Hunt will, therefore, be required to submit an amendment to the presiding Administrative Law Judge, within 20 days after the release of this Order, providing all required broadcast interest information.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, that pursuant to section 309(e) of the

[1] Channel 60, Inc. indicates that it expects to have non-voting stockholders at some time in the future. When this occurs, Channel 60, Inc. will be expected to provide all relevant information respecting any such stockholders who may have media interests in the area subject to the Commission's cross-interests policy.

[2] If it has not already done so, Ridge must file an FAA Form 7460-1 with the Federal Aviation Administration.

Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Channel 60, Inc., Hunt Partnership and Ridge Broadcasting Company, Inc. whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine with respect to Hunt Partnership, whether the applicant has reasonable assurance that its proposed transmitter site will be available.

3. To determine which of the proposals would, on a comparative basis, best serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, That the oppositions filed by Ridge Broadcasting Company, Inc. and Channel 60, Inc., on March 28, 1985 and April 2, 1985, respectively, are granted to the extent indicated herein and Are DENIED in all other respects.

13. It is further ordered, that the petition for leave to amend filed by Focus Broadcast Communications, Inc., on March 20, 1985, is granted and the amendment filed on the same date is accepted for filing for § 1.65 purposes only.

14. It is further ordered, that in the event of a grant of Focus Broadcast Communications, Inc.'s application, it will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that David Eakin has severed all connection with the licensee of Station WJCM(AM), Sebring, Florida.

15. It is further ordered, that the amendments filed by Channel 60, Inc. on March 20 and 27, 1985 and Ridge Broadcasting Company, Inc. on March 28, 1985 are accepted for filing for § 1.65 purposes only.

16. It is further ordered, that Hunt Partnership shall submit an amendment stating the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days of the release of this Order.

17. It is further ordered, that Hunt Partnership shall, within 20 days of the date of release of this Order, file with the presiding Administrative Law Judge an amendment containing the broadcast interest information required by Section II, Item 6(b), FCC Form 301.

18. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

19. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

20. It is further ordered, that the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-16742 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

Lawton Communications Co., et al.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Roni DeAnn Gardner; Lawton, OK.	BPH-831215AA	85-193
B. Lawton Communications Co., a limited partnership; Lawton, OK.	BPH-840719IA	
C. T. Kent Atkins d.b.a. Atkins Broadcasting; Lawton, OK.	BPH-840719IC	
D. Delbert Francis Ault; Lawton, OK.	BPH-840719ID	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix), A, C
2. City Coverage, B, C
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

Additional Issue Paragraph

1. If a final environmental impact statement is issued with respect to A (Gardner) and/or C (Atkins) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) To determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 85-16743 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

Radio Page Communications, et al.; Memorandum Opinion and Order Designating Applications for Hearing

In re Applications of:

	CC Docket No. 85-217.
J.M. Blodgett d.b.a. Radio Page Comunications. For authority to modify the authorization of Station KWT 885 operating on frequency 35.58 MHz in the Public Land Mobile Service at Atlantic City, NJ.	File No. 21012-CD-P-78.
Answering Service of Trenton, Inc.. For authority to construct an additional facility for Station KED 352 to operate on frequency 35.58 MHz in the Public Land Mobile Service at Stafford Township, NJ.	File No. 21284-CD-P-78.
J.M. Blodgett d.b.a. Radio Page Comunications.	File No. 21325-CD-P-78.

For authority to construct an additional facility for Station KWT 885 to operate on frequency 35.58 MHz in the Public Land Mobile Service at Forked River, NJ.

Adopted: June 28, 1985.
Released Juy 8, 1985.

By the Commission Carrier Bureau.

1. Presently before the Chief, Mobile Services Division, pursuant to delegated authority, are the captioned applications of J.M. Blodgett d/b/a/ Radio Page Communications (Radio Page) and Answering Service of Trenton, Inc. (ASOT). Also pending is the letter request of ASOT to vacate the grant of Radio Page's Atlantic City application, File No. 21012–CD–P–78, Radio Page's informal application for interim operating authority and related pleadings, and Radio Page's Petition for Expedited Issuance of a Hearing Designation Order and for Other Relief and responsive pleadings.

Background

2. Radio Page's Atlantic City antenna modification application, File No. 21012–CD–P–78, was filed on March 13, 1978 and was accepted for filing by Public Notice on March 20, 1978. ASOT's Stafford Township application was filed on April 19, 1978 and was accepted for filing in a Public Notice on May 1, 1978. Radio Page's Forked River application was filed on April 25, 1978 and was accepted for filing by Public Notice on May 8, 1978. On July 14, 1980, the Commission granted Radio Page's Atlantic City application without a hearing. Radio Page thereafter constructed its facility and filed for a covering license on February 24, 1981. Radio Page then commenced operations.

3. On January 11, 1983, counsel for ASOT filed a letter informing the Commission that Radio Page's Atlantic City application was mutually exclusive with ASOT's Stafford Township application. ASOT argued that the Commission's July 14, 1980 grant of Radio Page's Atlantic City application without a hearing was *ultra vires* and requested that the grant be vacated. As the result of a subsequent meeting of counsel and Commission staff, Radio Page voluntarily pulled back its Atlantic City service contour, on January 17, 1983, to the directional antenna contour that had been previously authorized in File No. 22064–CD–P/ML–04–77.

4. By letter dated April 25, 1984, Radio Page responded to an April 6, 1984 Commission inquiry respecting the operating parameters of the Atlantic City Station, stating: "Given that the 21012 authority was not revoked and operations thereunder were and would continue to be on a non-interference basis pending final disposition of the ASOT application, Radio Page believes it should be able to operate under the 21012 authority, pending resolution of the mutual exclusivity between Radio Page application 21012 and ASOT application 21284."

5. By letter dated May 24, 1984, ASOT opposed Radio Page's interim authority request as "entirely unprecedented and highly prejudicial to ASOT." By letter dated May 31, 1984, Radio Page asserted that its earlier letter had "sought confirmation of Radio Page's right to operate under its 21012 authority, unless and until it is rescinded by the Commission * * * and only secondarily to request, in the alternative, a grant of interim authority." Radio Page also requested that the applications be set for comparative hearing as soon as possible.

6. On February 25, 1985, Radio Page filed a Petition for Expedited Issuance of a Hearing Designation Order and for Other Relief. The Petition was filed in the instant proceeding and in a separate mutually exclusive proceeding involving Radio Page and ASOT applications.[1] Radio Page has requested that these three applications be consolidated with the two Penns Grove applications because of the "identity of parties and issues." Radio Page also requested that the consolidated applications be immediately designated for comparative hearing, and that Radio Page be authorized "to operate on an interim basis under the parameters of its Atlantic City application pending the outcome of the comparative hearing."

7. On March 12, 1985, ASOT filed its Opposition to Radio Page's Petition supporting the request for comparative hearing designation but opposing Radio Page's request for any interim authorization. Radio Page filed a Reply on March 22, 1985.

Discussion

8. As a preliminary matter, Radio Page's request for consolidation of these applications with the Penns Grove applications will be denied. The two proceedings do not have complete identity of parties, as the application of Radio Broadcasting Company, File No. 20582–CD–P–79, is mutually exclusive with the two Penns Grove applications. Public Notice, No. PMS–85–15, issued May 8, 1985. Since Radio Broadcasting is not a party to the instant proceeding, consolidation would serve to add to the complexity of this dispute and would be contrary to the public interest.

9. We also conclude that ASOT's January 11, 1983 request to vacate the improper grant of Radio Page's Atlantic City application should be granted. Radio Page's Atlantic City application was mutually exclusive with ASOT's Stafford Township application. Pursuant to §§ 22.31 and 22.32 of the Commission's Rules, a mutually exclusive application filed prior to August of 1981 may not be granted without a formal hearing. ASOT has not waived its right to a comparative hearing. The Commission's July 14, 1980 grant, without formal hearing, of Radio Page's Atlantic City application was *ultra vires* and was void *ab initio*. The grant will be formally vacated and Radio Page's previous authority, issued in Filed No. 22064–CD–P/ML–04–77, will be reinstated.[2]

10. Radio Page's request for interim authority to operate under the parameters of its Atlantic City application will be denied. Radio Page cited § 22.25(b)(3) as authority for the interim authorization sought.[3] Radio Page has cited no precedent where § 22.25(b)(3) authority has been granted under the circumstances present here, and we conclude that the cited Rule Section is inapposite. First, since Radio Page's Atlantic City construction permit has been vacated, there is no authorized construction to facilitate. Second, since the mistaken grant was void *ab initio*, Radio Page's proposed antenna modification was never legally previously authorized. Third, Radio Page has failed to demonstrate that either the unspecified cost of the equipment it had obtained or the service requirements of its subscribers [4] warrant a finding that

[1] File No. 20100–CD–P–79, a Radio Page application to construct an additional facility for Station KWT 885 on frequency 35.58 MHz at Penns Grove, NJ, and File No. 20540–CD–P–79, an ASOT application to construct an additional facility for Station KED 352 on frequency 35.58 at Penns Grove, NJ (Penns Grove applications).

[2] This action will moot Radio Page's February 24, 1981 application for a covering license which was held in pending status.

[3] Section 22.25(b)(3) provides that special temporary authorizations may be granted when the authorization is to permit interim operation to facilitate completion of authorized construction or to provide substantially the same service as previously authorized."

[4] Both before the erroneous grant and since January 17, 1983, Radio Page's Atlantic City subscribers have been served throughout the area legally licensed to Radio Page in File No. 22064–CD–P/ML–77. There is no evidence that the continuation of such service pending final disposition of a comparative hearing of the mutually exclusive applications would harm Radio Page's subscribers.

the public interest requires a grant of interim authority. Finally, § 22.32(g) of the Commission's Rules, which expressly covers the conditional granting of a mutually exclusive application pending the outcome of a formal hearing, is inapplicable as none of the four specified situations justifying such relief is apparent in this proceeding.

11. The involved applications of Radio Page and ASOT are electrically mutually exclusive. Public Notice, No. PMS-85-15, released May 8, 1985. After careful consideration, we find the applicants to be legally, technically and otherwise qualified to construct and operate the proposed facilities. Since the applications were filed prior to August 1981, these applications are not subject to the lottery selection; [5] therefore, a comparative hearing will be held to determine which applicant would best serve the public interest.

12. Accordingly, it is ordered, that the consolidation request of J.M. Blodgett d/b/a Radio Page Communications is denied.

13. It is further ordered, that the request of Answering Service of Trenton, Inc. to vacate the July 14, 1980 grant of File No. 21012-CD-P-78 is granted, and that such grant is vacated and the authority granted in File No. 22064-CD-P/ML-04-77 is reinstated.

14. It is further ordered, that the informal application of J.M. Blodgett> d/b/a Radio Page Communications for a grant of interim authority under § 22.25(b)(3) of the Commission's Rules is denied.

15. It is further ordered, pursuant to section 309 of the Communications Act of 1934, as amended, that the applications of J.M. Blodgett d/b/a Radio Page Communications, File Nos. 21012-CD-P-78 and 21325-CD-P-78, and the application of Answering Service of Trenton, Inc., File No. 21284-CD-P-78, are designated for hearing in a consolidated proceeding upon the following issues:

(a) To determine on a comparative basis, the nature and extent of service proposed by each applicant, including the rates, charges, maintenance, personnel, practices, classifications, regulations, and facilities pertaining thereto;

(b) To determine on a comparative basis, the areas and populations that each applicant will serve within the prospective interference-free area within the 43 dBu contours,[6] based upon the standards set forth in § 22.504(a) of the Commission's Rules [7] and to determine and compare the relative demand for the proposed services in said areas; and

(c) To determine, in light of the evidence adduced pursuant to the foregoing issues, what disposition of the referenced applications would best serve the public interest, convenience, and necessity.

16. It is further ordered, that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

17. It is further ordered, that the Chief, Common Carrier Bureau, is made a party to the proceeding.

18. It is further ordered, that the applicants shall file written notices of appearance under § 1.221 of the Commission's Rules within 20 days of release date of this Order.

19. This Order is issued under § 0.291 of Commission's Rules and is effective upon its release date. Petitions for reconsideration will not be entertained. See § 1.106(a)(1) of the Rules. Applications for review will be entertained pursuant to § 1.115(e)(3). See also § 1.4(b)(2).

Federal Communications Commission.

Michael Deuel Sullivan,

Chief, Mobile Services Division, Common Carrier Bureau.

[FR Doc. 85-16741 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

Tel-Dodge Broadcast Company; Inc., et al.; Hearing Designation Order.

In re Applications of:

MM Docket No. 85-191

Tel-Dodge Broadcasting Co. Inc., Milan, GA. Req: 1100 kHz, 0.5 kW, D.	File No. BP-840202AC.
Joann S. Miller, Woodbine, GA. Req: 1100 kHz, 10 kW, D.	File No. BP-840314AA.

For Construction Permit.

Adopted: June 4, 1985.
Released: July 9, 1985.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications for new AM broadcast stations.

2. The proposed location of Tel-Dodge Broadcasting Company Inc's main studio is unclear. In response to Question seven of Section V-A of the application form, which requests a justification pursuant to Section 73.1125 of the Commission's Rules for studio locations not within the principal community or at the transmitter site, the applicant makes reference to Exhibit E. However, Exhibit E fails to mention the main studio. We cannot determine from the record under these circumstances if the applicant complies with § 73.1125 of the Commission's Rules. Therefore, an appropriate issue will be specified.

3. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. As the proposals are for different communities, we will specify an issue to determine pursuant to Section 307(b) of the Communications Act of 1934, as amended, which proposal would better provide a fair, efficient and equitable distribution of radio service. We will also specify a contingent comparative issue, should such an evaluation of the proposals prove warranted.

4. Accordingly, it is ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order upon the following issues:

1. To determine whether the proposal of Tel-Dodge Broadcasting Company, Inc. is in compliance with § 73.1125 of the Commission's Rules with respect to the location of its main studio.

2. To determine: (a) The areas and populations which would receive primary aural service from the proposals and the availability of other primary service to such areas and populations, and (b) in light thereof and pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio services.

3. To determine, in the event it be concluded that a choice between the

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[5] See, Second Report and Order, Gen. Docket 81-768, released May 27, 1983, 91 FCC 2d 911, para. 129.

[6] For the purpose of this proceeding, the interference-free area is defined as the area within the 43 dBu contour as calculated from § 22.504, in which the ratio of desired-to-undesired signal is equal to or greater than R in FCC Report No. R-6406, equation 8.

[7] Section 22.504(a) of the Commission's Rules and Regulations describes a field strength contour of 43 decibels above one microvolt per meter as the limits of the reliable service area for base stations engaged in one-way communications service. Propagation data set forth in § 22.504(b) are the proper bases for establishing the location of service contours F(50,50) for the facilities involved in this proceeding. (The applicants should consult with the Bureau counsel with the goal of reaching joint technical exhibits.)

applicants should not be based solely on considerations relating to section 307(b), which of the proposals would on a comparative basis better serve the public interest.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, that in addition to the copy served on the Chief, Hearing Branch, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Room 350, 1919 M Street, NW., Washington, D.C. 20554.

6. It is further ordered, that to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, written appearances stating an intention to appear on the dates fixed for the hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, that pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the Rule, and shall advise the Commission of the publication of such as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-16744 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1525]

Petitions for Reconsideration and Clarification of Actions in Rule Making Proceedings

July 5, 1985.

The following listings of petitions for reconsideration and clarification filed in Commssion rulemaking proceedings is published pursuant to 47 CFR 1.429(e). Oppositions to such petitions for reconsideration and clarification must be filed within 15 days after publication of this Public Notice in the **Federal Register**. Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to Allow the Selection From Among Mutually Exclusive Competiting Cellular Applications Using Random Selection or Lotteries Instead of Comparative Hearings. (CC Docket No. 83-1096).

Filed by:

Gerard J. Duffy, Attorney for Cellular Technology, Inc., on 6-3-85.

Ben C. Fisher, John Q. Hearne & Eliot J. Greenwald, Attorneys for Cell Pro on 6-3-85.

Theodore D. Frank & Marilyn D. Sonn, Attorneys for Centel Corporation on 6-19-85.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-16739 Filed 7-12-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL ELECTION COMMISSION

[Notice 1985-9]

Filing Dates for Texas Special Runoff Election

AGENCY: Federal Election Commission.

ACTION: Notice of Filing Dates for Texas Special Runoff Election.

SUMMARY: Committees required to file reports in connection with the special election to be held on August 3, 1985, must file a 12-day pre-election report due on July 22, 1985, and a 30-day post-election report due on September 2, 1985. The semiannual report due on July 31, 1985, has been waived for those committees required to file the 12-day pre-election report. After filing these reports, committees should resume filing reports on a semi-annual basis.

FOR FURTHER INFORMATION CONTACT: Ms. Bobby Werfel, Chief, Information Services Division, 1325 K Street, NW., Washington, D.C. 20463, Telephone: (202) 523-4068, Toll free: (800) 242-9530.

Notice of Filing Dates for Special Election, 1st Congressional District, Texas

All principal campaign committees of candidates in the special election and all other political committees not filing monthly, which support candidates in the special election shall file a 12-day pre-election report due on July 22, 1985, with coverage dates from date of last report filed, or if filing first report from date of registration, through July 14, 1985, and a 30-day post-election report due on September 2, 1985, with coverage dates from July 15, 1985, though August 23, 1985. The semiannual report due on July 31, 1985, has been waived for those committees required to file the 12-day pre-election report. After filing these reports, committees should resume filing on a semiannual basis.

Dated: July 10, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-16693 Filed 7-12-85; 8:45 am]

BILLING CODE 6715-01-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 section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this seciton before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-001875-002.

Title: Tacoma Terminal Agreement.

Parties:

Port of Tacoma (Port)

Kaiser Aluminum & Chemical Corporation (Kaiser)

Synopsis: Agreement No. 224-001875-002 modifies the basic agreement which provides for the preferential berthing of Kaiser's alumina vessels at Berth C of Pier 7, Tacoma, Washington, as well as crane operators provided by the Port. The second amended agreement deletes the wharfage, service and facilitites charges and crane rental from the first amendment to the agreement, and substitutes different charges therefore. Agreement No. 224-001875 will become effective upon the date determined by the Federal Maritime Commission.

Agreement No.: 212-010382-007.

Title: Argentina/U.S. Gulf Ports Agreement.

Parties:

A. Bottacchi S.A. De Navegacion C.F.I.I.

Companhia De Navegacao Lloyd Brasileiro

Companhia Maritima Nacional

Cylanco S.A.

Empresa Lineas Maritimas Argentinas S.A.

Reefer Express Lines Pty., Ltd.

Transportacion Maritima Mexicana S.A.

United States Lines (S.A.) Inc.

Synopsis: The proposed amendment would restate the agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 224-010777.

Title: San Pedro Terminal Agreement

Parties:

Metropolitan Stevedore Company (Metropolitan)

L.A. Cruise Ship Terminals, Inc. (LACST)

Synopsis: Agreement No. 224-010777 provides that Metropolitan will provide passenger terminal services for LACST at facilities located at Berths 90-93, San Pedro, California, pursuant to a permit issued by the City of Los Angeles, and as per FMC agreement No. 224-010730. The term of the agreement shall be for one year. Metropolitan will be compensated pursuant to schedule C of the agreement. The parties have requested a shortened Review period for the agreement.

Agreement No.: 224-010778.

Title: Burns International Harbor Terminal Agreement.

Parties:

Indiana Port Commission (Commission)

Donald J. Mitrazyk dba Paul Dee Co. (PDC)

Synopsis: Agreement No. 224-010778 provides for the lease of 1.190 acres by the Commission to PDC situated at the Burns Waterway Harbor. The premises will be used for the installation and operation of a storage, processing and distribution facility for oyster shells and other non-hazardous dry bulk commodities, and the transportation of the material necessary and incidental to such activity. The term of the agreement shall run through June 30, 1993, with renewal options of four consecutive five year periods. PDC guarantees to the Commission minimum amounts of wharfage as provided for in the agreement.

Agreement No.: 226-010779.

Title: Carriers' Container Interchange Agreement.

Parties:

Atlantic Container Line, G.I.E.

Compagnie General Maritime

The Cunard Steam-Ship Company, plc

East Asiatic Co. Ltd. A/S

Intercontinental Transport (ICT) B.V.

Johnson Line AB

Rederiaktiebolaget Soya

Rederiaktiebolaget Transatlantic

Wilhelm Wilhelmsen Ltd.

Synopsis: The proposed agreement would permit the parties to establish an organization to be known as Container Equipment Management to provide for interchange among the parties of empty equipment designated by them to be interchangeable, and for its coordinated positioning, transport, acquisition, repair and the sharing of costs associated with such agreement activities.

Agreement No.: 224-010781.

Title: Burns International Harbor Terminal Agreement.

Parties:

Indiana Port Commission (Commission)

Brown, Inc. (Brown)

Synopsis: Agreement No. 224-010781 provides that the Commission will lease to Brown 1 acre at the Burns Waterway Harbor. The premises will be used for the installation and operation of a storage, processing and distribution facility for non-hazardous dry bulk commodities, and for the transportation of the material necessary and incidental to such activity. The term of the agreement shall run through July, 1989, with renewal options of three consecutive 5 year periods. Brown will guarantee to the Commission wharfage amounts as provided for in the agreement.

Dated: July 10, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-16767 Filed 7-12-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

BC Corp. of Detroit 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 on 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 question 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 5, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *BC Corp. of Detroit*, Hamtramck, Michigan; to become a holding company by acquiring 100 percent of the voting shares of Commerce Bancorp, Inc., Hamtramck, Michigan, thereby indirectly acquiring The State Bank of Fraser, Fraser, Michigan, and Bank of Commerce, Hamtramck, Michigan.

In this regard, Security Bancorp, Inc., Southgate, Michigan, has applied to acquire 100 percent of the voting shares of BC Corp. of Detroit.

2. *Central Wisconsin Bankshares, Inc.*, Wausau, Wisconsin; to acquire 80 percent of the voting shares of Central National Bank of Wausau, Wausau, Wisconsin.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Indiana Bancshares, Inc.*, Charlestown, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Clark County, Charlestown, Indiana, and to acquire at least 52.33 percent of the voting shares of The First National Bank of Scottsburg, Scottsburg, Indiana.

Board of Governors of the Federal Reserve System, July 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16696 Filed 7-12-85; 8:45 am]

BILLING CODE 6210-01-M

Equitable Bancorp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 1985.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Equitable Bancorporation*, Baltimore, Maryland; to acquire First American Limited Partnership, thereby indirectly acquiring certain assets from First American Group, and engaging in mortgage banking, including originating, selling, and servicing loans to third parties, secured by real estate.

Board of Governors of the Federal Reserve System, July 9, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-16695 Filed 7-12-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

FSG 66—Federal Supply Schedule Improvement

The GSA, FSS, General Products Commodity Center, Engineering and Commodity Management Division and Scientific Equipment Division, is contemplating establishing a voluntary collaborative effort to review the FSG 66 Federal Supply Schedules Solicitations for appropriateness of coverage. The review will cover technical analysis only. Any industry association or firm interested in participating in this effort should respond to this notice by C.O.B. August 15, 1985, to General Services Administration, FSS, General Products Commodity Center, Engineering and Commodity Management Division, CMBG #4, Room 832, Washington, DC 20406.

For information call John Miller (703) 557-9440.

Dated: July 3, 1985.

Larry E. Schroyer,

Director, Scientific Equipment Division, General Products Commodity Center.

[FR Doc. 85-16176 Filed 7-12-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following District Consumer Exchange Meeting:

New Orleans District Office, chaired by Robert O. Bartz, District Director. The topic to be discussed is Health Issues of Older Women.

DATE: Tuesday, July 30, 1985, 10 a.m. to 11:30 a.m.

ADDRESS: Shady Oaks Senior Center, Terrebone Parish Council on Aging, 876 Verret St., Houma, LA 70363.

FOR FURTHER INFORMATION CONTACT: Frances Brysson, Consumer Affairs Officer, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships betwen local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 10, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-16676 Filed 7-10-85; 10:31 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

Correction

In FR Doc. 85-15377, appearing on page 26627, in the issue of Thursday, June 27, 1985, in the third column, in the seventh and twentieth lines, "Thereas" should read "Theresa".

BILLING CODE 1505-01-M

[Docket No. 85E-0162]

Determinaton on Regulatory Review Period for Purposes of Patent Extension; Coactin® Sterile

Correction

In FR Doc. 85-14940, beginning on page 25786 in the issue of Friday, June 21, 1985, make the following correction:

On page 25786, in the third column, in the fifth complete paragraph, third line, "April 15, 1984" should read "April 15, 1982".

BILLING CODE 1505-01-M

[Docket No. 85M-0224]

Vision Tech, Inc.; Premarket Approval of Sauflon PW (Lidofilcon B) and Sauflon 70 (Lidofilcon A) Soft Contact Lenses

Correction

In FR Doc. 85-14720 beginning on page 25468 in the issue of Wednesday, June 19, 1985, make the following correction:

On page 25468, in the third column, in the first complete paragraph, in the sixth line, "polymehtylmethacrylate" should read "polymethylmethacrylate".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Coastal Barrier Resources System; Inquiry

AGENCY: Office of the Secretary, Interior.

ACTION: Notice. Coastal Barrier Resources Act; Section 10—Report to Congress (16 U.S.C. 3509).

SUMMARY: In order to allow more time for the public, States and local governments, members of Congress and other Federal agencies to comment on the Draft Report to Congress on the Coastal Barrier Resources System, the public comment period previously scheduled to close on July 15, 1985, is hereby extended until close of business September 30, 1985. Following that time, the Department shall develop recommendations regarding the System as directed by Section 10. Early in 1986, the revised report, including recommendations, shall be issued for public comment prior to transmittal in final form to Congress.

DATE: Comments on the report and maps that are a component of this effort will be accepted through September 30, 1985.

ADDRESS: Comments should be directed to: The Coastal Barriers Study Group, Department of Interior, National Park Service—498, P.O. BOX 37127, Washington, D.C. 20013-7127.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lanzone, Coastal Barriers Study Manager, National Park Service—763, Department of the Interior, Washington, D.C. 20013-7127, (202) 343-5625.

Dated: July 9, 1985.

Susan Reece,

Acting Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 85-16735 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[OR-19343]

Oregon; Conveyance of Public Lands; Order Providing for Opening of Lands

Correction

In FR Doc. 85-15461 appearing on page 26631 in the issue of Thursday, June 27, 1985, make the following corrections:

1. In the second column, land description beginning T. 16 S., R. 13 E., "S½NW¼" should have read "S½ NE¼".

2. In the land description beginning T. 1 S., R. 18E., "S¼SW¼" should have read "S½SW¼". In T. 5 S., R. 18 E., "E¼NE½." should have read "E½NE¼."

3. In the third column, in T. 21 S., R. 22 E., first line, "21" should have read "22".

BILLING CODE 1505-01-M

Filing of Plat of Survey; Utah

AGENCY: Bureau of Land Management, Utah, Interior.

ACTION: Notice.

SUMMARY: These Plats of Survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah immediately:

Salt Lake Meridian, Utah

T. 35 S., R. 2 E.

This plat represents the dependent resurvey of the Seventh Standard Parallel South, through a portion of Range 2 East, a portion of the north and west boundaries, and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, and the survey of the subdivision of sections 1, 11, 12, 15, 17, 20, 21, 29, and 30 of T. 35 S., R. 2 E., Salt Lake Meridian, Utah for group 616, was accepted March 22, 1985.

Salt Lake Meridian, Utah

T. 22 S., R. 6 E.

This plat represents the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines, and a partial subdivisional survey of sections 3 and 4 of T. 22 S., R. 6 E., Salt Lake Meridian, Utah for group 651 was accepted April 25, 1985.

Salt Lake Meridian Utah

T. 13 S., R. 16 E.
T. 13 S., R. 17 E.
T. 14 S., R. 14 E.

These plats, in three (3) sheets representing: (1) The dependent resurvey of a portion of the north boundary and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines of T. 13 S., R. 16 E., Salt Lake Meridian, Utah; (2) the dependent resurvey of a portion of the south boundary of T. 12 S., R. 17 E., and a portion of the subdivisional lines, and the survey of a portion of the subdivisional lines, and the survey of the subdivision of section 19 of Utah; (3) the dependent resurvey of a portion of the west boundary of T. 14 S., R. 15 E., and a portion of the subdivisional lines, and a survey of a portion of the subdivisional lines of T. 14 S., R. 14 E., Salt Lake Meridian, Utah for group 630, were accepted May 3, 1985.

Salt Lake Meridian, Utah

T. 16 S., R. 7 E.

This supplemental plat of Section 5, T. 16 S., R. 7 E., Salt Lake Meridian, Utah, was prepared to show the subdivision of original lot 7, and is based upon the plat approved March 10, 1981, was accepted March 15, 1985.

These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries relating to this land should be sent to the Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111.

Orval Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-16692 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-DQ-M

Public Information Request for the Powder River Coal Region

AGENCY: Bureau of Land Mangement, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management wishes to determine leasing interest in all areas available for further leasing consideration within the Powder River Coal Region. Public input is requested. However, the use of this information is dependent upon a Secretarial decision to continue coal activity planning.

DATE: Public input is welcome through October 31, 1985.

ADDRESS: Public input should be submitted to the Chief, Branch of Solid Minerals, Bureau of Land Management (Wyoming State Office 924), 1828 P.O. Box, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Don Brabson, Branch of Solid Minerals, Bureau of Land Management (Wyoming State Office 924), 1828 P.O. Box, Cheyenne, WY 82003; telephone (307) 772-2571.

SUPPLEMENTARY INFORMATION: By Federal Register notice on May 6, 1985, the Bureau of Land Management requested re-expressions of coal leasing interest on the 22 tracts under leasing consideration in the *Draft Environmental Impact Statement of Round II Coal Lease Sale in the Powder River Region*, January 1984. In response, the Bureau received re-expressions of interest for some of the tracts and unsolicited expressions on interest for additional tracts. In order to fully comprehend the leasing interest throughout the region, the Bureau would like to know the degree to which additional leasing interest exists beyond the above-referenced 22 tracts. To this end the public is invited to indicate regional leasing interest where areas are available for leasing considerations. Those parties that submitted letters in response to the May 6, 1985, notice do not need to provide additional input, unless their interest changes.

The areas available for leasing consideration are set out in Bureau land use plans. The Bureau's Casper District Office and Miles City District Office can supply these plans for Wyoming and Montana portions of the region, respectively. The addresses and telephone numbers for these offices are Casper District Office, 951 North Poplar, Casper, Wyoming 82601, (307) 261-5101 and Miles City District Office, P.O. Box 950, Miles City, Montana 59301, (406) 232-4331.

Information received in response to this notice will be furnished to the Powder River Regional Coal Team. This team is expected to use this information in the development of Federal coal leasing recommendations for the Secretary of the Interior, provided that the Secretary decides to continue coal activity planning under the Federal Coal Management Program.

Hillary A. Oden,

State Director, Wyoming.

[FR Doc. 85-16710 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Mines

Advisory Committee on Mining and Mineral Research; Meeting

This notice is issued in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App.I) and Office of Management and Budget Circular No. A63, Revised.

The Advisory Committee on Mining and Mineral Research will meet from 8:30 a.m. to 5:00 p.m. (or completion of business), on Friday, August 16, 1985, for the primary purpose of completing work on its National Plan for Research in Mining and Mineral Resources.

The Committee meeting will be held in: Bureau of Mines Room D-2004.2006, Building 20, Denver Federal Center, 6th Avenue and Kipling Street, Denver, Colorado 80225.

The meeting will deal with the following subjects:

1. Review of minutes of meeting of May 16, 1985.
2. Revision and approval of draft plan for research in mining and mineral resources.
3. Status of 1985 grant awards program.
4. Status of congressional action on mineral institute 1986 budget.
5. New business.

This meeting is open to the public. Approximately 20 visitors can be accommodated on a first-come, first-served basis. Written statements concerning the subjects are welcome.

Visitors who expect to attend should inform Dr. Ronald A. Munson, Chief, Office of Mineral Institutes, Bureau of Mines, MS 1020, 2401 E Street, NW., Washington, D.C. 20241, phone (202) 634-1328, no later than Monday, August 12.

Dated: July 10, 1985.

Robert C. Horton,

Director.

[FR Doc. 85-16683 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-53-M

Bureau of Reclamation

Kesterson Reservoir Closure and Cleanup; Rescheduling of Scoping Sessions for Draft Environmental Impact Statement; Correction

This document corrects a notice on the closure and cleanup of Kesterson Reservoir that appeared on page 28125 in the **Federal Register** of Wednesday, July 10, 1985, (50 FR 28124). This action is necessary to correct the date of the meeting in Merced, California, and the telephone numbers of Reclamation and Fish and Wildlife Service contacts.

Meeting date: Notice of the meeting scheduled for July 24, 1985, at Herbert Hoover School, Merced, California, will actually take place on July 23, 1985, 7:00 p.m.-10:00 p.m.

Telephone numbers: The telephone number for Mr. Bob Schroeder should be changed to (916) 978-4923, the telephone number for Mr. Rod Hall should be changed to (916) 978-5130, and the telephone number for Mr. Stephen Moore should be changed to (916) 978-4978.

Dated: July 11, 1985.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 85-16854 Filed 7-12-85; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Lodging of a Stipulation and Order Regarding Violations of a Consent Decree Under the Toxic Substances Control Act; Interstate Transformer, Inc., and H.G. Snyder

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 26, 1985, a proposed Stipulation and Order in *United States v. Interstate Transformer, Inc. and H.G. Snyder*, Civil Action No. 79-734-C (W.D. Pa.) was lodged with the United States District Court for the Western District of Pennsylvania. Under the Stipulation and Order, defendants are held in civil contempt for their failure to comply with a Consent Decree, entered October 24, 1980. The Consent Decree requires, among other things, that defendants comply with PCB disposal and recordkeeping requirements found in 40 CFR Part 761, which was promulgated pursuant to section 6(e) of the Toxic Substances Control Act, 15 U.S.C. 2605(e).

The Stipulation and Order require defendants to purge themselves of contempt by:

1. Constructing additional containment areas, meeting the requirements of 40 CFR 761.65, so that all PCBs at the site are within such areas;
2. Providing to EPA all documents in their possession regarding PCBs at the site; and,
3. Conducting monthly inspections of PCB containers and PCB articles at the site, in accordance with 40 CFR 761.65(c)(5). Such inspections will include visual inspections of the fence which secures the property.

Mr. Snyder is personally responsible for the above inspections, but if he cannot perform them he may designate someone acceptable to EPA to conduct them on his behalf. Written reports of the inspection must be submitted to EPA in a format acceptable to the Agency. Mr. Snyder is personally responsible for cleaning up any PCB leaks, of which EPA must immediately be notified. These inspection and reporting requirements shall terminate when the PCBs are disposed of in accordance with 40 CFR 761.65(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Stipulation and Order. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Interstate Transformer, Inc., et al.*, DOJ Ref. 90-5-1-1-1219A.

The proposed Stipulation and Order may be examined at the Office of the United States Attorney, Western District of Pennsylvania, Room 633, United States Post Office and Courthouse, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, PA 19107; and, at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Stipulation and Order may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-16706 Filed 7-12-85; 8:45 am]

BILLING CODE 4410-01-M

The R.C.A. Rubber Co.; Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 27, 1985, a proposed consent decree in *United States* v. *The R.C.A. Rubber Company*, was lodged with the United States District Court for the Northern District of Ohio. This agreement resolves a judicial enforcement action brought by the United States against the R.C.A. Rubber Company which alleged violations of the Clean Air Act and the National Emission Standards for Hazardous Air Pollutants for Asbestos at the Company's facility in Akron, Ohio.

The consent decree provides for the installation of a new baghouse to control dust emissions from sanding operations, modifications to an existing baghouse which is used to control emissions from two mixers and compliance with waste disposal standards through specific disposal procedures outlined in the decree. The agreement provides for stipulated penalties for failure to comply with the provisions of the decree and the payment of a civil penalty of $150,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to: *United States* v. *The R.C.A. Rubber Company*, D.J. Ref. 90-5-2-1-716.

The proposed consent decree may be examined at the office of the United States Attorney or the regional office of the Environmental Protection Agency as follows:

U.S. Attorney

U.S. Attorney, Northern District of Ohio, Suite 500, 1404 East Ninth Street, Cleveland, Ohio 44114

EPA

Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check payable to Treasurer of the United States in the amount of $1.90.

Myles E. Flint,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 85-16714 Filed 7-12-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D-3397 et al.]

Proposed Exemptions; Alaska Hotel and Restaurant Employees Pension Trust et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Alaska Hotel and Restaurant Employees Pension Trust (Hotel Fund) and the Alaska Electrical Pension Trust (Electrical Fund, Collectively, the Funds) Located in Anchorage, Alaska

[Application Nos. D-3397 and D-3442]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply, effective February 3, 1975, to the purchase by the Funds of participation interests in certain multi-family residential and commercial mortgage loans from the First National Bank of Anchorage (the Bank), a party in interest with respect to the Funds, provided that the terms of the transactions were not less favorable to the Funds than the terms generally available in arm's-length transactions between unrelated parties.

Effective Date: If granted, this exemption will be effective February 3, 1975.

Summary of Facts and Representations

1. The Funds are multiemployer plans located in Anchorage, Alaska. As of April 30, 1982, the Hotel Fund had total assets of approximately $50 million and the Electrical Fund, as of December 31, 1982, had total assets of approximately $150 million. The Bank is a national bank with principal offices located in Anchorage, Alaska. The Bank is primarily regulated by the Comptroller of the Currency and the Federal Reserve Board.

2. The applicant seeks an exemption for the past purchase by the Funds of participation interests in certain multi-family residential and commercial mortgage loans from the Bank. The Bank served as a custodian for each Fund at the time of the purchases and was therefore a party in interest with respect to the Funds. The specific transactions were as follows:

The Electrical Fund purchased on February 3, 1975, a $392,000 participation in a multi-family residential mortgage loan originated by the Bank. The borrower was an unrelated party with regard to the Electrical Fund. An independent investment adviser, Kennedy Boston Associates, Inc. [now known as Kennedy Associates, Inc. (Kennedy)] represented the Electrical Fund in the transaction. The Bank serviced the loan for a fee of ¼ of 1% of the loan amount. The loan was repaid in full on February 18, 1980. The applicant represents that the terms of the loan were not less favorable to the Fund than terms available in an arm's-length transaction.

The Hotel Fund purchased from the Bank the 90% guaranteed portion of 14 Small Business Administration (SBA) guaranteed loans. The loans were made to unrelated parties with regard to the Hotel Fund. The Fund confirmed its agreement to purchase the participations on December 11, 1975. The loans were thereafter acquired from the Bank from December 18, 1975 through January 13, 1976 after SBA approval was received and funds became available for the purchase. The participations were purchased at par (plus accrued interest) for a total purchase price of $2,014,772. this amount represented approximately 6% of the Hotel Fund's assets at the time of purchase. The loans were sold as a group and marked to return to the Hotel Fund an average yield of not less than 9½%. The Hotel Fund paid a ¾ of 1% servicing fee to the Bank which thereby provided the Hotel Fund a net return of 8.87%. (¼ of 1% of the servicing fees were applied to reimburse the Bank for SBA guaranty fees).

Mr. Samuel Noel (Mr. Noel), an officer of the Norwest Corporation (Norwest), a nationally known mortgage company, represents that the return to the Hotel Fund from the SBA guaranteed participations was at or above market rate returns at the time of purchase. Mr. Noel states that in 1975 and 1976 he was an officer of the Seattle-First National Bank (SeaFirst) and that he committed SeaFirst to buy similar participations at similar guaranteed returns during the time period the Hotel Fund purchased the participations. In this regard, Mr. Noel committed SeaFirst on March 30, 1976 to purchase $2 million of SBA guaranteed participations at an average net yield of 8.75%.

3. At the time of the purchase by the Hotel Fund the Bank was a custodian of the Hotel Fund and was therefore a party in interest. The Bank represents that it offered the participations to the Hotel Fund but did not have any fiduciary authority or responsibility with regard to the Hotel Fund's decision to purchase the participations. In this regard, the trustees of the Hotel Fund made the decision to purchase the participations. The trustees represent that they did not examine individual loan files because the participations were guaranteed by both the Federal government and the Bank. In this regard, the purchase of a SBA-guaranteed porton of a loan provides that if a borrower defaults, the purchaser (the Hotel Fund) may demand that the originator (the Bank) repurchase the participation interest without recourse. If the originator does not repurchase within the stated time period, the SBA will repurchase the holder's participation interest upon written notice. The applicant represents there have been no defaults to date with regard to the participation interests. The Bank represents that it received no compensation from the Funds other than the servicing fees regarding the loan participations.[1]

4. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because a) the decision to purchase the participation interests were made by fiduciaries of the Funds who are independent of the Bank; and b) the terms of the transactions were not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (That is not a toll-free number.)

[1] No exemption from section 406 of the Act is proposed herein for the servicing of the participations beyond that provided by section 408(b)(2) of the Act.

California Brewing Industry Employment Security Trust Fund (the SUB Fund) and California Brewing Industry Vacation Trust Fund (the Vacation Fund; Together the Funds) Located in San Francisco, California

[Application Nos. D-5361 and D-5362]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the transactions necessary to effect the consolidation of the SUB Fund and the Vacation Fund.[2]

Summary of Facts and Representations

1. The Funds are welfare benefit plans which were established pursuant to the 1964 Collective Bargaining Agreement between the Teamster, Brewery and Soft Drink Workers Joint Board of California and the California Brewers Association. The Board of Trustees of each Fund has eight members, four from the participating local union and four from the participating employers. The Funds have a common Board of Trustees (the Trustees). As of January 6, 1984, the Funds each had approximately 1,500 participants.

2. The Trustees for the Funds propose to consolidate the two Funds in an effort to resolve a problem of chronic overfunding of the SUB Fund. Almost since its inception, SUB Fund income from employer contributions and investment earnings has exceeded benefit claims. As a result SUB Fund assets have steadily grown to an amount in excess of $700,000, notwithstanding that pursuant to the 1973-1976 collective bargaining agreements and all such agreements thereafter, no employer contributions to the SUB Fund have been made since 1973.

3. The Vacation Fund was created to amelioriate problems arising out of seniority provisions in the collective bargaining agreements which allow

[2] The applicants have also requested relief from the restrictions of section 406(a) of the Act. However, the applicants have represented that the Funds are not parties in interest with respect to one another, and have not demonstrated in their application that such relief is necessary. Accordingly, the Department is not herein providing any relief from the restrictions of section 406(a) of the Act.

employees to move from one company to another without loss of accrued vacation benefits but without assured funding of those benefits. However, the original projections of intercompany movements resulting in vacation claims proved grossly under-estimated. As a result, the Vacation Fund has suffered periodic deficits which threatened its ability to support vacation payments. The Vacation Fund is now adequately funded (see rep. 7, below).

4. The Trustees propose that the Vacation Fund be merged into the SUB Fund. Such merger will be effected pursuant to authorization in applicable collective bargaining agreements, and pursuant to resolutions of the Trustees. The applicants represent that employers contributing to the Funds will not be relieved of any obligation to contribute to the Funds (or the results consolidated Fund) by reason of such consolidation. The proposed amended SUB Fund Trust Agreement will neither reduce benefits payable to participants under the prior separate agreements nor diminish funding of those benefits. Moreover, the Trustees propose that the consolidation be conditioned on maintenance of a minimum reserve level in the new Fund to assure adequate support of unemployment benefits under the amended Trust Agreement. Further, employees have agreed, through collective bargaining, that in the event the assets of the combined Fund fall below $700,000, contributions will be made by wage reduction (at the rate of $.10 per hour worked or paid) until the combined Fund increases to a level of $1,200,000.

5. The Trustees propose to consolidate the Funds, rather than merely link them through an amendment providing for periodic automatic transfers of assets, to achieve substantial administrative savings. Because the Funds have a common funding source and cover the same set of participants, there is no reasons to maintain separate administrative procedures. The mechanics of the merger will involve the combining of the two Funds in one account under a new Trust Agreement. In effect the two old trust funds will disappear into a new trust. The new Trust Agreement will cover the same set of participants as the prior Trust Agreements. In addition, the new Trust Agreement will provide for full protection of benefits payable under the two prior Trust Agreements.

6. The intent of the Funds' consolidation is to insure that the original purposes of the Funds can be carried out by realignment of the funding of the benefits. Through collective bargaining, the participating employers and the local union have expressed their assent to the proposed consolidation.

7. In the subject case, both welfare Funds currently have assets substantially in excess of accrued benefits. Although the Vacation Fund has on occasion lacked funds to pay benefits (see rep. 3, above), it is now adequately funded. Thus, the applicants represent that a merger at this time will not impair the SUB Fund whatsoever. As an additional protection to the interests of Fund participants, the Trustees have proposed to include in the amended Trust Agreement a provisio to the effect that reserve levels cannot fall below a statistically determined minimum.

8. In summary, the applicants represent that the proposed transaction meets the criteria contained in section 408(a) of the Act because: (1) Consolidation of the two Funds will reduce administrative costs and thereby increase assets available to pay benefits under the consolidated Fund; (2) consolidation of the two Funds will remove from consideration the possibility of termination or curtailment of benefits under either Fund; and (3) future employer contributions will not be reduced as a result of the merger.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Health Systems Group Retirement Plan and Trust (the Plan) Located in Vancouver, Washington

[Application No. D-5692]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the prior sale for cash of an undivided one-half interest in certain real property (the Property) by the Plan to the Seattle-First National Bank (the Bank), a party in interest with respect to the Plan, provided that the price received was no less than the fair market value of the Property at the time the transaction was consummated.

Effective Date: The effective date of the proposed exemption, if granted, will be December 12, 1983.

Summary of Facts and Representations

1. The Plan (formerly known as the Retirement Plan of Southwest Washington Hospital Services and also the Retirement Trust of St. Joseph's Community Hospital) is a tax-exempt pension trust sponsored by Health Systems Group and its subsidiary, Southwest Washington Hospital Services (collectively the Plan Sponsor), both incorporated in the State of Washington and headquartered in Vancouver, Washington. As of January 1, 1984, the Plan had 1,216 participants and total assets of $5,236,428 of which $4,167,522 was held by the Bank as custodian. At the time of the sale (December 12, 1983) for which the exemption is requested, John D. Ritchie, Richard Fauble, and Robert G. Kendall, Jr. were the trustees of the Plan (the Trustees). Mr. Ritchie, who is Vice-President Investments/Institutional for Prudential-Bache Securities in Portland, Oregon, is currently Chairman of the Board for the Plan Sponsor and has served on boards of its predecessors. He is also Chairman of the Board of Trustees for the Plan and has served as trustee for approximately ten years. Mr. Fauble, who was an Assistant Vice-President for the Bank's Vancouver branch office as manager of its Installment Credit Department for ten years prior to his retirement on January 1, 1980, has served as trustee of the Plan since 1979. He was also a non-voting advisory director of the Plan Sponsor's subsidiary. Mr. Kendall was a member of the Board of Directors of the subsidiary of the Plan Sponsor.

2. On December 12, 1979, the Bank, as investment manager for the Plan, in an arm's length transaction with an unrelated party, invested $90,250 of Plan assets in a one-half interest of a $238,966.27 principal amount promissory note (the Note), paying 9 percent per annum in interest and secured by a Deed of Trust on the Property. The other one-half interest in the Note was purchased by the Bank as investment manager for a certain endowment fund (not subject to the Act) of the Seattle University (the University). The Property is located in rural southwest Oregon some 300 miles from Vancouver, Washington at 4411 Holland Loop Road near Cave Junction, Oregon and consists of 160.35 acres of meadows and woodland with an 8-room house and attached garage. On December 1, 1980, the Note was defaulted by non-payment. Early in 1981, foreclosure on the Note and Deed of Trust was initiated by the Bank for the Plan and the University. Extensive litigation delayed the

foreclosure sale until August 1, 1983. At the foreclosure sale the Plan and the University each acquired an undivided one-half interest in the Property by each bidding an amount equal to one-half the outstanding principal balance and one-half the accrued interest owed on the Note ($118,055.96 and $27,916.27, respectively). As of September 17, 1983, the Property was appraised by Russell O. Butler, Cave Junction, Oregon and determined to have a fair market value of $303,600. Subsequently, as of June 4, 1984, Raymond Richard, Rogue River, Oregon, an appraiser, estimated the fair market value of the Property to be $300,000. Later on September 27, 1984, Mr. Richard qualified his estimate and stated that the Property, in a cash sale, would have an estimated value between $255,000 and $270,000.

3. After the foreclosure and acquisition of the Property, the Trustees and the University informed the Bank of their disapproval of the investment in the Note and their acquisition of the Property in the foreclosure. The Bank was then dismissed as investment manager for the Plan and the University. Options were explored by the Trustees and the University with various realtors for disposing of the Property. If the Property could be sold, it was concluded that owner-financing would be necessary with the sale price considerably less than the appraised value. Neither the Plan nor the University were interested in financing a third-party's purchase of the Property. Confronted with being unable to sell the Property and the probability of a lengthy litigation with the Bank regarding the prudence of the investment in the Note, the Plan and the University with their respective legal counsel undertook negotiations to compel the Bank to purchase the Property. They sought to recoup their investments and expenses, plus a reasonable return. The negotiations resulted in a settlement agreement between the Bank and the Plan and the University under which the Bank acquired the Property on December 12, 1983, for a cash consideration. The Plan received a total of $130,604.24, which enabled the Plan to recoup all its expenses and its investment, plus a reasonable return.

4. The Bank and the Trustees seek an exemption for the prior cash sale for $130,604.24, on December 12, 1983, by the Plan of its undivided one-half interest in the Property to the Bank. The Trustees represent that the sale was made only after they had explored all alternative options available to the Plan, including, in November 1983, listing for sale the Property with Century 21 Allstar Realty of Cave Junction, Oregon. Furthermore, the Trustees, who represent themselves as having extensive experience with investments of real property and securities and being aware of the appraisal, expressed a strong conviction that the sale of the undivided one-half interest in the Property to the Bank was made at the fair market value and was the most prudent action to be taken at the time and under the circumstances.

5. The Trustees represent that they made their determination to sell the Property to the Bank on Decemer 12, 1983, for the following reasons: (a) The lack of prospective tennants or buyers since the December 1, 1980, default on the Note; (b) the Property was producing no income and was incurring expenses for maintenance, insurance and taxes; (c) depressed economic conditions and a recession in forest-products industry plus deflated real estate values in farm property; (d) denial of zoning for ground and surface water for a fish hatchery deprived the Property its principal source of funds for debt servicing; (e) difficulty in obtaining a sale without a discount from the appraised value and providing financing for a prospective purchaser; and (f) no real estate commissions in sale to the Bank.

6. In summary, the applicant represents that the sale met the statutory criteria of section 408(a) of the Act because (a) the sale of the Property to the Bank permitted the Plan to dispose of a non-income producing asset, at no expense, which had been incurring a drain on other assets; (b) the sale permitted the Plan to recover its investment in the Note and all expenses, plus realize a fair rate of return; (c) the sale of an undivided one-half interest in the Property on the open market would not have been economically feasible for the Plan; and (d) the Plan was represented by independent Trustees, with legal counsel, who were joined in the sale by the University, with legal counsel, which owned the other undivided one-half interest in the Property.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523–7901. (This is not a toll-free number.)

Byung Soon Lee, M.D., P.C., Employees' Profit Sharing Plan (the Plan) Located in Mount Clemens, Michigan

[Application No. D-5898]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective September 1, 1981, to the purchase by Dr. and Mrs. Byung Soon Lee of certain improved real property (the Property) from the Plan for $164,126, provided that the sale price of the Property was not less than fair market value on the date of sale.

Effective Date: If the exemption is granted, the effective date will be September 1, 1981.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan with three participants and assets of approximately $74,077 as of June 5, 1985. The Employer is a Michigan professional service corporation specializing in gastroenterology, and its principal place of business is Mount Clemens, Michigan. Byung Soon Lee, M.D. owns 100% of the Employer, and he is the trustee and administrator of the Plan.

2. The Property is a farm located in Ray Township, Macomb County, Michigan. The Plan purchased the Property on November 7, 1979, from Thomas E. and LaDonna K. Wheeler, who are unrelated to the Plan and the Employer. The purchase price of the Property was $158,000, which included a downpayment of $38,265 in cash and an assumption of a land contract payable to Frank and Madeline Douglas and Shirley Olszak, who are also unrelated to the Plan and the Employer, with an outstanding balance of $119,735. At that time, the Plan had assets of approximately $29,649.[3] When the Property was purchased, it was anticipated that the Property could be sold within a short period of time for development into housing subdivisions. However, real estate values declined sharply in the metropolitan Detroit area due to the recession, high interest rates, and the decline in the automobile industry. Therefore, Dr. Lee determined that the Property was no longer a suitable investment for the Plan. The Property was listed with Ms. Joan Park, a real estate agent, for approximately sixteen months in 1980 and 1981, with an

3 The remaining $8,616 required for the cash downpayment was loaned to the Plan by the Employer's Money Purchased Pension Plan. The Department is expressing no opinion as to whether the original acquisition of the Property by the Plan was in violation of any provision of the Act.

asking price of $180,000. No written or verbal offers were received during that time at that or any price. Ms. Park represents that she believes the Property had a fair market value of $160,000 at that time.

3. Dr. and Mrs. Lee purchased the Property from the Plan on September 1, 1981. The sale price to the Lees was determined by adding the expenses incurred by the Plan for maintenance of the Property, the original downpayment, and the payments made by the Plan under the land contract. The total sale price was $184,126, which included a cash downpayment of $65,000 and the assumption by the Lees of the land contract which then had a balance of $119,126.

4. Barbara Ragnon of Barbara & Associates located in Romeo, Michigan has been retained to appraise the fair market value of the Property as of the second half of 1981. Ms. Ragnon has been a real estate broker for over ten years. She has determined that the Property had a fair market value between $152,000 and $162,000 in 1981, although she notes that the real estate market at that time was slow and that it is difficult to locate comparable sales in the area. Subsequent to their purchase of the Property, the Lees listed the Property with Hewitt Realty and have not received any offers for the purchase of the Property.

5. In summary, the applicant represents that the transaction satisified the administrative requirements of section 408(a) of the Act because (a) the Property represented a continuing loss to the Plan, which loss has been eliminated as a result of the Lees' purchase of the Property in which all Plan payments have been reimbursed; (b) the Plan was unable to locate another purchaser; and (c) the purchase price paid by the Lees was at or above fair market value.

For Further Information Contact: Ms Linda Shore of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Everett & Hurite Opthalmic Association Money Purchase Pension Plan and Trust (the Money Purchase Plan) and Everett & Hurite Opthalmic Association Defined Benefit Pension Plan and Trust (the Defined Benefit Plan, Collectively, the Plans) Located in Pittsburgh, Pennsylvania

[Application Nos. D-6003 and D-6004]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(A) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the past sale by the Defined Benefit Plan of a painting (the Painting) to the Money Purchase Plan for $225,000 in cash, provided that the sales price was the fair market value of the Painting on the date of sale.

Effective Date: The effective date of this proposed exemption, if granted, is July 18, 1984.

Summary of Facts and Representations

1. The Defined Benefit Plan had 39 participants as of October 31, 1983 and net assets of $2,762,797. The Money Purchase Plan had 40 participants as of November 1, 1983 and net assets of $1,278,940. The trustees of both Plans (the Trustees) are Drs. William Everett and Francis Hurite.

2. In 1981, the Trustees of the Defined Benefit Plan hired Leon Arkus, an independent art consultant, to advise them with respect to the desirability of investing in art. Mr. Arkus advised the Trustees that contemporary art would be a desirable investment. With the assistance of Mr. Arkus, the Trustees purchased the Painting through the Xavier Fourcade, Inc. art dealership, an unrelated party with respect to the Plan. The Plan paid $180,000 in cash for the Painting, which is an oil on canvas painting by Willem de Kooning, entitled, "Untitled XVII, 1976."

3. The Painting has been held by the Defined Benefit Plan since its acquisition and was on display in the offices of Everett & Hurite Opthalmic Association (the Employer) through April 26, 1984. On April 26, 1984, the Painting was placed in storage to be held until such time as an independent third party, such as a museum, can be found to accept the Painting on loan for safekeeping and display. The Employer recognized that the display of the Painting constituted a prohibited transaction and on June 8, 1984, the Employer filed Form 5330 with the Internal Revenue Service and paid the excise taxes arising from the prohibited transaction. In addition, the Employer has paid back rent to the Plan for the period May 1, 1981 through April 26, 1984, when the Painting was removed from display.

4. On September 7, 1983, Recco Luppino, a Fellow of the American Society of Appraisers and of the Incorporated Society of Valuers and Auctioneers of the United Kingdom appraised the painting and determined that it had a fair market value of $225,000 as of that day. Mr. Luppino states that he has been a ful time fine arts appraiser for over 40 years. Mr. Luppino further states that the American Society of Appraisers certifies appraisers on the basis of both examination and experiences on four levels, of which the highest level is that of Fellow. In additon, Mr. Luppino states that there are only 30 Fellows of the American Society of Appraisers and only three of these, including himself, are Fellows in fine arts appraisal.

5. In a an affidavit accompanying his appraisal, Mr. Luppino stated that he advised the Trustees that in his judgment, although it might be possible to find a buyer for the Painting at the appraised price, a sale of the Painting on the open market at that time would be inappropriate. Mr. Luppino stated that several factors led to this decision, including: (a) The decided increase in the value of de Kooning's paintings over the previous 20 years and particularly over the last 3 or 4 years; (b) the age of de Kooning (79) and the likelihood that his works will appreciate substantially in value after his death; and (c) the fact that auctioneers usually charge a commission of at least 10% to sell paintings and the commission charged may even be greater if the Painting was sold through a private gallery.

6. On October 28, 1983, the Defined Benefit Plan was amended to provide for its termination effective October 31, 1983. Form 5310, Application for Determination upon Termination was filed with the Internal Revenue Service and the Pension Benefit Guaranty Corporation (PBGC) on November 18, 1983. On May 3, 1984, the PBGC issued a Notice of Sufficiency providing for a termination date of November 28, 1983, and requiring that all assets be distributed within 90 days of the date of the Notice of Sufficiency.

7. In conjunction with the termination of the Defined Benefit Plan and the distribution of its assets to the participants, the Trustees proposed to sell the Painting to the Money Purchase Plan. Such sale was proposed because, upon termination, the participants were to receive a lump-sum distribution of their accurued benefits under the Defined Benefit Plan. The Trustees determined that an in-kind distribution of title to the Painting was not feasible because (a) a pro rata distribution of the Painting would require the creation of 39 undivided interests which would not be desirable as investments and might not be marketable; (b) creation of fewer

than 39 undivided interests would require the Trustees to make subjective judgments as to how many interests to distribute and which participants were to receive such interests, opening any distribution to challenge by the participants; (c) distributed interests could not be rolled over into an IRA or other self-directed accounts, due to the prohibitions of section 408(m) of the Code regarding the holding of artwork and other collectibles in such accounts; and (d) the participants would bear all expenses of storage, insurance, etc.

8. Prior to the sale of the Painting, Bennett J. Cooper was hired as independent trustee for the purpose of reviewing the transaction. Mr. Cooper represents that he is a tax attorney and president of Coordinated Consulting Services, a firm which specialies in benefit counseling and income and estate tax counseling. Mr. Cooper further represents that he acted as a consultant for the Employer in 1982 but he received no payments from the Employer in either 1983 or 1984. Mr. Cooper states that upon review of the transaction, he advised the Trustees that the sale of the Painting between the two Plans would be proper. He further advised the Trustees that based on Mr. Luppino's appraisal, it would be inappropriate to sell the Painting and more prudent to continue holding it in order that the participants in the Money Purchase Plan, who are essentially the same as those in the Defined Benefit Plan, could receive the gains projected in Mr. Luppino's appraisal. In addition, he advised the Trustees that a distribution in kind would be inappropriate because of its lack of flexibility for the participants.

9. The sale of the Painting from the Defined Benefit Plan to the Money Purchase Plan was consummated on July 18, 1984 with the Money Purchase Plan paying $225,000 for the Painting. The Trustees now seek an exemption from sections 406(a) and 406 (b)(1) and (b)(2) of the Act with respect to the sale. The applicant represents that at the time of the sale, the Trustees were entitled to more than 50% of the benefits in both Plans and therefore the Plans may have been parties in interest with respect to each other under section 3(14)(G) of the Act.

10. In summary, the applicant represents that the sale of the Painting met the requirements of section 408(a) of the Act because: (a) It was a one-time transaction for cash; (b) the transaction was approved by an independent trustee; (c) it allowed the participants of the Defined Benefit Plan to receive an all cash distribution of their accrued benefits; and (d) it will allow the participants in the Money Purchase Plan, essentially the same as those in the Defined Benefit Plan, to receive the gains projected in the appraisal of the Painting by Mr. Luppino, an independent, qualified art appraiser.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Buffalo Laborers Pension Fund (the Plan) Located in Buffalo, New York

[Application No. D-6096]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, (1) the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase by the Plan of certain improved real property (the Property) from Local 210, Inc. (the Union Corporation), a party in interest with respect to the Plan and the subsequent leasing by the Plan of space in the Property to the Laborer's International Union of North America, Local 210 (the Union), the Union Corporation (collectively, the Union Tenants) and the Buffalo Laborers Welfare Plan (the Welfare Plan); and (2) section 406(b)(2) of the Act shall not apply to the subsequent leasing by the Plan of space in the Property to the Buffalo Laborers Training Fund (the Training Fund) and the Buffalo Laborers Supplemental Unemployment Benefit Fund (the SUB Fund, collectively with the Welfare Plan, the Related Plans),[4] provided that the terms and conditions of the transactions are at least as favorable to the Plan as those obtainable by the Plan in arm's length transactions with unrelated parties.

Summary of Facts and Representations

1. The Plan is a multiemployer pension plan which had approximately 2,450 participants on January 1, 1984 and net assets of approximately $51,031,606 as of October 13, 1983. The Plan is administered by six trustees (the Trustees), three of whom are selected by contributing employers and three of whom are selected by the Union. The Trustees are also the trustees of each of the Related Plans. The Plan's contributing employers are those having a collective bargaining agreement with the Union. The Union Corporation is a New York not-for-profit corporation, wholly owned by the Union, which was established for the purpose of holding title to real property for the benefit of the Union.

2. The Property is located at 481 Franklin Street, Buffalo, New York, and consists of a parcel of land approximately 190 feet by 126 feet in size, improved by a two-story concrete and steel office building with a finished basement area and a paved parking lot. The building is approximately seventeen years old and contains a net leaseable office area of approximately 9,600 square feet. The first floor is occupied by the Union and the Training Fund, with the Union occupying 4,500 square feet and the Training Fund occupying 300 square feet. Office space on the second floor of the building is shared between the Plan, the SUB Fund and the Welfare Plan. There is no geographic separation between the plans and the SUB Fund on the second floor since one staff handles the business affairs of all of them, and rent for the second floor is presently shared and assessed on a percentage of activity basis.[5]

3. The Trustees propose to purchase the Property on behalf of the Plan from the Union Corporation and to continue leasing the Property to the present occupants. The Union Corporation has determined that the Property should be sold, primarily for financial reasons, and the Trustees state that it is highly probable that a buyer other than the

[4] The applicant represents that of the Related Plans, only the Welfare Plan, which provides services to the Plan, is a party in interest with respect to the Plan. Therefore, the Department is proposing relief only from section 406(b)(2) of the Act with respect to the proposed leasing by the Plan to the Training Fund and the SUB Fund.

The Welfare Plan provides administrative services to the Plan, the Training Fund and the SUB Fund, and is paid for these services on a percentage of usage basis by them. The applicant represents that the furnishing of these services is exempt from the prohibitions of section 406(a) and section 406(b)(2) of the Act by virtue of the exemptions provided in Prohibited Transaction Exemption 76-1 (41 FR 12740) and Prohibited Transaction Exemption 77-10 (42 FR 33918), respectively. The Department expresses no opinion as to the applicability of these class exemptions to the furnishing of these services.

[5] The applicant represents that the present leasing of office space by the Union to the Plan, the Training Fund, the Welfare Plan and the SUB Fund is exempt from the prohibited transaction provisions of the Act by virtue of the relief provided by section 408(b)(2) of the Act. The Department expresses no opinion as to the applicability of section 408(b)(2) of the Act to these leasing arrangements.

Plan would require the current tenants to relocate. The applicant states that the Plan would incur substantial relocation expenses if such a move was required and would also be likely to incur much greater rental expenses. The applicant represents also that it is extremely advantageous for the Plan and the Related Plans to occupy the same building as the Union in order to provide for better facilitation of services for the plans' participants.

4. The proposed purchase price of the Property is $607,000, representing approximately 1.19% of the Plan's current net assets. The purchase price will be paid in cash. The Property was appraised on March 16, 1983, by Mr. Thomas R. Donovan, president of T.R. Donovan Appraisals, Inc., 963 Kenmore Ave., Kenmore, New York, who determined the fair market value of the Property as of March 1, 1983 to be $620,000. Mr. Donovan updated his 1983 appraisal on April 27, 1984 to indicate that $620,000 still represented the fair market value of the Property on that date, adding however, that property values in the immediate area were starting to increase due to the near completion of redevelopment and of a rapid transit system in the downtown area of Buffalo. Mr. Donovan is independent of the Union.

5. Prior to the date of closing, the fair market value of the Property will be re-evaluated, but the purchase price will in no event by higher than $607,000. No commissions or fees will be incurred by the Plan with respect to the sale. Subsequent to the sale, the Plan will continue to occupy 1,632 square feet, or approximately 17% of the building and will lease allocated portions of the remaining office space in the building to the Union and the Related Plans in the following proportions:

	Square feet leased	Percentage of net leaseable area
The Union Tenants	4,500	47
The SUB Fund	1,536	16
The Welfare Plan	1,632	17
The Training Plan	300	3

6. An appraisal of the fair market rental value of the building was made on November 21, 1984 by Mr. Charles R. Anderson of Charles R. Anderson Auctioneers and Appraisers, Buffalo, New York. Mr. Anderson determined the fair market rental value, on a triple net basis, to be $8.00 per square foot per annum for the first floor of the building and $7.25 per square foot per annum for the second floor of the building. Mr. Anderson, who based his appraisal upon comparable rental properties in the area where the Property is located, represents that he has been actively involved as a liquidator and appraiser for residential and commercial real estate since 1971. The applicant represents Mr. Anderson is completely independent of all parties to the proposed transactions.

7. The leases (the Leases) will each be for a ten year term with an option to renew for an additional ten year period. The initial annual rental under the Leases will be $8.00 per square foot with respect to the leases to the Union and the Training Plan, which occupy the first floor of the building, and $7.25 per square foot with respect to the leases to the SUB Fund and the Welfare Plan, which together with the Plan, occupy the second floor of the building. The Leases are triple net, with each tenant of the building paying its proportionate percentage of all operating expenses with respect to the Property, including all taxes, maintenance and repair costs, insurance and utilities. All occupants of the building will be entitled to use of the adjacent parking lot and to use of the basement area for meetings. Rental is payable in equal monthly installments and will be adjusted every two years during the Lease terms and any renewals thereof to an amount not less than the then-current fair market rental value as determined by a qualified and independent appraiser selected by the independent fiduciary for the Plan (see below). Any renewals of the Leases must be approved as being appropriate for and in the best interest of the Plan by the independent fiduciary for the Plan. Similarly, the Trustees, who are also the trustees of the Related Plans, must determine on behalf of each of the Related Plans whether such renewal is appropriate for and in the best interest of each of those plans.

8. The Lease to the Union Tenants contains certain additional provisions not contained in the other Leases. These include an agreement that the Union Tenants will pay over to the Plan the sum of $36,000 at the commencement of the Lease term as a security deposit against a default in rent by the Union Tenants occurring at any time during the Lease term or any renewal thereof. The independent fiduciary for the Plan is to deposit that sum in an insured, interest-bearing escrow account, such account to be charged with all unpaid rent during the Lease term or renewal, all loss by reasons of vacancy or reletting at a lesser rent after eviction or abandonment, and all costs and expenses, including, but not limited to, reasonable attorney fees related to collection, eviction or reletting. To the extent not so charged, the balance will be paid over to the Union Tenants at the end of the Lease or renewal term, unless at such time the premises are vacant or rented at a rate less than $3,000 per month, in which case the security deposit will be charged further with the difference until such time as the monthly rental meets or exceeds $3,000 per month.

9. Mr. William C. Klager has been appointed to act as the independent fiduciary for the Plan with respect to the proposed purchase of the Property by the Plan from the Union Corporation and with respect to the Leases by the Plan to the Union Tenants and the Related Plans. Mr. Klager represents that he is completely independent of the Union, the Union Corporation and the Related Plans, and that he has consulted with an attorney regarding his duties, responsibilities and liabilities as a fiduciary under the Act. Mr. Klager states that he has over twenty years of experience in investment and estate planning and that he is currently employed as a broker with the offices of First Albany Corporation, located in Buffalo, New York.

Mr. Klager has reviewed the appraisals, all terms and conditions of the proposed transactions, the investment portfolio and needs of the Plan, including its needs for liquidity, diversification and a favorable rate of return, and has determined that the purchase of the Property and the subsequent Leases are in the best interest of the Plan for the following reasons: (a) The purchase price of the Property, which is less than the appraised fair market value of the Property, represents less than 2% of the Plan's current assets and will enable the Plan to better diversify its investment portfolio; (b) the expected rate of return of approximately 12.2% per annum is in excess of the yield expected from other Plan investments and does not even take into consideration the appreciation potential of the Property; (c) recent developments in the immediate vicinity of the Property indicate that its market value has increased since the appraisal was made; (d) the fair market rental value of the Property will be re-appraised every two years over the terms of the Leases by a qualified, independent appraiser and the rental rates will be adjusted accordingly; (e) a security deposit has been negotiated with the Union Tenants to guarantee the Plan's stream of income from the Lease to the Union Tenants; and (f) the Plan will be able to continue to occupy a convenient building and will be able to avoid the disruption and expenses of relocation.

Mr. Klager represents that he will monitor the Leases and select appraisers on the Plan's behalf, will determine whether any renewals of the Leases are appropriate for and in the best interest of the Plan, and will ensure that the Plan receives at least the fair market rental value for the Property, as determined every two years by a qualified, independent appraiser. Mr. Klager will also take any enforcement actions necessary to protect the rights and interests of the Plan with respect to the Leases, including the bringing of a lawsuit if appropriate.

10. The Trustees, who are also the trustees and fiduciaries of each of the Related Plans, represent that they have reviewed the needs of each of the Related Plans, the terms and conditions of the Leases, including the ten-year lease term, the initial rental rates of $8.00 or $7.25 per square foot per annum, depending upon which floor is occupied, and the appraisal of the fair market rental value of the Property made by Mr. Anderson, and have determined that the proposed Leases are appropriate for and in the best interest of each of the Related Plans. The Trustees represent, in addition, that the amount of space in the building being leased by each of the Related Plans is appropriate and necessary for the needs of each of those plans.

11. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) The Plan will be able to continue to occupy a building which is convenient for Plan participants and will avoid the expenses and disruption of relocation; (b) the fair market value and fair market rental value of the Property have been determined by independent appraisers; (c) the fair market rental value will be re-appraised every two years over the terms of the Leases, at which time the rental rates will be adjusted accordingly; and (d) the purchase of the Property and the terms and conditions of the Leases have been approved as being appropriate for, protective of and in the best interest of the Plan and will be monitored and enforced by Mr. Klager, as an independent fiduciary for the Plan.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

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

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-16745 Filed 7-12-85; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Call for Riders for the Digest

AGENCY: Merit Systems Protection Board.

ACTION: Notice of call for riders for *The Digest* for fiscal year 1986.

SUMMARY: The purpose of this notice is to inform Federal agencies that the Merit Systems Protection Board publication, *The Digest*, will be available for fiscal year 1986 on riders to the Government Printing Office. Departments and agencies may order this monthly publication by riding the Merit Systems Protection Board's printing requisition #6-00043.

DATE: Agency requisitions (Standard Form 1) must be submitted no later than August 31, 1985.

ADDRESS: Interested departments and agencies should send requisitions through their Washington, D.C. headquarters offices authorized to procure printing—to the Government Printing Office, Requisitions Section, Room 836, Washington, D.C. 20401. Agencies may estimate cost by using the current Government Printing Office price list of printing services.

FOR FURTHER INFORMATION CONTACT: Ada R. Kimsey, Information Services Division, Office of the Clerk of the Board, 1120 Vermont Avenue, Washington, D.C. 20419, 202-653-7200.

SUPPLEMENTARY INFORMATION: *The Digest* is a monthly publication containing summaries of selected Board orders and a list of all other Board orders issued each month. *The Digest* also lists decisions made in the Board's regional offices under the voluntary expedited appeals procedure, summarizes selected court cases, and reprints the Board's Federal Register issuances.

Dated: July 11, 1985.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 85-16798 Filed 7-12-85; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which includes records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorizes agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposal as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before September 13, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, D.C. 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L St. NW, Washington, D.C.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedule Pending Approval

1. Department of Agriculture, Agricultural Research Service (NC1-310-85-1). Records, chiefly premiminary raw data, relating to USDA research on rat breeding, 1939-68; household use and discard of edible foods, 1958-60; rural household economics, 1958-59; and rural household food consumption, 1967.

2. Administrative Office of the United States Courts, Administrative Services Division (NC1-116-85-2). Records concerning the establishment of health units in courts and the disposal of surplus real and related personal property.

3. Administrative Office of the U.S. Courts, Office of Court Reporting and Interpreting Services (NC1-116-84-4). Records relating to management of court reporting and interpreting services.

4. Central Intelligence Agency (NC1-263-84-5). This CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

5. Environmental Protection Agency, Office of Federal Activities (NC1-412-84-1). Records relating to the development of environmental policies and the review of routine environmental impact statements.

6. Federal Deposit Insurance Corporation, Division of Accounting and Corporate Services (NC1-34-85-2). Routine reports of condition and income, and supervisory data reports, submitted by banking institutions regulated by the FDIC.

7. Department of the Interior, Burearu of Land Management (NC1-49-85-3). Letters of application and recommendation concerning permission to practice as an attorney before the U.S. Land Office at Los Angeles.

8. Department of the Interior, Bureau of Land Management (NC1-49-85-4). Diaries of daily activities of grazing service supervisors and other employees from the Arizona Strip District in St. George, Utah.

9. Department of the Navy, Military Sea Transportation Service (NC1-313-85-1). Administrative and other correspondence, sailing orders, repairs to vessels, and similar documents relating to routine operations in Bremerhaven, Balboa, and Mediterranean ports, 1950-63.

10. U.S. Nuclear Regulatory Commission, Office of Investigations (NC1-431-83-6). Records relating to investigations of allegations involving private companies and persons in the nuclear industry.

11. Pension Benefit Guaranty Corporation (NC1-465-85-2). Records dealing with assets liquidation, money management, investment policy, training, standing committees, and internal management.

12. Department of State, Office of Refugee Programs, Kampuchean Working Group (NC1-59-82-12). Press relations files, the substantive documentation from which is maintained in other records of the State Department.

13. Department of State, Bureau of International Organization Affairs, Policy Management Staff (NC1-59-85-1). General correspondence, reports, reviews, questionnaires, and administrative files relating to management support activities.

14. Tennessee Valley Authority, Division of Personnel (NC1-142-84-9). Comprehensive schedule, including records in paper, microform and machine-readable form, covering all aspects of personnel administration.

15. Department of the Treasury, Financial Management Service (NC1-425-85-1). Paid and reconciled U.S. Government checks, pertaining to closed claims cases, June 1978-June 1979.

Dated: July 11, 1985.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 85-16883 Filed 7-12-85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days after the date of notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, (202) 786-0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson

Place, NW., Room 3208, Washington, D.C. 20503 (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506 (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill our the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: New

Title: Instructions for Applicants with Projects Requiring the Use of Automation Technology

Form Number: Not applicable

Frequency of Collection: Collections occur once or twice yearly, according to individual program application deadlines. (Once per application)

Respondents: Humanities researchers and institutions applying for funding whose projects require the use of automation technology

Use: To justify the use and cost of equipment and the methodology involving automation technology that will be employed on proposed projects so that competing applications for funding can be evaluated in the peer review process.

Estimated Number of Respondents: 685.

Estimated Hours for Respondents to Provide Information: 8.

Susan Metts,

Acting Director of Administration.

[FR Doc. 85-16786 Filed 7-12-85; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by August 16, 1985. Permit applications may be inspected by interested parties at the Permit Office address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357-7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain mammals and certain geographic areas as requiring special protection. The regulations establish such a permit system and designate Specially Protected Areas and Sites of Special Scientific Interest. The regulations may be found at Title 45, Part 670 of the Code of Federal Regulations. Copies are available from the National Science Foundation.

The purpose of the regulations is to conserve and protect the mammals, birds, and plants of Antarctica and ecosystem upon which they depend. To that end, unless the following activities are specifically authorized by permit, it is unlawful:

- To take any mammal or bird native to Antarctica (note that "take" means "to remove, harass, molest, harm, pursue, hunt, shoot, wound, kill, trap, capture, restrain, or tag" any native mammal or bird or to attempt to engage in such conduct)
- To collect any plant native to Antarctica in specially protected areas
- To enter any Specially Protected Area or certain Sites of Special Scientific Interest
- To import from the United States any mammal or bird native to Antarctica or any plant collected in a Specially Protected Area
- To introduce to Antarctica any nonindigenous plant or animal.

The Antarctic Conservation Act of 1978 mandates civil and criminal penalties for noncompliance with the regulations.

All mammals and birds normally found in Antarctica, excluding whales regulated by the International Whaling Commission, are designated as native mammals or native birds. Activities involving these mammals or birds require a permit. Areas of outstanding ecological interest are designated as Specially Protected Areas. No one may enter these areas or collect any native plants in these areas without a permit. Areas of unique scientific value that need protection from interference are designated as Sites of Special Scientific Interest. Entry into certain of these areas without a permit is prohibited.

The permit system is described in the regulations. To obtain a permit, each applicant must provide the scientific names and numbers of native mammals or birds to be taken, including age, size, sex, and condition (e.g., pregnant or nursing) or the scientific names and numbers of native plants to be collected in a Specially Protected Area. Each applicant must include a complete description of the location, the time period, and the manner of taking or collecting specimens. If the specimens are to be imported into the United States, the applicant must also indicate the ultimate disposition of the materials.

Permits for taking or collecting mammals, birds, or plants will be issued by the Director of the National Science Foundation or his designated representative. Each permit will be evaluated in terms of the objectives of the Antarctic Conservation Act, that is, the conservation and protection of antarctic flora and fauna and the antarctic ecosystem. Permits issued under these regulations (or copies of them) must be held in the possession of those authorized to engage in a permitted action. The permits must be displayed upon request to any person responsible for enforcing the regulations.

Anyone who knowingly commits an act prohibited by the Antarctic Conservation Act of 1978 is liable to a civil penalty of up to $10,000 for each violation. If the violation was committed without knowledge of the regulations, the fine will not exceed $5,000. Criminal penalties for willful violation of the regulations may involve a fine of up to $10,000 and/or imprisonment for not more than 1 year.

The Antarctica Conservation Act of 1978 does not supersede the Marine Mammal Protection Act, the Endangered Species Act, or the Migratory Bird Treaty Act. Permit applications involving native mammals or native birds covered by these acts will be forwarded by NSF to the agencies that administer them. If a proposed activity involves approval under more than one law, then the activity must satisify the conditions of all applicable laws or a permit cannot be granted. Even if a permit is approved by other appropriate agencies, the Director of the National Science Foundation still must decide whether to issue a permit according to the requirements of the Antarctica Conservation Act of 1978.

The regulations amend Title 45 of the Code of Federal Regulations by adding Part 670.

The applications received by the National Science Foundation are as follows:

1. Applicant

Arthur L. DeVries, 524 Burrill Hall, University of Illinois, Urbana, Illinios 61801

A. Activity for Which Permit Requested

Introduction of a non-indigenous species into Antarctica.

The applicant proposes to introduce specimens of the New Zealand black cod, *Notothenia angustata*, into a laboratory environment in Antarctica for a study of the role of blood glycopeptide antifreeze compounds. All specimens will be kept in a closed sea water aquarium. The specimens will not be released into the Antarctic environment.

B. Location

McMurdo Station, Antarctica

C. Dates

October, 1985–May, 1986

2. Applicant

Wayne Z. Trivelpiece, Point Reyes Bird Observatory, Stinson Beach, California 94970.

A. Activity for Which Permit Requested

Taking, enter Site of Special Scientific Interest.

The applicant proposes to conduct a population study of the pygoscelid penguins: the Adelie, Gentoo, and Chinstrap. Permission is requested to band up to 1,500 chicks of each species. Additionally, the applicant requests permission to band locally found Brown Skua, South Polar Skua, S. Giant Fulmar and S. Black-backed Gull adults and chicks. The applicant also requests permission to enter and conduct research in the Point Thomas Site of Special Scientific Interest No. 8.

B. Location

King George Island, Antarctica

C. Dates

October, 1985–March, 1986

3. Applicant

Philip R. Kyle, New Mexico Institute of Mining and Technology, Socorro, New Mexico 87801

A. Activity for Which Permit Requested

Enter Site of Special Scientific Interest.

The applicant proposes to collect rock samples in Site of Special Scientific Interest No. 4, Cape Crozier. The areas of collection are well removed from any penguin rookery.

B. Location

Cape Crozier, Antarctica

C. Dates

November, 1985–January, 1986

4. Applicant

Donald B. Siniff, University of Minnesota, Minneapolis, Minnesota 55455

A. Activity for Which Permit Requested

Taking, Import into U.S.A.

The applicant proposes to take seals as part of a study of the reproductive cycle and food habits of these seals. Tissue and blood samples will also be collected for gentic comparisons. The species to be taken are:

Species	Number, capture/tag/release	Number sacrificed
Lobodon carcinophagus	600	360
Hydrurga leptonyx	400	84
Leptonychotes weddelli	200	20
Ommataphoca rossi	200	10
Mirounga leonian	200	20
Arctocephalus gazella	200	20

B. Location

Antarctic Peninsula and South Shetland Islands

C. Dates

August–December, 1985

5. Applicant

James T. Staley, University of Washington, Seattle, Washington 98195

A. Activity for Which Permit Requested

Taking, Import into U.S.A.

The applicant proposes to collect specimens of adelie and chinstrap penguins, crabeater and weddell seals in the vicinity of Palmer Station. A small number of these animals will be sacrificed so that (1) tissue from various internal organs may be removed and examined for the presence of chitinase and (2) the rate of chitin degradation may be determined.

Species	Number
Pygoscelis adeliae	10
Pygoscelis Antarctica	10
Lobodon carcinophagus	5
Leptonychotes weddelli	5

B. Location

Palmer Station, antarctica

C. Dates

November, 1985–March, 1987

Authority to take Action under the Antarctic Conservation act of 1978 including publication of this notice, has been delegated by the Director of the National Science Foundation.

A. N. Fowler,

Acting Director, Division of Polar Programs.

[FR Doc. 85-16718 Filed 7-12-85; 8:45 am]

BILLING CODE 7555-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Safety Recommendations Issued; Availability

Recommendation No.	Issued to	Date	Subject
Aviation			
H-85-34	Federal Aviation Administration	June 3, 1985	Left-side cooling air tube
Highway			
H-85-8	Governors of Alabama, Alaska, Colorado, Georgia, Tennessee, and West Virginia	do	Annual inspections of privately-owned pupil transportation vehicles.

Recommendation No.	Issued to	Date	Subject
H-85-9 through -11	Florida Department of Highway Safety and Motor Vehicles.	do	Do.
H-85-12	Governors of all States and the District of Columbia.	do	Instruction programs for drivers of privately-owned and-operated pupil transportation vehicles.
H-85-13	Directors of Pupil Transportation of all States and the District of Columbia.	do	Standards for schoolbus drivers comparable to those applicable to publicly-owned and operated schoolbuses.
H-85-14 and -15	National Parent-Teacher Association	do	Surveys to identify drivers of public and private school buses who engage in unsafe driving practices, and informing parents about State safety requirements for schoolbus drivers and inspections.
Railroad			
R-85-24	Department of Transportation	June 3, 1985	Postmortem generation of alochol levels due to microbial action; postaccident toxicological testing requirements.
R-85-43 through -46	Burlington Northern Railroad Co.	do	Training for individuals employed in safety critical positions.
R-85-47	Federal Railroad Administration	do	Do.
R-85-48	Association of American Railroads	do	Do.
R-85-61	Research and Special Programs Administration.	June 24, 1985	Protection of DOT specification aluminum tank car ends from puncture.
R-85-62 and-63	Association of American Railroads	do	DO.
R-85-64	Federal Railroad Administration	do	Do.
R-85-73	State of Lousisana	June 17, 1985	Administration of safety regulations in petrochemical plants.
R-85-71 and -72	Occupational Safety and Health Administration	do	Inspections of petrochemical plant loading facilities.
R-85-70	Research and Sepcial Programs Administration.	do	Safety standards and inspection procedures for loading facilities at petrochemical plants.
R-85-68 and -69	Federal Railroad Administration	do	Inspection of rail loading facilities at petrochemical plants.
R-85-65 through -67	Formosa Plastics Corp	do	Training program for employees assigned to load hazardous materials; safety inspection program; emergency preparedness plan.
R-85-54	Federal Railroad Administration	June 6, 1985	Criteria for emergency planning and response for operators of railroad yards that handle bulk shipments of hazardous materials.
R-85-55 and -56	Federal Emergency Management Agency	de	Do.
R-85-53	Railroad Managers	do	Do.
R-85-73	State of Louisiana	June 17, 1985	Evaluation of State agencies' ability to administer safety regulations in petrochemical plants.
R-85-22	Seaboard System Railroad	May 24, 1985	Programs requiring traincrew members to be monitored on applicable operational tests.
R-85-23	Association of American Railroads	do	Bottom discontinuities on stub-sill tank cars.
R-85-57 and -58	New York City Transit Authority	May 20, 1985	Restricted speeds, discrepancies in track conditions.
M-85-39 through -41	Scandinavian World Cruises	May 24, 1985	Availability of ship's interior plans for emergency use; development of port contingency plans; extra air-pacs utilizing bottles for use during drills and demonstrations.
M-85-36 through -38	Canaveral Port Authority	do	Port contingency plan; ship's plans showing interior arrangements; temporary electrical power sources at berths.
M-85-42 through -44	U.S. Coast Guard	do	Standardized vocabulary for vessel operators; standard whistle procedure; formal procedure to transmit over vessel bridge-to-bridge radiotelephone.
M-85-29 through -35	do	do	Port contingency plan for Port Canaveral; firefighting in U.S. ports and waterways; examinations of fire/emergency equipment; modification of fire standards; hose ports in fire doors; sprinkler systems.
Intermodal			
I-85-12	National Solid Waste management Association.	May 16, 1985	Procedures for safe transportation of hazardous waste.
Pipeline			
P-85-6	Texas Eastern Corp.	June 10, 1985	Cathodic protection test station readings.
P-85-7	American Gas Association/Interstate Natural Gas Association of America/American Petroleum Institute.	do	Review of cathodic portection test station readings.
P-85-8 through -15	Southwest Gas Corp.	July 1, 1985	Effects of liquid accumulation at low spots in gas distribution system on ABS or other types of plastic pipe.
P-85-16 and -17	Phoenix Fire Department	do	Leaking gas; combustible gas indicators.
P-85-18 and -19	Research and Sepcial Programs Administration.	do	Chemically induced ABS plastic pipe failure.
P-85-20	National Association of Regulatory	do	Programs to educate the public about hazards of natural gas; gas emergency procedures.
P-85-21	American Gas Association	do	ABS pipe material failures.
P-85-22	Plastic Pipe Institute	do	ABS Plastic pipe.
Aviation			
A-85-35 through -49	Federal Aviation Administration	July 2, 1985	Requirement for life vests/flotation seat cushions on any aircraft conducting overwater operations.
A-85-50 through -52	do	July 8, 1985	Fairchild Swearingen models SA-226 and SA-227 ignition switches.
Highway			
H-85-16	National Safety Council	do	State Operation Lifesaver Councils.
Marine			
M-85-45 and -46	U.S. Coast Guard	July 2, 1985	Vessel stability criteria.
M-85-47	State of Alabama	do	Alabama Water Safety Act; amendment of.
M-85-48	National Association of State Boating Law Administrators.	do	U.S. Coast Guard stability requirements for recreational vessels.
M-85-49	Boat Owners Association of the United States	do	Vessel stability.
M-85-50	U.S. Power Squadrons	do	Do.
Railroad			
R-85-74	Florida East Coast Railway Co.	July 8, 1985 do	Railroad/highway grade-crossing safety training.
R-85-75	Chicago, South Shore and South Bend Railroad.	June 28, 1985	Switch-point locks on hand-operated Switches over which passenger trains make facing-point movements.

Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include addressee's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page ($1 minimum charge).

Catherine T. Kaputa,

Federal Register Liaison Officer.

July 9, 1985.

[FR Doc. 85-16682 Filed 7-12-85; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-247]

Consolidated Edison Company of New York (Indian Point Nuclear Generating Unit No. 2); Order Modifying License Confirming Additional Licensee Commitments on Emergency Response Capability

I

Consolidated Edison Company of New York (the licensee) is the holder of Facility Operating License No. DPR-26 which authorizes the operation of the Indian Point Nuclear Generating Unit No. 2 (the facility) at steady-state power levels not in excess of 2758 megawatts thermal. The facility is a pressurized water reactor (PWR) located in Westchester County, New York.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities and significant upgrading of emergency response capability based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The requirements are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements," and in Supplement 1 to NUREG-0737, "Requirements for Emergency Response Capability." Among these requirements are a number of items consisting of emergency response facility operability, emergency procedure implementation, addition of instrumentation, possible control room design modification, and specific information to be submitted.

On December 17, 1982, a letter (Generic Letter 82-33) was sent to all licensees of operating reactors, applicants for operating licenses, and holders of construction permits enclosing Supplement 1 to NUREG-0737. In this letter operating reactor licensees and holders of construction permits were requested to furnish the following information, pursuant to 10 CFR 50.54(f), no later than April 15, 1983:

(1) A proposed schedule for completing each of the basic requirements for the items identified in Supplement 1 to NUREG-0737, and

(2) A description of plans for phased implementation and integration of emergency response activities including training.

III

The licensee responded to Generic Letter 82-33 by letter dated April 15, 1983, as supplemented August 31, 1983, November 18, 1983, February 14, 1984 and March 12, 1984. In these submittals, the licensee made commitments to complete the basic requirements. The licensee's commitments included (1) dates for providing required submittals to the NRC, (2) dates for implementing certain requirements, and (3) a schedule for providing implementation dates for other requirements. The staff found that these dates were reasonable and achievable dates for meeting the Commission requirements and concluded that the schedule proposed by the licensee would provide timely upgrading of the licensee's emergency response capability. On June 12, 1984, the NRC issued "Order Confirming Licensee Commitments on Emergency Response Capability" which confirmed the licensee's commitments. By letter dated March 11, 1985, the NRC corrected an error in the original order concerning the implementation date of Regulatory Guide 1.97 with respect to Emergency Response facilities.

IV

The June 12, 1984, Order stated that for those requirements for which the licensee committed to a schedule for providing implementation dates, those dates would be reviewed, negotiated and confirmed by a subsequent order. In conformance with the milestones in the June 12, 1984 Order, the licensee's letter dated July 31, 1984, provided a completion schedule for the following requirement:

2. Detailed Control Room Design Review (DCRDR).

2b. Submit a summary report to the NRC including a proposed schedule for implementation.

The attached Table summarizing the licensee's schedular commitment for the above item was developed by the NRC staff from the information provided by the licensee. The staff reviewed the licensee's July 31, 1984 letter and discussed the date with the licensee.

The NRC staff finds that this date is a reasonable and an achievable date for meeting the Commission requirements. The NRC staff concludes that the schedule proposed by the licensee will provide timely upgrading of the licensee's emergency response capability.

In view of the foregoing, I have determined that the implementation of the licensee's commitments are required in the interest of the public health and safety and should, therfore, be confirmed by an immediately effective Order.

V

Accordingly, pursuant to Sections 103, 161i, 161o and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 50, it is hereby ordered, effective immediately, that license DPR-26 is modified to provide that the licensee shall:

Implement the specific items described in the Attachment to this ORDER in the manner described in the licensee's submittals noted in Section IV herein no later than the dates in the Attachment.

Extension of time for completing these items may be granted by the Director, Division of Licensing, for good cause shown.

The licensee or any other person who has an adversely affected interest may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register.** Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy should be sent to the Executive Legal Director at the same address. A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licensee should comply with the requirements set forth in Section V of this Order.

This Order is effective upon issuance.

Dated in Bethesda, Maryland this 8th day of July, 1985.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Director, Division of Licensing Office of Nuclear Reactor Regulation.

INDIAN POINT UNIT 2.—LICENSEE'S ADDITIONAL COMMITMENTS ON SUPPLEMENT 1 TO NUREG-0737

Title	Requirements	Licensee's completion schedule (or status)
2. Detailed Control Room Design Review (DCRDR).	2b. Submit a summary report to the NRC including a proposed schedule for implementation.	June 1986.

[FR Doc. 85-10758 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-3 (Emergency Planning)]

Long Island Lighting Co. (Shoreham Nuclear Power Station, Unit 1); Oral Argument Before the Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the Appeal Board's order of May 20, 1985, oral argument of the appeal of the Long Island Lighting Company (LILCO) from the Licensing Board's April 17, 1985 partial initial decision will be heard at *2:00 p.m. on Monday, August 12, 1985, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.*

Dated: July 9, 1985.

For the Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 85-16755 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-266 and 50-301]

Wisconsin Electric Power Co.; Granting of Exemption From Appendix R to 10 CFR Part 50 Fire Protection Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted an Exemption from certain requirements of Appendix R to 10 CFR Part 50 to Wisconsin Electric Power Company (the licensee). The Exemption relates to the fire protection program for the Point Beach Nuclear Plant, Unit Nos. 1 and 2 (the facilities) located in Manitowoc County, Wisconsin. The Exemption is effective as of July 3, 1985.

The Exemption allows alternative fire protection features to certain requirements of Subsection III.G of Appendix R to 10 CFR Part 50 as follows:

(1) To the 20-foot horizontal separation and full coverage, automatic fire suppression system requirements of Section III.G.2.b for the Unit 1 Motor Control Center Room (fire zone 1), the Component Cooling Water Pump Room (fire zone 3), the Unit 2 Motor Control Center Room (fire zone 4).

(2) To the fixed fire suppression system requirements of Section III.G.3.b for the Containment Spray Additive and Monitor Tank Room (fire zone 7) and from the full coverage automatic fire suppression requirements of Section III.G.2.b for the Safety Injection and Containment Spray Pump Room (fire zone 2).

(3) To the 20-foot horizontal separation requirement of Section III.G.2.b for the Auxiliary Feedwater Pump Room (fire area 5) and the Cable Spreading Room (fire area 8).

The Exemption is granted on the basis that the proposed alternative existing and additional fire protection features provide equivalent protection to the requirements of Appendix R. Requiring literal compliance to Appendix R would not enhance the fire protection safety in the facilities. Details are provided in the Exemption.

The requests for the Exemption comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations which are set forth in the Exemption.

The requests for the Exemption comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations which are set forth in the Exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (50 FR 20863).

For further details with respect to this action, see (1) the application for exemptions dated June 30, 1982 as supplemented by letters dated September 29 and October 11, 1982, February 7 and 25, April 28, May 31, July 20 and October 26, 1983, April 4 and 27, 1984, and January 3 and 9, 1985, (2) the Commission's letter dated July 3, 1985, and (3) the Exemption dated July 3, 1985. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 3rd day of July 1985.

For the Nuclear Regulatory Commission.

Hugh Thompson, Jr.,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 85-16757 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-1257]

Finding of No Significant Impact; Amendment of Special Nuclear Material License No. SNM-1227; Exxon Nuclear Company, Inc., Richland, WA

The U.S. Nuclear Regulatory Commission (the Commission) is considering an amendment to Special Nuclear Material License No. SNM-1227 to permit the construction and operation of a uranium recovery facility. This facility is designed to recover uranium from chemical process waste solutions for recycle to the fuel conversion process.

The Commission's Division of Fuel Cycle and Material Safety has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-1227. On the basis of this assessment, the Commission has concluded that the environmental impacts created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate. The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Copies of the Environmental Assessment may be obtained by calling (301) 427-4510 or by writing to the Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Silver Spring, Maryland this 8th day of July 1985.

For the Nuclear Regulatory Commission.

W.T. Crow,

Acting Chief, Uranium Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 85-16794 Filed 7-12-85; 8:45 am]

BILLING CODE 7590-01-M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

L. Jacqueline Brent, Office of Personal and Administration, Overseas Private Investment Corporation, Suite 405, 1129 Twentieth Street, NW., Washington, D.C. 20527; Telephone (202) 653-2818.

OMB Reviewer

Francine Picoult, Office of Information and Regulatory Affairs, Office of Mangement and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395-7231.

Summary of Form Under Review

Type of Request: Revision
Title: OPIC Reconnaissance Survey/Feasibility Study Application form
Form Number: OPIC-84
Frequency of Use: On occasion
Type of Respondent: Individuals; businesses or other for-profit; small businesses
Standard Industrial Classifcation Codes: All
Description of Affected Public: Same as types of respondents
Number of Responses: 130
Reporting Hours: 130
Federal Cost: $8,466
Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses):

Information will be collected to determine the eligibility of applicants for financial assistance from OPIC to conduct reconnaissance surveys or feasibility studies on proposed business projects in developing countries.

Dated: July 1, 1985.

Leo H. Phillips,

Office of the General Counsel.

[FR Doc. 85-16717 Filed 7-12-85; 8:45 am]

BILLING CODE 3210-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23762; 70-7124]

Southern Appalachian Coal Co.; Proposal To Pay Up to $22 Million Common Stock Dividend

July 9, 1985.

Southern Appalachian Coal Company ("Company"), 40 Franklin Road, P.O. Box 2021, Roanoke, Virginia 24022, a subsidiary of Appalachian Power Company ("Appalachian"), a subsidiary of American Electric Power Company, Inc., 1 Riverside Plaza, Columbus, Ohio 43215, a registered holding company, has filed a declaration with this Commission pursuant to section 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 46 thereunder.

The Company has disposed of substantially all of its mining assets, is no longer engaged in coal mining operations, and now only leases its remaining mining operations and receives royalties. At December 31, 1984, the Company had retained earnings in the amount of $9,483,000 and capital surplus in the amount of $49,093,000, consisting of $13,893,000 of premium on common stock and $35,200,000 of other paid-in capital. Since these amounts were far in excess of any foreseeable capital needs of the Company, it was determined that funds which were not needed by the Company should be distributed to Appalachian. Accordingly, the Company on March 21, 1985 declared and paid to Appalachian a dividend of $9,382,500, representing 99% of retained earnings.

The Company now seeks permission from this Commission to declare and pay to Appalachian an additional dividend of up to $22,000,000 but not less than $20,000,000 from capital surplus. The amount of funds available to be distributed by the Company to Appalachian, as of April 30, 1985, amounted to approximately $21.7 millions.

Pursuant to West Virginia law, a West Virginia corporation is permitted to make a distribution to its shareholders out of capital surplus if the articles of incorporation so provide or if such distribution is authorized by the affirmative vote of the holders of a majority of the outstanding shares of each class. Since the Articles of Incorporation of the Company contain no such provision, it is proposed that the distribution will be authorized by the affirmative vote of Appalachian, which is the sole holder of the issued and outstanding shares of common stock of the Company, which is the only class of securities of the Company outstanding. Immediately after the vote of Appalachian, it is proposed that the Board of Directors of the Company will declare a distribution on its common stock in an aggregate amount of up to $22,000,000 but not less than $20,000,00.

The declaration and any amendment thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 5, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-16763 Filed 7-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22215; File No. SR-CBOE-85-13]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE") submitted on April 23, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to describe the opening rotation procedures for the Standard & Poor 100 Index ("OEX") options. The proposed rule change provides that rotations for third and fourth month options will be held in the southwest corner of the OEX pit, beginning with the fourth month and proceeding to third month options. Rotations will start at the lowest call strike price and alternate between calls and puts. First and second month OEX options will be opened simultaneously with the back month options, opening the second month first, starting at the lowest call strike price, and alternating between calls and puts. The proposed rule change has been in effect at the CBOE on a pilot basis since December 24, 1984. Under the pilot, the average time for opening rotations in OEX has been reduced from twenty to thirteen minutes, approximately. CBOE indicates that "virtually" no complaints were received by the exchange regarding the pilot.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22068, May 22, 1985) and by publication in the **Federal Register** (50 FR 23218, May 31, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the CBOE's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 5, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16765 Filed 7-12-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22216; File No. SR-CBOE-85-21]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted on May 10, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, for approval to list five-year Treasury note option contracts. The Exchange states that this new contract fulfills the demand for a hedging vehicle for corporate bonds having a maturity of ten years or less.

Chapter XXI of the Exchange's Rules will apply to Treasury note options, with the following amendments: (1) Rule 21.8(b) is amended to provide that Treasury note options shall have four expiration months available: The two near-term months with two further out months on the March cycle; and (2) Rule 21.8(c) is amended to provide that the exercise price for Treasury securities with a remaining term to maturity of six years or less shall be fixed at a percentage of principal amount which is an integral multiple of 1%; or 2% for Treasury securities having a remaining term to maturity of more than six years.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 22059, May 21, 1985) and by publication in the **Federal Register** (50 FR 23217, May 31, 1985). No comments were received with respect to the proposed rule filing.

The Exchange indicates that 60% of all corporate bonds issued in 1984 were ten-year maturities or less, and there is a natural demand for hedging these short maturities using a five-year note. In addition, the CBOE believes that liquidity in CBOE's Treasury bond option contracts should be enhanced as a result of listing Treasury note options.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization and, in particular, the requirements of Section 6 and the rules and regulations thereunder. The CBOE states that the proposed rule change, together with the rules in Chapter XXI, is consistent with section 6(b)(5), in particular, because it is designed to prevent fraudulent and manipulative acts and in general to protect investors and the public interest in connection with options covering undelrying Treasury notes.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the CBOE's proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 5, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-16766 Filed 7-12-85; 8:45 am]

BILLING CODE 8010-01-M

[1] CBOE presently trades thirty-year Treasury bond options.

[Release No. 22217; File No. SR-NASD-85-12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

The National Association of Securities Dealers, Inc. ("NASD"), submitted on May 24, 1985, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Schedule D of the NASD By-Laws to permit the NASD to require any market maker, whose quotations appear to be no longer reasonably related to the prevailing market in a NASDAQ security, to re-enter its quotation.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22100, May 31, 1985) and by publication in the **Federal Register** (50 FR 24074, June 7, 1985). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: July 9, 1985.
John Wheeler,
Secretary.

[FR Doc. 85-16764 Filed 7-12-85; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to fund for the first time one additional Small Business Development Center (SBDC) in New York (Downstate) during fiscal year 1985. This proposed SBDC would cover the following counties: Nassau, Suffolk, Bronx, Queens, Kings, New York, Richmond, Westchester, Rockland, Putman, Sullivan, Ulster, Dutchess and Orange. Currently, there are 39 SBDC's in existence. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to the proposal developer for the SBDC to be funded. This publication is being made to provide the State single point of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed funding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

DATE: Comments will be accepted through September 13, 1985.

ADDRESS: Comments should be addressed to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically § 135.4, SBA is publishing this notice to provide public awareness of the pending application for funding of the proposed Small Business Development Center (SBDC). Also, published herewith is an annotated program announcement describing the SBDC program in detail.

The proposed SBDC will be funded at the earliest practicable date following the 60-day comment period. However, no funding will occur unless all comments have been considered. Relevant information identifying this proposed SBDC and providing the mailing address of the proposal developer is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single point of contact and other interested State and local entities are expected to advise the relevant proposal developer of their comments regarding the proposed funding in writing as soon as possible. Copies of such written comments should also be furnished to Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416. Comments will be accepted by the proposal developer and SBA for a period of two months (60 days) from the date of publication of this notice. The proposal developer will make every effort to accomodate these comments during the 60-day period. If the comments cannot be accomodated by the proposal developer, SBA will, prior to funding the proposed SBDC, either attain accommodation of any comments or furnish an explanation to the commenter of why accommodation cannot be attained to the commentor prior to funding the proposed SBDC.

Description of the SBDC Program

The Small Business Development Center Program is a major management assistance delivery program of the U.S. Small Business Administration. SBDC's are authorized under section 21 of the Small Business Act (15 U.S.C. 648). SBDC's operate pursuant to the provisions of section 21, a Notice of Award (Cooperative Agreement) issued by SBA, and a Program Announcement. The Program represents a partnership between SBA and the State-endorsed organization receiving Federal assistance for its operation. SBDC's operate on the basis of a State plan which provides small business assistance throughout the State. As a condition to any financial award made to an applicant, an additional amount equal to the amount of assistance provided by SBA must be provided to the SBDC from sources other than the Federal Government.

Purpose and Scope

The SBDC Program has been designed to meet the specialized and complex management and technical assistance needs of the small business community. SBDC's focus on providing indepth quality assistance to small businesses in all areas which promote growth, expansion, innovation, increased productivity and management improvement. SBDC's act in an advocacy role to promote local small business interests. SBDC's concentrate on developing the unique resources of the university system, the private sector, and State and local governments to provide services to the small business community which are not available elsewhere. SBDC's coordinate with other SBA programs of management assistance and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the State academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources; and

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDC's are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a single full-time Director. SBDC's must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDC's provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDC's emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State.

The degree of which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDC's should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDC's should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas is provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform but not be limited to the following activities.

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualifed small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other group designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

(a) Lead SBDC's shall operate on a 40-hour week basis, or during normal State business hours, with National holidays or State holidays as applicable excluded.

(b) SBDC subcenters shall be operated on a full-time basis. The lead SBDC shall ensure that staffing is adequate to meet the needs of the small business community.

(c) All counseling assistance offered through the Small Business Development Center network shall be provided at no cost to the client.

Dated: July 1, 1985.

James C. Sanders,

Administrator.

Address of Proposed SBDC and Proposal Developer

Mr. James L. King, State University of New York, State University Plaza, Albany, New York 12246, (518) 473-5398

[FR Doc. 85-16753 Filed 7-12-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. IP85-1; Notice 2]

Volkswagen of America Inc.; Denial of Petition; for Inconsequential Noncompliance

This notice denies the petition by Volkswagen of America, Inc. of Troy, Michigan, ("VWoA") to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act for noncompliances with 49 CFR 571.101 Motor Vehicles Safety Standard No. 101, *Controls and Displays*, with 49 CFR 571.105, Motor Vehicles Safety Standard No. 105, *Hydraulic Brake Systems*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on January 14, 1985 and an opportunity afforded for comment (50 FR 1971).

The noncompliance affects 78,000 1984 and 1985 Audi 5000S and 5000S Turbo passenger cars ("Audi 5000s" herein) and 1985 Audi 4000S and 4000S Quattro, Coupe GT, and Quattro passenger cars ("Audi 4000s" herein).

According to paragraph S5 and Table 2 of Standard No. 101 the brake system display telltale shall be identified with the word "Brake". To the same effect is paragraph S5.3.5(b) of Standard No. 105 which requires failure indicator lamps serving as a common indicator to bear the word "brake". VWoA has labelled the brake telltale lens of Audi 4000s with the International Standards Organization (ISO) symbol for brake failure warning, instead of the requisite word. Similarly, the Audi 5000S shows the ISO symbol rather than the word "Brake" on its informational readout display. NHISA has proposed use of the ISO symbol on November 4, 1982 (47 FR 49993) with several other symbols, but chose not to adopt them in the final rule published on July 27, 1984 (49 FR 30191). Audi's design engineers apparently did not realize that the ISO symbol was only a proposal and not a requirement, nor permitted, when they engineered the Audi 4000s and 5000s concerned.

VWoA argued that the noncompliance is inconsequential for several reasons. It is aware of no compliants or injuries to customers in the U.S. or anywhere in the world. The symbol is explained in the Operator's Manual furnished with each vehicle. The indicator lamps meet other requirements for such lamps. In the Audi 4000s they light up when the brake fluid is below a predetermined level, and when the parking brake is applied. In the Audi 5000s, the indicator lamp flashes and chimes whenever a predetermined level is reached by brake fluid, by the hydraulic pressure in the brake power assist system, and by the fluid in the power steering/brake power assist unit. The application of the parking brake is indicated by a separate lamp labelled "Brake" meeting the requirements of Standard Nos. 101 and 105. VWoA believes that its noncompliance is technical only.

One comment was received on the petition; Mercedes-Benz of North America supported it and recommended that the ISO symbol be adopted, as originally proposed in 1982.

The agency has decided to deny the petition. Symbols are intended to convey information faster and more efficiently than words. Unlike other symbols such as those for headlamp or windshield wipers, the brake failure warning symbol is not easily identified. It consists of an exclamation point enclosed in a circle bracketed by two parentheses (representing brake shoes). Representatives of BMW conducted a test on symbol and word recognition, and presented that results in a 1978 SAE paper. Test subjects were asked to identify a series of words or symbols that BMW was considering for use. The subjects were to indicate that function they generally associated with the symbol and then give a more precise technical definition of that function. The word "brake" was correctly identified by 87% of the test group, and its function correctly defined by 52%. The symbol and its specific function, however, were identified by only 26% and 21% respectively. The word in this case proved far superior to the symbol.

Although the meaning of the symbol is referenced in the vehicle's owner manual, many operators do not refer to the manual, which may not even be available in older or rented vehicles. The Audi brake failure indicators may be a sufficient alert that *some* type of vehicle system is experiencing a problem but given the critical nature of the braking system a message of failure must be understood immediately. That message will not be clear when imparted by the ISO symbol.

Accordingly petitioners has failed to sustain its burden that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is hereby denied.

(Sec. 103, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on July 10, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-16770 Filed 7-10-85; 4:37 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted To OMB for Review

July 10, 1985.

The Department of Treasury has submitted the following public information collection requirements(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0191
Form Number: ATF Form 5100.16
Type of Review: Revision
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond
Clearance Officer: Howard Hood (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

OMB Number: 1545-0166
Form Number: IRS Form 4255
Type of Review: Revision
Title: Recapture of Investment Credit

OMB Number: 1545-0214
Form Number: IRS Form 5695
Type of Review: Revision
Title: Residential Energy Credit
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, D.C. 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports, Management Office.

[FR Doc. 85-16719 Filed 7-12-85; 8:45 am]

BILLING CODE 4810-25

United States Mint

Use of Metal Tokens; Final Statement of Policy

AGENCY: United States Mint, Treasury.

ACTION: Final Statement of Tresury Policy Regarding the Use of Metal Tokens.

SUMMARY: The United States Mint, Department of Treasury announces its final statement of policy regarding the use of metal tokens. The Mint has historically been opposed to the production and use of metal tokens because of its concern that widespread use of tokens would lead to their circulation in the community as coinage in violation of the criminal code. Exceptions to this opposition have been granted by the Mint for the use of tokens by gambling casinos on a case-by-case basis.

On September 2, 1983, the Mint notified the public that it was proposing to change its policy of opposition to metal tokens provided that certain enumerated criteria were met. *See* 48 FR 40054. Public comment was invited and received. The commenters endorsed the concept of the restrictions and advocated expanding them to insure against the unlawful use of tokens in vending machines and other coin operated devices.

On June 21, 1984, the Mint published revised token restrictions which generally adopted the increased restrictions advocated by the commenters. *See* 49 FR 2556. Public comment was again invited and received. Having analyzed these comments the Department now issues its final policy statement on the use of metal tokens. The present policy statement retains certain of the restrictions while deleting others. The final statement is aimed at providing the necessary guidance to the public to insure the protection of U.S. coinage while minimizing the adverse impact of the restrictions on legitimate users of tokens.

EFFECTIVE DATE. This policy will be effective on July 15, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Gubin, Legal Counsel, United

States Mint, Room 1032 Warner Building, 501 13th St. NW., Washington, D.C. 20220.

SUPPLEMENTARY INFORMATION:

Before discussing the specific comments to the previous notice, a preliminary point must be clarified. The policy which is reflected in the notice which is published today is intended for the advice and guidance of token manufacturers and users as well as the public generally. It represents the views of the Department of Treasury concerning measures which, if implemented, should minimize the possibility of a violation of the counterfeiting provisions of title 18, United States Code. This statement of policy does not prescribe mandatory specifications concerning the size, composition or other requirements for metal tokens. These matters may be the subject of state or local regulation. Rather, this notice simply informs the public, especially those who are in the business of manufacturing or using tokens, that as a general rule, the Department does not object to tokens which meet the restrictions which are set forth out in this notice. The prosecution of violations of the counterfeiting statutes is vested with the Department of Justice which will assess each claimed violation on the particular facts presented.

Summary of Comments

Approximately 36 comments were received. Commenters expressed strong opposition to several of the restrictions. First, a number of commenters were opposed to the requirements that tokens contain (1) The name and location of the establishment from which they originate on at least one side and (2) language limiting redemption of the tokens to the issuing establishment. Commenters pointed out that requiring this information adds significantly to the costs of the tokens. While large business concerns are able to absorb these costs, it is asserted that smaller business establishments which have been using a generic token without this identifying information will be unable to afford the increased costs. It is emphatically urged that these requirements be abandoned.

The Department recognizes that the identification requirements may impose significant costs upon the token user. These requirements derive from conditions that were originally placed upon casinos which were more able to absorb the costs. Their purpose is to facilitate the determination of the source of a potential violation so that appropriate remedial action may be taken. The Department believes that this goal will be attained provided that tokens contain some mark which clearly identifies the manufacturer. Accordingly, we have modified the restrictions to allow for the use of manufacturer's identifying mark or logo in place of the name of the originating establishment.

By far the most vehement opposition to the restrictions was concerned with the prohibition of certain diameter ranges for metal tokens. It was pointed out that under the most recently proposed restrictions, one of the most commonly used tokens, which is .900 inch in diameter, would be prohibited. In addition, other size tokens would be likewise not in compliance with the diameter specifications. It was pointed out that there are millions of such tokens in use throughout the United States. Commenters urged that the increased restrictions on token size were simply not necessary to achieve the Department's purpose of safeguarding against the slugging of vending machines. Moreover, commenters wished to know what mechanism would be specified for the replacement of these tokens.

The restriction on the diameter of metal tokens is the most essential means of minimizing the possibility that tokens will be unlawfully used to slug vending and other gaming machines. In view of the impact that the prohibition of a .900 inch token would have on token users throughout the United States, however, the Department has carefully reexamined its restrictions and has determined that its policy goals will be met by narrowing the prohibited ranges for these "quarter-sized" tokens to .910–.980. This range is large enough to exclude most tokens which could find their way into vending machines without excluding the popular .900 token.

Other diameter ranges have been likewise modified to allow for the continued existence of tokens which have not posed significant problems under the slugging statute.

Commenters objected to the minimum weight and thickness restrictions embodied in our previous policy statement. It is asserted that there is no reason for such restrictions since a lighter weight and thinner tokens will more easily be rejected by the coin mechanisms.

The Department has determined that the restrictions on minimum weight and thickness for tokens are not necessary in view of the protection afforded by the restrictions on token diameters. Accordingly, these restrictions have been eliminated.

A number of commenters objected to the requirements concerning the composition of the tokens, especially to the requirement that tokens which are composed of a copper based material contain more than twenty-five percent of alloying materials. In addition, commenters object to the requirement that tokens not be composed of a ferromagnetic material.

The Department has determined that the restrictions on the amount of alloying material for copper based tokens serves the purpose of providing added assurance that such tokens will not be unlawfully used instead of U.S. coinage in vending machines. Accordingly the restriction has been retained. The restriction has been modified, however, to require that the amount of alloying material be *at least 20 percent* of the token's weight. The Department believes that this modification will provide the necessary protection against slugging while minimizing its adverse impact on legitimate taken users. With regard to the prohibition against ferromagnetic material, this provision has been modified to require only that tokens not be composed of material the magnetic properties of which will result in their being accepted by vending machines. This change will not restrict tokens whose magnetic properties are so slight that they should not be accepted by the coin mechanism.

Conditions for Department Approval

The Department does not oppose the production or use of tokens which meet the following conditions:

1. Tokens should be clearly identified with the name and location of the establishment from which they originate on at least one side. Alternatively, tokens should contain an identifying mark or logo which clearly indicates the identity of the manufacturer.

2. Tokens should not be within the following diameter ranges (inches):

0.680–0.775
0.810–0.860
0.910–0.980
1.018–1.068
1.180–1.230
1.475–1.525

3. Tokens shall not be manufactured from a three layered material consisting of a copper nickel alloy clad on both sides of a pure core, nor from a copper based material except if the total of zinc, nickel, aluminum, magnesium and other alloying materials is at least 20 percent of the token's weight. In addition, tokens shall not be manufactured from material which possesses sufficient magnetic properties

so as to be accepted by a coin mechanism.

4. Establishments using these tokens shall prominently and conspicuously post signs on their premises notifying patrons that federal law prohibits the use of such tokens outside the premises for any monetary purpose whatever.

5. The issuing establishments shall not accept tokens as payment for any goods or services offered by such establishment with the exception of the specific use for which the tokens were designed.

6. The design on the token shall not resemble any current or past foreign or U.S. coinage.

The Department of Treasury believes that the observance of these restrictions will minimize the possibility of a violation of the counterfeiting statutes. The prosecution of violations of these statutes is vested with the Department of Justice which must evaluate any claimed violation on the particular facts presented.

Katherine D. Ortega,

Treasurer of the United States.

[FR Doc. 85-16519 Filed 7-12-85; 8:45 am]

BILLING CODE 4810-37-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 135
Monday, July 15, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL ENERGY REGULATORY COMMISSION

July 10, 1985.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., July 17, 1985.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

Consent Power Agenda, 817th Meeting—July 17, 1985, Regular Meeting (10:00 a.m.)

CAP-1.
Project No. 8843-001, Lawrence J. McMurtrey
CAP-2.
Project No. 8399-001, City of Ellensburg, Washington
CAP-3.
Project No. 7885-003, Fisheries Development Company
CAP-4.
Project No. 2266-008, Nevada Irrigation District
Project No. 8840-001, Northwest Power Company, Inc.
CAP-5.
Project No. 8644-002, Pacific Hydropower Company
CAP-6.
Project Nos. 8802-001 and 002, Birch Power Company
CAP-7.
Project No. 4939-002, Brownville Power Company
CAP-8.
Project No. 7046-001, Jamaica Waterpower Company
CAP-9.
Project No. 5927-002, Goose Creek Hydro Associates
CAP-10.
Project No. 4313-000, Forrest E. Speck, et al.
Project No. 5196-000, Essex Development Associates, Inc. and Village of Newport, New York
Project No. 4247-001, Long Lake Energy Corporation
CAP-11.
Project No. 2611-001, Scott Paper Company
CAP-12.
Project No. 7585-000, Gentry Resources Corporation
CAP-13.
Project No. 8749-000, Clearwater Hydro Company
CAP-14.
Project No. 8052-000, the Town of Jackson, Wyoming
CAP-15.
Project No. 4620-001, Carrasan Power Company
CAP-16.
Project No. 8136-001, Friends of Keeseville, Inc.
CAP-17.
Project No. 2548-002, Georgia-Pacific Corporation
CAP-18.
Docket Nos. ER85-521-000 and ER85-522-000, Kansas Gas and Electric Company
CAP-19.
Docket No. ER85-538-000, Gulf States Utilities Company
CAP-20.
Docket No. ER85-545-000, Boston Edison Company
CAP-21.
Docket No. ER85-458-000, Iowa Electric Light and Power Company
CAP-22.
Docket No. ER85-380-002, Florida Power & Light Company
CAP-23.
Docket No. ER84-604-005, Southwestern Public Service Company
CAP-24.
Docket No. ER85-375-002, Centel Corporation—Kansas
CAP-25.
Docket No. ER85-404-002, Commonwealth Edison Company
CAP-26.
Docket Nos. ER82-703-002 and ER82-703-003, New England Power Company
CAP-27.
Docket No. ER84-579-001, AEP Generating Company
CAP-28.
Docket No. ER84-348-006, American Electric Power Service Corporation
CAP-29.
Docket Nos. ER84-504-001, ER84-504-002, and ER84-504-003, Allegheny Generating Company
CAP-30.
Docket Nos. ER83-110-000 and ER84-55-000, Montaup Electric Company
CAP-31.
Docket No. ER84-654-001, Yankee Atomic Electric Company
CAP-32.
Docket No. ER84-705-002, Boston Edison Company
CAP-33.
Docket No. ER84-572-001, Utah Power & Light Company
CAP-34.
Docket No. EL84-3-001, Clifton Power Corporation

Consent Miscellaneous Agenda

CAM-1.
Docket Nos. RM84-15-001, 002, 003, and 004, generic determination of rate of return on common equity for electric utilities
CAM-2.
Docket No. RM83-53-001, obligations of sellers and purchasers of first-sale natural gas for refunds owed for collections in excess of maximum lawful prices under the Natural Gas Policy Act of 1978
CAM-3.
Docket No. RM85-7-000, revised procedures for stripper gas well category determinations under the NGPA
CAM-4.
Docket No. RM79-76-221 (Louisiana 5—addition), high-cost gas produced from tight formations
CAM-5.
Docket No. GP84-59-000, Department of Natural Resources of Louisiana, Energy Reserves Group, Inc., section 107(c)(5) NGPA determination, John Wilfert No. 1 Well, FERC JD No. 84-25246
CAM-6.
Docket No. GP84-28-000, Worldwide Energy Corporation, W.K. Hoffman B-8 Well
CAM-7.
Docket No. GP83-16-000, Phillips Petroleum Company, West B #1 Well
CAM-8.
Docket No. GP85-26-000, Philadelphia Oil Company, Rainwater Ramsey Well No. P-15, Larkin Stanley Well No. P-32, Steinman Development Well No. P-39 and Thomas Bise Well No. P-55
CAM-9.
Docket Nos. SA84-8-001, SA84-9-001, and SA84-10-001, Phillips Petroleum Company
Docket Nos. SA84-11-001 and SA84-12-001, Phillips Oil Company
CAM-10.
Docket No. RO85-5-000, Shell Oil Company

CAM-11.
Docket No. RA84-5-000, Big Muddy Oil Processors, Inc.
CAM-12.
Docket No. RA85-6-000, Utex Oil Company
CAM-13.
Docket No. RM85-19-000, generic determination of rate of return on common equity for public utilities
CAM-14.
Docket No. GP84-20-001, city of Farmington v. Amoco Gas and Amoco Production Company

Consent Gas Agenda

CAG-1.
Docket No. RP82-10-012, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CAG-2.
Docket No. RP85-165-000, Distrigas of Massachusetts Corporation
CAG-3.
Docket Nos. TA85-1-26-000 and TA85-1-26-005, Natural Gas Pipeline Company of America
CAG-4.
Docket No. RP80-72-013, Algonquin Gas Transmission Company
CAG-5.
Docket Nos. RP80-55-010, RP80-118-012, RP81-73-004, and RP82-32-005, Sea Robin Pipeline Company
CAG-6.
Docket No. RP85-141-001, Texas Gas Transmission Corporation
CAG-7.
Docket No. TA85-2-48-002, ANR Pipeline Company
CAG-8.
Docket No. TA85-1-53-005, KN Energy, Inc.
CAG-9.
Docket No. TA85-2-42-002, Transwestern Pipeline Company
CAG-10.
Docket Nos. TA82-2-33-027, RP82-33-008, and TA85-1-33-003, El Paso Natural Gas Company
CAG-11.
Docket Nos. RP85-143-001 and RP85-145-001, Texas Eastern Transmission Corporation
CAG-12.
Docket No. RP85-117-000, Alabama-Tennessee Natural Gas Company
Docket No. RP85-88-000, ANR Pipeline Company
Docket No. RP85-105-000, Arkansas-Oklahoma Gas Corporation
Docket No. RP85-119-000, Arkla, Inc.
Docket No. RP85-109-000, Caprock Pipeline Company
Docket No. RP85-100-000, Cimarron Transmission Company
Docket Nos. RP85-95-000 and 001, Colorado Interstate Gas Company
Docket Nos. RP85-91-000 and 001, Columbia Gas Transmission Corporation
Docket No. RP85-87-000, Consolidated Gas Supply Corporation
Docket No. RP85-92-000, El Paso Natural Gas Company
Docket No. RP85-75-000, Florida Gas Transmission Company
Docket No. RP85-115-000, Gas Gathering Corporation
Docket No. RP85-120-000, Kentucky-West Virginia Gas Company
Docket No. RP85-98-000, KN Energy, Inc.
Docket Nos. RP85-76-000 and 001, Lone Star Gas Company
Docket No. RP85-116-000, Louisiana-Nevada Transit Company
Docket No. RP85-82-000, Mid-Louisiana Gas Company
Docket No. RP85-80-000, Mississippi River Transmission Corporation
Docket No. RP85-137-000, MIGC, Inc.
Docket No. RP85-97-000, Montana-Dakota Utilities Company
Docket No. RP85-73-000, Mountain Fuel Resources, Inc.
Docket No. RP85-93-000, National Fuel Gas Supply Corporation
Docket Nos. RP85-99-000 and 001, Natural Gas Pipeline Company of America
Docket No. RP85-121-000, North Penn Gas Company
Docket No. RP85-113-000, Northern Natural Gas Company, division of Internorth, Inc.
Docket No. RP85-81-000, Northwest Central Pipeline Corporation
Docket No. RP85-83-000, Northwest Pipeline Corporation
Docket Nos. RP85-96-000, 001, and 002, Panhandle Eastern Pipe Line Company
Docket No. RP85-89-000, Sea Robin Pipeline Company
Docket No. RP85-94-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. RP85-85-000, Texas Eastern Transmission Corporation
Docket No. RP85-79-000, Texas Gas Pipe Line Corporation
Docket No. RP85-84-000, Texas Gas Transmission Corporation
Docket No. RP85-78-000, Transcontinental Gas Pipe Line Corporation
Docket No. RP85-88-000, Transwestern Pipeline Company
Docket Nos. RP85-77-000 and 001, Trunkline Gas Company
Docket No. RP85-90-000, United Gas Pipe Line Company
Docket No. RP85-86-000, Valero Interstate Transmission Company
Docket No. RP85-104-000, Valley Gas Transmission Company
Docket No. RP85-74-000, West Lake Arthur Corporation
Docket No. RP85-108-000, West Texas Gathering Company
Docket No. RP85-127-000, Western Gas Interstate Company
CAG-13.
Docket No. RP85-113-001, Northern Natural Gas Company, division of Internorth, Inc.
CAG-14.
Docket Nos. TA85-2-42-003 and RP84-77-004, Western Gas Interstate Company
CAG-15.
Docket No. TA85-2-52-003, Transwestern Pipeline Company
CAG-16.
Docket No. TA85-3-34-000, Florida Gas Transmission Corporation
CAG-17.
Docket Nos. TA82-1-33-003, TA82-2-33-018, TA83-1-33-010, TA83-2-33-002, and TA84-1-33-001, El Paso Natural Gas Company
CAG-18.
Docket No. RP85-37-000, High Island Offshore System
CAG-19.
Docket No. RP84-18-000, South Georgia Natural Gas Company
CAG-20.
Docket No. RP84-141-000, Midwestern Gas Transmission Company
CAG-21.
Docket No. ST83-442-002, Acadian Gas Pipeline System
CAG-22.
Docket Nos. ST79-23-004 and ST81-256-003, Louisiana Intrastate Gas, a division of Celeron Corporation
Docket No. CP84-378-000, ANR Pipeline Company
Docket No. CP81-400-000, Arkla Energy Resources, a division of Arkla, Inc.
Docket No. ST84-294-009, the Town of Colfax
Docket No. CP81-416-000, Columbia Gas Transmission Corporation
Docket No. ST81-165-002, Columbia Gas Transmission Corporation
Docket No. ST84-996-000, Faustina Pipe Line Company
Docket No. ST84-441-000, Florida Gas Transmission Company
Docket No. ST82-229-001, Mid-Louisiana Gas Company
Docket No. CP84-389-000, Mid-Louisiana Gas Company
Docket No. ST79-023-003, Mid-Louisiana Gas Company
Docket No. ST81-381-000, Southern Natural Gas Company
Docket No. ST81-256-001, Southern Natural Gas Company
Docket No. ST82-479-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. ST84-953-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. ST81-240-002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
Docket No. ST82-433-002, Texas Eastern Transmission Corporation
Docket No. ST83-57-001, Texas Eastern Transmission Corporation
Docket No. ST83-242-001, Texas Eastern Transmission Corporation
Docket No. ST80-273-001, Texas Eastern Transmission Corporation
Docket No. ST84-924-000, Texas Gas Transmission Corporation
Docket No. CP81-333-000, Texas Gas Transmission Corporation
Docket No. ST79-25-002, Texas Gas Transmission Corporation
Docket No. ST82-24-001, United Gas Pipe Line Company
Docket No. ST79-24-001, United Gas Pipe Line Company
CAG-23.
Docket No. ST85-97-000, Phanix Transmission Company
CAG-24.
Docket Nos. ST81-258-002, ST81-437-001, ST82-127-000, ST82-127-001, ST83-134-

001, ST84-81-000, and ST84-431-000, Liberty Natural Gas Company
CAG-25.
Docket No. ST83-273-001, Delhi Gas Pipeline Corporation
CAG-26.
Docket Nos. ST84-54-000 and 001, ST83-257-000 and 001, ST84-630-000 and 001, Delhi Gas Pipeline Corporation
CAG-27.
Docket Nos. ST81-181-002, ST81-201-002, ST81-181-001, ST84-671-000, ST82-323-001, ST81-201-001, ST80-260-002, and ST80-186-002, Transok, Inc.
CAG-28.
Docket No. CI85-181-002, McMoran Offshore Exploration Company
CAG-29.
Docket No. CI64-26-013, Gulf Oil Corporation
CAG-30.
Docket No. CI85-462-000, Northern Oil & Gas, Inc.
CAG-31.
Docket No. CI85-168-000, Aceite Energy Corporation
CAG-32.
Docket Nos. G-17136-000 and RI60-234-000, Trice Production Company
Docket No. G-18516-000, Oleum Incorporated
CAG-33.
Docket No. G-10139-002, Canadianoxy Offshore Production Company
Docket Nos. G-2712-004, G-4579-027, CI60-418-000, CI61-1332-000, CI65-561-000, CI67-864-001, CI68-311-001, CI71-207-001, CI73-845-000, CI77-402-001, CI83-168-002, and CI68-1322-002, Cities Service Oil and Gas Corporation
Docket Nos. CI67-881-002, CI80-345-001, CI68-1302-002, and CI76-629-005, Conoco Inc.
Docket Nos. CI67-862-000, CI68-1306-003, and CI77-364-002, Getty Oil Company
CAG-34.
Docket Nos. RI74-188-055 and RI75-21-050, Independent Oil & Gas Association of West Virginia
CAG-35.
Docket Nos. RI74-188-056 and RI75-21-051, Independent Oil & Gas Association of West Virginia
CAG-36.
Docket Nos. RI74-188-057 and RI75-21-052, Independent Oil & Gas Association of West Virginia
CAG-37.
Docket No. CP85-18-001, Point Arguello Natural Gas Line Company
CAG-38.
Docket No. CP77-410-009, Sea Robin Pipeline Company
CAG-39.
Docket No. CP77-410-008, Sea Robin Pipeline Company
CAG-40.
Docket Nos. CP84-659-001, CP82-158-007, and 004, Transcontinental Gas Pipe Line Corporation
CAG-41.
Docket Nos. CP84-26-000 and 002, Mantaray Pipeline Company and Texas Eastern Transmission Corporation
CAG-42.
Docket Nos. CP84-21-001 and 002, Steve Bowman, et al. v. Columbia Gas Transmission Corporation, et al.
Docket Nos. CP84-99-001 and 002, Columbia Gas Transmission Corporation
CAG-43.
Docket Nos. CP84-539-001 and 002, El Paso Natural Gas Company and Producer-Suppliers of El Paso Natural Gas Company
CAG-44.
Docket No. CI85-417-000, Entrade Corporation
CAG-45.
Docket No. CI85-503-000, Pennzoil Company, Pennzoil Producing Company and Pennzoil Oil & Gas, Inc.
CAG-46.
Docket No. CI85-477-000, Consolidated Fuel Supply, Inc.
CAG-47.
Docket No. CI85-504-000, Hadson Gas Systems, Inc.
CAG-48.
Docket No. CI85-467-000, Park-Ohio Energy, Inc.
CAG-49.
Docket No. CP85-385-000, Mountain Fuel Resources, Inc.
CAG-50.
Docket No. CP85-333-000, Great Lakes Gas Transmission Company
CAG-51.
Docket Nos. CP85-89-000 and 001, Eastern Shore Natural Gas Company
Docket Nos. CP85-94-000 and 001, Columbia Gas Transmission Corporation
CAG-52
Docket Nos. CP84-630-000 and CP84-631-000 and 001, Lawrenceburg Gas Transmission Corporation
CAG-53.
Docket No. CP85-162-000, Tennessee Gas Pipe Line Company, a division of Tenneco Inc.
CAG-54.
Docket Nos. CP84-293-000 and 001 and CP84-425-000 and 001, Michigan Consolidated Gas Company and Interstate Storage Division
Docket Nos. CP77-253-016 and 018, Panhandle Eastern Pipeline Company
CAG-55.
Docket Nos. CP85-376-000 and 001, Colorado Interstate Gas Company
CAG-56.
Docket No. CP85-31-000, United Gas Pipe Line Company
CAG-57.
Docket No. CP85-358-000, Northern Natural Gas Company, division of Internorth, Inc.
CAG-58.
Docket No. CP85-55-000, National Fuel Gas Supply Corporation
CAG-59.
Docket No. CP85-49-000, Sea Robin Pipeline Company
CAG-60.
Docket No. CP85-296-000, Florida Cities v. Florida Gas Transmission Company and Houston Natural Gas Corporation
CAG-61.
Docket No. CP84-209-013, Lawrenceburg Gas Transmission Corporation
CAG-62.
Docket No. TA85-1-16-005, National Fuel Gas Supply Corporation
CAG-63.
Docket Nos. RP83-70-000 and RP85-38-000, U-T Offshore System
CAG-64.
Docket Nos. TA82-1-52-002, TA82-2-52-003, TA83-1-52-001, TA84-1-52-000, and TA84-2-52-000, Western Gas Interstate Company

I. Licensed Project Matters

P-1.
Project Nos. 5-004 and 2776-000, the Montana Power Company and Confederated Salish and Kootenai Tribes of the Flathead Reservation
Project No. 5-003, the Montana Power Company
Docket No. EL84-12-000, Confederated Salish and Kootenai Tribes of the Flathead Reservation v. the Montana Power Company
P-2.
(A) Docket Nos. EL80-19-000, 004, 005, 006, 007, 008, 009, 011, 012, 013, 014, 015, and 016, Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York
Docket Nos. EL80-24-000, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, and 014, Connecticut Municipal Electric Energy Cooperative v. Power Authority of the State of New York
Docket Nos. EL78-24-029, 032, 033, 034, 035, 036, 038, 039, 040, 041, and 042, Municipal Electric Utilities Association of New York State v. Power Authority of the State of New York
(B) Project No. 2216-003, Power Authority of the State of New York

II. Electric Rate Matters

ER-1.
Docket Nos. ER85-534-000, ER85-424-001, ER85-425-001, and ER85-468-001, Southwestern Electric Power Company
ER-2.
Docket No. QF85-172-000, Power Developers, Inc.
ER-3.
Docket No. QF83-425-003, Electrodyne Research Corporation (Gilberton, Pennsylvania)
ER-4.
Omitted
ER-5.
Docket No. RE81-56-000, Oglethorpe Power Corporation; Altamaha EMC; Amicalola EMC; Canoochee EMC; Carroll EMC; Central Georgia EMC; Coastal EMC; Cobb EMC; Colquitt EMC; Coweta Fayette EMC; Douglas County EMC; Excelsior EMC; Flint EMC; Grady County EMC; Habersham EMC; Hart County EMC; Irwin County EMC; Jackson EMC; Jefferson EMC; Lamar EMC; Little Ocmulgee EMC; Middle Georgia EMC; Mitchell EMC; Ocmulgee EMC; Oconee EMC; Okefenoke Rural EMC; Pataula EMC; Planters EMC; Rayle EMC; Satilla Rural EMC; Sawnee EMC; Slash Pine EMC; Snapping Shoals EMC; Sumter EMC; Three Notch EMC; Tri-County EMC; Troup County EMC; Upson County

EMC; Walton EMC; and Washington EMC

Miscellaneous Agenda

M-1.
Omitted
M-2.
Docket No. RM85-6-000, waiver of the water quality certification requirement of section 401(a) of the Clean Water Act
M-3.
Reserved
M-4.
Reserved
M-5.
Omitted
M-6.
Docket No. GP84-23-000, Stowers Oil & Gas Company, et al.
M-7.
Docket No. GP83-47-000, Oklahoma Corporation Commission, Phillips Petroleum Company, section 103 NGPA determination, Crose A No. 1 well, FERC No. JD80-59073
M-8.
Docket No. GP83-61-000, Texas Railroad Commission, Sun Exploration and Production Company, section 108 NGPA determination, Frost National Bank -C- No. 2N Well, FERC No.JD 82-28865
Docket No. GP84-38-000, Oklahoma Corporation Commission, Getty Oil Company, section 108 NGPA determination, J.E. Wise No. 2 well, FERC No. JD 84-05177
Docket No. GP84-46-000, Texas RAilroad Commission, El Paso Natural Gas Company, section 108 NGPA determination, Yoes A No. 1 Well, FERC JD No. 84-33180
Docket No. GP84-48-000, New Mexico Oil Conservation Division, Arco Oil and Gas Company, section 108 NGPA determination, J.R. Phillips "A" No. 9 Well, FERC No. JD 84-14328
Docket No. GP84-52-000, Oklahoma Corporation Commission, TXO Production Corporation, section 108 NGPA determination, State 16-1 Well, FERC No. JD80-20899
M-9.
Docket No. GP84-40-000, Mineral Resources Incorporated and Natural Gas Pipeline Company of America
M-10.
Docket No. GP85-9-000, Texas Gas Transmission Corporation
M-11.
Omitted
M-12.
Docket No. RO83-8-000, Ven-Fuel, Inc.

I. Pipeline Rate Matters

RP-1.
Docket Nos. TA85-2-18-000, 001 and 002 and TA85-1-18-003, Texas Gas Transmission Corporation
RP-2.
Docket Nos. TA85-4-17-000 and 001, Texas Eastern Transmission Corporation
RP-3.
Docket Nos. TA85-2-26-000 and 001, Natural Gas Pipeline Company of America
RP-4.
Docket No. RP79-23-023, Distrigas of Massachusetts Corporation
Docket No. RP79-24-015, Distrigas Corporation
RP-5.
Docket No. RP84-15-000, MIGC, Inc.
Docket No. RP84-7-000, Colorado Interstate Gas Company
Docket Nos. TA83-2-47-000, TA84-1-47-000, and TA84-2-47-000, MIGC, Inc.
RP-6.
Omitted
RP-7.
Docket Nos. RP80-97-000, RP81-54-000, RP81-56-000, RP82-12-000, and RP82-10-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

II. Producer Matters

CI-1.
Docket No. CI85-135-000, Pennzoil Oil & Gas, Inc. and Pennzoil Producing Company
CI-2.
Docket No. CI78-704-002, Mitchell Energy Corporation

III. Pipeline Certificate Matters

CP-1.
Docket No. RP74-50-001, Florida Gas Transmission Company (Basic Magnesia, Inc.)
Docket No. RP74-50-002, Florida Gas Transmission Company (Wenczel Tile Company of Florida, Inc.)
Docket No. RP74-50-003, Florida Gas Transmission Company (Borden, Inc.)
Docket No. RP74-50-004, Florida Gas Transmission Company (Gardinier, Inc.)
CP-2.
Docket No. CP85-185-000, Tennessee Gas Pipeline Company, a division of Tenneco Inc.
CP-3.
Docket No. CP85-364-000, Northern Natural Gas Company, division of Internorth, Inc.
CP-4.
Docket No. CP85-422-000, Northern Natural Gas Company, division of Internorth, Inc.
Docket No. CP85-478-000, Louisiana Resources Company
CP-5.
Docket No. CP85-117-000, Northwest Pipeline corporation
CP-6.
Docket No. CP68-75-012, Northern Natural Gas Company, division of Internorth, Inc.
Docket No. CI68-816-004, Phillips Petroleum Company

Kenneth F. Plumb,
Secretary.
[FR Doc. 85-16852, Filed 7-11-85; 1:52 pm]
BILLING CODE 6717-01-M

2

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: At 10:00 a.m., Thursday, July 18, 1985.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED:

Insurance Premiums
Net-Worth Requirements of Insured Institutions

Jeff Sconyers,
Secretary.
[FR Doc. 85-16789 Filed 7-11-85; 3:25 pm]
BILLING CODE 6720-01-M

3

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: Friday, July 19, 1985, at 10:30 a.m.

PLACE: Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

MATTERS TO BE CONSIDERED:

Securities Offerings
Finance Subsidiaries
D.C. Branching

Jeff Sconyers,
Secretary.
[FR Doc. 85-16790 Filed 7-11-85; 3:25 pm]
BILLING CODE 6720-01-M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-29]

TIME AND DATE: At 11:00 a.m., Friday, July 19, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Petitions and Complaints:
   a. Cellulose acetate hollow fiber artificial kidneys (Docket No. 1213)—briefing and vote.
2. Investigation 731-TA-269 [Preliminary] (Nylon impression fabric from Japan)—briefing and vote.
3. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,
Secretary.
[FR Doc. 85-16788 Filed 7-10-85; 4:48 pm]
BILLING CODE 7020-02-M

5

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Monday July 22, 1985—2:00 p.m.-5:00 p.m.

PLACE: 525 Griffin Square, Suite 820, Dallas, Texas.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of information of a personal nature regarding certain inmates, parolees, investigative, enforcement or administrative personnel or others, the disclosure of which would constitute a clearly unwarranted invasion of their personal privacy. Consideration of information containing investigative techniques and procedures.

2. Consideration of revision of the agency's personnel rules and/or practices, and related personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Ms. Mary Armstrong, Chairman's Office, (301) 492–5990.

Dated: July 8, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–16825 Filed 7–11–85; 11:38 am]

BILLING CODE 4410-01-M

6

UNITED STATES PAROLE COMMISSION

DATE AND TIME: Monday, July 22, 1985, 9:00 a.m. to 1:00 p.m.

PLACE: 525 Griffin Square, Suite 820, Dallas, Texas 75202.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Appeals to the Commission of approximately 25 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all cases orginally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda Wines Marble, Chief Analyst, National Appeals Board United Parole Commission, (301) 492–5987.

Dated: July 10, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–16826 Filed 7–11–85; 11:38 am]

BILLING CODE 4410-01-M

7

UNITED STATES PAROLE COMMISSION

PLACE: 525 Griffin Square, Suite 820, Dallas, Texas 75202.

DATE AND TIME:

Tuesday, July 23, 1985—9:00 a.m. to 5:30 p.m.
Wednesday, July 24, 1985—9:00 a.m. to 5:30 p.m.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of open business meeting of April 22–24, 1985 and open conference call meeting of June 26, 1985.

2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Operations, and the Administrative Sections.

3. Petitions for rulemaking concerning disclosure of presentence reports.

4. Cross training of professional staff through part-time work in different regions.

5. Waiver of parole dates resulting in new hearing on next available docket.

6. Check list for rewarding inmate assistance under 28 CFR 2.63.

7. Warrant applications and rewording of F-2 Forms.

8. Parolees as informants.

9. Travel request forms.

10. Inter-regional warrant requests.

11. Limitation on written material at hearings.

12. Dispositional revocation hearings—proposed modification of 28 CFR 2.47.

13. Deletion of rule at 28 CFR 2.62 regarding minimum sentence reduction.

14. Amendment of rule at 28 CFR 2.40(13) to require satisfaction of certain court ordered obligations as conditions of release.

Consent Agenda

The following Consent Agenda Items shall be deemed adopted by consent and will not be discussed at the meeting unless a request to discuss a particular item has been received by July 18, 1985.

15. Technical revisions to disclosure rules and procedures under 28 CFR 2.55 and 2.56.

16. Obsolete rules and procedures.

17. Good time credit—inapplicability to violator terms.

CONTACT PERSON FOR MORE INFORMATION: Peter B. Hoffman, Director of Research, United States Parole Commission, (301) 492–5980.

Dated: July 10, 1985.

Joseph A. Barry,

General Counsel, United States Parole Commission.

[FR Doc. 85–16827 Filed 7–11–85; 11:38 am]

BILLING CODE 4410-01-M

federal register

Monday
July 15, 1985

Part II

Environmental Protection Agency

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

Hazardous Waste Management System; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, 265, 266, 270, 271, and 280

[SWH-FRL 2724-6]

Hazardous Waste Management System; Final Codification Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA). This new statute makes many changes to EPA's existing hazardous waste management program. The purpose of this rule is to amend EPA's existing hazardous waste regulations to reflect those statutory provisions that have immediate or short-term effects on the regulated community. This rule also adds Part 280 to the EPA regulations to incorporate the interim prohibition of new section 9003(g), added by the 1984 Amendments. This section prohibits the installation of any new underground storage tank for regulated substances unless the tank is protected against corrosion and structural failure and is compatible with the substance to be stored.

EFFECTIVE DATE: These rules become effective July 15, 1985.

ADDRESSES: The official record for this rulemaking is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Holidays.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Jim O'Leary, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Toll free: RCRA Hotline (800-424-9346). In Washington, D.C.: (202-382-3000).

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are issued under authority of sections 2002(a), 3001, 3002, 3004, 3005, 3006, 3010, 3015, 3017, 3019, 9001, and 9003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6921, 6922, 6924, 6925, 6926, 6930, 6935, 6937, 6939, 6991, and 6993.

II. Background

On November 8, 1984, the President signed into law the Hazardous and Solid Waste Amendments of 1984 (HSWA), a major new statute that will require profound changes in the way that this country manages hazardous wastes. A brief summary of the new law's major provisions indicates the magnitude of the changes:

1. A new program for banning wastes from land disposal.

2. Prohibitions against certain land disposal practices (e.g., placement of liquids in landfills; placement of waste in salt bed formations, mines, and caves; use of hazardous waste as a dust suppressant; and certain types of underground injection).

3. Minimum technological measures for landfills, surface impoundments, and incinerators.

4. Expanded requirements for ground-water monitoring and cleanup at permitted facilities.

5. Requirements for retrofitting certain existing surface impoundments with liners.

6. Authority to expedite permits for new and innovative treatment technologies to foster research and development.

7. Authority to require permit conditions beyond the scope of EPA's existing regulations.

8. Tighter controls on small quantity generators of hazardous waste.

9. Requirements to identify additional hazardous wastes.

10. A full assessment of the hazards posed by a waste before EPA may delist it.

11. Requirements for thorough inspections of State and Federal facilities.

12. Enhanced Federal enforcement authorities (including the ability to issue "corrective action orders" to interim status facilities).

13. Specific controls on the burning and blending of hazardous wastes as fuels.

14. Specific requirements for the regulation of used oil.

15. Tighter controls on the export of hazardous wastes.

16. A new program for identifying the health risks presented by surface impoundment and landfill facilities.

17. An expanded program for the regulation of solid waste management facilities.

18. Greater citizen involvement in "imminent and substantial hazard" cases under section 7003.

19. A major new program for regulating underground storage tanks.

20. The establishment of a National Ground Water Commission.

These comprehensive amendments are all the more significant because of the ambitious schedules the Congress has established for the imposition of these requirements. Many of the provisions are already in effect; others go into effect within very short time frames. Other sections of the statute establish "hammer" provisions (i.e., requirements that go into effect by statute if EPA fails to issue regulations by certain dates).

These new amendments present serious new challenges to EPA, the regulated community, and the public at large. The first of these challenges is the task of developing a working understanding of the new statute's provisions. To fully appreciate the changes to EPA's hazardous waste program that have been made by this statute, one must not only become familiar with the specifics of individual provisions but also must understand the interrelationships that exist among the various sections of the law.

As will be described in more detail in the next section, today's rule is EPA's effort to facilitate such an understanding of the new amendments to RCRA. In EPA's view, an early, clear articulation of the regulated community's new responsibilities is an essential step in any strategy for the effective implementation of the Congress' will.

III. Purpose of Today's Rule

The purpose of today's rule is to incorporate into the existing Subtitle C regulations a set of requirements from the new RCRA amendments that become effective as a matter of statute in the short term. EPA is making these modifications to the existing rules through a final rule that will be immediately effective. In addition, EPA is adding a new interim prohibition on the installation of certain new underground storage tanks. In light of the fact that this rule is being issued before there has been an opportunity for public comment, EPA has, for the most part, simply codified into the regulations the statutory language associated with each provision.

Specifically, today's rule addresses the following provisions of the RCRA amendments:

1. The ban on placement of bulk liquid hazardous waste and nonhazardous liquids in landfills.
2. The permitting and interim status requirements for double liners and leachate collection systems at surface impoundments and landfills.
3. The redefinition of "regulated unit" for purposes of the ground-water monitoring and response program.
4. The obligation to institute corrective action for solid waste management units at permitted facilities.
5. The elimination of the double liner variance from the ground-water monitoring and response program allowed for landfills, surface impoundments, and waste piles.
6. The variance from ground-water monitoring allowed for certain engineered structures.
7. The ban on disposal in certain salt dome formations, caves, and underground mines.
8. The ban on use of materials mixed with dioxins or other hazardous waste for dust suppression.
9. The interim measures (i.e., manifest and destination requirements) for small quantity generators producing between 100 and 1000 kilograms of waste per month.
10. The preconstruction ban with the variance for PCB facilities having EPA approvals under TSCA.
11. The restrictions on a facility's permit life.
12. The authority to add conditions to a permit beyond those provided for in regulations.
13. The extension of interim status to facilities that become subject to permitting requirements because of new regulatory requirements.
14. The loss of interim status for facilities failing to submit Part B applications within specific deadlines and for failure to self-certify compliance with ground-water monitoring and financial responsibility requirements.
15. The ban on the burning of hazardous wastes in certain cement kilns.
16. The requirement to label hazardous waste fuels.
17. The exclusion for certain wastes burned at resource recovery facilities.
18. The additional criteria (i.e., other constituents or factors) that must be evaluated before a waste can be delisted.
19. The authority to foster innovative research and development by the issuance of special treatment permits.
20. Extending the life of interim authorization for State programs by one year.
21. The requirement that State programs assure the public availability of information.
22. The identification of the new requirements that will go into effect in authorized States prior to State authorization.
23. The requirements concerning recordkeeping for hazardous waste exports.
24. The requirements for generators and owners or operators of treatment, storage, and disposal facilities to certify that they have instituted a waste minimization program.
25. The interim prohibition on the installation of any new underground storage tank for regulated substances unless the tank is protected against corrosion and structural failure and is compatible with the substance to be stored.

EPA recognizes that many of these provisions raise interpretive questions. For the most part, EPA has avoided adding regulatory language to resolve interpretive questions. This is in keeping with EPA's view that the principal purpose of today's rule is to codify the new statutory requirements. EPA has articulated in the preamble, however, its view of what Congress intended these new requirements to be. Such statements of statutory interpretation are derived from the legislative history and EPA's view of Congressional purposes for the new requirements.

In addition, EPA intends to prepare a companion proposed rule to today's final rule that proposes modifications to the existing regulations to assist in implementing the new statutory provisions. This proposal will deal with issues that are logical outgrowths of the new provisions rather than matters addressed directly by the statutory language.

While it recognizes the importance of public comment in its rulemaking activity, EPA believes that the circumstances presented by the new RCRA amendments create a need for swift administrative action before public comment can be obtained. The Administrative Procedures Act, 5 U.S.C. 551, *et seq.*, specifically recognizes that there will be situations where an administrative agency need not go through a round of public comment before issuing a substantive rule. Under 5 U.S.C. § 553(b)(3)(B), a rule is exempt from notice and public comment requirements "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedures thereon are impractical, unnecessary, or contrary to the public interest."

The Administrative Conference of the United States has recently summarized the case law that has developed on the use of the "good cause" exemption by offering the following guidance to administrative agencies:

> Examples of the types of situations requiring use of the exemption are those in which (1) advance notice of rulemaking will defeat the regulatory objective, (2) immediate action is necessary to reduce or avoid health hazards of imminent harm to persons or property, (3) immediate action is required to prevent serious dislocation in the marketplace, and (4) delay in promulgation will cause an injurious inconsistency between an agency rule and a newly enacted statute or judicial decision. ACUS Recc. 83-2: *The "Good Cause" Exemption from APA Rulemaking Requirements*, 1 CFR Part 305.83-2 (1984).

An examination of the circumstances presented by the new amendments and the limited objectives of this rule indicates that EPA may properly invoke the good cause exemption from the notice and comment requirements of the APA. First of all, the Congress has specifically indicated that it expects EPA to make use of the good cause exemption in the early stages of its implementation program. The Conference Report on the statute [H.R. Report No. 1133, 98th Cong., 2d Sess., 112 (1984)] states:

> For those provisions of this Act which are immediately effective, it would be contrary to the public interest and impractical for EPA to engage in the time-consuming rulemaking procedures required by Section A of the APA, 5 U.S.C. Section 553, to carry out swiftly its statutory mandate. Therefore, for such immediately effective provisions, EPA appropriately may invoke the "good cause" exemption of 5 U.S.C. Section 553(b)(B) and (d)(3), in issuing final substantive or interpretative rules to implement those provisions. This will enable the Agency to put into place swiftly the enacted requirements.

Second, immediate action serves important public policy objectives. The Congress has clearly indicated in the new statute that many of its provisions are to go into effect immediately or within a very short period of time. If that objective is to be met, it is vital that the regulated community become aware of the new requirements and fully understand how their operations must change. EPA's regulations provide the most effective vehicle for officially communicating the will of Congress. The regulated community has been working with EPA's regulations for several years now. Those regulations have become the touchstone for the hazardous waste program, defining the basic requirements that must be met. Many permits that have been issued to owners and operators of treatment, storage, and disposal facilities reference specific sections of the regulations. Many State regulatory programs are modeled after EPA's regulations; some States even incorporate EPA's regulations by reference.

Thus, by modifying the current EPA regulations to reflect the new statutory amendments, EPA is translating those requirements into the regulatory parlance with which the interested public is most familiar. This step should help to eliminate much of the confusion that would result if individual members of the regulated community had to struggle on their own to understand the effect of the new amendments on their responsibilities. They certainly would have difficulty understanding which parts of the existing regulations had been superseded by new requirements and which had not.

This effort to bring EPA's regulations into line with the new statutory provisions also has important benefits for the Agency's enforcement efforts. An important aspect of any effective enforcement program is an effort to put regulated parties on notice of what the law says so that they cannot claim that they were confused about their responsibilities.

By reducing confusion about the program and clarifying responsibilities for enforcement purposes, EPA is ultimately serving the basic purposes of the statute—the protection of human health and the environment. An atmosphere of confusion about the content of a new environmental law can only paralyze efforts by responsible segments of the regulated community to move ahead to meet their responsibilities and can only provide another excuse for those segments of the regulated community that are not inclined to comply with the law. Neither result advances the Congress' objective of promptly reducing the threats to human health and the environment posed by hazardous waste management. Thus, EPA's efforts to codify the new amendments into its regulations should provide important immediate benefits for protecting human health and the environment.

A third consideration is that EPA has tried to minimize the need for public comment on the final rule by codifying the exact statutory language for most of the provisions. Given this approach, the need for public comment on the final rule is much reduced.

For the reasons described above, EPA has concluded that there is good cause to issue today's rule prior to receiving public comment because, under the circumstances, notice and comment procedures would be impracticable, unnecessary, and contrary to the public interest under 5 U.S.C. 553(b)(B). For the same reasons, EPA believes that it has good cause to make today's rule immediately effective, instead of effective within 30 days, as provided for in 5 U.S.C. 553(d)(3). EPA also believes it has a sound basis for suspending the statutory six-month effective date for regulations under RCRA provided by section 3010(b). The Hazardous and Solid Waste Amendments of 1984 amended section 3010(b) to provide that EPA may shorten or provide for an immediate effective date where (1) the regulated community does not need six months to come into compliance, (2) the regulation responds to an emergency situation, or (3) there is other good cause. For the reasons described above, EPA believes there is a good cause to make today's rule immediately effective.

IV. Other Elements of EPA's Strategy for Implementing Amendments

EPA's effort to communicate with the public about these new requirements has not and will not be limited to the promulgation of today's rule. A variety of activities have already taken place or are planned to ensure that EPA receives the feedback from Regions and States and from other interested parties necessary for intelligent implementation of the new RCRA program. These activities include:

1. A working conference held on October 24 and 25, 1984, to discuss with the Regions and States options for implementing the early enactment provisions.
2. A December 11, 1984, teleconference held on the new amendments with all ten Regions, and anyone else with a satellite hook-up.
3. A series of informal meetings with State interests and with industrial and environmental groups to further explore major implementation decisions.
4. Mailing of draft guidance to the Regions, States, and outside interests for review prior to publication.
5. A series of regional and public meetings (scheduled for April 1985) to describe implementation plans.
6. Date of Enactment Alert (RSI #1) mailed November 9, 1984, to the Regions and States to inform them of the immediate impact of new provisions on permitting.
7. A series of pamphlets, brochures, and papers to further describe new provisions to affected interests.
8. Direct mailing to treatment, storage, and disposal facilities informing them of the ~~new~~ requirements for which they will be responsible.
9. Direct mailing to small quantity generators informing them of the manner in which they will be affected by new provisions of law.

V. Section by Section Analysis of Regulatory Changes

In this section, EPA discusses in more detail the specific changes being made to the existing regulations by today's rule.

A. Land Disposal Amendments

1. Liquids in Landfills

a. Ban on bulk or non-containerized liquid hazardous waste. The Hazardous and Solid Waste Amendments of 1984 (HSWA) amend section 3004 of RCRA by adding paragraph (c) dealing with the placement of liquids in landfills. Section 3004(c)(1) calls for an absolute ban on the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids in any landfill after May 8, 1985.[1] The statute makes it clear that the ban encompasses hazardous waste containing free liquids even if absorbents have been added to such waste. Until this ban takes effect on May 8, 1985, the requirements set forth in EPA's existing regulations, as promulgated on July 26, 1982, remain applicable.

The rule promulgated today amends EPA's existing regulations for permitted and interim status landfills to implement this new statutory provision. Section 264.314(a) (setting forth standards for permitted landfills) and § 265.314(a) (setting forth standards for interim status landfills) have been changed to reflect the fact that the standards contained therein remain applicable only until May 8, 1985, at which point the absolute ban on the placement in landfills of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids takes effect. This absolute ban is now codified in a new paragraph (b) which has been added both to § 264.314 and to § 265.314.

The Agency interprets the ban on "placement" to include, but not be limited to: (1) Placing bulk liquids into a landfill cell where the liquids are solidified and then transferred to another landfill cell, and (2) placing treated bulk liquids still in liquid form into a landfill cell prior to solidification. The term "placement" is sufficiently broad to encompass treatment, storage, or disposal. The legislative history of a related provision, section 3004(b) (banning the placement of liquid hazardous waste in salt domes, underground mines, or caves) confirms that Congress intended the ban on "placement" to be construed broadly to prohibit even storage of material while awaiting further treatment or disposal, and to preclude use of such locations as treatment chambers. *See* 129 Cong. Rec. H8141 (daily ed. Oct. 6, 1983). Thus, it is evident that the ban is effective regardless of the purpose of placing the liquids into a landfill.

b. Ban on non-hazardous liquids. HSWA also adds new section 3004(c)(3), which imposes a ban on the placement of non-hazardous liquids in permitted or interim status landfills after November 8, 1985. This provision provides an exemption from the prohibition, however, if the owner or operator of such a landfill demonstrates to EPA's satisfaction[2] that: (1) The only reasonably available alternative for these non-hazardous liquids is a landfill or unlined surface impoundment (including units not operating pursuant to a permit or interim status) which already contains, or may reasonably be anticipated to contain, hazardous waste, and (2) the disposal of the non-hazardous liquids in the owner or operator's landfill will not present a risk of contamination to any underground source of drinking water. This exception is designed to prevent the shifting of non-hazardous liquid waste from Subtitle C landfills to muncipal landfills and unlined surface impoundments that contain or might contain hazardous wastes due to prior disposal practices. 129 Cong. Rec. H8138 (daily ed. Oct. 6, 1983). As used in this provision, the term "unlined" surface impoundment means a surface impoundment that does not meet the requirements of 40 CFR Part 264, Subpart K, as promulgated on July 26, 1982. 129 Cong. Rec. H8141 (daily ed. Oct. 6, 1983). Section 3004(c)(3) specifies that the term "underground source of drinking water" has the same meaning as provided in regulations promulgated under the Safe Drinking Water Act (*see* 40 CFR 144.3).

To implement this provision, paragraph (e) has been added to §§ 264.314 and 265.314 (f) banning the placement of a liquid which is not a hazardous waste in permitted or interim status landfills after November 8, 1985. These paragraphs essentially repeat the prohibition and exemption found in section 3004(c)(3). In addition, the permit application requirement pertaining to landfills receiving bulk or non-containerized liquid waste (§ 270.21(h)) is amended to reflect the fact that such waste may continue to be received at landfills only until May 8, 1985.

2. Minimum Technological Requirements

HSWA amends section 3004 of RCRA by adding a new paragraph (o) imposing minimum technological requirements on the owners or operators of certain landfills and surface impoundments seeking permits. HSWA also adds a new section 3015 to RCRA imposing similar requirements on certain interim status waste piles, landfills, and surface impoundments.

Specifically, section 3004(o)(1)(A) provides that a permit for a new landfill or surface impoundment, a new landfill or surface impoundment unit at an existing facility, or a replacement or lateral expansion of an existing landfill or surface impoundment unit, must require the installation of two or more liners, a leachate collection system above (in the case of a landfill) and between the liners, and ground-water monitoring. Section 3004(o)(5)(B) allows the use of a particular type of liner design pending the issuance of EPA regulations or guidance implementing the double-liner requirement in section 3004(o)(1). In today's rule, this provision appears in § 264.221(c) (for surface impoundments) and § 264.301(c) (for landfills).

Section 3004(o)(2), codified in today's rule at §§ 264.221(d) and 264.301(d), provides an exemption from the section 3004(o)(1)(A) standards for liners and leachate collection systems if alternative design and operating practices, together with location characteristics, will prevent the migration of hazardous constituents into the ground water or surface water at least as effectively as the liners and leachate collection systems. Section 3004(o)(3) exempts certain monofills from the double liner requirements. The monofill exemption is added in §§ 264.221(e) and 264.301(e).

Section 3015(b)(1) establishes standards for interim status surface impoundments and landfills. Any new unit, or replacement or lateral expansion of an existing unit, is subject to the requirements of section 3004(o) (relating to minimum technological requirements), with respect to waste received beginning May 8, 1985. According to section 3015(b)(2), the owner or operator of any unit subject to section 3015(b) must notify EPA as least sixty days prior to receiving waste and must file a Part B application within six months of the receipt of the notice. Today's rule adds new § 265.221 to codify the requirements for interim status surface impoundments. New § 265.301 contains the requirements for interim status landfills.

Section 3015(b)(3) provides that the owner or operator of a surface impoundment or landfill who installs liners and a leachate collection system in good faith compliance with EPA regulations and guidance documents, may not be required to install a different liner or leachate collection system at the time that the facility receives its first permit. Notwithstanding this provision, the Administrator may require installation of a new liner at permitting if the Administrator has reason to believe that the liner installed during interim status is leaking. The language

[1] "Free liquids" are liquids which readily separate from the solid portion of a waste under ambient temperature and pressure. 40 CFR 260.10.

[2] The language of section (c)(3) requires a determination by the "Administrator." In codifying this and other statutory provisions which use the term "Administrator," EPA has substituted the term "Regional Administrator" where this usage would be consistent with EPA's current regulations.

of this provision appears in §§ 265.221(e) and 265.301(e).

Section 3015(a) sets out standards for interim status waste piles. Any new waste pile unit, or replacement or lateral expansion of an existing unit, must comply with requirements for liners and leachate collection provided in current regulations or in revised regulations under section 3004(o). The new standards are applicable to any new waste pile unit, or replacement or lateral expansion of an existing unit, with respect to waste received beginning May 8, 1985. Today's rule has added these requirements in new § 265.254.

The following discussion explains in more detail the intended applicability and content of the minimum technological requirements.

a. Who is affected by the statutory amendments. Section 3004(o)(1)(A) specifies which facilities, units, and lateral expansions will have to comply with the new minimum technological requirements at the time of permitting. Section 3015 specifies which units and lateral expansions are subject to the new standards during interim status. This section of the preamble compares the scope of the two provisions and explains who must comply with the new requirements.

Under section 3004(o)(1)(A), a permit issued after November 8, 1984 must require liners, leachate collection, and ground-water monitoring for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, and each replacement or lateral expansion of an existing landfill or surface impoundment unit. The requirements apply with respect to waste received after the issuance of the permit.

Section 3015, which subjects the owner or operator of a waste pile, landfill, or surface impoundment operating under interim status to minimum technological requirements, uses language similar to that used in section 3004: units subject to section 3015 include any new unit, any replacement of an existing unit, and any lateral expansion of an existing unit. The provision applies with respect to waste received beginning May 8, 1985.

Currently, EPA defines "unit" in the preamble to the July 26, 1982, regulations as a contiguous area of land on or in which waste is placed, or the largest area in which there is a significant likelihood of mixing waste constituents in the same area. *See* 47 FR 32289. This definition envisions a unit as a defined or bounded area designed to contain waste, with either natural or artificial boundaries. The legislative history to HSWA confirms that Congress intended "unit" to be defined as in the preamble to the EPA regulation published on July 26, 1982, and as further defined by EPA. *See* H.R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 60 (1983).

Consistent with this definition, EPA considers that the available physical evidence (e.g., berms, excavation, or other construction) offers the best indication of where the boundaries of a unit are located. Other objective information, such as operating records or the Part A permit application, also may be used to identify the boundaries of a unit.

Surface impoundments will generally be either excavated or bounded by dikes. Similarly, most landfill trenches or cells are excavated and the boundaries of the unit will be readily recognizable. For certain areafills and waste piles, where no defined boundaries exist and no construction or excavation is necessary or planned (because waste is placed on the unprepared land surface), the boundaries of the unit will be determined based on various objective factors, such as evidence in the facility operating record or the Part A permit application, which would indicate whether a particular area was intended to be an individual unit (i.e., a bounded area where waste will be placed).

Neither the statutory language nor the legislative history specifically provides an interpretation of the term "lateral expansion." A lateral expansion would be defined as an expansion of the boundaries of the existing unit. Hence, if an existing interim status surface impoundment or landfill unit expands after November 8, 1984 to cover new land area, the expanded area must comply with the double liner and leachate collection requirements if that area is still receiving waste on May 8, 1985. Expansion is usually accomplished in a surface impoundment by moving dikes to create additional capacity, or in a landfill by excavating additional areas to enlarge an existing trench.

For interim status purposes, section 3015 specifies that the new requirements apply to a lateral expansion of an existing unit that is within the "waste management area" identified in the Part A permit application.[3] In codifying the new interim status requirements in §§ 265.221(a), 265.254, and 265.301(a), EPA has used the term "area," rather than the term "waste management area" used in the statute. EPA believes Congress intended the term "waste management area" to refer to the area identified in the original or amended Part A. The term "waste management area" as used in EPA regulations has a precise meaning: it designates the area on which waste will be placed during the active life of a *regulated unit*. *See* 40 CFR 264.95(b). Because "regulated unit" is a term of art under the ground-water monitoring and response program, the use of the term "waste management area" will not always be appropriate in the context of the provision dealing with double-liner requirements. It is reasonable to assume that Congress, in using the term, intended to refer to the area designated in the Part A permit application, not "waste management area" as the term is used in § 264.95(b).

A "replacement" waste pile or surface impoundment unit is a unit that is taken out of service and emptied by removing all or substantially all waste from it. The unit must be brought into compliance with the minimum technological requirements before it can be reused. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983).

In codifying sections 3004(o)(1)(A) and 3015, EPA had to determine what the terms "new" and "existing" should mean in this context. The statutory scheme, the legislative history, and the existing regulatory system support the conclusion that the terms "new" and "existing" must have different meanings for the purposes of interim status (section 3015) and of permitting (section 3004(o)(1)).[4]

The language of section 3015, and the relationship of this provision to section 3004(o), dictate that the applicability of the minimum technological requirements to interim status units be determined with reference to the date of enactment of HSWA, November 8, 1984. For

[3] The language of section 3015 refers to a lateral expansion of an existing unit that is "within the waste management area identified in the permit application submitted under Section 3005." EPA has interpreted the phrase "permit application submitted under section 3005" to mean the Part A permit application. *See* S. Rep. No. 284, 98th Cong., 1st Sess., 24 (1983).

[4] The definitions of "new facility" and "existing facility" set out in EPA's current regulations at 40 CFR § 260.10 (October 21, 1976 for "new" facilities, and November 19, 1980 for "existing" facilities), cannot be used for the new regulations, because the applicable dates do not relate to the purposes of the liner amendments in HSWA.

New section 3004(o)(4) (requiring EPA to promulgate standards on leak detection systems within thirty months) does provide a definition of "new unit" as a unit on which construction commences after the promulgation of regulations under section 3004(o)(4). However, the statute expressly restricts the use of that definition to the purposes of section 3004(o)(4). Such a definition would not be appropriate for section 3004(o)(1), which goes into effect on the date of enactment of HSWA.

purposes of section 3015, a new unit, replacement of an existing unit, or lateral expansion of an existing unit is defined as a unit, replacement, or lateral expansion that first receives waste after November 8, 1984. Such a unit or expansion must comply with the minimum technological requirements with respect to waste received beginning May 8, 1985.[5]

This interpretation of section 3015 tracks the unambiguous legislative history to this provision. The legislative history defines new units, replacements, and lateral expansions for the purposes of section 3015 as those units or lateral expansions that first receive waste after the date of enactment of HSWA (November 8, 1984). The legislative history specifies that any such unit or expansion must comply with the minimum technological requirements if it continues to receive hazardous waste six months after enactment (May 8, 1985). *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983).

Thus, any new unit, replacement, or lateral expansion of an existing unit that first receives waste after November 8, 1984 is subject to the new requirements. *If* such a unit is still receiving waste on May 8, 1985, the minimum technological requirements must be in place on that date. In effect, the statute allows such a unit or lateral expansion a six-month period from the date of enactment of HSWA to come into compliance with the new standards.

Moreover, the entire unit or lateral expansion is subject to the new standards if the unit continues to receive waste after May 8, 1985. This means that if waste has been placed in a new unit or lateral expansion prior to May 8, 1985, the owner or operator must still bring the *entire* unit into compliance with the new liner and leachate collection standards in order to continue using the unit after May 8, 1985. The language and legislative history of section 3015 both require that "new units" have the required liners and leachate collection systems in order to receive waste after May 8, 1985. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983). The provision acts to give owners and operators the option of either closing new units or bringing the units into compliance with the double liner and leachate collection requirements.

Under section 3015, then, several options are available for a new unit or lateral expansion:

(1) If the unit continues to operate on May 8, 1985, an owner or operator who wishes to continue using the whole unit must line the entire unit in accordance with the new requirements. If the unit has received waste between November 8, 1984, and May 8, 1985, the owner or operator will have to retrofit.

(2) An owner or operator may be able to restructure a unit that has received waste between November 8, 1984, and May 8, 1985, by creating a barrier between the area that contains waste and any empty area (e.g., a berm within a landfill trench). The empty area would then constitute a new unit which can receive waste after May 8, 1985, if it complies with the new statutory requirements. To avoid retrofitting in this situation, the owner or operator would have to cease placing waste into the portion of the old unit that had received waste between November 8, 1984, and May 8, 1985.

(3) If a new unit or a replacement or lateral expansion of an existing unit operating under interim status stops receiving hazardous waste before May 8, 1985, the unit need not comply with the minimum technological requirements. In other words, section 3015 does not impose any new requirements on an interim status unit or lateral expansion that first receives waste after November 8, 1984, but ceases receiving waste before May 8, 1985.

The above analysis suggests that if a unit had received waste prior to the date of enactment of HSWA, it would automatically be exempt from the minimum technological requirements. However, the legislative history accompanying section 3015 indicates that in addition to having already received waste by the date of enactment, a unit must also be "operational" by that date in order to be exempt from the new requirements. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24 (1983). EPA believes that in order to be "operational" as of November 8, 1984, a unit must have been constructed to comply with all Federal, State and local requirements, including licenses and permits, in effect prior to the enactment of HSWA, so that as of November 8 there was no legal impediment to the operation of the unit. EPA believes that Congress would not have viewed a unit as being operational unless it was authorized to receive waste and had the legal right to operate.

If, for some reason, the entire unit was not operational on November 8 (for example, a liner or leachate collection system required by a State permit was not in place), only the part of the unit which was ready to receive waste in accordance with existing requirements in effect on November 8, 1984, will be exempt from the new requirements. EPA believes that this is the only area that can qualify as an "existing unit" under section 3004(o) given this legislative history. An owner or operator who has installed liners or leachate collection systems which exceed the applicable Federal, State or local requirements in effect on November 8, 1984, need not have completed such installation by November 8 in order for the unit to be exempt from the new double liner provisions (as long as the applicable legal requirements have already been complied with). It should be emphasized that in order to be exempted from the new minimum technology requirements, the unit must satisfy both criteria enumerated in the legislative history of the bill from which this provision was drawn: the unit must already have begun receiving waste by the date of enactment of HSWA, and it must have been fully operational by that date.

Section 3015 does not expressly identify the type of waste a unit must contain in order to qualify as an existing unit. Based on the purposes of HSWA and on current regulatory practice, a unit should qualify as an existing unit if it has received hazardous wastes or solid wastes (as defined in 40 CFR 261.2) or both before November 8, 1984. This characterization is appropriate for the purposes of HSWA because it exempts from the new requirements those units for which retrofitting would most likely be impracticable or dangerous. Retrofitting may be burdensome not only for wastes identified or listed as hazardous, but also for many non-hazardous solid wastes as well. This rationale is also consistent with the provision in current regulations exempting from the single liner requirements those units for which retrofitting would be impracticable or burdensome. *See* 47 FR 32290, 32315.

As noted above, while section 3015 defines the applicability of the minimum technological requirements to interim status units, section 3004(o)(1)(A) applies the requirements to permitted

[5] The applicability provisions for interim status facilities are the same for waste piles, landfills, and surface impoundments. Although section 3015 deals separately with waste piles (section 3015(a)) and with surface impoundments and landfills (section 3015(b)), the two sections use identical language: both 3015(a) and 3015(b) refer to new units, replacements and lateral expansions of existing units.

Section 3015(a) differs from section 3015(b) in that the technical requirements imposed on waste piles (a single-liner system) are not the same as the technical requirements imposed on landfills and surface impoundments (a double liner system). These technical requirements are further explained in Sections b. and d. below.

landfills and surface impoundments.[6] In the context of the permit program, new facilities, new units, and replacements or lateral expansions of existing units refer to those units or lateral expansions that first receive waste after the date of permit issuance. Such facilities, units, replacements, or lateral expansions must comply with the minimum technological requirements under section 3004(o)(1)(A).

Today's regulations interpret section 3004(o)(1)(A) to apply to all facilities that receive a permit after the date of enactment of HSWA. The language of section 3004(o)(1)(A) could be read to impose the minimum technological requirements only on those facilities for which a Part B application is received after the date of enactment.[7] Such a limitation, however, would be inconsistent with the new standards established in section 3015, requiring interim status units that first receive waste after the enactment of HSWA to comply with the minimum technological requirements of section 3004(o). If applied literally, the statutory language could be read to require that a facility comply with minimum technological requirements during interim status but be relieved from these same requirements after permitting if the permit application was received prior to November 8, 1984.

For example, an interim status landfill for which a Part B application was submitted prior to November 8, 1984, would still be subject to new section 3015 during interim status. (The timing of the submission of the Part B application does not affect the applicability of the minimum technological requirements during interim status, because section 3015 applies to all new interim status units and expansions.) If several trenches were planned at the landfill, any new interim status trench that began receiving waste after November 8, 1984 and continued to receive waste after May 8, 1985, would have to comply with the new double liner requirements. After the facility received its permit, it would be subject to the requirements of section 3004(o). Applied literally, the language of section 3004(o) could exempt from the double liner requirements any trenches which first received waste after permit issuance, if the facility's Part B application was submitted before November 8, 1984. In consequence, the minimum technological requirements would apply to new units at such a facility only until the facility received its permit, at which time any new units at the same facility would be exempted from the requirements.

Such a result cannot be reconciled with the structure of the treatment, storage, and disposal standards that EPA has pursued since the inception of the hazardous waste program. EPA has operated on the assumption that shifting a facility from interim status to permitting results in stricter controls, or at least no less stringent requirements, on the facility. The original theory behind the interim status standards was that they constituted a subset of the standards EPA planned to impose during permitting. *See* 45 FR 33159. EPA does not believe that Congress intended to reverse that basic principle of the RCRA program with this amendment. No such intent can be drawn from the statutory language or legislative history. Certainly it cannot be concluded that Congress intended to have EPA downgrade environmental controls when it issued a permit.

Therefore, today's rule interprets section 3004(o)(1)(A) to apply to all facilities receiving a permit after November 8, 1984, regardless of when the Part B was submitted. However, neither the statutory language nor the legislative history mandates the minimum technological requirements of section 3004(o)(1)(A) for facilities that received permits on or before November 8, 1984. Accordingly, today's regulation does not impose the requirements on facilities that received permits by that date.

An additional provision, paragraph (b)(3) of section 3015, outlines EPA's authority during the permitting process to require the retrofitting of liners and leachate collection systems installed in interim status landfills and surface impoundments. (This provision does not apply to waste piles.) Section 3015(b)(3) provides that if the interim status liners and leachate collection systems have been installed in good faith, EPA may not require the unit to retrofit at the time the facility receives its first permit.

Section 3015(b)(3) also provides an exception to the good faith provision. The Administrator is authorized to require installation of a new liner when the Administrator has reason to believe that the liner installed during interim status is leaking.

EPA has construed its authority to require retrofitting under section 3015(b)(3) as being limited to the time of permitting. Neither the statutory language nor the legislative history suggests that Congress intended to give EPA a broader authority under section 3015(b)(3) to require interim status units to retrofit prior to issuance of a permit.[8] (For a discussion of the technical requirements associated with the good faith provision, see Section c. below.)

Existing units, as noted above, are not affected by the new law. A landfill or surface impoundment unit that already contained waste and was operational on November 8, 1984, qualifies as an existing unit under the new law: it is an existing unit under section 3015 (interim status) because it received waste and was operational before the date of enactment of HSWA, and it is also an existing unit under section 3004(o)(1) (permitting) because it received waste before permit issuance. Therefore, the entire unit is exempt from the new minimum technological requirements. However, EPA's current regulations do require the lining of partial units at the time of permit issuance: Section 264.221(a) (for surface impoundments) and § 264.301(a) (for landfills) require the portions of units not covered with waste at permit issuance to install a single liner (with a leachate collection system above the liner, in the case of a landfill). This means that even if a unit is exempt from the new double liner standards, it is still subject to EPA's current single liner standards at permitting. Nothing in HSWA suggests that Congress intended entirely to invalidate these regulations; rather, the regulations are superseded in part by the standards in new sections 3015 and 3004(o)(1)(A). Today's rule amends existing §§ 264.221(a) and 264.301(a) to limit the applicability of those provisions to units which are exempt from the new double liner standards.

In summary, the combined effect of sections 3004(o)(1)(A) and 3015 is to require any unit, replacement, or lateral expansion that first receives waste after November 8, 1984 to comply with the minimum technological requirements on May 8, 1985 (if such unit, replacement, or lateral expansion is still receiving waste on that date), or at permitting, whichever occurs first. Landfill and surface impoundment units that install

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[6] Section 3004(o)(1)(A) applies only to permitted landfills and surface impoundments and does not impose any new requirements on permitted waste piles. All permitted waste piles will continue to be subject to the current regulation, § 264.251(a)(1), which requires the portions of units not covered with waste at permit issuance to have a single liner and leachate collection system.

[7] Section 3004(o)(1)(A) refers to facilities "for which an application for a final determination regarding issuance of a permit under section 3004(c)" is received. Today's rule interprets this phrase to mean a Part B application.

[8] This is not the only authority, however, under which a retrofit requirement might be imposed. As discussed in Section V.A.3. of this preamble, EPA has authority under setion 3008(h) to issue orders requiring corrective action at interim status facilities, which may include source control measures such as retrofitting of liners.

double liners and leachate collections systems in good faith during interim status cannot be required to retrofit at the time of first permitting unless the liner is leaking. Any landfill or surface impoundment unit that received waste and was operational before November 8, 1984, is exempt from the statutory minimum technological requirements but must comply with the Agency's current single liner regulations at permitting.

b. Technical requirements: Liners and leachate collection systems. New section 3004(o)(1)(A)(i) adds a provision requiring new units and lateral expansions and replacements of existing landfills and surface impoundments that receive permits after November 8, 1984, to have two or more liners. Surface impoundments must have a leachate collection system between the liners, while landfills must have a leachate collection system above and between the liners. These new requirements are codified in §§ 264.221(c) (setting out design and operating requirements for permitted surface impoundments) and 264.301(c) (setting out design and operating requirements for permitted landfills). Every landfill or surface impoundment subject to the new law must meet the statutorily mandated minimum technological requirements for two or more liners and a leachate collection system above and between the liners (for landfills) and two or more liners with a leachate collection system between the liners (for surface impoundments), unless the conditions for a statutory variance are met. (See Section e. below for a discussion of variances.)

The Agency interprets section 3004(o)(1)(A)(i) to require that the liner and the leachate collection system between the liners extend to any area of the unit that is in contact with the waste. This interpretation of the statutory requirement is consistent with the Agency's current regulatory practice regarding the design of liners and leachate collection systems. Congress intended that the Agency's existing design standards provide the basis for interpreting the new minimum technological requirements. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 27 (1983); H.R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 63 (1983). In addition, the legislative history suggests that the leachate collection system should act both as a leachate collection and removal system and a leak detection system. These purposes can be achieved only if the liners and the leachate collection system between the liners cover all surfaces of the unit that are in contact with the wastes. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 26 (1983); H.R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 62, 63 (1983).

Sections 264.221(c) and 264.301(c) provide a broad narrative standard for the new liner requirement: the statutorily mandated double liners and leachate collection systems shall "protect human health and the environment." This broad standard is drawn directly from the statutory language in section 3004(a). While section 3004(o)(1) does not specifically set forth a standard, that section is ultimately designed to implement the mandate of section 3005(a).[9] It must be assumed that Congress wanted EPA to issue double liner standards "as necessary to protect human health and the environment" when enacting section 3004(o).

Under section 3015(b)(1), landfills and surface impoundments operating under interim status must comply with the minimum technological requirements set out in section 3004(o). To implement this statutory requirement, today's rule requires interim status landfill and surface impoundment units to comply with the liner and leachate collection requirements set out in the new Part 264 regulations described above. Specifically, new § 265.221(a) requires interim status surface impoundments to install liners and leachate collection systems in compliance with § 264.221(c). Similarly, new § 265.301(a) requires interim status landfills to install liners and leachate collection systems in compliance with § 264.301(c).

Section 3004(o)(5)(A) requires EPA to promulgate regulations or issue guidance documents implementing the requirements of section 3004(o)(1) within two years after the enactment of HSWA. Until the effective date of such regulations or guidance documents, section 3004(o)(5)(B) provides that the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period the facility remains in operation (including any post-closure monitoring period) and a lower liner designed, operated and constructed to prevent the migration of any constituent through the lower liner during such period. The statute further provides that a lower liner shall be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second. This interim liner standard is codified in §§ 264.221(c) and 264.301(c). The statute makes it clear that the standard set out in section 3004(o)(5)(B) will be superseded by EPA regulations or guidance documents implementing the statutory requirement contained in section 3004(o)(1). The Congress viewed this interim design as a measure intended to fill the gap before EPA acted. *See* 130 Cong. Rec. S9182 (daily ed. July 25, 1984).

The statute does not mandate the use of the liner standard set out in section 3004(o)(5)(B) during the period prior to the issuance of implementing regulations or guidance: rather, the statute provides that the requirement for two or more liners "may" be satisfied by following section 3004(o)(5)(B). The Agency believes that, during this interim period, an owner or operator who wishes to install a liner system other than the one described in section 3004(o)(5)(B) must meet the broad narrative standard of protection of human health and the environment.

c. Requirements under the good faith provision. As noted in Section a. above, section 3015(b)(3) provides that if the owner or operator has installed liners and a leachate collection system pursuant to the requirements of section 3015 and in good faith compliance with regulations and guidance documents governing liners and leachate collection systems, the Administrator shall not require the owner or operator to install a different liner or leachate collection system for the unit when issuing the first permit, except that a new liner may be required if the Administrator has reason to believe that a liner installed during interim status is leaking.

The intent of this provision was to provide that anyone who followed EPA guidance documents would be presumed to have acted in good faith. Retrofitting would be required in cases involving fraud or gross noncompliance, including failure to install a liner or leachate collection system, installation of a liner or leachate collection system not in compliance with EPA guidance documents, or inadequate documentation of any major design feature or construction activity. In addition, failure to submit the required notice prior to receipt of waste (see Section g. below) would result in the elimination of the "good faith" protections of this provision. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 24–25 (1983).

In order to determine whether a liner system has been installed in good faith,

[9] Section 3004(o) begins with the phrase "The regulations under subsection (a) of this section shall * * *."

the Agency will need to have information showing that all appropriate units have been lined in accordance with EPA regulations and guidance documents. The owner or operator should provide the Agency with sufficient information to allow the Agency to determine what areas at any interim status facility are new units, or replacements or lateral expansions of existing units, as of November 8, 1984. EPA intends to issue guidance documents on the installation of liners and leachate collection systems and on recordkeeping. EPA anticipates that the owner or operator will be keeping information showing that he complied with EPA guidance in the facility operating records described in § 265.73. The Agency's upcoming liner guidance will also discuss a construction quality assurance (CQA) plan. Such a plan would document the liner design, materials, and installation procedures. The Agency will review the operating records and other documents at permitting to assist in its determination of good faith.

d. Waste piles. As discussed in Section a. above, section 3004(o), which establishes new double liner requirements for permitted landfills and surface impoundments, does not apply to waste piles. The existing requirements for a single liner and leachate collection system, as set out in § 264.251, remain in effect for permitted waste piles.

HSWA does impose new requirements on interim status waste piles. Section 3015(a) subjects the owner or operator of a waste pile operating under interim status to the requirements for liners and leachate collection systems or equivalent protection, as set out in EPA regulations or as revised under section 3004(o) (relating to minimum technological requirements). Essentially, the language in section 3015(a) provides that interim status waste piles must comply either with standards established under section 3004(o), or with standards in current regulations. *See* S. Rep. No. 284, 98th Cong., 1st Sees. 24 (1983). EPA has not issued new standards for waste piles under the authority of section 3004(o). Therefore, section 3015(a) requires interim status waste piles to comply with requirements for a single liner and leachate collection system, as set out in existing § 264.251(a) (dealing with permitting standards for waste piles). Today's rule adds new § 265.254 to codify that provision.

The reference in section 3015(a) to "equivalent protection" is intended to authorize waste piles to use the variances to the liner and leachate collection system requirements in current regulations. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 25 (1983). EPA construes this provision to mean that owners and operators of interim status waste piles are eligible for the exemptions from the single liner requirement set out in § 264.250(c) (exempting from regulation under § 264.251 any waste pile that is inside or under a structure) and § 264.251(b) (providing a variance if the owner or operator demonstrates that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constitutents into the ground water or surface water at any future time).

e. Variances. Section 3004(o)(2), codified in §§ 264.221(d) and 264.301(d), allows the owner or operator of a landfill or surface impoundment to obtain an exemption from the requirements for liners and leachate collections systems set out in section 3004(o)(1)(A). The owner or operator must demonstrate that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as the liners and leachate collection systems.

Section 3004(o)(3), codified in §§ 264.221(e) and 264.301(e), authorizes an exemption from the requirements of section 3004(o)(1)(A) for a monofill containing only hazardous wastes from foundry furnace emission controls or metal casting molding sand, as long as the wastes do not contain constituents which would render them hazardous for reasons other than the Extraction Procedure (EP) toxicity characteristics set out in EPA regulations.[10] The EP toxicity characteristics are set out in 40 CFR 261.24.

To obtain the exemption, the monofill must also meet one of two additional requirements set out in new sections 3005(j)(2) and 3005(j)(4). (Sections 3005(j)(2) and 3005(j)(4), which deal with existing surface impoundments, have not been codified elsewhere in today's rule because these two sections do not go into effect immediately.)

To comply with paragraph (j)(2), the monofill must meet three conditions. First, it must have at least one liner which is not leaking. Section 3005(j)(12)(A) defines "liner" for the purposes of section 3005(j)(2) as either a synthetic liner or a clay liner, as long as at closure the clay liner, waste materials, and contaminated soils are removed or decontaminated to the extent practicable. Today's regulations incorporate this definition of "liner" into the monofill variance for surface impoundments. EPA believes that it is appropriate to incorporate this definition into the monofill variance for surface impoundments because section 3005(j) itself deals with requirements for surface impoundments and because giving a removal option to surface impoundments is consistent with EPA's current regulations. The definition of "liner" in section 3005(j)(12)(A) has not been included in the variance for landfills because existing EPA regulations do not allow such a removal option for landfills. *See* 40 CFR 264.310, 265.310.[11] Nothing in the language or legislative history of section 3004(o)(3) suggests that Congress, in establishing the exemption for monofills, intended to alter the closure requirements of the existing regulations by giving landfills a closure option which the regulations currently prohibit.

Second, the statute requires that the monofill be in compliance with generally applicable ground-water monitoring requirements for facilities with RCRA permits. The requirements for facilities with RCRA permits may be found in Subpart F of Part 264. Finally, the monofill must be more than one-fourth mile from an underground source of drinking water, as defined in the Safe Drinking Water Act regulations.

Alternatively, the monofill may meet the requirements of section 3004(j)(4), which requires the owner or operator to demonstrate that the monofill is located, designed, and operated to assure no migration of any hazardous constituent into ground water or surface water at any future time.

Under section 3004(o)(6), which is codified in new § 264.301(k), any permit for a landfill located within the State of Alabama must require the installation of two or more liners and a leachate collection system above and between the liners, notwithstanding any other provision of RCRA. The intent of section 3004(o)(6) is to provide that Alabama

[10] Section 3004(o)(3) refers to a variance from the "double-liner requirements set forth in section 3004(o)(1)(A)." EPA construes this language to mean a variance from the liner *and* leachate collection requirements in 3004(o)(1)(A).

[11] Current regulations allow the owner or operator of a surface impoundment (*see* 40 CFR 264.228, 265.228) or waste pile (*see* 40 CFR 264.258, 265.258) to remove or decontaminate all waste residues and other contaminated materials at closure. The regulations establish specific closure and post-closure requirements for facilities which remove these materials at closure. In contrast, the landfill regulations establish closure requirements only for facilities that close with wastes in place.

landfills are not eligible for the variances set out in section 3004(o). *See* H.R. Rep. No. 1133, 98th Cong., 2d Sess. 90 (1984); 129 Cong. Rec. S12819 (daily ed. Oct. 5, 1983) (statement of Sen. Chafee).

Section 3015 subjects interim status facilities to the minimum technological requirements of section 3004(o) but does not make clear whether interim status facilities are eligibile for the variances from the liners and leachate collection system in sections 3004(o)(2) and (o)(3). The Agency has interpreted section 3015 to allow interim status units to apply for these variances. For interim status surface impoundments, § 265.221 allows the owner or operator to obtain the variances provided in § 264.221(b) (for alternate designs) and § 264.221(e) (for monofills). Similarily, § 265.301 makes the variances in § 264.301(b) (for alternate designs) and § 264.301(h) (for monofills) available to the owner or operator of a landfill operating under interim status.

The Agency has construed the statute in this way because a contrary approach could subject interim status facilities to technological requirements which are potentially more stringent than those applicable to permitted facilities. As discussed earlier, such a result is inconsistent with the general structure of the Subtitle C regulations.

f. Ground-water monitoring. Section 3004(o)(1)(A)(ii) requires new permitted landfills and surface impoundments, new units, and replacements and lateral expansions of existing units to have ground-water monitoring. The Agency has construed this provision to refer to the ground-water monitoring requirements of Subpart F of Part 264 of the regulations.

Section 3015 requires interim status units to comply with the minimum technological requirements for permitted units as set out in section 3004(o). This reference to section 3004(o) includes the ground-water monitoring requirement.

Section 3015 is ambiguous, however, because it does not specify which ground-water monitoring requirements apply to interim status units. On the one hand, the reference in section 3015 to the ground-water monitoring requirements set out in section 3004(o) could be construed to require interim status units to comply with the same ground-water monitoring requirements which apply to permitted units.

On this reading, interim status units would be subject to the requirements of Subpart F of Part 264 of the regulations. Alternatively, the provision could be construed merely to require ground-water monitoring for all interim status units as specified in existing Part 265 regulations.

EPA has interpreted the ground-water monitoring requirement for interim status units to refer to existing Part 265 requirements. Congress' intent in requiring ground-water monitoring in section 3004(o) was to eliminate the provision in current regulations allowing double liners and ground-water monitoring to be alternatives. *See* S. Rep. No. 284, 98th Cong., 1st Sess. 26 (1983); H. R. Rep. No. 198, 98th Cong., 1st Sess. part 1, at 63 (1983). There is no indication that Congress sought to change the existing ground-water monitoring requirements for interim status facilities with this provision. Therefore, interim status surface impoundment and landfill units, replacements, and expansions will continue to be subject to the ground-water monitoring requirements of Subpart F of Part 265.

g. Notification. Section 3015(b)(2), codified in today's rule at §§ 265.221(e) and 265.301(e), calls for the owner or operator of an interim status landfill or surface impoundment unit subject to the minimum technological requirements of section 3015(b)(1) to notify the Administrator at least sixty days prior to receiving waste at that unit. Section 3015(b)(1) applies to units that first receive waste after November 8, 1984. Owners or operators of these units must comply with the notice requirement if such units are still receiving waste on May 8, 1985.

Section 3015(b)(2) also provides that within six months of receipt of notice, EPA (or an authorized State) shall require the owner or operator to file a Part B application.[12] EPA does not read this provision to require a formal request for a Part B permit application by EPA or the State as now provided for in EPA's permitting regulations. It is clear that the Congress wanted the duty to send in an application to become automatic once the sixty-day notification has been given. Therefore, EPA is simply incorporating the duty to submit an application directly into the regulations.[13]

[12] The statute uses the phrase "application for a final determination regarding issuance of a permit," which EPA has construed to mean a Part B application and applicable post-closure permit application.

[13] Section 3005(e) provides that interim status for owners and operators of land disposal facilities will terminate on November 8, 1985, unless the owner or operator submits a Part B application before that date. (See Section C.5. of this preamble.) Thus, most facilities will have submitted a Part B by November 8, 1985, if not before that time. EPA thus construes section 3015(b)(2) to require an owner or operator to submit a Part B six months after the receipt of notice if the Part B has not previously been submitted.

3. Corrective Action

a. Redefinition of Regulated Unit. The Act introduces a new subsection (i) to section 3005 which provides that the ground-water monitoring, unsaturated zone monitoring and corrective action requirements applicable to new land disposal units (i.e., those requirements set forth in Part 264) are applicable to landfills, surface impoundments, waste piles or land treatment units that received hazardous waste after July 26, 1982. The legislative histories of the House and Senate bills from which this provision has been drawn reveal that the intent of the provision is to override the existing EPA regulations which subject such units to ground-water monitoring and corrective action requirements at the time of permitting only if they receive hazardous waste after January 26, 1983. S. Rep. No. 284, 98th Cong., 1st Sess. 25–26 (1983); H.R. Rep. No. 198, 98th Cong., 1st Sess., Part 1, 44–5 (1983); 130 Cong. Rec. S13818 (daily ed. Oct. 5, 1984).

Accordingly, today's rule amends § 264.90(a) to provide that the general ground-water monitoring and corrective action requirements of Subpart F of Part 264 apply to landfills, surface impoundments, waste piles and land treatment units that receive hazardous waste after July 26, 1982. Since the unsaturated zone monitoring requirements of § 264.278 were never subject to the January 26, 1983 cut-off, this section has not been amended. Active land treatment units continue to be subject to unsaturated zone monitoring requirements regardless of the date on which hazardous wastes were received at such units.

b. Cleanup of Continuing Releases. Section 3004 of RCRA is amended by adding paragraph (u) governing releases at facilities seeking a permit under Subtitle C. This new subsection provides that any permit issued after November 8, 1984, must require corrective action for all releases of hazardous waste or constituents from any solid waste management unit regardless of when waste was placed at such unit. It further requires financial assurance for the completion of such corrective action. The provision applies to any solid waste management unit, including inactive units, at any treatment, storage, or disposal facility seeking a permit under section 3005(c) of RCRA. 130 Cong. Rec. H11129 (daily ed. October 3, 1984).

The Agency's jurisdiction under this new provision is defined by a number of key terms. First, as noted above, this new corrective action authority applies to facilities seeking a permit under

Subtitle C. Congress is silent as to whether the permits referred to in this section include post-closure permits as well as operating permits. EPA sees no legal basis for departing from a literal reading of the statute, which appears to encompass *any* Section 3005(c) permit within its mandate. Accordingly, any solid waste management unit located at a facility required to obtain a post-closure permit (i.e., units that close after January 26, 1983 (§ 270.1(c)) or an operating permit will be subject to corrective action for continuing releases.

Section 3004(u) does not appear to contemplate that its terms apply to solid waste management units located at facilities that are not required by regulation to obtain a Subtitle C permit. Accordingly, solid waste management units located at interim status facilities that closed before January 26, 1983, will not be subject to section 3004(u) since these facilities are not required to obtain permits under the existing regulations. Similarly, regulated units (now defined as any waste pile, landfill, surface impoundment, or land treatment unit that received waste after July 26, 1982) located at facilities which closed before January 26, 1983, are not required to obtain post-closure permits.[14] Releases from such units may be addressed by the interim status corrective action orders authorized by section 3008(h) of the new law. (See section f, *infra*.)

EPA must assume that in using the term "facility," Congress intended, in the absence of contrary statutory language or legislative history, to adopt the definition of this term traditionally employed by the Agency. The preamble to the July 26, 1982, regulation elaborates on the definition of this term. Specifically, the preamble notes that "[w]hen using the term 'facility', EPA is referring to the broadest extent of EPA's area jurisdiction under Section 3004 of RCRA . . . [meaning] the entire site that is under the control of the owner or operator engaged in hazardous waste management." 47 FR 32288–9 (July 26, 1982). The legislative history of the conference bill makes it clear that Congress was aware of the Agency's definition. In discussing new section 3004(v) (see subsection e, *infra*), the Congress noted EPA's position limiting the scope of its remedial authorities to the property of the polluting facility. 130 Cong. Rec. H11129 (daily ed. Oct. 3, 1984). Accordingly, for purposes of section 3004(a), the term "facility" is not limited to those portions of the owner's property at which units for the management of solid or hazardous waste are located, but rather extends to all contiguous property under the owner or operator's control.

The extent to which the above interpretation applies to Federal facilities raises legal and policy issues that the agency has not yet resolved. To address these issues, it is necessary to examine the objectives of Section 3004(u), the purposes of HSWA, and the relationship of RCRA to other Federal laws. Permit applications for Federal facilities will continue to be processed, but recognizing that final Federal facility permits may not be issued where these unresolved issues exist, EPA will make its best efforts to reach a resolution in the next 60 days.

The Agency's cleanup authority under section 3004(u) extends to all "solid waste management units" at a facility seeking a permit under section 3005(c). The term "solid waste management unit" includes any unit at the facility "from which hazardous constituents might migrate, irrespective of whether the units were intended for the management of solid and/or hazardous wastes." H.R. Rep. No. 198, 98th Cong., 1st Sess., Part 1, 60 (1983). It is generally not intended to encompass areas where wastes were not placed in such units. The legislative history notes that "[t]he term 'unit' is intended to be defined as in the preamble [sic] to EPA regulations published on July 26, 1982 and as further defined by EPA in the future." *Id.* Consistent with that concept, EPA believes that the term "unit" at least encompasses the units identified in that preamble, which refers to "containers, tanks, surface impoundments, waste piles, land treatment units, landfills, incinerators, and underground injection wells." 47 FR 32281 (July 26, 1982).

In understanding the scope of the term solid waste management unit, several points need to be made. First, units falling into the above categories are subject to section 3004(u) regardless of their purposes. EPA has in the past considered developing special standards for certain types of units and has temporarily exempted classes of units from the substantive standards applicable generally to hazardous waste management units. For example, there are such exemptions for recycling units (§ 261.6) and for tanks qualifying as "wastewater treatment units" (§ 264.1(g)(6) and § 265.1(c)(10)). Such units are solid waste management units under RCRA and thus are subject to Section 3004(u).

EPA expects that implementation of corrective action requirements for wastewater treatment tanks would be limited to submission of descriptive information with the permit application and a preliminary assessment by EPA that did not include sampling and analysis. EPA will impose additional requirements where this first phase turns up evidence of releases of hazardous waste or constituents from the tanks. EPA estimates that the costs per facility for the initial phase would result in an annualized cost of less than $3,000. In addition, it may make sense, based on the same considerations that motivated EPA's earlier examination of special standards for these units, to develop remedial investigation requirements implementing section 3004(u) for these units that differ from requirements applicable to other solid waste management units.

Second, in considering injection wells as units, it should be recognized that for a "Class I injection well" (as that term is used in the Underground Injection Control (UIC) regulations under the Safe Drinking Water Act), the injection zone into which the well discharges is essentially part of the waste management unit. Thus the emplacement of liquids into an injection zone through a Class I well does not constitute a release from a solid waste management unit but rather constitutes migration within the solid waste management unit.

Third, the legislative history indicates that the term "solid waste management unit" is intended to limit EPA's jurisdiction under section 3004(u) to *discernible units.* One of the questions raised by this definition is whether an area on which a spill occurs is intended to be viewed as a solid waste management unit. Clearly, a spill of hazardous waste or hazardous constituents from a discernible unit would constitute a "release" from a solid waste management unit under the definition of this term adopted by the Agency (see below). Similarly, any subsequent contamination resulting from this spill (e.g. subsequent releases to air, ground water or surface water) would also be considered a release from the original solid waste management unit and would thus be subject to EPA's jurisdiction.

EPA does not, however, believe that section 3004(u) applies to spills that cannot be linked to solid waste management units. For example, a spill from a truck traveling through a facility would not constitute a release from a

[14] It should be noted that "closure" in this context does not mean simply ceasing to place waste in a unit. Closure, as a regulatory concept under these rules, is a proceeding during which EPA determines, after public review, that the facility has an adequate closure plan and that the facility implements that plan. Thus, closure is not complete under the hazardous waste regulations until a certification of closure has been given under 40 CFR 265.115.

solid waste management unit. It should be recognized, however, that such a spill, if it occurs after November 19, 1980, is nonetheless actionable because it constitutes illegal disposal (i.e., disposal that does not occur in an authorized unit).

The Agency's authority under section 3004(u) encompasses "all releases of hazardous waste or constituents" from any solid waste management unit. Section 3004(u) contemplates that EPA will issue standards addressing corrective action for such releases. Once EPA establishes such standards they will guide the Agency's decisions about appropriate corrective action. Section 3004(u) also indicates, however, that permits issued after November 8, 1984, must implement the corrective action requirement. Therefore, until EPA establishes specific standards under section 3004(u) it is reasonable for EPA to make case-by-case decisions on the appropriate corrective action, guided by the general regulation being codified today.

EPA believes that this language contemplates coverage of any release of hazardous constituents from a solid waste management unit. The term "hazardous constituent" as used in this section is intended to mean those constituents listed in Appendix VIII to 40 CFR Part 261 [H.R. Rep. No. 198, 98th Cong., 1st Sess., part 1, 60–61 (1983)] and includes hazardous constituents released from solid waste and hazardous constituents that are reaction byproducts. S. Rep. No. 98–284, 98th Cong., 1st Sess. 32 (1983).

While the statute does not explicitly define the term "release," EPA believes that the purposes behind the provision indicate that the term should be at least as broad as the definition of release under CERCLA. *See* CERCLA § 101(22), 42 U.S.C. 9601. The legislative history of Section 3004(u) clearly indicates that one of its purposes was to prevent RCRA sites from becoming future burdens on the Superfund program. H.R. Rep. No. 198, 98th Cong., 1st Sess., part 1, 61 (1983). The Congress has, however, placed constraints on the scope of Section 3004(u) (*i.e.*, "solid waste management unit", "hazardous constituents" discussed above) that may result in cleanups at RCRA facilities that do not have the same breadth as CERCLA cleanups. Within these constraints, it is nonetheless logical to use a definition of release that is at least as broad as the definition under CERCLA. Moreover, such an integration with the CERCLA definition of release is consistent with the spirit of section 1006 of RCRA, which calls for integration of RCRA provisions with those of other statutes administered by EPA.

Section 1006 also provides, however, that EPA's integration of RCRA with other statutes should be accomplished "only to the extent that it can be done in a manner consistent with the goals and policies expressed in [RCRA] and in the other acts." Thus certain elements of the CERCLA definition are not, in EPA's view, part of the RCRA definition of release. Certain CERCLA exemptions are simply inapplicable, such as those for emissions from certain engine exhausts and for fertilizer applications. Other exemptions are inappropriate. The CERCLA exemption for releases subject to the Atomic Energy Act and the Uranium Mill Tailings Radiation Control Act (UMTRCA) are not needed because RCRA includes a specific statutory scheme for how overlaps between those statutes and RCRA are to be addressed. See section 1004(27), section 1006 of RCRA. (Section 703 of HSWA also specifically indicates that nothing in the new amendments, including section 3004(u), should be construed to modify or amend UMTRCA.) EPA also does not see anything in the legislative history of RCRA indicating an intent to ignore releases to the workplace at the facility.

Accordingly, EPA believes that the term "release" under section 3004(u) means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment. The Congress is currently considering amendments to CERCLA that could alter the scope of that program. If the scope of CERCLA is altered, EPA will, consistent with Section 1006 of RCRA, decide whether modifications are needed in the scope of the releases covered by Section 3004(u).

It is clear that Congress intended the term "release" to encompass at least releases to ground water. The Senate legislative history notes that in order "[to] assure corrective action is taken in response to releases . . . the Administrator will need to revise *groundwater* [sic] monitoring requirements . . . (emphasis added) S. Rep. No. 284, 98th Cong., 1st Sess. 32 (1983).

Similarly, the House legislative history notes that the corrective action required for a release "must be accomplished in the manner currently prescribed in [§ 264.100]." H.R. Rep. No. 98th Cong., 1st Sess. Part 1, 60 (1983). The requirements of § 264.100 pertain only to cleanup of ground water. Accordingly, corrective action instituted under the regulations promulgated today must, at a minimum, address any release to ground water from a solid waste management unit.

However, there is nothing in the Act or legislative history to suggest that Congress explicitly intended to limit this provision to releases to ground water. As discussed previously, section 3004(u) requires corrective action for *all* releases of hazardous wastes or constituents. EPA believes use of the term "all releases" indicates Congress' intent that section 3004(u) governs releases to all media, including ground water.

The HSWA provides other evidence of such an intent as well. As will be discussed in more detail later, new section 3008(h) authorizes EPA to issue administrative orders requiring corrective action at interim status facilities as necessary to protect human health and the environment. That authority can clearly reach media other than ground water.[15] See H.R. Rep. No. 1133, 112 (1984). It is reasonable to assume that Congress intended EPA's powers to require cleanup at the time of permitting to be at least as broad as its power to do so under interim status. Accordingly EPA believes that it is authorized to address releases to air, surface water, ground water, and soils under section 3004(u).

Although the scope of section 3004(u)'s jurisdiction appears broad given the definition of release and its multimedia jurisdiction, the Agency has limited the application of this provision by mandating corrective action only *where necessary to protect human health and the environment.* This interpretation is consistent with the legislative history of section 3004(u) which provides that the "new subsection [is] intended to assure that appropriate corrective action is taken to protect human health and the environment from any past, present or future release of hazardous waste from a permitted hazardous waste facility." S. Rep. No. 284, 98th Cong. 1st Sess., 31 (1983).

Under this legal interpretation, the Agency would not mandate corrective action for all releases into the environment. For example, with respect to ground-water releases to the uppermost aquifer only, the Agency would only apply corrective action to those releases which exceeded the 40 CFR Part 264 Subpart F Ground-Water Protection Standards. The ground-water

[15] By way of analogy it is also worth noting that the term "environment" when defined in Federal environmental statutes has generally included all media. See CERCLA 101(8) and FIFRA 2(j).

protection standard is defined by the Subpart F regulations to be either the background concentration of the constituent at issue or the maximum contaminant level for that constituent established by the National Interim Primary Drinking Water Regulations, unless the owner or operator demonstrates that an alternate concentration limit is warranted.

It should be noted that, consistent with Section 1006 of RCRA, EPA will implement Section 3004(u) in a manner consistent with other EPA programs. For example, where a release from a solid waste management unit is otherwise subject to regulation under Section 402 of the Clean Water Act, EPA will use the NPDES program to address such a discharge.

Section 3004(u) requires corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a RCRA permit *regardless of the time at which such waste was placed in such unit*. This clear statutory directive precludes a reading of the statute which would limit an owner's or operator's responsibilities to waste placed in units during his or her tenure. Accordingly, the owner or operator of a solid waste management unit containing only waste placed there by a previous owner would be fully responsible for corrective action for any release from such unit. This interpretation would not, of course, preclude such owner or operator from bringing any action otherwise allowed by law against the previous owner seeking remuneration for the costs of corrective action.

New section 3004(u) further provides that permits issued to facilities containing solid waste management units shall include schedules of compliance and financial assurance for completing any necessary corrective action. The legislative history explains that where insufficient information exists at the time of permitting to specify in the schedule of compliance the corrective action required (if any) and the financial assurance needed to ensure its completion, the schedule of compliance included in the permit may establish a time frame by which the information necessary to determine the extent and cost of corrective action will be obtained and financial assurance demonstrated. 130 Cong. Rec. H11129 (daily ed. Oct. 3, 1984). Once the necessary information has been acquired, the permit is amended [through the major modification process, 40 CFR 270.41(a)(2)], to incorporate financial assurance and to institute the appropriate corrective action.

Today's rule adds a new section to Subpart F, § 264.101, to codify these new standards for permitted facilities containing solid waste management units. New section 264.101(a) provides that all section 3005(c) permits issued after November 8, 1984, shall require the owner or operator of a treatment, storage or disposal facility to institute corrective action where necessary to protect human health and the environment whenever EPA determines that there has been a release of hazardous waste or constituents from any solid waste management unit, regardless of the time at which waste was placed in such unit.

Paragraph (b) of § 264.101 codifies the statutory requirement that all permits issued after November 8, 1984, to facilities containing solid waste management units incorporate either a schedule of compliance for completing any necessary corrective action (for all solid waste management units, and except as discussed further in section c, *infra*, regulated units with releases to ground water in the uppermost aquifer) or a schedule for gathering information to determine the extent of corrective action required (if any) and assurances of financial responsibility for completing such corrective action. Any permit issued with a schedule of compliance directing the owner or operator to gather information necessary to determine the extent and cost of corrective action needed (if any) must include either financial assurances for completing any corrective action deemed necessary (where this can be determined at the time of permit issuance) or a schedule of compliance for obtaining the information necessary to determine the cost of corrective action and demonstrating financial assurances.

In order to implement the provision of new section 3004(u), the owner or operator of any facility seeking a 3005(c) permit to be issued after November 8, 1984, must submit with the permit application sufficient information to enable EPA to assess the applicability of section 3004(u) to the owner's or operator's facility. EPA is not authorized to issue a permit absent a determination that the facility is in compliance with the requirements of section 3004 [*see* 3005(c), 42 U.S.C. § 6925(c).]

c. Relationship between sections 3004(u) and 3005(i). As noted earlier, new subsection (i) of section 3005 provides that the ground-water monitoring, unsaturated zone monitoring, and corrective action standards applicable under section 3004 to new units will apply to units receiving waste after July 26, 1982. The purpose of this amendment, as explained in the pertinent legislative history, is to revise EPA's existing Part 264 standards so that a regulated unit is defined as a landfill, surface impoundment, waste pile, or land treatment unit that receives hazardous waste after July 26, 1982 (rather than after January 26, 1983, as is provided in EPA's existing regulations). New subsection (u) of section 3004, on the other hand, deals with a broader class of units: that is, all solid waste management units that have received solid waste (including hazardous waste) at any time. Thus, regulated units, as defined by 3005(i), are clearly a subset of solid waste management units. In assessing the effect of the Hazardous and Solid Waste Amendments of 1984, one of the major legal questions has been how Congress intended to reconcile these provisions. The legislative history sheds some light upon the intended relationship between these provisions.

As noted above, the legislative history of section 3005(i) suggests that the major purpose of this provision is to ensure that landfills, waste piles, surface impoundments and land treatment units that receive waste after July 26, 1982, are subject to the ground-water monitoring and corrective action requirements contained in existing Subpart F of Part 264. Subpart F deals exclusively with releases to ground water in the uppermost aquifer. It provides explicit measures to be followed in detecting a release to ground water and instituting corrective action for any such release. Section 3004(u), on the other hand, does not limit corrective action to ground-water releases. Moreover, it does not prescribe specific measures to be taken in detecting and correcting a release.

To the extent that section 3004(u) could be read to impose on solid waste management units different standards for detection and correction of ground-water releases than would be required for regulated units under existing Subpart F, it would appear to be consistent with Congressional intent to let the more explicit provision of section 3005(i) govern. On the other hand, to the extent that section 3004(u) imposes obligations that are not addressed by section 3005(i) (such as the requirements to correct releases to media other than ground water and to demonstrate financial assurance for corrective action) there would appear to be little basis for excluding a regulated unit from such obligations.

Accordingly, the Agency has interpreted these sections to provide that regulated units, as newly defined by section 3005(i), shall be subject to existing standards under Subpart F of Part 264 in detecting and correcting any release to ground water in the uppermost aquifer. For all other releases, regulated units shall be subject to the detection and corrective action standards implemented under section 3004(u). Similarly, the existing exemptions from Subpart F requirements for ground water protection apply only to regulated units with releases to ground water in the uppermost aquifer, not to *all* solid waste management units.

By that same logic, regulated units are treated somewhat differently for purposes of the special financial assurance and schedule of compliance provisions in this section. Section 3004(u) authorizes EPA to incorporate into a permit issued after November 8, 1984, to the owner or operator of a solid waste management unit, a schedule of compliance allowing the owner or operator to gather information to establish the extent of any necessary corrective action. Subpart F of Part 264 already establishes specific requirements for gathering such information for releases to ground water in the uppermost aquifer at regulated units. Since those units, defined as "regulated units", generally are required to gather sufficient ground-water data during interim status to determine whether a release has occurred, it would not be appropriate to afford such units an additional opportunity to gather such information at the time of permit issuance.[16]

Since the "information collection" type of schedule of compliance is not available to regulated units with releases to the uppermost aquifer, the financial assurance requirements in section 3004(u) cannot be deferred through a schedule of compliance for such releases. Once the owner or operator of a regulated unit has identified the releases to the uppermost aquifer, pursuant to existing Subpart F regulations, and developed a cost estimate of the necessary corrective action, he becomes responsible for establishing financial assurance for completion of the corrective action.

[16] It may be argued that this rationale does not apply to certain waste piles. Waste piles are not subject to ground-water monitoring during interim status. Accordingly, some may assert that the owner or operator of a waste pile will not have determined whether a release has occurred by the time of permit issuance. However, since waste piles have always been subject to ground-water monitoring requirements under Part 264 and the attendant Part 270 application standards, the Agency believes that many owners or operators of waste piles have determined at the time of permit issuance whether corrective action is required.

The foregoing distinctions are reflected in today's amendments. Section 264.90(a)(1) provides that solid waste management units are subject to the new detection, corrective action, financial assurance, and schedule of compliance authorities contained in § 264.101. Section 264.90(a)(2) also makes it clear that the requirements imposed by new § 264.101 do not apply to regulated units for purposes of detecting, characterizing and responding to releases into the uppermost aquifer. The financial responsibility requirements of § 264.101 apply to regulated units.

d. Corrective Action for Programs Covered Under RCRA Permits by Rule. Certain facilities specifically included under the RCRA permitting requirements by regulation (§ 270.1(c)(1)) are currently deemed to have a RCRA permit if they have permits under other programs and comply with the special requirements under the permit-by-rule provision (§ 270.60). The addition of the new requirements under section 3004(u) for RCRA-permitted facilities requires conforming changes to RCRA permits by rule for UIC facilities and for municipal facilities with National Pollutant Discharge Elimination (NPDES) permits under the Clean Water Act. Corrective action requirements for vessels and barges permitted by the Marine Protection, Research, and Sanctuaries Act (MPRSA) do not require a conforming change for the reasons explained below.

(1) Permit by rule for underground injection wells—Section 270.60(b) provides a permit by rule to underground injection wells if they have a permit issued by EPA or the State under the UIC program and if they meet other specified RCRA requirements. With the addition of the new requirements for solid waste management units at RCRA permitted facilities, there is a need to incorporate additional requirements into the UIC permit by rule to reflect those changes. Accordingly, § 270.60 has been modified to provide that all solid waste management units at UIC facilities must meet the requirements in § 264.101 in order for the facility to qualify for a permit by rule.

(2) Permit by rule for municipal NPDES facilities—Section 270.60(c) provides a permit by rule to publicly owned treatment works (POTWs) that have an NPDES permit, receive hazardous waste by rail, truck, or by a pipe that did not carry sewage, comply with specified RCRA requirements, and meet all Federal, State, and local pretreatment requirements under the Clean Water Act. The corrective action requirement of section 3004(u) of RCRA, however, requires permits issued after November 8, 1984 to contain the corrective action requirements. The regulations under § 270.60(c) have been modified to add this new permit-by-rule requirement. The corrective action requirement will be implemented through the NPDES permitting process.

It should be noted that the overlap between the requirements of section 3005(i) and section 3004(u) discussed in part c above does not exist for POTWs. Section 3005(i) applies to regulated units at interim status facilities that receive hazardous waste after July 26, 1982. POTW facilities, however, have a RCRA permit by rule and, therefore, are not covered by interim status. Thus, section 3005(i) does not apply to POTW facilities with a RCRA permit by rule. Since section 3005(i) does not operate to supersede section 3004(u) for any units at POTW facilities, all such units at the facility are covered by the requirements of § 264.101. This includes releases from regulated units to the uppermost aquifer. In fashioning such requirements at a municipal NPDES facility for solid waste management wastes, including regulated units, a compliance schedule may be used. EPA intends to propose a rulemaking package which will discuss how the corrective action requirement will be implemented for POTWs with RCRA permits by rule.

(3) Permit by rule for vessels and barges permitted under MPRSA—Section 270.60(a) provides a permit by rule for any vessel that obtains a permit for the disposal of hazardous waste in ocean waters under the Marine Protection, Research, and Sanctuaries Act (MPRSA) and complies with specified RCRA requirements. Any onshore storage or treatment facility that may be associated with the ocean disposal operation, however, must obtain a RCRA permit. EPA regards the vessels and the onshore operations as separate facilities rather than units belonging to the same facility. Since the vessel and any onshore operation are separate facilities, no applicant for a permit for ocean disposal under the MPRSA is required to undertake corrective action for releases at any onshore facility. EPA will discuss the issues raised by applying corrective action requirements to permitted vessels in a future proposal.

EPA is not making any conforming change to the permit-by-rule provisions for ocean dumping vessels. The conforming changes for the UIC and NPDES programs insure that corrective action requirements apply to releases from *all* solid waste management units at UIC or NPDES facilities, including units not regulated by the UIC or NPDES programs. MPRSA permits, however, cover all portions of ocean dumping vessels. Hence, there are no unregulated "units" within an ocean dumping "facility", and no conforming change is necessary.

e. Cleanup beyond the property boundary. New subsection (v) of section 3004 requires EPA to amend its regulations to impose upon owners and operators of hazardous waste treatment, storage, and disposal facilities the obligation to clean up any contamination that has migrated beyond the facility boundary. Specifically, this provision requires that the owner or operator institute corrective action beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator demonstrates to EPA that, despite the owner's or operator's best efforts, he is unable to obtain the necessary permission to undertake such action. This provision applies to all permitted facilities, including facilities containing landfills, surface impoundments and waste piles that are embraced by the new definition of "regulated unit" (i.e., units receiving waste after July 26, 1982).

In the future, EPA intends to propose regulations which impose upon owners and operators of hazardous waste management facilities the obligation to clean up contamination that has migrated beyond the facility boundary as necessary to protect human health and the environment. Pending promulgation of these regulations, EPA intends, as required by the statute, to issue orders to implement section 3004(v)'s directives on a case-by-case basis.

f. Interim status corrective action authority. In addition to introducting the foregoing new statutory provisions dealing with corrective acton, the HSWA vests EPA with authority to issue corrective action orders to interim status facilities. The new provision, section 3008(h), authorizes EPA to issue such an order whenever it determines, on the basis of any information, that there is, or has been, a release of hazardous waste into the environment from an interim status facility.

The authority conferred upon the Agency by this provision is a broad one. The legislative history makes it clear that the term "release" as it is used in this section is not limited to releases to ground water. 130 Cong. Rec. H11135 (daily ed. October 3, 1984). Indeed, Congress specifically noted that interim status corrective action orders could be used to control air emissions. *Id.* The order may require corrective action or any other response measure that EPA determines is necessary to protect human health and the environment.

"The amendment is a supplement to EPA's power to impose corrective action through permits." *Id.* EPA is authorized to exercise this order authority to apply to interim status facilities those "environmental standards promulgated under section 3004." *Id.* Since section 3004 has been amended to extend corrective action requirements to all solid waste management units at facilities seeking a RCRA permit, the Agency interprets this mandate to authorize the issuance of corrective action orders to any interim status facility containing solid waste management units, including regulated units, from which there has been a release to the environment. Similarly, by virtue of section 3004(v), the requirement to institute corrective action beyond the facility boundary becomes an applicable section 3004 standard and may be enforced through the section 3008(h) order authority at interim status facilities.

Congress has made it clear that the interim status corrective action order is meant to be a flexible mechanism. The legislative history notes, for example, that this provision authorizes EPA to issue an order which, as a first step, requires the owner or operator to characterize the extent of ground-water contamination and to submit to EPA a proposed corrective action plan. *Id.* The Agency and the owner could then confer on the corrective action plan and incorporate any modifications to the plan in an amendment to the order.

According to the new statutory provision, any order issued pursuant to this section may include a suspension or revocation of a facility's authority to operate under interim status. If anyone named in an interim status corrective action order fails to comply with the order, EPA may assess a civil penalty of up to $25,000 for each day of noncompliance. In additon to the authority to issue corrective action orders, this provision confers upon EPA the authority to commence a civil action for appropriate relief, including a temporary or permanent injunction.

4. Ground-Water Monitoring Variances

Section 3004(p) of the HWSA introduces a new provision governing variances from general ground-water monitoring requirements. Specifically, paragraph (p) provides that ground-water monitoring requirements applicable to surface impoundments, waste piles, landfills and land treatment units shall apply whether or not such units are located above the seasonal high water table, have two liners and a leachate collection system, or have liners that are periodically inspected. The effect of this provision is to render invalid several of the ground-water monitoring waivers incorporated in EPA's existing standards.

Sections 264.222, 264.252 and 264.302 of the existing regulations allow surface impoundments, waste piles and landfills to waive Subpart F ground-water monitoring requirements if such units are fitted with a double liner, leak detection system, leachate collection system (in the case of landfills and waste piles), and are located entirely above the seasonal high water table. In light of the above provision calling for ground-water monitoring notwithstanding the presence of double liners or location above the seasonal high water table, these variances cannot stand. Accordingly, today's final rule deletes §§ 264.222, 264.252 and 264.302.

Today's rule also deletes § 264.253. This section exempts any lined waste pile from ground-water monitoring requirements if such a pile is located entirely above the seasonal high water table and the waste is removed periodically so that the liner can be examined. Again, the plain language of section 3004(p) would subject such a pile to ground-water monitoring requirements notwithstanding its location above the seasonal high water table and the periodic liner inspection. Accordingly, the regulations have been amended to reflect this change.

Section 3004(p) also introduces a new variance from ground-water monitoring requirements for engineered structures that meet certain requirements. Specifically, this variance is applicable on a case-by-case basis, only to an engineered structure that (1) does not receive or contain liquid waste (or waste containing free liquids), (2) is designed and operated to exclude liquid from precipitation or other runoff, (3) has multiple leak detection systems within the outer layer of containment which are operated and maintained throughout the life of the unit, including the closure and post-closure care periods, and (4) prevents the migration of hazardous constituents beyond the outer layer of containment prior to the end of the post-closure care period. Section 264.90(b) of the existing regulations has been amended to incorporate this new ground-water monitoring waiver.

The regulatory requirements set forth in § 264.90(b)(2) repeat the statutory language with one exception. The statute provides that in order to be eligible for this new exemption an engineered structure must utilize "multiple leak detection systems within the outer layer of containment." EPA has interpreted this reference to an "outer" layer of containment to imply that there must be at least one "inner" layer as well. This interpretation is supported by the legislative history which provides that "[a] qualifying structure would also have to be engineered to have inner and outer layers of containment enclosing the waste." 130 Cong. Rec. S9179 (daily ed. July 25, 1984). Accordingly, § 264.90(b)(2)(iv) calls for both inner and outer layers of containment. EPA has also interpreted the reference to "multiple leak detection systems within the outer layer" to mean that a leak detection system must be built into each layer of containment. Again, this interpretation is expressly sanctioned by the legislative history, which provides that a leak detection system must "be built into the structure at each internal containment layer." *Id.* Today's rule codifies this requirement at § 264.90(b)(2)(v).

Section 3004(p) expressly states that its provisions shall not be construed to affect other regulatory exemptions or waivers from ground-water monitoring requirements to the extent that such exemptions are consistent with the new provisions. EPA interprets this provision to mean that section 3004(p) does not affect the ground-water monitoring waiver contained in § 264.90(b)(4) which exempts units at which "there is no potential for migration" of liquid to the uppermost aquifer during the operating, closure and post-closure periods. This interpretation finds support in the legislative history which expressly provides that the § 264.90(b)(4) waiver is not nullified by § 3004(p). S. Rep. No. 284, 98th Cong., 1st Sess. 64 (1983). The Agency also believes that the ground-water waiver set forth in § 264.280(e), which exempts land treatment units from ground-water monitoring if it is demonstrated that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit, is unaffected by the new statutory provision.[17]

One of the questions emerging from a review of the new statute is the relationship between section 3004(o) and (p). Section 3004(o) provides that certain landfills and surface impoundments must be double lined (with appropriate leachate collection systems) and must comply with ground-water monitoring. The Agency has interpreted this reference to ground-water monitoring to mean that the units governed by section 3004(o) must comply with applicable ground-water monitoring requirements unless exempted from such requirements in accordance with paragraph (p). As noted previously, paragraph (p) allows for an exemption from ground-water monitoring only if a unit meets the new engineered structure exemption, or complies with § 264.90(b)(4) or, in the case of land treatment units, § 264.280(e).

5. Salt Dome Formations, Salt Bed Formations, Underground Mines and Caves.

Under new section 3004(b), the Congress has placed strict controls, effective on the date of enactment, on the placement of hazardous wastes in salt dome formations, salt bed formations, underground mines and caves. The applicable requirements will depend on whether a hazardous waste falls into one of the two categories.

For all noncontainerized (or bulk) liquid hazardous waste, the placement of waste in the four settings identified above is prohibited until:

(1) EPA has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(2) EPA has promulgated performance and permitting standards for such facilities under Subtitle C; *and*

(3) a permit has been issued for the facility.

For containerized liquid hazardous waste and all other non-liquid hazardous waste, the placement of such waste in the four enumerated settings is prohibited until a permit has been issued for the facility.

The new provision also provides that EPA's decisions on banning land disposal of certain hazardous wastes under section 3004 (d), (e) and (g) cannot negate the prohibitions explicitly stated in this provision. In other words, EPA must take action under section 3004(b) in order to lift the prohibitions stated therein. In addition, the Congress makes it clear that the prohibitions provided in section 3004(b) do not apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

In integrating this provision into the current regulations, EPA believes that this provision is best viewed as a location standard that applies to all treatment, storage, and disposal facilities. The statutory language refers to any "placement" of hazardous wastes in the four types of settings. This language would appear to include treatment, storage, and disposal activities because each involves placement of waste in the enumerated settings.

Accordingly, EPA has included this provision as a location standard in § 264.18 and § 265.18. In Part 265, the ban applies absolutely to all hazardous wastes because no wastes may be placed in the enumerated settings until an individual permit has been issued under Part 264.

In Part 264, the ban only applies to noncontainerized or bulk liquid hazardous waste. For other hazardous waste the issuance of a permit relieves an owner or operator from the ban. The statute appears to contemplate, however, that EPA must take additional steps beyond issuing a Part 264 permit for noncontainerized hazardous waste before EPA may relieve an owner or operator from the ban. For example, the statute states that EPA must conduct some kind of hearing in an "affected area" before a ban may be lifted. It is unclear what this requirement necessarily entails and how that process might be integrated with EPA's existing permit program. Since EPA is not prepared at this time to define what steps must be taken to lift the ban on placement of noncontainerized liquid hazardous waste in the enumerated settings, it has simply incorporated the ban into the Part 264 provisions. Based on further review, EPA may clarify when the ban on noncontainerized liquid hazardous waste can be lifted. EPA intends in the future to propose regulations which would specifically solicit comments on this issue.

The ban in new section 3004(b) applies to *underground* mines. EPA believes that by using that term the Congress did not intend to apply the ban to strip mines. Operations at strip mines involve removal of mineral deposits located near the surface of the ground by excavation of large surface areas. This is in contrast to operations at shaft mines. Strip mines will typically create a large depression in the ground that would be regulated as a surface impoundment or a landfill under RCRA if it was used to manage hazardous wastes. EPA does not believe that the Congress meant, in section 3004(b), to modify how EPA generally regulates surface impoundments and landfills. Accordingly EPA believes that only

[17] This interpretation is in accordance with the legislative history which notes that apart from the exemptions specified in §§ 264.222, 264.252, 264.302 and 264.253, this amendment does not affect other exemptions from the ground-water monitoring standards. *Id.*

underground mines rather than strip mines were meant to be covered by section 3004(b).

6. Dust Suppression

New section 3004(l) prohibits use of hazardous waste (except hazardous wastes exhibiting the characteristic of ignitability and not hazardous for any other reason) mixed with waste oil, used oil, or other material for dust suppression or for road treatment. The provision is codified in a new Subpart C to Part 266, a subpart reserved for regulation of hazardous waste uses constituting disposal.

The statutory language raises a number of issues. The first pertains to the reference of dioxin: "[t]he use of waste oil or used oil or other material which is contaminated with dioxin or any other hazardous waste. * * *" The issue is whether dioxin must be present as a result of being added as hazardous waste, or if the language refers to dioxin contamination from any source. The Agency believes that the ban applies only when the dioxin is present as a result of being added as a constituent in a hazardous waste. This is indicated by the fact that Congress placed the provision in section 3004—where regulatory jurisdiction is generally limited to hazardous wastes identified or listed in section 3001—and also by the explanation in the legislative history that the ban is for "hazardous waste contaminated materials * * *" S. Rep. No. 284, 98th Cong., 1st Sess. 23.

A second issue is the reference to "waste oil or used oil." Waste oil is virgin oil that has been discarded before use. The Agency believes the term was used purposely (since the phrase is otherwise redundant), so that if virgin oil is mixed with hazardous waste, it cannot be used legally as a dust suppressant or for treatment.

The prohibition applies on its face to hazardous wastes that are mixed with other materials, but does not explicitly ban the use of *unmixed* hazardous wastes (i.e., hazardous wastes applied directly as dust suppressants). The Agency believes the provision should be read as banning this type of direct application. This appears to be the only sensible reading because an unmixed waste is likely to be more hazardous than a mixed, diluted one. Moreover, the Conference Report states that the provision "bans the use of * * * any * * * hazardous waste as a dust suppressant." H.R. Rep. No. 1133, 98th Cong., 2nd Sess. 88 (1984).

A final issue is the question of what is used oil and what is hazardous waste. The bill's prohibition applies on its face only to used oil that is contaminated with hazardous waste, not to used oil applied directly, even if the used oil is contaminated through use. At this time, determining whether used oil is contaminated by use or through adulteration with a hazardous waste is a question of fact to be decided on a case-by-case basis. EPA plans to address this issue in future rulemakings, including those dealing with hazardous waste fuels and with standards for recycled oil.

7. Underground Injection

The HSWA introduces a new section to RCRA governing the underground injection of hazardous waste.[18] Section 7010 bans the injection of hazardous waste into or above any underground formation which contains, within one-quarter mile of the injection well, an underground source of drinking water. This statutory ban on so-called "Class IV" wells is effective automatically, six months from the date of enactment, in any State which does not have identical or more stringent prohibitions in effect under an "applicable undergound injection control program" ("UIC" program) (defined at 42 U.S.C. 300h-1(d)) which has been approved or prescribed by EPA under the Safe Drinking Water Act ("SDWA"). 42 U.S.C. 300f *et seq.* In any State in which the "applicable underground injection control program" *does* include an identical or more stringent prohibition, no new notice to the public or six-month phase-in period is necessary, and the ban may be enforced immediately.

In May 1984, EPA adopted a regulatory ban upon all hazardous and radioactive waste injection into or above a USDW, effective six months after the date the applicable underground injection control program becomes effective. *See* 49 FR 20138, 20181 (May 11, 1984) (codified at 40 CFR 144.13 (1984). Because this regulatory ban was adopted pursuant to both the SDWA and Subtitle C of RCRA, *see* 49 FR 20138, at 20138 (May 11, 1984); 40 CFR 144.1(a) (1984), the regulatory ban may be enforced pursuant to both SDWA 1423, 42 U.S.C. 300h-2, and RCRA 3008, 42 U.S.C. 6928. Furthermore, as provided in HSWA 7010(c), the *statutory* prohibition on hazardous waste injection into such wells may be enforced pursuant to RCRA sections 7002 (citizen suits) and 7003 (imminent and substantial endangerment) as well as the SDWA, in States in which the applicable UIC program includes the same ban or a ban which is more stringent. Finally, in States in which no identical or more stringent prohibition exists under the applicable UIC program, and in which the Administrator has not prescribed a UIC program, the statutory ban imposed by § 7010(a) may be enforced immediately under sections 7002 or 7003 of RCRA, and may later be enforced under the SDWA when the applicable underground injection control program includes the ban.

Although EPA may invoke RCRA 3008 compliance order authority to enforce the *regulatory* ban on these "Class IV" wells in States where EPA implements the UIC program, it appears that such compliance order authority is not available to the Agency to enforce the statutory ban in States which have UIC primary enforcement responsibility and which have not yet adopted the full Class IV ban now required by 40 CFR 144.13. This is because section 3008(a) orders may be used only to enforce the provisions of subtitle C of RCRA, whereas Congress included section 7010 in subtitle G of the Act. EPA does not believe that by referencing the enforcement authority contained in sections 7002 and 7003, Congress has precluded the Agency from enforcing the *regulatory* ban on Class IV wells under RCRA § 3008, or from initiating an action in equity to enjoin a violation of the prohibition contained in section 7010(a).

Section 7010(b) provides an exception to the ban provision. The ban does not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn if

(1) The injection is part of a federally-supervised cleanup action under RCRA (e.g., corrective action requirements of § 264.100, 101), or section 104 or 106 of CERCLA;

(2) Contaminated ground water is treated to substantially reduce hazardous constituents prior to injection; and

(3) Such cleanup, when completed, will be sufficient to protect human health and the environment. The legislative history elaborates on the intent of this exception, noting that since "[t]he pumping, treatment and reinjection of already contaminated ground water may be the preferred removal or remedial technique" at some site, such injections are not to be

[18] In 40 CFR 144.13, as amended on May 11, 1984 at 49 FR 20138 et seq., EPA promulgated a ban on hazardous and radioactive waste injection into or above "underground sources of drinking water." (This phrase, often referred to as "USDW," is broadly defined in 40 CFR 144.3.) Congress ratified that definition in § 7010(d). The ban includes an exception, similar to that in the statute, for reinjection of treated, contaminated ground water during an EPA-approved cleanup action under RCRA or CERCLA.

banned. 130 Cong. Rec. S9179 (daily ed. July 25, 1984).

A question of interpretation arises with respect to section 7010(b)(3), which requires that any response action or corrective action involving reinjection of contaminated ground water be sufficient to protect human health and the environment. Section 300.68(j) of the CERCLA regulations provides that a remedial action must effectively mitigate and minimize damage to and provide adequate protection of public health, welfare, and the environment. Similarly, §§ 264.100 and 264.101 of the RCRA regulations provide that any corrective action program must protect human health and the environment by meeting the standards specified therein. Finally, the EPA regulations at 40 CFR 144.13(c) provide that EPA must specifically approve of any such reinjection. EPA believes that any response or corrective action carried out in conformance with these provisions should be deemed to satisfy the standard set forth in section 7010(b)(3).

B. Small Quantity Generators

The HSWA adds a new subsection (d) to section 3001 of RCRA designed to modify EPA's current regulatory exemption (40 CFR 261.5) of wastes generated by small quantity generators from full Subtitle C regulation.[19] The principal focus of section 3001(d) is a comprehensive set of standards specifically tailored to wastes produced by small quantity generators of between 100 kilograms and 1000 kilograms per calendar month which EPA must promulgate by March 31, 1986 pursuant to sections 3001(d)(1), 3001(d)(2), and 3001(d)(6). If EPA fails to promulgate these small quantity generator standards by March 31, 1986, the requirements set forth in section 3001(d)(8) automatically go into effect.

Section 3001(d) makes certain minimum requirements applicable to small quantity generators of between 100 kilograms and 1000 kilograms per calendar month effective before March 31, 1986. Effective immediately, section 3001(d)(5) provides that all hazardous waste from generators producing greater than 100 kilograms but less than 1000 kilograms of hazardous waste per calendar month must be either treated, stored, or disposed of at a facility having a permit under section 3005 of RCRA or disposed of at a facility authorized by a State to manage municipal or industrial solid waste. Section 3001(d)(3) provides that, no later than 270 days after enactment, hazardous waste shipped off-site by a generator producing greater than 100 kilograms but less than 1000 kilograms during one calendar month must be accompanied by a copy of the EPA Uniform Hazardous Waste Manifest form signed by the generator and containing certain specified information.

EPA is publishing today regulatory amendments necessary to codify requirements dictated by the statutory amendments effective until March 31, 1986. These regulatory amendments will remain in effect until standards are promulgated pursuant to section 3001(d)(1) or until March 31, 1986, whichever occurs first. The Agency has already initiated a study of small quantity generators and will continue this study consistent with the mandates of Section 221(c). On the basis of this study, EPA intends to propose and promulgate a comprehensive set of small quantity generator standards in accordance with sections 3001(d)(1), 3001(d)(2), and 3001(d)(6) of RCRA. In the event the Agency finds it is unable to promulgate these standards by March 31, 1986, it may publish further regulatory amendments to codify additional requirements of section 3001(d)(8) that are applicable to small quantity generators on March 31, 1986.

The statutory provisions codified today affect only those generators generating between 100 kilograms and 1000 kilograms of non-acutely hazardous waste per calendar month. Section 3001(d)(7) of RCRA expressly provides that existing EPA regulations pertaining to acutely hazardous waste are not affected by the statutory amendments. Thus, these amendments, together with existing regulations, distinguish three classes of small quantity generators for regulatory purposes:

(1) Those generating between 100 kilograms and 1000 kilograms of non-acutely hazardous waste per calendar month;

(2) Those generating up to 100 kilograms of non-acutely hazardous waste per calendar month; and

(3) Those generating acutely hazardous waste in those quantities currently set forth in paragraphs (e)(1) and (e)(2) of § 261.5.

EPA is amending § 261.5 to reorganize existing provisions and to codify new statutory requirements to provide a separate paragraph for each class of small quantity generators listed above. Today's regulatory amendments add three new paragraphs to § 261.5 designated as paragraphs (f), (g), and (h); existing paragraphs (f) and (g) are stricken; and existing paragraphs (h) and (j) are redesignated as (i) and (k), respectively.

New paragraph (f) of § 261.5 recodifies all existing requirements applicable to small quantity generators of acutely hazardous waste in quantities set forth in paragraph (e). It provides that the generator must comply with § 262.11 to determine whether his waste is hazardous (recodified from existing paragraph (g)(1) of this section); conditionally allows for on-site accumulation (recodified from existing paragraph (f) of this section); and sets out treatment, storage, and disposal requirements (recodified from existing paragraph (g)(3) of this section).

New paragraph (g) of § 261.5 recodifies existing requirements applicable to small quantity generators generating less than 100 kilograms of non-acutely hazardous waste in one calendar month.[20] It requires that generators comply with § 262.11 (recodified from existing paragraph (g)(1) of this section); conditionally allows for on-site accumulation (recodified from existing paragraph (f) of this section); and provides for treatment, storage, and disposal practices (recodified from existing paragraph (g)(3) of this section).

New paragraph (h) recodifies one existing requirement and incorporates new requirements pursuant to Sections 3001(d)(3) and 3001(d)(5) of RCRA, applicable to generators generating between 100 kilograms and 1000 kilograms of non-acutely hazardous waste during one calendar month. The existing provision requiring the generator to comply with § 262.11 is recodified from existing paragraph (g)(1) of this section and is now found at paragraph (h)(1).

New paragraph (h)(3) codifies section 3001(d)(3) of RCRA requiring, effective August 5, 1985, any hazardous waste shipped off-site by a generator of

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[19] Enactment of section 3001(d) eliminates the issue, initially raised with respect to EPA's regulatory exemption of small quantity generators in 1980, as to whether EPA has legal authority to conditionally exempt small quantity generators from full Subtitle C regulation. Section 3001(d)(1) directs EPA to promulgate standards applicable to wastes generated by generators of between 100 kilograms and 1000 kilograms per calendar month, which may, pursuant to section 3001(d)(2), differ from existing subtitle C regulations applicable to wastes from larger quantity generators. Section 3001(d)(4) further provides that EPA may establish standards for generators of less than 100 kilograms per month if such standards are required to protect human health and the environment.

[20] Section 3001(d)(4) of RCRA provides that EPA may establish standards applicable to small quantity generators of less than 100 kilograms hazardous waste per calendar month, if the Administrator finds such standards necessary to protect human health and the environment. EPA is not publishing, at this time, any requirements applicable to these generators beyond those currently required by existing § 261.5.

between 100 kilograms and 1000 kilograms per month to be accompanied by a copy of EPA's Uniform Hazardous Waste Manifest form signed by the generator. This form must contain the following information:

(1) The name and address of the generator;

(2) The U.S. Department of Transportation description of the waste including the proper shipping name, hazard class, and identification number; [21]

(3) The number and type of containers;

(4) The quantity of waste being transported; and

(5) The name and address of the designated facility.

This information corresponds to Items 3, 9, 11, 12, 13, 14, and 16 of EPA's Uniform Hazardous Waste Manifest, form 8700-22 and accompanying instructions, promulgated by EPA on March 20, 1984 (40 CFR Part 262, Appendix; 49 FR 10490). Although use of the form is mandatory after August 5, 1985, small quantity generators are not required by Federal law to complete the entire form or to comply with the full manifest system established by 40 CFR Part 262 applicable to generators of greater than 1000 kilograms of hazardous waste per month. However, States operating approved hazardous waste programs in lieu of the Federal program pursuant to section 3006 of RCRA may have additional manifest requirements applicable to small quantity generators. Generators in States having their own hazardous waste program are strongly advised to contact the appropriate State agency when completing this form to ensure compliance with State law.

New paragraph (h)(4) of § 261.5 sets forth requirements for the treatment, storage, or disposal of wastes produced by generators of between 100 kilograms and 1000 kilograms of nonacutely hazardous wastes per month. These requirements allow a generator to either treat or dispose of his hazardous waste on-site or ensure delivery to an off-site storage, treatment, or disposal facility providing that the on-site or off-site facility is either:

(1) Permitted by EPA pursuant to section 3005 or by a State having an authorized permit program pursuant to Part 271 of this chapter;

(2) In interim status under Parts 270 and 265 of this chapter;

(3) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(4) A facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or treats its waste prior to reuse, recycling or reclamation.

These are the same requirements currently applicable to small quantity generators, recodified from § 261.5(g)(3). In retaining these requirements, EPA is relying on the only reading of section 3001(d)(5) that is consistent with Congress' overall scheme of small quantity generator waste regulation and the legislative history.

Section 3001(d)(5) governs the destination of hazardous waste from generators of between 100 kilograms and 1000 kilograms from the date of enactment until promulgation of the full set of small quantity generator standards or until March 31, 1986 (when the alternative provisions of section 3001(d)(8) become effective). It provides that:

> . . . any hazardous waste . . . which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disosal facility with a permit under section 3005, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

Section 3001(d)(5) explicitly allows for treatment, storage, or disposal at a facility with a permit under section 3005. In addition, since a permit issued by a State having an approved hazardous waste permit program pursuant to section 3006 generally has the same force and effect as a permit issued by EPA under section 3005, section 3001(d)(5) also allows for small quantity generator waste management at a hazardous waste facility permitted by a State. (See section 3006(d) of RCRA). To implement this provision, today's rule recodifies existing regulations (§§ 261.5(g)(3) (i) and (iii)) to allow small quantity generators of between 100 kilograms and 1000 kilograms of hazardous waste to continue to treat, store, or dispose of such waste at a facility having either an EPA- or State-issued hazardous waste permit.

The plain language of section 3001(d)(5) does not expressly provide for treatment, storage, or disposal of small quantity generator waste at a facility in interim status. Section 3001(d)(5) refers only to a facility "having a permit under Section 3005." EPA has consistently interpreted this language as meaning only a facility actually having obtained a permit pursuant to Parts 270 and 264 of this chapter (see, *Hempstead County and Nevada County Project, et al.* v. *U.S. EPA*, 700 F. 2d 459 (8th Cir. 1983)). Since section 3001(d)(5) does not expressly provide for treatment, storage, or disposal of small quantity generator waste at a facility in interim status, a strict reading of this section, apart from other statutory provisions governing small quantity generator waste, would effectively rule out treatment, storage, or disposal at a facility in interim status. As discussed below, EPA is rejecting such a restrictive reading of section 3001(d)(5) because it does not fit within the statutory scheme chosen by Congress for small quantity generator waste and is not consistent with the legislative history accompanying this section.

EPA believes that implementation of section 3001(d)(5) must be consistent with the nature and structure of section 3001(d) governing small quantity generator waste as a whole. The overall statutory scheme chosen by Congress in section 3001(d) provides that, from the date of enactment, progressively more stringent requirements are to be applied to small quantity generator waste. This phase-in of regulatory requirements begins with the partial manifest requirement of section 3001(d)(3) applicable to only generators of between 100 kilograms and 1000 kilograms of hazardous waste per month which remains in effect only until EPA promulgates the full set of small quantity generator standards. If EPA fails to promulgate a full set of standards by March 31, 1986, additional requirements will be applied to generators of between 100 kilograms and 1000 kilograms of hazardous waste per month pursuant to section 3001(d)(8). Both the minimum requirements of section 3001(d)(6) for the full set of standards and the alternative provisions of section 3001(d)(8) allow treatment, storage, or disposal of small quantity generator waste at a facility in interim status. Implementation of section 3001(d)(5) based on a strict interpretation would prohibit treatment, storage, or disposal of small quantity generator waste at a facility in interim

[21] Section 3001(d)(3) provides that if the Department of Transportation ("DOT") description is "not applicable" the manifest form shall contain the EPA identification number, or a generic description of the waste, or a description of the waste by hazardous waste charcteristic. Today's rule does not include a provision allowing use of these descriptions in lieu of DOT's description because DOT's description will always be applicable. DOT's regulations implementing the Hazardous Materials Transportation Act require all shipments of hazardous materials (a universe which includes all RCRA hazardous wastes) to be accompanied by a shipping paper including DOT's descriptive information. For shipments of hazardous waste, the completed manifest serves the dual purpose of satisfying both DOT's shipping paper requirements and EPA's manifest requirements. Thus, in order to conform with DOT's shipping paper requirements, the manifest must contain DOT descriptive information including the proper shipping name, hazard class, and identification number (UN/NA).

status and thus would produce the anomalous and inconsistent result of making interim requirements more stringent than the full set of small quantity generator standards or alternative requirements of section 3001(d)(8), since either set of requirements allows management of small quantity generator waste at an interim status facility. EPA does not believe that such a result can be reconciled with the Congressional objective of imposing progressively more stringent regulatory requirements on small quantity generator waste.

This conclusion is bolstered by the legislative history accompanying section 3001(d)(5). Both the conference report for HSWA and the Senate report accompanying the Solid Waste Disposal Act Amendments of 1983, S. 757 (from which this provision was taken) indicate that Congress intended section 3001(d)(5) to allow treatment, storage, or disposal of small quantity generator waste at facilities having interim status. The conference report explains that section 3001(d)(5) requires that small quantity generator waste, "shall go to Subtitle C facilities or facilities licensed by a State to manage municipal or industrial wastes." H.R. Rep. No. 1133, 98th Cong., 2nd Sess. 103 (1984). Subtitle C of RCRA authorizes management of hazardous waste at either a facility with a permit under sections 3004 and 3005 or at a facility having interim status pursuant to section 3005. Accordingly, reference to "Subtitle C facilities" includes facilities in interim status. The Senate report on section 3001(d) (originally reported as section 3002(b)) explains that the language "having a permit under section 3005" includes "both facilities that have a Subtitle C permit issued by either EPA or an authorized State or *facilities with interim status, since interim status facilities are deemed to have a permit under the language of section 3005.*" [Emphasis added.] S. Rep. No. 284, 98th Cong., 1st Sess. 12 (1983). These discussions relative to section 3001(d)(5) clearly evidence Congress' intent to allow management of small quantity generator waste at interim status facilities.

Similarly, EPA has retained the existing provision allowing treatment or storage as well as disposal of small quantity generator waste at facilities permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Although section 3001(d)(5) refers only to *disposal* of small quantity generator waste at a State-approved municipal or industrial solid waste facility, the legislative history indicates that Congress did not intend to restrict use of State-authorized municipal or industrial solid waste facilities to disposal only. The conference report states that small quantity generator waste "shall go" to municipal or industrial waste facilities, not limiting such destination to disposal. H. Rep. No. 1133, 98th Cong., 2nd Sess. 103 (1984). The Senate report on S. 757 from which section 3001(d)(5) was taken, explains that this section was meant to codify existing small quantity generator regulatory requirements relative to State-approved solid waste facilities. S. Rep. No. 284, 98th Cong., 1st Sess. 9 (1983). Inasmuch as existing requirements allow treatment and storage of small quantity generator waste at a State-approved solid waste facility, Congress thus intended to continue these requirements. Moreover, allowing treatment and storage as well as disposal of small quantity generator waste in a State-approved solid waste facility is consistent with the general objective in section 3001(d) of ensuring sound management of small quantity generator waste; arguably, treatment or storage of hazardous waste at a State-approved solid waste facility is less environmentally threatening than disposal of waste at such a facility.

Thus, State-approved industrial or municipal solid waste facilities that choose to accept hazardous wastes from small quantity generators during the interim before the effective date of the standards or March 31, 1986, whichever comes first, do not have to have either interim status or a permit. However, if these facilities intend to continue accepting hazardous wastes after the effective date of the standards or March 31, 1986, they must have either interim status or a permit since both the full set of standards and the alternate provisions effective March 31, 1986 restrict treatment, storage, and disposal of small quantity generator waste to Subtitle C facilities.[22]

New paragraph (h)(2) recodifies the existing requirement (§ 261.5(f)) allowing small quantity generators to accumulate on-site up to 1000 kilograms of hazardous waste, provided that if the accumulation limit of 1000 kilograms is exceeded, all of the accumulated wastes are subject to full Subtitle C regulation.

[22] Section 3005(e)(1)(A)(ii) provides that facilities in existence on the effective date of statutory or regulatory changes that render the facility subject to permit requirements may qualify for interim status. Since State-approved industrial and municipal solid waste facilities choosing to accept hazardous waste after promulgation of the full set of standards or March 31, 1986 will be subject to permitting requirements, they will be eligible for interim status pursuant to section 3005(e)(1)(A)(ii).

The HSWA does not explicitly address on-site storage of small quantity generator hazardous waste during the period between enactment and the effective date of the full set of small quantity generator standards. If the full set of standards is not promulgated by March 31, 1986, the alternative requirements of section 3001(d)(8) apply. As discussed earlier, EPA does not believe that Congress intended to place more stringent requirements on small quantity generator waste during the interim before promulgation of the set of small quantity generator standards, but rather intended to maintain the status quo with respect to the destination of small quantity generator wastes. Accordingly, EPA has retained the existing regulatory scheme for on-site accumulation for up to 1000 kilograms of hazardous waste.

C. Permits/Interim Status

1. Preconstruction Ban/TSCA Exception

On May 19, 1980 EPA promulgated regulations prohibiting the construction of new hazardous waste management facilities without a finally effective RCRA permit (40 CFR 270.10(f)(1)). In the HSWA, Congress adopted these regulations by amending section 3005(a) of RCRA to clarify the Administrator's authority to require a RCRA permit to construct a hazardous waste treatment, storage, or disposal facility. The preconstruction ban in section 3005(a) is, however, qualified. The statute exempts facilities constructed pursuant to an approval issued by the Administrator under section 6(e) of the Toxic Substances Control Act (TSCA), for the incineration of polychlorinated biphenyls (PCBs), from the requirement to have a RCRA permit prior to construction. Any person owning or operating such a facility may file an application for a RCRA permit to incinerate hazardous wastes at any time after construction or operation of such a facility.

The purpose of the TSCA exemption from the preconstruction ban is to remove an inconsistency between the RCRA and TSCA regulations affecting incinerators. As discussed previously, under current RCRA regulations no construction may occur prior to receipt of a final permit. However, under TSCA, construction may occur prior to final approval (the analogue of a RCRA permit).

The Congressional intent underlying the TSCA exemption is as follows:

[w]here an incinerator has been constructed and approved pursuant to TSCA for the burning of PCBs, the owner or operator shall

not be precluded from applying for a RCRA permit solely because a RCRA permit was not obtained prior to construction. The EPA regulation being codified by this amendment was designed to assure that when it has been unable to influence the location, design, and construction chosen by the applicant, the permitting agency would not face a choice between approving an incinerator or "forcing the abandonment or devaluation of the premature investment." Here, however, if a company proceeded with construction, obtained TSCA approval, and then sought a RCRA permit, the company would not have to abandon or suffer a devaluation of its investment if it was ultimately denied a RCRA permit for the incinerator. The company would still have a PCB incinerator. 130 Cong. Rec. S.9175, (daily ed. July 25, 1984).

In order to codify the TSCA exemption, the Agency is today amending § 270.10(f)(3). That provision currently allows a person to begin physical construction of a new hazardous waste management facility subsequent to November 19, 1980, but prior to the effective date of the unit-specific Part 264 standards (i.e., Subpart I et seq.) in limited circumstances. The Agency believes that this provision is legally inconsistent with the general preconstruction ban and is, accordingly, deleting that provision in today's rule. The Agency is instead codifying the section 3005(a) TSCA exemption in § 270.10(f)(3).

Congress did not specifically address whether the TSCA exemption from the preconstruction ban is applicable to units that store PCBs prior to incineration at a TSCA-approved incineration facility. Under the TSCA regulation, any PCB articles or PCB containers may be stored for disposal for up to one year (40 CFR 761.65). The facility need not obtain a permit for construction of the storage unit but must ensure that the unit meets the criteria specified in § 761.65. The Agency believes that, as a legal matter, the TSCA exemption to the preconstruction ban for facilities constructed pursuant to approval under TSCA is applicable to storage units at these facilities in compliance with § 761.65. To hold otherwise would eviscerate the statutory exemption since it is common practice for facilities to store PCBs prior to incineration.

2. Permit Life

On May 19, 1980, EPA promulgated a regulation providing that RCRA permits shall be effective for a fixed term not to exceed 10 years. 40 CFR 122.9(a) (now codified as 40 CFR 270.50(a)). On February 8, 1983, EPA proposed to amend that regulation to issue permits for the life of the facility (48 FR 5872). In response to that proposal, Congress, in HSWA, amended section 3005(c) to provide that any permit for a treatment, storage, or disposal facility shall be for a fixed term, not to exceed 10 years.

In enacting this provision, Congress stated that "with the advancing state of technology and the long projected useful life of many of these facilities, it is preferable to limit permit life to the minimum period consistent with the cost and administrative burden of issuing a permit. * * * Limited permit duration will assure that facilities are periodically reviewed and requirements for them upgraded to reflect the current state of the art." S. Rep. No. 284, 98th Cong., 1st Sess. 30 (1983).

The Agency believes that § 270.50(a)-(c), as currently drafted, is consistent with the statutory amendment to section 3005(c). Therefore, the Agency is not amending those regulations today.

The HSWA also amends section 3005(c) to provide that each permit for a land disposal facility shall be reviewed 5 years after the date of issuance or reissuance and shall be modified as necessary to assure that the facility complies with the currently applicable requirements in sections 3004 and 3005. Since section 3005 provides that the Agency has the authority to issue permits encompassing conditions necessary to protect human health and the environment, the Agency may modify land disposal permits to include these conditions.

In order to codify the amendment to section 3005(c), the Agency is today amending § 270.50 by adding a new subsection, § 270.50(d). That subsection requires the Director to review the permit for a land disposal facility 5 years after the date of permit issuance or reissuance and to modify the permit in accordance with § 270.41.

The Agency is also amending § 270.41(a) in order to implement the amendment to section 3005(c). Section 270.41(a)(3) as currently drafted, provides that permits may be modified because of regulatory amendments only if the permittee requests such a modification. That provision conflicts with the statutory requirement that the Agency modify land disposal permits to assure continued compliance with applicable regulations. Accordingly, the Agency is today amending § 270.41(a) by adding a new cause for modification, § 270.41(a)(6). Section 270.41(a)(6) provides that notwithstanding any other provision in § 270.41(a), when a permit for a land disposal facility is reviewed under § 270.50(d), the Director shall modify the permit to assure that the facility continues to comply with the currently applicable requirements in Parts 264, 266, and 270. Since, as discussed below, EPA has the authority under Part 270 to issue permit conditions beyond those specified in the regulations, the Agency may, where appropriate, modify land disposal permits to reflect conditions beyond those specifically set forth in the regulations under the authority of Part 270.

Pursuant to today's rule, the Agency may modify permits to incorporate new regulatory requirements without the request of the permittee in the context of land disposal permit reviews. Such permit modifications would constitute major modifications and would, accordingly, be subject to the procedural rights of notice and comment under 40 CFR Part 124 accorded permittees undergoing major permit modifications.

3. Authority To Add Conditions

In enacting HSWA, Congress amended § 3005(c) to provide that each RCRA permit issued shall contain such terms as the Administrator (or the State) determines necessary to protect human health and the environment. The accompanying legislative history indicates a Congressional intent to authorize the Administrator to add permit conditions beyond those specified in the regulations. S. Rep. No. 284, 98th Cong., 1st Sess. 31 (1983). The Agency is today implementing this amendment by adding a new subsection to the RCRA regulations, concerning the establishment of permit conditions, § 270.32(b)(2).

Since the Administrator has the authority to review land disposal facility permits every five years to assure that the facility operates in a manner which protects human health and the environment, the Administrator has the authority to add permit conditions where necessary to protect human health and the environment when conducting such reviews of land disposal facility permits under § 270.50(d). The Administrator also has the authority to add conditions necessary to protect human health and the environment when reviewing an application for permit renewal. Such an interpretation is in accordance with the amendment to section 3005(c) which specifically requires the permitting authority, in any permit renewal, to consider among other things improvements in the state of control and measurement technology as well as changes in applicable regulations. Such improvements and changes must be incorporated in the renewed permit. S. Rep. No. 284, 98th Cong., 1st Sess. 30-31 (1983). Improvements and changes in control and measurement technology are factors that Congress intended the Administrator to take into account when adding permit terms and conditions as necessary to protect human health and the environment. *Id.* Accordingly, the Administrator has the authority under section 3005 to add conditions necessary to protect human health and the environment when reviewing an application for permit renewal. In addition, the Administrator shall consider any changes that may have occurred in operation of the facility since the permit was issued, and other information concerning the impact of the facility on human health and the environment.

Section 3005(c) provides that each RCRA permit *issued* under section 3005 shall contain such terms as the Administrator deems necessary to protect human health and the environment (emphasis added). The Congressional intent underlying this amendment is to authorize the Agency to impose permit conditions beyond those mandated by the regulations, such as new or better technologies or other new requirements. S. Rep. No. 284, 98th Cong., 1st Sess. 31 (1983). The purpose of this amendment is to upgrade facility requirements in order to protect human health and the environment. The Agency believes that the authority to *issue* permits containing conditions deemed necessary to protect human health and the environment must encompass the authority to *deny* permits where necessary to afford such protection. To hold otherwise would deprive this statutory amendment of its intended effect.

4. Expansion of Interim Status for Newly Regulated Units

Section 3005(e) of RCRA previously restricted interim status to owners or operators of "existing HWM facilities" or facilities in operation or for which construction commenced on or before November 19, 1980. In HSWA, Congress amended section 3005(e) by providing that facilities in existence on the effective date of statutory or regulatory changes under the Act that render the facility subject to the requirement to have a permit, qualify for interim status if they make an application for a permit and comply with the section 3010 notification requirements. Facilities which have been previously denied a RCRA permit or for which authority to operate the facility under RCRA has been previously terminated may not, however, qualify for interim status pursuant to the amendment to section 3005(e).

In the legislative history accompanying this provision, Congress indicated that the amendment to section 3005(e) would apply to facilities in existence which treat, store, or dispose of newly listed hazardous wastes. The legislative history also noted that facilities which were previously exempted from certain RCRA requirements but subsequently became subject to those requirements (e.g., small quantity generators) would also be eligible for interim status as a result of this amendment. 130 Cong. Rec. S9170 (daily ed. July 25, 1984).

If a unit at a facility has been previously denied a RCRA permit or had its interim status terminated, the owner or operator of the facility may not qualify for interim status for any unit at the facility in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit. This interpretation is in accordance with the legislative history which notes that *facilities* for which RCRA permits have been previously denied or for which interim status has been previously terminated would be unable to qualify for interim status pursuant to this amendment *under any circumstances. Id.*

As discussed previously, facilities must submit a permit application in order to qualify for interim status. In order to implement the statutory amendment to section 3005(e), the Agency is today amending 40 CFR 270.70(a). Section 270.70(a), as amended, provides that owners and operators of facilities in existence on the effective date of changes under the Act that require the facility to have a permit, qualify for interim status if they comply with the requirements of 40 CFR 270.10 governing submission of Part A permit applications. Since § 270.10 does not currently provide Part A application requirements for owners and operators of these facilities, the Agency is today amending the application requirements in § 270.10(e) to reflect the new § 270.70(a). Today's rule provides that owners and operators of HWM facilities in existence on the effective date of statutory or regulatory amendments under RCRA that render the facility subject to permit requirements must submit Part A of their permit application by the dates specified in § 270.10(e)(1) in order to qualify for interim status. The Agency is also adding a new provision, § 270.70(c), in order to implement the amendment to section 3005(e). Section 270.70(c) provides that a person shall not qualify for interim status if he owns or operates a facility which has been previously denied a RCRA permit or if authority to operate the facility has been previously terminated.

5. Loss of Interim Status for Failure To Submit Part B

The HSWA amends section 3005(e) by providing that interim status for owners and operators of land disposal facilities terminates within a 12-month period unless the owner or operator submits a Part B prior to that date and certifies compliance with the applicable ground-water monitoring and financial responsibility requirements. Congress also amended section 3005(c) to provide that interim status for owners and operators of incinerators terminates by November 8, 1989 unless a Part B application is submitted by November 8, 1986. For all other facilities, interim status terminates by November 8, 1992, unless an application is submitted by November 8, 1988. The Agency is today amending the regulation concerning termination of interim status, 40 CFR 270.73, to reflect these grounds for termination of interim status.

In addition to amending § 270.73, the Agency is also amending 40 CFR 270.10(e)(4) which specifies the application requirements for HWM facilities. Section 270.10(e)(4) now provides that an owner or operator shall submit his Part B voluntarily or in response to a request from the State or EPA. Section 270.10(e)(4), as amended today, provides that owners or operators of HWM facilities must submit their Part B application in accordance with the dates specified in § 270.73. This regulatory amendment conforms with the statutory requirement that the owner's or operator's duty to submit a Part B application is mandatory. The Agency or the State need not first request the Part B application. It is the Agency's intention, however, to continue, as a matter of policy, to request Part B applications from owners and operators of hazardous waste management facilities, consistent with the deadlines now specified in § 270.73. It should also be noted that submission of a UIC permit application would meet the requirement to submit the Part B application for facilities covered by the UIC permit by rule (See § 270.60(b)).

If at the expiration of the specified statutory time periods, the owner or operator of the facility fails to submit his Part B application or applicable certifications of compliance, interim status will terminate immediately under section 3005. EPA need not take any specific action to terminate the facility's interim status. Requiring specific Agency action prior to termination of interim status would delay the termination of interim status which would, in turn, conflict with the statutory requirement that interim status terminates on the expiration of the statutory time period.

As discussed previously, the applicant must certify compliance with applicable ground-water monitoring and financial responsibility requirements. The statute is silent as to whether the applicable requirements are found in Part 264 or Part 265. However, the legislative history indicates that the applicable ground-water monitoring requirements are found in Part 265. In discussing the amendment, Congress asserted that since EPA's ground-water monitoring requirements have been in effect since November 1981, there is no excuse for noncompliance at this late date. 129 Cong. Rec. H8142 (October 6, 1983). The ground-water monitoring requirements in effect since November 1981 are those found in Part 265, Subpart F. See § 265.90. Accordingly, certification with the Part 265 ground-water monitoring standards or the State analogue to the Part 265 requirements will satisfy section 3005(e)(3). In order to be internally consistent with respect to certifications of compliance under section 3005(e)(3), the owner or operator must certify compliance with the financial responsibility requirements found in Part 265 or the State analogue to the Part 265 requirements rather than Part 264.

If the owner or operator of a facility fails to submit the application or the applicable certifications of compliance for such facility, the statute provides that interim status shall terminate for such facility. The Agency believes that the termination of interim status only affects the unit or units at the hazardous waste management facility for which the required information is not submitted. For example, if a hazardous waste management facility had both an incinerator and a land disposal unit, and the owner or operator of the facility submitted the Part B for the incinerator by the specified date but *not* for the land disposal unit, interim status would terminate for the land disposal unit and *not* for the incinerator.

EPA believes this interpretation is reasonable for several reasons. First, EPA sees no evidence in the legislative history to suggest that Congress meant to stop all operations at a large, multiple-unit facility simply because one unit has not properly submitted its Part B application or applicable certifications. Terminating waste management at these units that are not covered by the owner's or operator's application or certification would seem an adequate sanction to achieve the Congressional purpose. Moreover, allowing loss of interim status for a subset of units at a facility is consistent with EPA's regulatory authority to divide its consideration of units for permitting purposes. See § 270.1(c)(4). Under its current regulations EPA may grant or deny a permit to a set of units at a facility without disturbing the facility's interim status for other units at the facility.

D. Burning and Blending of Hazardous Waste

1. Ban on Hazardous Waste in Certain Cement Kilns

Section 204 of the Hazardous and Solid Waste Amendments of 1984 amends section 3004 of RCRA to prohibit cement kilns located in incorporated cities with populations greater than 500,000 from burning hazardous waste, or any fuel containing a hazardous waste, unless they comply with the regulations applicable to hazardous waste incinerators. This prohibition, contained in section 3004(8)(2)(C), remains in effect until the Agency develops substantive standards for cement kilns burning hazardous waste. As discussed more fully below, the prohibition would not apply to cement kilns burning petroleum coke containing hazardous waste indigenous to petroleum refining, unless the petroleum coke exhibited a characteristic of hazardous waste. *See* RCRA amended sections 3004(q)(2)(C)(i) and 3004(q)(2)(A), respectively.

The "hazardous wastes" covered by this prohibition are any hazardous wastes identified or listed in regulations implementing section 3001, and explicitly include commercial chemical products that are burned in lieu of their original intended use. *See* RCRA amended section 3004(g)(1).[23] The statute supersedes the exemption for the actual act of recycling (in this case, burning in a cement kiln) found in existing § 261.6(b), and also in EPA's recently published amendment, found in amended § 266.30, 50 FR at 667.

We have codified the statutory language in a new Subpart D to Part 266 of the regulations. This Subpart is reserved for rules dealing with burning hazardous wastes in thermal combustion devices other than incinerators, namely boilers and industrial furnaces. We also have made conforming changes to §§ 261.6(a) and 261.33.

The statutory prohibition applies to "fuels" containing hazardous wastes. The provision thus does not appear to apply to cement kilns burning hazardous wastes for material recovery. This is consistent with legislative history distinguishing between cement kilns burning for energy and material recovery. See H.R. Rep. No. 198, 98th Cong., 1st Sess. 40 (1983). An issue not specifically addressed is the status of a cement kiln burning hazardous waste for the dual purposes of energy and material recovery. In light of the remedial purpose of the provision, and the broad reach of section 204 in general, the Agency believes that cement kilns burning for a dual purpose are covered by the prohibition. See also 50 FR at 630–31 (January 4, 1985).

2. Labeling of Hazardous Waste Fuels

The new statutory amendments also require that any person who produces, distributes, or markets a fuel containing a hazardous waste, or a hazardous waste burned directly as a fuel, must include a warning label in the invoice or bill of sale for the fuel. The warning label must state that the fuel contains hazardous wastes, and must list the hazardous wastes contained therein. *See* RCRA Section 3004(r)(1). The legislative history indicates that this latter requirement is satisfied by identifying wastes by generic classes (such as "chlorinated solvent") rather than by precise chemical name. H.R. Rep. No. 198, 98th Cong., 1st Sess. 42 (1983). The warning label must be located conspicuously, and be printed in conspicuous, legible, and contrasting type. This requirement took effect on February 6, 1985. The warning label requirement applies to fuels containing *any* hazardous waste (with three exceptions described below), and so supersedes provisions in §§ 261.6(a) and 261.33 of EPA's existing regulations (as well as provisions in EPA's recent January 4 amendment to § 261.6(a)).

An issue arises as to precisely who is to prepare a warning label, particularly with reference to intra-company shipments of hazardous waste fuels. The labeling requirement applies to any person required to notify under paragraphs (1) and (3) of section 204, namely persons who produce, market, or distribute hazardous waste fuel. The

[23] For this prohibition to apply, a commercial chemical product must be burned in lieu of its normal use, or added to a fuel in lieu of its normal use. A fuel merely containing a chemical on the § 261.33 list is *not* automatically a hazardous waste. For the fuel to be a waste, the chemical must have been a commercial product (or off-specification variant or spill residue thereof) when it was added, and the commercial chemical must not be a fuel itself. See H.R. Rep. No. 570, 97th Cong., 2d Sess. 18–19 (1982). EPA has recently amended § 261.33 in a manner virtually identical to the statute. See 50 FR at 665 (January 4, 1985).

legislative history indicates that the purpose of the provision is to put users and transporters on notice that they are handling a fuel potentially more dangerous than a virgin fuel. H.R. Rep. No. 198 at 42; S. Rep. No. 284 at 40. The Agency thus is of the view that this requirement should apply whenever a hazardous waste fuel is sent off-site, even if the ultimate user is the same company that produced the fuel.

We note that the labeling requirement may be superseded by EPA regulations. RCRA section 3004(r)(1). EPA believes that a hazardous waste manifest serves the same function as the warning label, and is far more efficient to administer. EPA thus proposed requiring a manifest rather than a warning label. 50 FR at 1704 (January 11, 1985).

3. Exception to Labeling Requirement

The statute contains three exceptions to the labeling requirement: for hazardous waste-derived petroleum coke, and for two types of hazardous waste-derived fuels from petroleum refining operations. These are discussed below in turn.

The exception for petroleum coke applies to petroleum coke which contains as ingredients oil-bearing hazardous wastes from petroleum refining operations, for those wastes that are indigenous to the refining operations. Thus, if a refinery added spent solvents to the coke, the coke would not be exempt. *See* S. Rep. No. 284 at 39. Hazardous waste-derived petroleum coke exhibiting a characteristic of hazardous waste is not exempt. In addition, the legislative history is clear that only the petroleum coke is exempt: "the exemption for hazardous waste to be converted to coke begins only with the introduction to the conversion process." *Id.* The hazardous refinery wastes are subject to regulation up until that point.

The second statutory exemption from the labeling requirement is for hazardous waste-derived fuels from petroleum refining operations (defined as refining operations within SIC Code 2911). There are three conditions precedent to this exemption: the wastes must contain oil, they must be generated and reinserted on-site into the refining process at a point where contaminants are removed, and they must be converted into product along with normal process streams. As with the previous exemption, this exemption applies only to fuel containing wastes that are indigenous to the petroleum refining process. H.R. Rep. No. 198 at 43.

The legislation does not state precisely what is meant by the requirement that "contaminants (be) removed" by reinsertion into the process. The Agency does not read this as a requirement that all contaminants be removed. This is shown by the legislative history, which states that this standard was adopted by analogy to the definition of rerefined oil in section 104(39) of RCRA. S. Rep. No. 284 at 41. Rerefining is a process that removes some but not all contaminants.

The Agency believes that the requirement that wastes be inserted into a part of the refining process where contaminants are removed means that wastes must be inserted at or before a point in the process designed to remove toxic metal and organic contaminants in the normal operation of the refining process. The requirement does not mean, however, that all contaminants in the waste be removed. Examples of parts of the refining process designed to remove contaminants are atmospheric distillation towers, vacuum distillation towers, fluid cokers, and catalytic cracking operations.

Fuels resulting from refining operations where hazardous wastes are added at or before these points would not be automatically subject to the warning label requirement. Conversely, certain downstream refining operations (e.g., product finishing, blending, and packaging operations) are not designed to remove contaminants in the sense required by the bill. These operations are designed primarily to improve product saleability; removal of toxic metals and organics is incidental to this purpose. Fuels containing hazardous wastes added at these points in the process would have to have a warning label.

The final exemption from labelling is for oily wastes from petroleum refining and transportation practices that are inserted into the petroleum refining process as in the previous exemption. RCRA section 3004(r)(3). This exemption is to a large degree coextensive with the previous one, but it differs in three respects: it applies to "oily materials" as well as to petroleum refining wastes; it applies to wastes generated from petroleum transportation practices (as well as production and refining practices), and the wastes need not be generated and inserted on-site.

The Agency reads section 3004(r)(3) as applying only to wastes not already covered by section 3004(r)(2). Any other reading would render section 3004(r)(2) surplusage, violating standard tenets of statutory construction. The legislative history in fact indicates that paragraph (r)(3) was intended to apply to used oil that is hazardous. *See* S. Rep. No. 284 at 40.

4. Household Waste

New section 3001(g) adds a clarification to the household waste exclusion contained in § 261.4(b)(1). That regulation states that household wastes are not hazardous wastes. The preamble accompanying that regulation states that residues remaining after treating household wastes also are not hazardous wastes. 45 FR 33099 (May 19, 1980).

The legislative clarification is that a resource recovery facility recovering energy from burning municipal waste is not considered to be managing hazardous waste, provided the facility meets two conditions:

(a) the facility receives and burns only household waste, and solid waste from other sources that contains no hazardous wastes; and

(b) the facility cannot accept hazardous wastes from any non-household sources, and must adopt precautionary measures—such as contractual arrangements of other notification procedures—to assure that hazardous wastes are not received or burned.

EPA has codified this provision in § 261.4(b), repeating the statutory language. The statutory provision appears to raise two principal issues:

(1) The status of facilities that, in spite of good faith efforts, receive and burn hazardous wastes; and

(2) The status of residues from burning household waste and non-hazardous solid waste if the residue exhibits a characteristic of hazardous waste.

As to the first issue, the statutory language contains no exception for facilities that, in spite of their best efforts, receive hazardous wastes. The legislative history indicates, however, that if good faith precautionary measures are in place and a resource recovery facility still receives and burns a hazardous waste, that the "facility * * * should not be penalized for the occasional, inadvertent receipt of hazardous waste * * *" S. Rep. No. 284 at 61. Thus EPA believes that resource recovery facilities do not become Subtitle C facilities when they inadvertently burn hazardous waste if they have taken good faith measures to avoid burning such waste.

The statute is silent as to whether hazardous residues from burning combined household and non-household, non-hazardous waste are hazardous waste. These residues would be hazardous wastes under present EPA regulations if they exhibited a characteristic. The legislative history does not directly address this question, although the Senate report can be read as enunicating a general policy of non-regulation of these resource recovery facilities if they carefully scrutinize their incoming wastes. On the other hand, residues from burning could, in theory, exhibit a characteristic of hazardous waste even if no hazardous wastes are burned, for example, if toxic metals become concentrated in the ash. Thus, the requirement of scrutiny of incoming wastes would not assure non-hazardousness of the residue. EPA believes that the principal purpose of section 3001(g) was to prevent resource recovery facilities that may inadvertently burn hazardous waste, despite good faith efforts to avoid such a result, from becoming subject to the Subtitle C regulations. EPA does not see in this provision an intent to exempt the regulation of incinerator ash from the burning of non-hazardous waste in resource recovery facilities if the ash routinely exhibits a characteristic of hazardous waste. However, EPA has no evidence to indicate that these ash residues are hazardous under existing rules. EPA does not believe the HSWA impose new regulatory burdens on resource recovery facilities that burn household and other non-hazardous waste, and the Agency has no plans to impose additional responsibilities on these facilities. Given the highly beneficial nature of resource recovery facilities, any future additional regulation of their residues would have to await consideration of the important technical and policy issues that would be posed in the event serious questions arise about the residues.

5. Minimum Technological Requirements for Incinerators

Section 202(a) of the Amendments adds a section 3004(o)(1)(B) to RCRA which states that incinerators which receive permits after enactment of the Amendments must meet the minimum destruction and removal requirements contained in § 264.343(a) of EPA's regulations. That regulatory provision states that principal organic hazardous constitutents (POHC's) in the waste feed must be destroyed and removed to a minimum efficiency of 99.99%

It is unnecessary to include any new provisions in EPA's regulations because the statute simply codifies the existing rules. We also note that the provision does not preclude the Agency from adopting a more stringent destruction and removal requirement (the statute refers to "attainment of a *minimum* destruction and removal efficiency"). Nor does it prohibit changes (either more or less stringent) in other performance standards for incinerators, including those for control of hydrogen chloride emissions or total particulates.

Finally, the requirement applies only to incinerators, and so does not mandate minimum technological requirements for other combustion units burning hazardous waste, such as boilers and industrial furnaces. *See* H.R. Rep. No. 198 at 42. (Boilers and industrial furnaces are subject to the same ultimate standard as incinerators, but need not meet the same technological requirements.)

E. Exposure Information and Health Assessments

In enacting the HSWA, Congress amended Subtitle C of RCRA by adding a new section concerning exposure information and health assessments, section 3019. Under section 3019, RCRA permit applications for landfills and surface impoundments must be accompanied by information on the potential for the public to be exposed to hazardous wastes through releases related to the unit. The Administrator will then make that information available to the Agency for Toxic Substances and Disease Registry (ATSDR) established under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Whenever the Administrator or a State judges that the release poses a substantial potential risk to human health, the Administrator may request the ATSDR to perform a health assessment and take appropriate action under CERCLA.

In order to codify section 3019, the Agency is today adding a new regulatory provision, 40 CFR 270.10(j). Section 270.10(j)(1) provides that Part B applications for landfills or surface impoundments submitted after August 8, 1985, must be accompanied by certain exposure information. Section 270.10(j)(2) provides that by August 8, 1985, owners and operators of a landfill or surface impoundment who have already submitted their Part B application are also required to submit exposure information.

40 CFR 270.10(j) is applicable to both operating permits and post-closure permits because in both types of permits the owner or operator is required to submit a Part B application. The submittal of the Part B triggers the duty to submit the exposure information. Owners or operators of closed units or active solid waste units for which a post-closure permit is not required would not be required to submit a Part B. Therefore, owners and operators of such units would not have to submit exposure information.

At a minimum, the exposure information must address reasonably foreseeable potential releases from normal operations and accidents, the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases, and the potential magnitude and nature of the human exposure resulting from the releases.

Section 3019 provides that exposure information must *accompany* the permit application; the information is not part of the permit application. In enacting this provision, Congress intended that the exposure information should not delay the permitting process. Submission of exposure information is not a condition for permit issuance. 130 Cong. Rec. S9187 (daily ed. July 25, 1984). Accordingly, the Agency is today amending 40 CFR 270.10(c) to provide that an application which is not accompanied by exposure information will not be deemed incomplete for purposes of permitting a facility. This interpretation is in accordance with the legislative history which notes that noncompliance with section 3019 is a separate violation of RCRA and should not be considered when determining the completeness or adequacy of Part B permit applications. 130 Cong. Rec. S13822 (daily ed. October 5, 1984).

Neither the statutory amendments nor the legislative history defines the term "release." The statute does, however, provide that in conducting health assessments, the potential pathways of human exposure must be evaluated. These pathways include ground or surface water contamination, air emissions, and food chain contamination. Given the multi-media nature of the health assessment pathways, and for the reasons previously discussed in connection with section 3004(u), it is appropriate to model the definition of release after section 101(22) of CERCLA. Pursuant to section 101 of CERCLA, "release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, with certain exclusions. Since the CERCLA exclusions are not generally appropriate for this section, the Agency will not adopt these exclusions when defining a "release".

Section 3019(a) provides that owners and operators who submitted Part B applications prior to the date of enactment of the HSWA must submit exposure information by August 8, 1985. Section 3019(a) also provides that after Auigust 8, 1985 each Part B application shall be accompanied by exposure information. The Agency intends that owners and operators who submitted Part B applications subsequent to the date of enactment but prior to August 8, 1985 must also submit exposure information because section 3019(a) requires that beginning on August 8, 1985, *each* Part B application shall be accompanied by exposure information. A contrary interpretation would create a gap in the implementation of section 3019 by not requiring exposure information from owners and operators who submitted Part B's between the date of enactment and August 8, 1985. Such an interpretation would not be justifiable in light of the fact that all owners and operators who submitted Part B's prior to the date of enactment must submit exposure information by August 8, 1985.

F. Delisting Procedures

The new amendments add a paragraph (f) to section 3001, establishing specific criteria and procedures for delisting petitions. This subsection requires EPA to consider additional factors, such as constituents other than those for which the waste was listed, if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste.

This provision is intended to eliminate what both Houses of Congress perceived as a defect in the standards used by EPA to evaluate delisting petitions. The Senate noted that, "[t]he Agency's practice has been to consider only the constituents given as the original justification for the Agency's decision to list a waste." S. Rep. No. 284, 98th Cong., 1st Sess. 33 (1983). This practice, however, does not ensure that wastes which are delisted are not hazardous. EPA often could have listed wastes for other constituents than those used as the basis for the listing and cited in Appendix VII of Part 261. A petitioner's waste could be non-hazardous with respect to the listed constituents, and exempted from regulation under recent EPA practices, yet still be hazardous due to constituents not considered. *Id.* (To the same effect, see H.R. Rep. No. 198, 98th Cong., 1st Sess. 57–58 (1983).) The amendments also require the Administrator to provide notice and an opportunity for comment on the additional factors considered before granting or denying a petition.

The statute forbids the granting of any new temporary exclusions without notice and comment as is currently permitted by § 260.22(m) of EPA's regulations, since the statute calls for notice and comments on all petitions evaluated after enactment of the amendments.[24] A provision in an earlier version of the House bill permitting the continued issuance to temporary exclusions, if notice and comment was provided, was eliminated from the final legislation. See H.R. Rep. No. 198, at 13, 58.

The amendments further set deadlines for Agency action on all future petitions received. To the maximum extent practicable, the Agency must propose a decision within twelve months of receiving a complete application[25] and grant or deny a petition within twenty-four months. Unlike the self-executing elimination of previously granted temporary exclusions noted below, this provision does not mean that the petitions are granted by operation of the statute if the Agency has not acted within the time limits specified.

The statute also places a time limit on the effectiveness of any temporary exclusions granted before its enactment. Beginning 24 months after enactment, wastes covered by a petition granted such a temporary exclusion no longer will be exempted from RCRA regulations, unless a final decision granting or denying the petition, after notice and comment, has been issued. This provision reflects the desire of Congress to eliminate the possibility that a delisting petition will be temporarily granted, without notice or an opportunity for comment, and then not reviewed for a final determination within a reasonable time. See, e.g., S. Rep., *supra*, at 33.

The new delisting standard and the need for notice and comment require a number of regulatory changes. The Agency has changed the substantive standard on which delisting petitions are reviewed to conform to the statutory mandate. In addition, today's regulation eliminates the temporary exclusion provision in the Agency's regulations.

[24] The Agency believes that the statute prohibits temporary exclusions as previously granted by EPA (i.e., exclusions, without notice and comment, based on a substantial likelihood that a petition eventually would be granted). Exclusions still may be granted, however, without notice and comment if the requirements of the good cause exception, 5 U.S.C. § 553(b)(3)(B), are met.

[25] A complete application includes both the original submission by the petitioner and any subsequent information requested by EPA in order to determine whether the waste contains any additional constituents which could cause it to be a hazardous waste. Congress required the Agency to consider, under certain circumstances, factors other than those for which the waste was listed. EPA does not believe that Congress would have expected the Agency to make this determination without adequate information. EPA therefore concludes that the time limits incorporated in the amendment begin to run only after the Agency has received all information necessary to determine whether the waste is hazardous.

1. The New Substantive Standard

The primary change in 40 CFR 260.22 made in this regulation is to modify the substantive standard on which delisting petitions are evaluated, in accordance with the statute. The current regulation requires that the petitioner demonstrate to the satisfaction of the Administrator that the waste produced does not meet any of the criteria under which the waste was listed and notes that a waste so excluded still may be a hazardous waste if it fails any of the characteristics in Subpart C of Part 261 (40 CFR 260.22(a)). Today's regulation retains these provisions, but requires in addition that, before a waste may be excluded, the Administrator determine that the waste does not satisfy any factors other than those for which the waste was listed or that there is no reasonable basis to believe that such additional factors could cause the waste to be hazardous. This provision codifies the two-prong test mandated by the amendments, i.e., the Agency must consider both the factors for which the waste was listed (in all cases) and the factors and constituents other than those for which the waste was listed (in cases where the Administrator has a reasonable basis to believe that these additional factors could cause the waste to be hazardous).

2. No New Temporary Exclusions

The regulation eliminates the provision authorizing temporary exclusions, which were issued without prior notice and comment when the Administrator found that there was a substantial likelihood that an exclusion would be granted. 40 CFR 260.22(m). Dissatisfaction with the lack of notice and comment was a major impetus for the revision of the delisting procedures. *See*, e.g., S. Rep., *supra*, at 33.

Today's regulation require notice and an opportunity for comment before a delisting may be granted.[26] The statute mandates notice and an opportunity for comment on the additional factors (including additional constituents) which the Agency now must consider, before granting or denying a petition. EPA regulations already require notice and comment for petitions, other than temporary exclusions. *See* 40 CFR 260.20. These provisions applied to petitions which addressed only the

[26] The Agency believes that the statute does not prohibit use of the APA provision permitting final agency action without notice and comment if there is good cause. See 5 U.S.C. 553(b)(3)(B). There is no suggestion in the language of the amendment or the legislative history that Congress meant to overrule the APA. These regulations also permit the Agency to use the good cause exception.

constituents for which the waste was listed. Congress wanted to ensure that notice and comment would continue to be required for the expanded petitions, addressing not only the listed constituents, but any additional constituents as well. The Agency concludes that the Act mandates notice and comment for all petitions, and for the entire petition, and the regulation so provides.

G. Research, Development, and Demonstration Permits

The HSWA adds section 3005(g) which provides EPA with authority to issue permits for research, development, and demonstration treatment activities. The amendment grants EPA authority to issue permits independent of existing regulations relating to hazardous waste treatment processes. EPA is directed to include certain provisions in each permit as well as any other requirements deemed necessary to protect human health and the environment. With several exceptions, the amendment also allows waiver or modification of the permit application and permit issuance requirements of the general permit regulations.

EPA has codified this new authority in § 270.65 of its regulations. This regulation has four basic provisions.

Paragraph (a) of the regulation authorizes the Administrator to issue RD&D permits for innovative and experimental treatment technologies or processes for which permit standards have not been established under Part 264 or 266. The regulation authorizes the Administrator to establish permit terms and conditions for the RD&D activities as necessary to protect human health and the environment. The statutory amendment allows the Administrator to select the appropriate technical standards for each RD&D activity to be permitted. EPA is required to address construction (if appropriate), limit operation for not longer than one year, and place limitations on the waste that may be received to those types and quantities of wastes deemed necessary to conduct the RD&D activities. The permit must include the financial responsibility requirements currently in EPA's regulations and other such requirements as necessary to protect health and environment. Other possible requirements include, but are not limited to, provisions regarding monitoring, operation, closure, remedial action, and testing and providing information. EPA may decide not to permit an RD&D project if it determines that the project, even with restrictive permit terms and conditions, may threaten human health and environment.

Paragraph (b) provides that the Agency will generally follow the permitting procedures of Parts 124 and 270. As authorized, EPA reserves the right to waive or modify these procedures to expedite permitting as long as human health and the environment are protected. However, EPA will not waive the public participation procedures of Part 124 established under § 7004(b)(2) of RCRA, nor will EPA waive the financial responsibility requirements currently in EPA regulations.

Paragraph (c) implements the statutory provision that authorizes the Administrator to order an immediate cessation of any operations at the facility if necessary to protect human health or the environment.

Under paragraph (a) and the statutory amendment, permits are initially to be issued for a maximum period of one year of operation. The legislative history provides that the permit is to be issued for a maximum of 360 days of operation. The 360-day time period does not refer to calendar days, to periods of construction, or to operation using materials other than hazardous waste. (*See* 129 Cong. Rec. H8160 (daily ed. October 6, 1983.) The permit may be renewed up to three times for periods of not more than one year of operating days as provided in paragraph (d). EPA has also amended § 270.10(a) to provide that procedures for issuing and administering RD&D permits are governed exclusively by § 270.65.

Congress made clear that RD&D permits could cover a variety of experimental activities, but suggested several limitations on EPA authority. The legislative history provides three examples of the types of RD&D activities which may be covered by this section. [*See* 129 Cong. Rec. H88160 (daily ed. October 6, 1983)]. First, a common experiment involves an individual or company who has designed on paper or in the laboratory an innovative treatment system for hazardous waste. In order to determine whether this new technology is technically feasible, a small pilot-scale unit may be constructed and operated for purposes of evaluation. If this is successful, a larger but still pilot-scale, experimental unit may be constructed to demonstrate the reliability, economic feasibility, and environmental impacts of the process.

A second type of hazardous waste management experiment involves an equipment vendor and a waste-generating or processing customer. Vendors often custom prepare storage and processing equipment, that is, tanks, incinerators, etc., based on a customer's individual needs, and this may require one or more tests with a pilot facility using samples of the customer's waste. And third, a manufacturer or user of a particular commercial treatment process may want to improve its efficiency or effectiveness or reduce environmental impacts. This may involve the construction of a pilot-scale treatment unit that will be operated in an experimental mode to test new wastes or alternate operating conditions. This list of examples is not an exclusive list of the activities that may be permitted.

Congress also explained how it expected EPA to operate in issuing RD&D permits. Under this section, EPA may permit (1) treatment technologies, processes, methods, or devices that are innovative and experimental (2) for the sole purpose of gathering information to evaluate their technical or economic feasibility. These factors are discussed below.

First, innovative and experimental treatment technologies or processes intended to be covered by this section at a minimum include experimentation and demonstration with technologies that have never been utilized in commercial application, as well as further refinement and development or performance testing of technologies that, in some form, have been operated in a commercial capacity.

Second, under a permit, EPA may allow the experimental treatment activities and associated storage. Such permits will not authorize disposal of hazardous waste. The disposal of hazardous waste must occur at a facility which has received a RCRA permit under Part 264 or which has interim status. RD&D permits may only be issued for the purpose of demonstration or evaluation of the economic or technical feasibility of a particular treatment technology, process, method, or device and associated storage. If the waste management activity related to the technology, unit, process, or device is used at any time to store or treat waste for any reasons other than the conduct of a treatment experiment, it must be permitted and operated in accordance with all applicable sections of 40 CFR Parts 264 and 266. *Id.*

H. State Authorization

HSWA made several significant changes regarding the authorization and implementation of State hazardous waste programs. Part 1 of this section discusses the new, dual State-Federal regulatory program in authorized States and some conforming changes to the State authorization regulations in Part

271 necessitated by the HSWA. Part 2 discusses section 3006(f), a new provision requiring authorized States to make information about hazardous waste facilities available to the public to the same extent that EPA would make the same information publicly available. Part 3 discusses the extension of the expiration date for interim authorization under the 1976 RCRA. Prior to the HSWA, responsibility for the RCRA program in a State with interim authorization would have reverted to EPA on or before January 26, 1985 if the State had not yet obtained final authorization. Part 4 discusses the new type of interim authorization under the HSWA and the requirements States must meet to obtain and retain final authorization ("moving target" and program revisions).

The preamble to the proposed rule to be published as a companion to this rule addresses additional issues pertaining to State authorization under the HSWA. Both preambles should be read together.

1. Applicability of Today's Rule in Authorized States

New section 3006(g) of RCRA provides that any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under the 1984 Amendments shall take effect in each authorized State on the same date as such requirement or prohibition takes effect in non-authorized States. The Administrator is directed to carry out such requirements or prohibitions directly in an authorized State until the State is granted authorization to do so. This includes the authority to issue or deny permits or portions of permits where the State is not yet authorized to implement the requirements and prohibitions established by the amendments. (Section 227.)

These amendments dramatically alter the existing Federal-State relationship under section 3006 of RCRA. Before the amendments, pursuant to sections 3006(b) or 3006(c), States with final authorization or all phases of interim authorization administered their hazardous waste program entirely in lieu of EPA. Changes to the Federal Subtitle C program did not take effect automatically in such States; States needed to revise their programs to include those changes and receive EPA's approval. Further, EPA could not issue permits for any facilities covered by the State permitting program which EPA had approved. *See* 40 CFR 264.1(f), 271.1(f), 271.121(f).

In contrast, the new amendments create a dual regulatory system in authorized States. Because of new section 3006(g), the requirements and prohibitions stemming from the amendments take effect immediately in all States, regardless of any less stringent State statute, regulation, or permit. For example, even though a facility may now hold a State RCRA permit allowing it to dispose of bulk liquid waste in a lined landfill, RCRA prohibits it from doing so after May 8, 1985. (See section V.A.1. of preamble.) And, even though authorized States have previously promulgated their permit application requirements, facilities in all States will have to comply with new Federal permit application requirements in Part 270.

EPA reviewed today's rule to determine which provisions in it are "requirements or prohibitions" that are applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste. EPA concluded that all of the provisions in the rule are requirements or prohibitions. They therefore take effect in authorized States and are Federally enforceable.

The Agency started its analysis with the Conference Report which specified that certain requirements and prohibitions should take effect immediately in all States. (130 Cong. Rec. H11134 (daily ed. Oct. 3, 1984).) With the exception of the "liquids in landfills" provision, these provisions were in the Senate version of the HSWA and appear in 3001(d)(3), (5), 3004(c), (1), (o), (r), (u), 3005(c)(3), 3007(e)(1), 3015, and 7010, as enacted. In addition, EPA concluded that the household waste exclusion in section 3001(i), the delisting procedures in section 3001(f), the requirements concerning corrective action and ground-water monitoring in sections 3004(p), (v), 3005(i), the prohibition concerning salt domes in section 3004(b), the ban on hazardous waste in cement kilns in section 3004(q)(2)(C), the requirement for health assessments in section 3019, the preconstruction ban in section 3005(a), the termination of interim status and extension of interim status requirements in section 3005(e), and the waste minimization requirements in section 3002(a)(6), (b) and 3005(h) are requirements and prohibitions. EPA also concluded that the requirements concerning hazardous waste exports in section 3017(g) were requirements concerning the generation and transportation of hazardous waste.

Finally, the Agency analyzed the statute to determine whether EPA's authority to issue research and development permits under section 3005(g) is a requirement concerning the treatment of hazardous waste. In doing so, EPA considered whether section 3005(g) is the type of provision that Congress would have wanted EPA to be able to implement directly in authorized States pursuant to section 3006(g). EPA concluded that section 3005(g) was intended to be implemented by EPA in the case of an authorized State which does not have State legal authority to issue permits to these types of facilities. While the language in section 3005(g) is discretionary ("The Administrator may issue a research, development, and demonstration permit * * *"), EPA does not believe that Congress, in amending the statute to encourage new and innovative technologies and to allow permitting before section 3004 standards are developed, intended to preclude the issuance of permits to research and development facilities in authorized States.

Thus, pursuant to 3005(g) and 3006(g), EPA is able to issue a research and development permit, in consultation with the State, to encourage development of the innovative technology. However, as discussed next, an EPA permit could not override more stringent State requirements governing the facility or precluding its construction or operation without a State permit.

Some of these new requirements and prohibitions provide for variances and exclusions. For example, exemptions from liner and ground-water monitoring requirements are available under certain conditions. *See*, e.g., § 264.90(b)(2), § 264.221(d). In addition, facilities constructed to incinerate PCBs pursuant to EPA's approval under section 6(e) of the Toxic Substances Control Act are exempted from the preconstruction ban in new 40 CFR 270.10(f)(1). See section 3005(a) of RCRA, as amended.

The Agency considered whether a variance or exclusion from such a requirement was itself a "requirement" or "prohibition" of the Act. EPA concluded that the entire provision on a subject matter—such as minimum technological requirements—should be treated as the "requirement" or "prohibition" since all the subparts are related. However, section 3009 of RCRA and existing 40 CFR 271.1(i) and 271.121 provide that nothing in RCRA prohibits States, political subdivisions, or localities from imposing more stringent requirements than those in EPA's RCRA regulations. Thus, any State or local requirement that is more stringent than a requirement or prohibition in today's rule remains in effect under State or local law.

As a practical matter, this means that facilities in authorized States may not be able to benefit from the Federal exclusions and variances as would facilities in non-authorized States unless and until the authorized State amends its more stringent regulations or enabling authority. That result is compelled by the Act; nothing in the amendments or legislative history suggests any Congressional intent to override section 3009 or preempt more stringent State requirements. Thus, the universe of the more stringent provisions in the authorized State program and today's rule defines the applicable requirements. Each member of the regulated community must familiarize himself with both the State and Federal regulations to be assured that he is in compliance with all applicable requirements. EPA may enforce any violation of the authorized State program, the HSWA, or today's rule; a State may, of course, enforce violations of its requirements regardless of authorization status.

The Agency also wishes to emphasize that future regulations implementing the requirements and prohibitions in the HSWA will take effect in authorized States at the same time that they take effect in non-authorized States. For example, EPA may publish additional regulations further defining the double liner requirement in today's rule. Even though a State may receive authorization for today's double liner requirements, any new EPA regulation on double liners will be applicable in that State until the State receives authorization for the newly-amended double liner requirement. Thus, a State's authorization status may change in response to further implementation of the HSWA. The **Federal Register** notices promulgating new requirements will explain their applicability in authorized States.

EPA has made various changes to Part 271 to reflect EPA's new authority in authorized States. In § 271.1(a), a reference to section 3006(f) of RCRA has been added since a new State authorization requirement appears in section 3006(f). Sections 271.1(f), 271.19, 271.121(f), and 271.134 have been amended to reflect the Administrator's new authority under sections 3006(c) and (g) to issue permits in authorized States. Without these changes the regulations would continue to prohibit EPA from permitting facilities in authorized States.

A new section, 271.1(j), has been added to identify the Federal program requirements and prohibitions that are promulgated or take effect pursuant to HSWA. The Agency determined that it was extremely important to clearly specify which EPA regulations implement HSWA since these requirements are immediately effective in authorized States. These HWSA provisions also impact whether interim or final authorization is available to States as discussed in detail in following sections of this preamble. Therefore, the Agency is creating a table in § 271.1(j) that lists the HSWA regulations promulgated to date (specifically, the January 1985 dioxin waste listing and today's final codification rule). Future regulations promulgated under the authority of the HSWA will be added to the table in § 271.1(j).

Sections 271.3(a) and 271.121(c)(3) have been amended to reflect section 3006, as amended by the HSWA, and section 3009. They now describe the respective Federal and State roles in administering Subtitle C and indicate that all of the HSWA requirements identified in § 271.1(j) take immediate effect in authorized States. In addition, § 271.24 and § 271.138 have been added, and § 271.21(e)(1)(i) and § 271.121(a) amended, to refer to the availability of interim authorization under the HSWA.

EPA also amended §§ 264.1(f) and 265.1(c)(4) to clarify that the regulatory modifications to Parts 264 and 265 made by today's rule apply to the regulated community in authorized States until a State receives authorization to carry out the new requirements. This change is necessary to reflect section 3006, as amended, and is consistent with the other amendments to Part 271.

2. Public Availability of Information

Section 3006(f) provides that information obtained by authorized States regarding facilities and sites for the treatment, storage, and disposal of hazardous waste must be made available to the public in substantially the same manner, and to the same degree, as would be the case if EPA were carrying out the RCRA program in the State. Previous to the HSWA, the only EPA requirement in this area was that the name and address of a permit applicant could not be withheld from the public. *See* 40 CFR 270.12(b); 271.14(f).

Initially, EPA has interpreted "in substantially the same manner" in section 3006(f) to refer to the procedures EPA employs in deciding how and when to release information under the Freedom of Information Act (FOIA), 5 U.S.C. 552. EPA has interpreted "to the same degree" to refer to the type and quantity of information that is released under EPA's FOIA regulations. Further, the Agency has concluded that information regarding facilities and sites would at least cover information relating to permitting, compliance, and enforcement, and include information gathered under section 3007 of RCRA (or a State analogue). Section 271.17(c) has been amended to address section 3006(f).

EPA's procedural and substantive regulations implementing FOIA and governing the treatment of confidential business information are set forth in 40 CFR Part 2. Any State requirements which are equivalent to those regulations will satisfy section 3006(f). While the use of "substantially the same manner" in section 3006(f) seems to offer the opportunity for greater flexibility than an equivalent standard, EPA has not had the opportunity to identify whether different standards are feasible. Thus, today's final rule does not go beyond the statutory language, thereby allowing case-by-case judgments about whether a State has satisfied section 3006(f).

Another issue concerns the effective date of the section 3006(f) requirements. The HSWA does not clearly indicate whether a State may receive final authorization after the date of enactment if its application does not demonstrate equivalence to section 3006(f). Section 3006(f) could be read as requiring any State which did not receive final authorization by the date of enactment to demonstrate compliance with the new requirement in order to be authorized. EPA rejects that reading because the Agency believes it is inconsistent with the statute as a whole and the legislative intent.

Section 225 of the amendments specifically amended section 3006(b) to allow the Administrator to authorize a State program that is not fully equivalent to the Federal program. That amendment was intended to assure that last minute changes to the Federal program which the State did not have time to adopt would not prevent an otherwise qualified State from obtaining final authorization. Further, the Conference Report, while ambiguous, does stress the need to allow States sufficient time to amend their programs to implement section 3006(f). 130 Cong. Rec. H11134 (daily ed. Oct. 3, 1984). The Report, in fact, specifically refers to EPA's regulations in 40 CFR 271.21(e) concerning the phase-in of new Federal requirements.

Accordingly, EPA concludes that States now applying for final authorization are not legally required to have an analogue to section 3006(f)(1). Such States, and States which have already received final authorization without demonstrating compliance with section 3006(f), are required to revise their programs to demonstrate compliance pursuant to the time schedules in § 271.21(e). (See part 4 of this preamble which summarizes § 271.21(e). The Agency intends to propose a rule which describes § 271.21(e) in depth.)

EPA notes that interim authorization, as described in sections 227 and 228 of the 1984 amendments, is not available for this new requirement. Congress made section 3006(f) an independent requirement that is subject to the standard in that provision, and not to a test of "equivalency" or "substantial equivalency." Thus, any State with final authorization or applying for final authorization to carry out the RCRA program must demonstrate full compliance with section 3006(f) within the timeframes specified in § 271.21(e). States applying for interim authorization need not address this provision.

3. Extension of Interim Authorization Expiration Date

Section 3006(c) of RCRA, as enacted in 1976, allowed EPA to grant "interim authorization" to a State program that EPA determined was "substantially equivalent" to the Federal program. EPA established a phased approach to interim authorization: Phase I, covering the EPA regulations in 40 CFR Parts 260–263 and 265 (universe of hazardous wastes, generator standards, transporter standards, and standards for interim status facilities) and Phase II, covering the EPA regulations in 40 CFR Parts 124, 264, and 270 (procedures and standards for permitting hazardous waste management facilities).

Phase II, in turn, has three components. Phase IIA covered general permitting procedures and technical standards for containers, tanks, surface impoundments, and waste piles. Phase IIB covered incinerator facilities, and Phase IIC addressed landfills and land treatment facilities. Some States were authorized only for Phase I; others received interim authorization for all Phase I and II components.

By statute Phase I and II interim authorization were to expire after the twenty-four month period beginning on the date six months after the date of promulgation of regulations under section 3002 through 3005. (That expiration date was January 26, 1985.) However, Congress amended section 3006(c) to provide that interim authorization under the 1976 Act ends "no later than January 31, 1986."

EPA has amended § 271.122(b)(1) to reflect the new statutory date. The Regional Administrator's existing authority in § 271.137(a) to extend the deadlines in section 271.137(a) to January 31, 1986 may be used if the "good cause" finding in that provision can be made.

Under § 271.137(a), State programs which received interim authorization for only part of the RCRA program were supposed to revert to EPA by a certain date if the State failed to apply for interim authorization for all components of the interim authorization program or for final authorization. However, the Regional Administrator was allowed to extend this deadline for "good cause," thereby avoiding reversion.

When EPA promulgated § 271.137(a), the Agency did not anticipate that this deadline could extend to January 31, 1986. However, EPA believes it is appropriate for the Regional Administrator to use § 271.137(a) for that purpose if "good cause" exists. Otherwise, States which are diligently proceeding toward final authorization would lose their interim authorization because of their inability to obtain final authorization before the January 1986 statutory deadline.

4. Authorization Under the HSWA: Application and Revision Requirements

Congress provided in section 3006(g)(2) that any State which has been granted interim or final authorization before the enactment of the HSWA may apply for interim authorization to carry out any requirement of the HSWA which takes effect in authorized States (i.e., today's rule and subsequent rules implementing the HSWA). If the Administrator finds that the State requirement is substantially equivalent to the Federal requirement, he is directed to grant the State interim authorization to carry out the requirement in lieu of EPA. Thus, as in the 1976 RCRA, States have an opportunity for a developmental period of interim authorization before they are required to be equivalent to and no less stringent than the HSWA program. Several significant issues have arisen concerning implementation of section 3006(g) and its relationship to the deadlines States must meet to obtain and maintain final authorization. Some of these issues are discussed here and others are discussed in the preamble to the proposed rule to be published in the near future.

To minimize confusion, EPA has used "1976 interim authorization" to refer to Phase I and Phase II interim authorization under RCRA as enacted in 1976, and "1984 interim authorization" to refer to the new type of interim authorization under the HSWA. Occasionally, "HSWA interim authorization" is substituted for 1984 interim authorization.

a. Impact of HSWA on Existing Authorized State Programs. One issue concerns the impact of the amendments on authorized States which have requirements that are more stringent or broader in scope than those required by Part 271 before the HSWA. At the time some States received 1976 interim authorization or final authorization, the State program may have included provisions the State believes are substantially equivalent (or equivalent) to some of the requirements in today's rule. The question has arisen about whether such States automatically have 1984 interim authorization for those requirements. EPA does not believe the statute allows this result.

Section 3006(g)(2) specifically allows an authorized State to submit an application demonstrating that its "existing program contains (or has been amended to include)" substantially equivalent requirements. If States were already authorized with respect to those requirements, there would have been no need for the reference to existing programs in the above provision. Thus, the statute contemplates that any State seeking authority to administer the 1984 amendments in lieu of EPA must submit an application for EPA's approval. Until the application is approved, EPA would enforce the Federal requirement.

It could be argued that this aspect of the amendments imposes an unnecessary burden on the States. In fact, submission of a new application serves several important functions. When the State submitted its original application for 1976 interim authorization or final authorization, the State's Attorney General would not have been able to certify substantial equivalence (or equivalence) to the new amendments since the amendments had not yet been passed. For the same reason, EPA could not have determined whether the State's regulations properly implemented the amendments. Finally, the public would not have had the opportunity to comment on whether the State's requirements were substantially equivalent (or equivalent).

In sum, major elements of the authorization process have not been satisfied for those States. Accordingly, they must still submit an application to receive 1984 interim authorization. However, the application need not be lengthy or complicated. While an Attorney General's statement will always be required, little explanation will be required where the State's authority is clear. Further, all revisions will not require addenda to the program description or a memorandum of agreement. EPA will issue further guidance in this area.

b. Applications and program revisions: deadlines and requirements. The relationship of 1984 interm authorization to final authorization raises several issues relating to § 271.21(e). Section 271.21(e) (as amended, 49 FR 21678, May 22, 1984) specifies which regulations a State must adopt to receive final authorization ("moving target") and contains deadlines by which States with final authorization must modify their programs to adopt new Federal requirements.

In summary, any State applying for final authorization for the pre-HSWA RCRA program after November 8, 1985 must have authority for those HSWA statutory provisions taking effect on November 8, 1984, and any State applying for final authorization after July 15, 1986 must also have authority for the final rule appearing today. However, a State program applying for final authorization before those dates need not have the authority described above.

Any State with final authorization, regardless of the date it received or will receive final authorization, must modify its program by November 8, 1985, to reflect the HSWA provisions taking effect on November 8, 1984 if only regulatory changes are necessary to change the State program, or by November 8, 1986 if statutory changes are needed. Similarly, such States must modify their programs to reflect today's final rule by July 15, 1986 or July 15, 1987 depending on whether regulatory or statutory changes are necessary. Extensions of up to six months for these deadlines are available in certain circumstances.

The above interpretation reflects EPA's legal construction of § 271.21(e) as revised today to reflect HSWA. In addition, the Agency is proposing some major changes to § 271.21(e) which will be discussed at length in the preamble to the proposed rule to be published in the near future. If adopted, many of the deadlines presented here will change.

b.1. States Applying for Final Authorization. Section 3006(b) of RCRA was amended by HSWA to provide more specificity with regard to the requirements that apply to a State submitting an application for final authorization. It allows EPA to grant final authorization to a State program which is not equivalent to the Federal program in effect at the time of authorization, provided that the State program is equivalent to the Federal program in effect one year prior to submission of the State's application for final authorization.

Section 271.21(e) currently requires a State application to be reviewed based on the Federal program existing 12 months prior to application submission unless the State has made a good faith effort to meet the 12 month deadline and applies for an extension. Because the opportunity for an extension in current § 271.21(e)(1)(ii) would allow the State program more time than provided in Section 3006(b) to adopt changes to the Federal program we are deleting that provision.

EPA is today adding a new § 271.24 to make clear that States which apply for authorization after November 8, 1984, may apply for interim authorization for the HSWA provisions. Section 3006(b)(1) of RCRA, like existing § 271.21(e)(1), uses equivalence as the legal standard for final authorization, suggesting that a State applying for final authorization after November 8, 1984, would have to apply for final authorization for both the pre-HSWA RCRA program and post-HSWA requirements. However, section 3006(q) offers States the opportunity to apply first for interim authorization for the new amendments. The 1984 interim authorization, like 1976 interim authorization, allows a State to demonstrate that its program is "substantially equivalent" to EPA's, rather than "equivalent to and no less stringent than" EPA's.

EPA reads the two statutory provisions together to offer States applying for final authorization for the pre-HSWA program the opportunity to qualify for either 1984 interim authorization or final authorization to carry out the new amendments. A contrary reading requiring States to be equivalent to the new amendments would effectively deny them any opportunity to receive 1984 interim authorization—a result EPA has no reason to believe Congress intended.

A State which does choose to meet the "moving target" deadline by seeking 1984 interim authorization for portions of its program will have to obtain final authorization for those portions at a later date. That date has not been determined yet because, under the statute, it will be the same date that HSWA interim authorization expires. That is, if HSWA interim authorization were to expire, for example, on February 1, 1990, States with HSWA interim authorization would have to obtain final authorization by that date. In the proposed rule that will appear in the Federal Register, EPA discusses various options for the expiration date of interim authorization under HSWA.

Section 271.21(e) is not expected to affect the application process for States which do not yet have final authorization for the pre-HSWA RCRA program. In order for States to receive final authorization before the expiration of interim authorization under the 1976 RCRA, they will have to submit their applications to EPA by this summer—several months before the time they would be required to adopt requirements based on the HSWA provisions that took effect upon enactment of today's rule. Thus, the HSWA should not delay the authorization of any State which planned to receive final authorization by January 31, 1986.

States applying for final authorization are not, however, relieved of the obligation to adopt regulations based on today's rule. To the contrary, those States must also proceed to adopt State analogues to the HSWA provisions that took effect on November 8, 1984 and today's rule. States must read § 271.21(e) carefully; because of the deadlines discussed there, it is possible that a State will be required to have completed its program revisions by about the same time it expects to receive final authorization. It should be noted, however, that EPA will propose major changes to § 271.21(e) that would change or suspend many of the deadlines discussed above. The preamble of the proposed rule will describe the proposed amendments in detail.

b. 2. States with Final Authorization. An analogous change has been made to § 271.21(e)(2) that provides for interim authorization for States that have final authorization for the pre-HSWA RCRA program. As previously written, these provisions would have required States which already have final authorization, or which will receive final authorization before expiration of the § 271.21(e)(1) deadline for making changes, to modify their programs within one or two years of this rule to become equivalent to the Federal program. Since Congress has now provided the opportunity for interim authorization for new requirements under the HSWA, the Agency has concluded it is also necessary to allow States the option of complying with those deadlines by modifying their programs to become substantially equivalent to the Federal HSWA program (the test for interim authorization). Retaining the former provisions would have diminished the utility of 1984 interim authorization to such an extent that the statutory purpose would not have been achieved. As explained before, however, States which obtain 1984 interim authorization will be required to obtain final authorization subsequently.

b. 3. All States. Whether a State is applying for final authorization or is already authorized, it is, of course, allowed to submit program revisions prior to the applicable § 271.21(e) deadline. A State need not seek authorization for all provisions at once. Indeed, States should apply now for interim or final authorization for any major portions of today's rule for which they already have legal authority. However, for those areas in which a State needs to amend its regulations or statute, EPA strongly encourages the State to submit one program revision application and not several piece-meal applications. This consolidation of State program revisions would minimize repetitive State and EPA involvement in the approval process.

States should note that they may not apply for final authorization to implement requirements of the HSWA if they have only interim authorization for the pre-HSWA RCRA program. States with interim authorization for all components of pre-HSWA program may apply for and be granted interim authorization for the new requirements. However, § 271.138(b) specifies that if the State fails to receive final authorization for the pre-HSWA program by January 31, 1986, its program (both pre-HSWA and HSWA) will revert to EPA on that date.

Finally, States should be aware that the deadlines for obtaining final authorization in § 271.21(e) have not changed regarding regulatory amendments unrelated to implementation of HSWA. For example, States must adopt regulations equivalent to the recently promulgated redefinition of solid waste (50 FR 614, January 4, 1985) within the one- or two-year deadline specified in § 271.21(e); interim authorization is not available. When EPA promulgates new RCRA regulations, the Agency will distinguish between those that implement HSWA requirements and those that do not.

I. Hazardous Waste Exports

1. Today's Amendments

As part of the HSWA, Congress enacted section 3017 governing the export of hazardous waste. Generally, section 3017 prohibits the export of hazardous waste unless the person exporting such waste: (1) Provides notification to the Administrator; (2) the government of the receiving country has consented to accept the waste; (3) a copy of the receiving country's written consent is attached to the manifest which accompanies the shipment; and (4) the shipment conforms to the terms of the consent.

In lieu of meeting the above requirements, a person may export hazardous waste if the United States and the government of the receiving country have entered into an agreement and the shipment conforms to the terms of the agreement. Section 3017(a). Subsections (d) and (e) establish procedures involving the Administrator and the Secretary of State for obtaining the consent of the receiving country, while subsection (f) discusses procedures for international agreements. Subsection (c) requires any person intending to export hazardous waste to notify the Administrator before the shipment leaves the United States and specifies the information to be included in such notification. Pursuant to subsection (b), the Administrator is required to promulgate regulations necessary to implement this section by November 8, 1985. Finally, Congress amended section 3008 of RCRA to provide criminal penalties for knowingly exporting hazardous waste without the consent of the receiving country or in violation of an existing international agreement between the United States and the receiving country.

Section 3017 of the HSWA contains one additional requirement with which exporters must comply immediately: section 3017(g) requires any person exporting hazardous waste to submit annually a report containing information relative to the wastes exported during that previous calendar year. EPA has today codified this requirement in the regulations by the addition of a new paragraph (d) to § 262.50 which provides that any person who exports hazardous waste must file with the Administrator, no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all hazardous waste exported during the previous year.

EPA is not publishing, at this time, amendments to codify the new notification requirement of section 3017(c) because it is a key element of the full section 3017 exportation scheme and, in the context of that scheme, presents several interpretive issues best resolved as part of the full set of regulations required by section 3017(b) to implement the entire section. Section 3017(c) requires notification "before such waste is scheduled to leave the country" without specifying whether or not separate notification is required for each shipment of hazardous waste, and without specifying the timing of such notification. Since the notification is a critical part of the section 3017(d) scheme for obtaining the consent of the receiving country, these issues should be addressed in the full set of regulations after opportunity for notice and comment. Accordingly, until November 8, 1985, or until EPA promulgates new requirements, persons exporting hazardous waste should comply with existing notification requirements of 40 CFR 262.50(b).

J. Waste Minimization

As part of the HSWA, Congress amended section 3002 of RCRA to add a new subsection (b) requiring that, effective September 1, 1985, the manifest required by subsection (a)(5) must contain a certification by the generator regarding efforts taken by him to minimize the amount and toxicity of wastes generated. Section 3002(b) provides that a generator must certify that he has a program in place to reduce the volume or quantity and toxicity of waste generated, to the degree determined by him to be economically practicable, and that the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

EPA is today publishing a revised Uniform Hazardous Waste Manifest Form (EPA Form 8700-22), the Appendix to Part 262, that includes a supplemental statement in Item 16 containing the certification required by the statutory amendment. This revised form, containing the supplemental statement, must be used after September 1, 1985. In addition, EPA is amending the instructions to the Appendix to Part 262 to include instructions for the waste minimization certification, Item 16. The instructions explain that any generator generating greater than 1000 kilograms of hazardous waste in any calendar month must sign (by hand) the certification. The instructions also make it clear that certain small quantity generators of less than 1000 kilograms of hazardous waste per month are exempt from the waste minimization manifest certification requirement. Specifically, generators of acutely hazardous waste in quantities below those specified in § 261.5(c) and generators of non-acutely hazardous waste in quantities below 1000 kg per month are exempt from the certification requirement, except that if they accumulate on-site more than the above threshold amounts they become subject to the full Subtitle C program (including the waste minimization requirements) for the increment of waste that exceeds these. *See* recodified § 261.5(f)(2), § 261.5(g)(2), and § 261.5(h)(2). Small quantity generators are exempt from this requirement since section 3002(b) refers to "the manifest required by [section 3002] subsection (a)(5)" and the special manifest provisions for small quantity generators are imposed by section 3001(d), not section 3002(a)(5). *See* S. Rep. No. 284, 98th Cong., 1st Sess. 67 (1983).

The legislative history to section 3002(b) makes clear that Congress' objective in enacting this section was to encourage generators of hazardous waste to voluntarily reduce the quantity and toxicity of waste generated. S. Rep. No. 284, 98th Cong., 1st Sess. 66 (1983). The amendment does not authorize EPA to interfere with or to intrude into the production process by requiring standards for waste minimization; rather it specifically provides that the substantive determinations of "economically practicable" and "practicable method currently available" are to be made by the generator in light of his own particular circumstances. Thus, from an enforcement perspective, the Agency will be concerned primarily with compliance with the certification signatory requirement. Each generator subject to the waste minimization requirement should make a good faith effort to minimize the amount and toxicity of waste generated and to select a means of treatment, storage, or disposal most likely to minimize the present and future threat to human health and the environment.

Section 3002 was further amended to include a new requirement that generators submit, at least once every two years, a report describing their efforts to minimize waste generation. EPA is thus amending § 262.41, which currently requires submission of a biennial report, to add two additional waste minimization information items required by the recently enacted section 3002(a)(6).

Congress also amended section 3005 of RCRA to provide that, effective September 1, 1985, RCRA permits for the treatment, storage, or disposal of hazardous waste on the premises where the waste was generated must contain a certification by the permittee regarding efforts taken to minimize the amount and toxicity of the generated wastes. In order to implement this amendment, EPA is today adding a new provision § 264.73(b)(9) which provides that the permittee record the waste minimization certification in the written operating record kept at the facility. The Agency is also amending § 264.70 to provide that § 264.73(b)(9) is only applicable to permittees who treat, store, or dispose of hazardous waste on the site where such waste was generated. In order to make it clear that this certification is applicable to permits, the Agency is today amending § 270.30(j)(2) to provide that the requirement to retain the operating record is a RCRA permit condition.

K. Financial Responsibility

Section 205 of the HSWA modifies section 3004 of RCRA by adding subsection (t) with respect to financial responsibility requirements. EPA does not believe that any new regulations are required to implement section 3004(t).

Section 3004(t)(1) affirms the action already taken by EPA in establishing financial responsibility requirements in 40 CFR Parts 264 and 265, Subparts H. While the trust fund and State-required mechanisms are not mentioned in the statute as a means of providing financial assurance for closure and post-closure care or corrective action, there is no evidence that Congress intended to eliminate either approach as a permissible mechanism; EPA believes that the trust fund is a viable instrument for the assurance of closure and post-closure care or corrective action and that the trust fund is particularly well-suited for small firms. The Agency uses standby trust funds to collect money from surety bonds and letters of credit. Without the standby trust funds, all monies collected from the instruments would revert to the U.S. Treasury and the Agency would not be able to draw on those funds directly for closure and post-closure activities. Accordingly, the Agency will continue to allow the trust fund to be used for financial assurance under Subpart H.

Section 3004(t)(2) provides for the assertion of a claim directly against the guarantor providing evidence of financial responsibility in cases where the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Code, or where judicial jurisdiction cannot be obtained over an owner or operator likely to be solvent at the time of judgment.

EPA interprets this provision to allow for "direct action" against persons providing insurance to owners or operators under 40 CFR §§ 264.147 and 265.147. While the working of the statute allows direct action against "guarantors," defined in section 3004(t)(4) to include persons who provide evidence of financial responsibility under that section, the remarks of Senator Moynihan, who introduced the direct action amendment, indicate only an intention to allow injured parties to assert claims directly against insurers where action against the owner or operator would be fruitless. 130 Cong. Rec. S9176 (daily ed. July 25, 1984).

The liability insurance requirements in §§ 264.147 and 265.147 are designed to provide assurance for injuries caused to persons and property by hazardous waste disposal facilities. However, there is no "injured party" *per se* when an owner or operator fails to comply with applicable closure and post-closure requirements. Only EPA can require that such obligations be performed. Moreover, the mechanisms allowed by EPA to provide closure and post-closure assurance were crafted to ensure that EPA could direct that the monies assured by the mechanisms be applied to closure and post-closure costs, whether or not the owner or operator was available or solvent. For these reasons, the Agency does not believe that the direct action amendment has any applicability to the mechanisms required for financial assurance of closure or post-closure care.

L. Underground Storage Tanks

The HSWA adds Subtitle I to RCRA to govern the regulation of underground storage tanks that are not subject to regulation under Subtitle C. Section 9001 of Subtitle I defines "underground storage tanks" as any one or combination of tanks (including any connected underground piping) which has ten percent or more of its volume beneath the surface of the ground (including the volume of connected pipes) and which is used to store "regulated substances." Regulated substances include (1) any substances defined as "hazardous substances" in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) that are not regulated as "hazardous wastes" under Subtitle C, and (2) petroleum, including crude oil or any fraction thereof. Expressly excluded from the definition of underground storage tanks are:

(1) Farm or residential tanks with a capacity of 1,100 gallons or less used to store motor fuels for noncommercial use.

(2) Tanks used for storing heating oil for consumptive use on the premises where stored.

(3) Septic tanks.

(4) Pipelines regulated under other acts.

(5) Surface impoundments, pits, ponds, or lagoons.

(6) Storm water and waste water collection systems.

(7) Flow-through process tanks.

(8) Liquid traps or associated gathering lines related to oil or gas production and gathering operations.

(9) Storage tanks located in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the tank is situated upon or above the surface of the floor.

Subtitle I establishes a comprehensive scheme for the regulation of underground storage tanks. Some of its provisions require EPA to promulgate requirements. Others go into effect without action on the part of EPA. The major provisions of Subtitle I include:

(1) A notification provision requiring that all owners of currently-used tanks and non-operational tanks taken out of service after January 1, 1974, notify designated State and local agencies of the existence of their tanks (section 9002).

(2) A requirement that EPA promulgate regulations governing petroleum tanks within 27 months, regulations governing new tanks containing hazardous substances within 33 months, and regulations governing existing tanks containing hazardous substances within 45 months (section 9003).

(3) A prohibition against the installation of new tanks that do not satisfy enumerated statutory requirements (section 9003(g)).

(4) A provision for the approval of State underground storage tank programs that are no less stringent than Federal regulations promulgated under section 9003 (section 9004).

(5) A provision providing EPA authority to inspect facilities, conduct monitoring and testing at facilities, or to require tank owners to conduct monitoring and testing and to provide information pertaining to their tanks to EPA (section 9005).

(6) A provision providing EPA authority to enforce the requirements of Subtitle I through the use of administrative orders, injunctions, or civil penalties (section 9006).

(7) A provision making tanks within the control of Federal government subject to Subtitle I requirements (section 9007).

(8) A requirement that EPA conduct the following studies: (i) a study concerning petroleum tanks within 12 months; (ii) a study concerning tanks containing hazardous substances within 36 months; and (iii) a study concerning exempted farm and heating oil tanks within 36 months (section 9009).

Of the requirements established by Subtitle I, the interim prohibition of section 9003(g) will go into effect automatically on May 7, 1985, without prior EPA rulemaking proceedings. That section prohibits the installation of any new underground storage tank for the purpose of storing regulated substances unless (A) the tank will prevent releases due to corrosion or structural failure for the operational life of the tank; (B) the tank is cathodically protected against corrosion, constructed of noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and (c) the material used in the construction or lining of the tank is compatible with the substance to be stored. Notwithstanding the above requirements, section 9003(g)(2) permits the installation of tanks without corrosion protection in soil with a resistivity of 12,000 ohm-cm or more. Today EPA is adding Part 280 to its regulations to incorporate the interim prohibition of section 9003(g). New

VI. Regulatory Analysis

A. Executive Order 12291: Regulatory Impact Analysis

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order and "to the extent permitted by law," to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. OMB has indicated that the regulation promulgated today is a major rule; however, OMB has also concluded that this rule is exempt from the RIA requirement. The exemption is based on Section 8 of the Executive Order, *Exemptions*, which states that

> procedures prescribed by this order shall not apply to: * * * (2) Any regulation for which consideration or reconsideration under the terms of the order would conflict with deadlines imposed by statute or by judicial order.

EPA has prepared preliminary estimates for the range of costs which the final rule may impose on hazardous and solid waste management units of various kinds and sizes, and for the total costs of the regulations. EPA estimated lower bound, upper bound, and most likely estimates for each of the provisions in the final rule that impose costs. The costs of the individual provisions were then aggregated to develop total cost estimates. EPA's general approach for estimating the costs, as well as the detailed assumptions underlying the estimates for each of the provisions, are described in Section D. In addition, EPA has begun analyzing the impacts of the costs of these requirements on particular waste-generating industries and expects to complete its analysis later this year.

This regulation was submitted to OMB for review under E.O. 12291.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a Regulatory Flexibility Analysis (RFA) when it promulgates a final rule. (5 U.S.C. 604). The purpose of the RFA is to describe the effects the regulations will have on small entities and examine alternatives that may reduce these effects. An agency head may delay completing the analysis for up to 180 days after publishing the rule in the Federal Register, if he publishes a finding that the final rule is being promulgated in response to an emergency that makes timely compliance impracticable. (5 U.S.C. 608).

EPA intends to examine the impact of today's regulations on waste-generating industries and will report results for those industries where the regulations have a substantial impact on a significant number of small entities.

Regulatory Flexibility Analysis

As indicted earlier in the preamble, the purpose of this rule is to promptly and effectively notify the regulated community of their responsibility under this new law. EPA believes this is a valid argument for evoking the regulatory flexibility emergency provisions.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control numbers: Notification 2050–0028; Manifest 2050–0039; Generators 2050–0035; Permittees 2050–0037; Biennial Report 2050–0024; Blending and Burning Fuels 2050–0047; and Exposure Assessments and Loss of Interim Status 2050–0007.

D. Estimated Cost of the Final Rule

1. General Approach

EPA estimated costs for each provision of the final rule which has compliance activities associated with the provision. EPA developed estimates of the affected population, the unit costs of compliance, and the aggregate costs of compliance for each provision. EPA developed likely lower- and upper-bound estimates of costs as well as a most likely estimate. In some cases, differences in assumptions about the affected population determine the lower and upper bounds; in others, the range reflects differences in assumptions about the unit costs of compliance with the provision. Moreover, the upper- and lower-bound estimates do not represent the worst or lowest case costs, but, rather, EPA's estimate of the *most reasonable* upper and lower bounds. The most likely estimate represents either EPA's best estimate, or, in some cases, the midpoint of the upper and lower bounds. Estimates are presented as the aggregate costs for the provision for all affected facilities.

EPA developed its estimates of affected populations largely on the basis of EPA's "National Survey of Hazardous Waste Generators and Treatment, Storage and Disposal Facilities Regulated Under RCRA in 1981" (hereafter referred to as the "1981 RCRA Survey").

EPA developed two different types of unit costs and applied these costs to the affected population to estimate provision-specific costs: (1) Costs that vary significantly with the size and type of unit; and (2) costs that are the same, regardless of the size or type of units at the facility. Costs that vary with the size and type of unit were used to estimate the costs of the minimum technological requirements. Other requirements of this final rule impose unit costs that are the same, regardless of the size or type of units at the facility. For example, the cost to complete an exposure assessment depends on the level of detail required in the assessment rather than the size or type of unit.

The costs are presented in two ways: First-year costs and annualized-present-value (APV) costs, and where appropriate, are presented as low, most likely, and upper bound estimates for each. First-year costs represent the initial capital/startup costs plus first-year operating costs (if applicable) that the provision imposes. If the first-year costs are the same as those in succeeding years, the first-year cost will equal the annualized present value.

Because the stream of costs over time may be uneven, EPA converted this stream to its equivalent annual cost over the life of the facility using discounted cash flow analysis. First, EPA calculated the total present value (TPV) which is the sum of costs incurred in each year divided by a discount factor, as follows:

$$PV = \sum_{n=0}^{n} \frac{(\text{costs})_n}{(1+r)^n}$$

where the real rate of return (r) equals 3 percent and n is the number of periods in which costs are incurred. The cash flows do not include inflation, taxes, or depreciation. As such, the resulting present value cost reports the full social cost in real terms.

In order to spread the costs evenly over the life of the facility, EPA annualized the total present value by multiplying it by a capital recovery factor (CRF):

$$CRF = \frac{r^{*}(1+r)^{OL}}{(r+1)^{OL}-1}$$

where OL is the operating life. Unless otherwise specified, EPA assumed a 20 year operating life. The 3 percent real rate of return and the 20-year operating life assumptions lead to a CRF of .0672. The annualized present value represents the annual revenue required to cover the costs imposed by the provision. This value provides a consistent basis for presenting and comparing costs of different provisions. However, it implicitly assumes that facilities can predict future costs and can recover them at a steady rate over the life of the facility.

2. Ban on Hazardous Liquids In Landfills Provision

Effective May 8, 1985, this provision of the final rule bans the placement of bulk or noncontainerized liquid hazardous waste in landfills. Under current Part 264 regulations, liquids are permitted in lined landfills or in any landfill if the liquids have been treated or stabilized.

Affected Population—Based on the 1981 RCRA Survey, EPA identified seven landfills which accept hazardous liquids; five of these, accounting for approximately 57,000 metric tons (MT) per year, solidify the liquids in the landfill, while the other two, accounting for 11,000 MT per year, place liquids directly in their landfills. These seven facilities represent the lower bound estimate of the affected population.

To calculate an upper bound on the number of affected landfills, EPA assumed that the seven landfills represented only one-half of firms actually disposing of bulk liquids. Further, EPA assumes that the seven additional landfills, for which there is no information on the quantity managed, handle the same amount as those surveyed.

Unit Costs—In order to treat the liquids so that their placement in landfills is acceptable, EPA assumes that the wastes must be solidified outside of the unit and then placed in the landfill. In order to solidify wastes so that liquids are permanently fixed, EPA assumes that the liquids will be mixed with cement. The unit costs are based on engineering cost estimates developed for four model sizes of solidification plants. Plant sizes are based on MT per year of waste input. These plants would be built on site and would be replaced once over the 20-year expected lifetime of the facility. Over the relevant range, the larger the solidification plant, the smaller the per-ton cost of solidifying the liquids. The size of the solidification plant at each of the affected landfills was adjusted to match the needs of the facility.[27] The cost per ton solidified ranged from $235 for the smallest to $68 for the largest facility.

Total Costs—The total cost of the provision was determined by multiplying the quantity of bulk liquids handled at each landfill by the appropriate unit cost of constructing a solidification plant with sufficient capacity to meet current needs. The lower-bound first-year costs are estimated to be $7.4 million. The annualized present value is $5.1 million. The upper bound first-year costs are $14.8 million; annualized costs are $10.2 million. The most likely costs represent the average of the lower and upper bound estimates: $11.1 million in the first year, with an annualized cost of $7.7 million.

3. Minimum Technological Requirements

Provisions—The final rule requirements apply to each new landfill or surface impoundment and to replacements or lateral expansions of existing landfills or surface impoundments. The rule requires that these units must have two or more liners and a leachate collection system; the leachate collection system must be between the top and bottom liners for surface impoundments and above the top liner and between the top and bottom liners for landfills. The 1984 HSWA does not require existing surface impoundments to immediately install new liner and leachate collection systems.

Affected Population: Landfills—Based on the 1981 RCRA Survey, EPA estimates that there are 199 active landfills that handle hazardous waste. EPA assumes that these landfills operate for 20 years, with a new cell opening and closing each year. As each landfill opens a new cell, the rule will

[27] Unit costs were defined using ordinary least squares regression of the cost for the model plants. The cost functions were of the form $C = aQ^b$ where C is the cost, Q is quantity in metric tons, a is a constant and b is the "scale" coefficient.

require that the cell be lined in accordance with the double liner standard. Therefore, all 199 landfills will be affected annually by the final rule because, as they open a new cell, they will incur the additional cost imposed by the double liner requirement.

Because the engineering costs for the affected population are specific to unit size, EPA could generate engineering costs for virtually any unit size. To limit the number of unit cost estimates and to simplify the analysis, EPA developed size categories based on the actual size distribution of landfill units from the 1981 RCRA Survey. Each landfill is placed into one of eight size classes ranging from 500 MT per year to 123,000 MT per year.

Affected Population: Surface Impoundments—EPA estimates that there are 758 hazardous waste facilities with surface impoundments and that, on average, each facility has 2.3 surface impoundments, for a potentially affected total population of 1,743 impoundments. As detailed below, approximately 33 percent of these existing surface impoundments are expected to incur costs associated with this regulation within the next four years, when other provisions of the amendments will require the remaining surface impoundments to retrofit.

In the near term this provision will affect only that portion of surface impoundments which are laterally expanded or replaced. Since lateral expansion is an unlikely engineering option for surface impoundments, EPA estimated only the number of impoundments that are likely to be replaced in the next four years. EPA defines replacement as "a unit taken out of service and emptied by removing all or substantially all waste from it." Therefore, EPA regards dredging of a surface impoundment as constituting replacement. Dredging is a normal part of the operation of a surface impoundment and EPA assumed that impoundments are normally dredged when the depth of settled sludge is equal to one-half of the operating depth. The time to dredging varies from 7 to over 13 years, depending on the size of the impoundment. Therefore the potentially affected population of 1,743 surface impoundments has been reduced to reflect the normal dredging schedules for units of six different model sizes. Accordingly, EPA estimates that 194 surface impoundments would normally be dredged in each of the next four years. Finally, EPA assumes that the facilities that would normally have dredged in each of the next four years will postpone dredging one year (see *Unit Costs: Surface Impoundments* below).

Unit Costs: Landfills—Because EPA assumes that landfills are filled one cell at a time and that one cell is filled each year, the cost of the final rule is estimated as the incremental cost of opening and closing a new cell using the design specified in the final rule. Under the final rule, the new cell must comply with a double liner and leachate collection system requirement and must be closed with an equivalent cap. Instead of placing a single liner under the new cell (as required under current Part 264 regulations), the owner or operator must use a double liner. EPA has defined an interim statutory, synthetic/clay liner to conform with the double liner requirement for the purpose of meeting the final rule requirements.

The cost attributable to the final rule is the incremantal cost of opening and closing new cells with as synthetic/clay liner and two leachate collection systems instead of the single liner and single leachate collection system currently required. The cost estimate assume that the clay for the liner is available on-site. If this were not the case, the costs would be larger, ranging from 12 to 53 percent more than those calculated, depending on facility size. EPA assumed that it is unlikely that facilities would need to bring clay from off-site.

The first-year costs range from $8,200 for the smallest landfills to $285,000 for the largest. On a per-ton basis, the incremental first-year cost is $12/MT for the smallest landfills and under $2/MT for the largest landfills.

Total Costs: Landfills—The initial capital cost for all 199 landfills is $9.68 million; the estimate is the same for the lower and upper bounds. The annualized costs are $10.2 million.

Unit Costs: Surface Impoundments—Surface impoundment unit costs rely on two major assumptions about compliance with the final rule. The first is that, rather than retrofit existing impoundments in accordance with the regulation, operators will instead choose the less costly option of closing the existing unit as a land disposal facility and constructing a new surface impoundment. The second assumption is that due to the high cost of managing hazardous waste in surface impoundments there will be additional incentive for operators to minimize the quantity of hazardous waste they place in them, such that operators will separate hazardous from non-hazardous waste sources to decrease the volume of hazardous waste that must be managed.

In order to model this expected behavior on the part of operators, EPA assumes first, that operators will extend the time until dredging by one year because of the reduced flow of hazardous waste into the impoundment. The estimated 194 surface impoundments that would normally dredge in 1985 will delay their dredging until 1986, and so on. Moreover, once the unit is ready for dredging (i.e. closure and replacement), EPA further assumes that the replacement impoundment will be only approximately half as large as the original impoundment. In terms of the model sizes used to calculate costs, the new unit will be one model size smaller than the impoundment it replaces. The full cost to surface impoundment facilities includes the cost of both the new surface impoundment and the cost of a new surface impoundment to handle the non-hazardous liquids. The cost of the latter impoundment is not included in these estimates of the cost of the minimum technological requirements for land disposal facilities.

Given these assumptions, the new unit costs of complying with the final rule include the incremental costs of:

(1) Closing the old surface impoundment as a land disposal facility in the next few years instead of 20 years from now;

(2) Constructing a new, smaller impoundment within the next few years with the interim statutory double liner and leachate collection system instead of the current Part 264 single liner and leachate collection system; and

(3) Closing the new surface impoundment with a cap equivalent to the interim statutory liner, rather than the cap specified in the existing Part 264 regulations.

The unit costs are dominated by closure costs for all model sizes: Moving closure costs approximately 20 years forward means that the present value practically doubles (an outlay of $100 today has a value of $181 in 20 years assuming a 3 percent discount rate). The initial year costs for closure of the old unit accounts for between 46 and 79 percent of total initial year costs; the balance is attributable to the cost of land and constructing the new unit.

The annualized costs of compliance with this rule vary from $55,000 per facility for the smallest new impoundments, to over $1.5 million for the largest. The annualized cost per ton managed in the newly constructed units ranges from approximately $18 for the smallest impoundments down to less than $1 per metric ton for the largest impoundments.

Total Costs: Surface Impoundments—The total annualized cost of the surface impoundment provision in the final rule is $53.2 million and is the same for the lower and upper bounds.

Total Costs: Minimum Technological Requirements—The first year costs are all from landfill compliance with the final rule and equal $9.68 million in both the lower and upper bound estimates. The total annualized cost of the provision is $63.5 million.

4. Corrective Action

Provisions—The final rule requires that any Subtitle C permit issued to a RCRA facility after the date of enactment must require corrective action for all releases of hazardous wastes or constituents from solid waste management units as well as hazardous waste management units at the facility. The final rule grants EPA the authority to issue corrective action orders to interim status facilities to clean up releases from both solid and hazardous waste management units on a site-specific basis. This analysis only addresses releases to ground water. It does not estimate the costs of corrective action for releases to other media.

Owners or operators of hazardous waste management facilities must also assure EPA that they can meet a financial responsibility test for the required expenditures. The costs of this provision are treated later in this section.

EPA developed estimates of corrective action costs for releases from solid waste management units (SWMU) at RCRA facilities. Corrective action for releases from active land disposal units is already required under existing Part 264, Subpart F regulations. This provision of the final rule imposes no incremental costs on these units. The costs for SWMUs are based on corrective action for releases only up to the facility boundary; the costs include the cost of counterpumping and treating contaminated ground water and, in some cases, the cost of controlling the source of contamination.

Affected Population: Solid Waste Management Units—The final rule requires owners or operators to take corrective action for releases from solid waste management units (SWMUs) at facilities seeking Subtitle C (RCRA) permits. The 1981 RCRA Survey estimated that there are 1,049 hazardous waste land disposal facilities and 3,769 hazardous waste treatment and storage facilities. Many of these facilities also have solid waste management units. The size of the affected population, therefore, depends on the number of these facilities with SWMUs and the number of leaking SWMUs at each of these facilities. To account for this uncertainty, EPA developed low, high and most likely population estimates.

The lower bound estimate assumes that there are no leaking SWMUs at the 1,049 hazardous waste land disposal facilities, and that one-fourth (942) of the 3,769 treatment and storage facilities have one leaking SWMU on-site. EPA further assumed no releases from facilities in arid climates and that those facilities granted ACLs under § 264.94 are exempt from the requirements. EPA assumes that 10 percent of the facilities are in arid climates and 10 percent will receive ACLs. Thus, the lower bound estimate assumes that corrective action begins immediately for these 754 SWMUs.

The upper bound assumes that 25 percent of all land disposal facilities have a SWMU on site that is leaking. In addition, each of the 3,769 treatment and storage facilities has one leaking SWMU. Thus the upper bound estimate assumes that corrective action begins immediately for all 4,031 facilities.

EPA's most likely estimate assumes that 12.5 percent of facilities with land disposal units, the midpoint of the upper and lower bound, also have a SWMU. Also, one-fourth of the remaining treatment and storage facilities have a single leaking solid waste management unit on site. Thus the best estimate assumes that corrective action begins immediately for 1,073 facilities.

Unit Costs: Corrective Action for Solid Waste Management Units—The unit costs of corrective action at SWMUs include the cost of containing or counterpumping the part of the plume that extends to the facility boundary and then treating the contaminated ground water. EPA used its Stochastic Model of Corrective Action Costs to estimate the costs of counterpumping and treatment. The model estimates these costs based on various inputs about the hydrogeology of sites, plume characteristics, and treatment options. Costs were adjusted to account for replacement of capital over the term of the corrective action. The mean length of time for completing the corrective action is 48 years. EPA assumes that the mean distance from the disposal unit to the facility boundary is 500 feet and that the cost model can be used to extrapolate costs for clean-up of plumes of this length.[28] The first year cost for cleaning up a 500 foot plume is $622,000 per unit if the clean-up begins immediately. The annualized present value is $249,000.

Total Costs: Corrective Action for Solid Waste Management Units—The estimates for first year corrective action costs at facilities with SWMUs range from $469 million to $2.5 billion. The annualized costs range from $188 million to $1.0 billion.

Unit Costs: Source Control for Solid Waste Management Units—In order to protect human health and the environment, it may be necessary to do more than contain or remove and treat the contaminated ground water. One additional component of the cost of corrective action would be the cost to remove or isolate the source of the plume from ground water. EPA assumed that source control requirements would only apply to SWMUs that have releases requiring corrective action (because active land disposal units at RCRA facilities are already subject to these requirements under the current regulations).

As noted above in the general approach, EPA generated upper and lower bound cost estimates which should not be regarded strictly as upper and lower limits on total costs. This point is important in light of the sensitivity of source control cost estimates to the assumptions about the affected population. The first assumption is that half of the facilities with SWMUs are required to perform corrective action involving source control. The second assumption involves the distribution of three alternative source control methods across affected facilities. The three methods are: controlling the source by removing it, building slurry walls, and capping the unit.

• Source removal option: Source removal, which requires both source removal and solidification, is the most expensive source control option. The lowest excavation and solidification costs per unit are $450,000 in the first year for a ¼ acre surface impoundment. The annualized cost is $30,000. The highest unit costs are for a 123,000 MT per year landfill. The first year cost is $63 million, 87 percent of which is the cost of solidification. The annualized cost is $4.2 million.

• Slurry wall option: A less expensive solution is to supplement the counterpumping with a slurry wall, constructed around the unit, down to the top of the saturated zone. The wall will divert upgradient flow around the unit and contain leakage from the unit itself. First year costs for slurry walls range

[28] EPA reviewed model sensitivity analysis of plume length and assumed that the cost functions display constant elasticity with respect to plume length (C=a(length)[b]).

from $10,000 for the ¼ acre impoundment to $513,000 for the 123,000 MT per year landfill; annualized costs range from $672 to $34,000.

• Capping the unit: The third option is to solidify the waste in the unit and place an impermeable cap on the unit. Because the waste must be solidified in order to support the cover, this option can be nearly as expensive as source removal, especially for large units. First year costs per facility range from $142,900 for ¼ acre impoundments ($9,600 annualized) to $62 million for the 123,000 MT per year landfill ($4.2 million annualized).

The choice of specific source control measures can have a significant effect on the costs. The most expensive option may be as little as 11 times more expensive than the least cost option for a given unit size, or as much as 120 times more expensive. As a result, EPA made several assumptions about the source control option applicable to the population.

For the lower bound, EPA assumed a uniform distribution among the three options: One-third of the affected facilities capped the unit, one-third excavated and solidified the waste, and one-third constructed slurry walls.

For the upper bound and best estimate, EPA selected the source control option on the basis of depth to the ground water at each site. If the ground water is within 10 feet of the bottom of the unit, source removal is necessary. (Based on information from the 1981 RCRA Survey, 67 percent of the landfills and 63 percent of the surface impoundments met this criterion.) Where the ground water is between 10 and 50 feet from the bottom of the unit, the operator would construct a slurry wall. (Twenty percent of the landfills and the rest of the surface impoundments (37 percent) included in the 1981 RCRA Survey met this criterion.) Finally, all other SWMUs (i.e., those situated more than 50 feet above the ground water) solidify the waste in the unit and then cap it.

Total Costs: Source Control for Solid Waste Management Units—The lower bound estimates for first year costs of source control at SWMUs is $1.4 billion or $92 million annualized. The upper bound costs are $11.7 billion for the first year or $784 million annualized. The most likely first year costs are $3.1 billion. The most likely estimate of annualized costs is $208 million.

Total Costs: Solid Waste Management Units (Corrective Action and Source Control)—Table VI–1 describes the individual components of the costs of corrective action and source control at solid waste management units. Source control costs dominate the first year costs because all of the source control options require a one-time investment. On an annualized basis, counterpumping costs that continue for many years are more important.

TABLE VI–1.—SUMMARY OF FINAL RULE CORRECTIVE ACTION COSTS AT FACILITIES WITH SOLID WASTE MANAGEMENT UNITS

	Lower bound		Upper bound		Most likely	
	First year costs	Annualized PV	First year costs	Annualized PV	First year costs	Annualized PV
Solid waste management units:						
Counterpumping	$468,864,000	$187,931,000	$2,507,438,000	$1,005,039,000	$667,640,000	$267,605,000
Source control:						
Land disposal facilities	0	0	721,439,375	48,460,726	360,719,688	24,240,363
Treatment and storage facilities	1,362,727,141	91,575,264	10,950,519,248	735,874,893	2,737,629,812	183,968,723
Source control total	1,362,727,141	91,575,264	11,671,958,623	784,355,619	3,098,349,500	208,209,086
Total	1,831,591,141	279,506,264	14,179,396,623	1,789,394,619	3,765,969,500	475,814,086

Total Costs of the Provision—The total costs of the provision include the cost to clean up plumes from SWMUs to the property boundary and the cost to remove the source of contamination at these units. When corrective action and source control are considered, the lower bound cost of the corrective action provision is $280 million annually and $1.8 billion the first year. The upper bound annualized cost is $1.8 billion or $14 billion the first year. The most likely annualized costs are $476 million with a first year cost of $3.8 billion.

The cost estimates for the provision are very sensitive to the assumption that RCRA treatment, storage, and disposal facilities have only one SWMU. If facilities have more than one SWMU, the costs could increase dramatically.

5. Dust Suppression

Provision—The final rule prohibits the use of used oil, mixed with hazardous waste, as a dust suppressant.

Affected Population—The provision affects two distinct groups: first, firms that generate the used oil and second, firms that buy the oil for re-use and recycling. The highest value use of the oil is as a dust suppressant applied to roads. EPA estimates that approximately 68.5 million gallons of this type of used oil are applied to roads each year. Under the final rule, generators will no longer be able to sell the oil for use as a dust suppressant. Firms that apply oil to roads will have to find an alternative to used oil and pay the additional cost of the alternative.

Unit Costs—The cost to generators depends on the number and type of alternate uses for the oil. For the lower bound, EPA estimates that generators can simply sell the oil to other users at no loss of revenue. The upper bound is that the oil has no resale value and the generators lose the revenue they earned on the sale of the oil to road oilers. The most likely estimate reflects the fact that the oil has some value, at least for its BTU content, but no higher value than it had as a dust suppressant (or the generators would have sought out the higher value use).

For road oilers, the lower bound cost assumes that they will switch to calcium chloride. This means a higher cost per gallon and a higher application rate. The upper bound cost includes the same assumptions plus a 50 percent higher application frequency.

Total Costs—The lower bound cost is $16 million and is the same each year. The upper bound is $35 million and the most likely cost is the average of the two, approximately $26 million.

6. Small Quantity Generators

Provision—The final rule imposes interim requirements for small quantity generators (SQGs) of hazardous waste. The final rule only requires SQGs to fill out portions of the Uniform Hazardous Waste Manifest for shipments of their waste.

Affected Population—EPA estimates that between 100,000 and 175,000 generators produce between 100 and 1,000 kg. of hazardous waste per month. Based on changes in the amount of time that generators may store waste on-site without a storage permit, EPA estimates that, on average, these generators will send between 1.33 and 2 shipments off-site per year. If the generator stores waste for 270 days (the most allowed under the new rules), he would send 1.33 shipments off-site each year. If the generator does not qualify for the 270 day storage period, he can store wastes for 180 days and would therefore ship 2 loads off-site each year on average.

Even if the generator stores for 270 days, the most waste he could accumulate is 9,000 kg. (9 MT), far less than a full load for either tank trucks or flatbeds (assumed to be roughly 23 MT and 18 MT respectively). The effect of this is that in the lower bound, 100,000 generators will each have 1.33 shipments per year, while in the upper bound, 175,000 generators will each have 2 shipments per year. The best estimate assumes 100,000 generators, each with 1.67 shipment per year.

Unit Costs—The generators are only required to fill out a small part of the Uniform National Manifest. Based on EPA estimates of the time required, the cost per manifest varies between $2.50 and $4.00 per manifest.

Total Costs—The lower bound cost is $332,500 per year; the upper bound is $1,400,000 and the most likely estimate is $542,750.

7. Burning and Blending

Provision—The final rule includes a provision banning the burning of hazardous waste in cement kilns which are located in cities with populations greater than 500,000.

Affected Population—EPA has information on several cement kilns that may currently burn or are considering burning hazardous waste, but it is difficult to estimate the actual population affected by this provision. For a lower bound estimate, EPA assumes that the provision is merely precautionary, and is designed to preclude this activity until EPA develops standards for these kilns. The upper bound and most likely estimate is that one kiln currently burns hazardous waste.

Generators of the solvents burned in the kiln will also be affected by the ban. They will lose the revenue they would now earn on the sale of the waste to the kiln operator and they may have to pay to dispose of the waste.

Unit Costs—In the upper bound and most likely scenarios, the owner of the kiln will lose the cost advantage he enjoyed by burning cheaper solvents in place of some other fuel. One facility reported savings of $.29 per gallon on the solvents burned; this is the difference between burning hazardous waste and number 6 fuel oil.

For the upper bound, EPA assumes that generators of the solvents will lose the revenue from the sale of the solvent to the kiln operator and will now have to pay to dispose of the solvents. The most likely estimate assumes that they will pay only a moderate fee to dispose of the solvents because of their BTU content.

Total Costs—The lower bound costs are zero. The upper bound cost is $167,000 per year and the most likely estimate is $108,000.

8. Exposure Assessments

Provision—The final rule requires all owners and operators of landfills and surface impoundments to supplement their RCRA permit applications with information on the potential for public exposure to releases from the unit. This should include information on potential releases, pathways of exposure, and the magnitude of possible exposures. In general, owners and operators are not expected to collect additional data; they can submit existing information.

Affected Population—The number of applicants is expected to match the current estimates for facilities with landfills (199) and surface impoundments (758) from the 1981 RCRA Survey. EPA also assumes that there will be approximately 20 new applicants each year.

Unit Costs—The costs of the final rule are based on estimates of the paperwork burden required of applicants to assemble and transmit the required information to EPA. Based on an estimate of 120 hours per respondent and an average cost of $16 per hour, the cost per facility is estimated at $1,920.

Total Costs—Most of the costs are incurred in the first year. After that, only new facilities need to submit the information. The upper and lower bound first year costs are $1.9 million; annualized costs are $176,000.

9. Delisting

Provision—The final rule requires that generators petitioning to exclude a waste generated at their facility from regulation must submit information beyond what is currently required. EPA is required to consider factors other than those for which the waste was originally listed if those factors might cause EPA to continue to regard the substance as a hazardous waste, i.e., to not delist.

Affected Population—To date, EPA has processed 369 petitions under the existing delisting provision. These petitions will be reexamined in light of this new regulation. In addition, based on the past number of petitions per year, EPA estimates that new petitions will arrive at the rate of approximately 136 per year.

Unit Costs—EPA assumes that an additional constituent analysis of the waste in question will be required in order to comply with the final rule. The expected cost for these analyses plus other petition costs is $3,000 per petition.

Total Costs—Most of the costs occur in the first year because of the need to reexamine old petitions. The first year upper and lower bound costs are estimated at $1.5 million and the annualized cost is $480,000.

10. Hazardous Waste Exports

Provision—The final rule requires exporters of hazardous waste to submit an annual report on their export activity. The report may be submitted as part of the biennial report or separately.

Affected Population—EPA assumes that between 150 and 200 generators export hazardous waste each year. The lower bound estimate is 150, 200 is the upper bound and 175 is the most likely.

Unit Costs—When the information is part of a biennial report, the cost of supplying additional information regarding exports is slight. EPA assumes that the additional cost ranges from a lower bound of $10 to an upper bound of $20. If the export report is not part of a biennial report, the costs will be higher. EPA assumes the costs range from $20 to $100.

Total Costs—EPA estimates first year and annualized costs of $2,250 for the lower bound, $12,000 for the upper bound, and $6,600 for the most likely.

11. Waste Minimization

Provision—The final rule requires that generators filling out hazardous waste manifests and TSDFs managing waste generated on-site must certify that they have taken economically practicable steps to minimize wastes generated. All generators must report on these efforts in their biennial reports.

Affected Population—Generators shipping waste off-site must sign a compliance statement on the manifest; the incremental cost is negligible. The number of TSDFs that must certify compliance is based on the total number of TSDFs reported by the RIA Survey, 4,818. The affected population is 90 percent of the TSDF population based on EPA assumptions that 90 percent of all TSDFs generate waste on-site.

All generators must submit a report on waste minimization in their biennial report. The number of generators is 14,098 according to the 1981 RCRA Survey; this is both the lower bound and the most likely. The upper bound is that all generators who notified must submit these reports. EPA estimates that 48,791 biennial reports would be required if all notifiers were active.

Unit Costs—The certification costs for generators are negligible and are excluded here. For TSDFs, the costs are estimated at less than $10. The cost of a biennial report will increase between $10 and $50. According to EPA paperwork burden estimates, the preparation of a biennial report will take 10 percent more time. This yields a most likely estimated cost of $13 per facility.

Total Costs—Lower bound first year and annualized costs are $141,000. EPA estimates the upper bound costs at $2.5 million with a most likely estimate of $205,000.

12. Financial Responsibility

Provision—The final rule requires facilities to perform corrective action as specified under §§ 206 and 207 of the amendments. In addition, facilities must provide financial assurance for that corrective action.

Affected Population—The same population estimates derived for the corrective action provision apply here. In summary, the lower bound population consists of 25 percent of the 3,769 treatment and storage facilities with leaking solid waste management units: 10 percent of these are assumed to be located in arid climates and another 10 percent are granted ACLs for constituents found in the ground water near the site, reducing the affected population to 754 facilities.

The upper bound population estimate assumes that 25 percent of the 1,049 land disposal facilities have one leaking SWMU. Each remaining treatment and storage facility (3,769) has one leaking SWMU.

The most likely population estimate is an average of the upper and lower bound for land disposal facilities. For treatment and storage facilities, 25 percent are assumed to have one leaking SWMU.

The final assumption about the population involves the difference between the number of facilities and the number of firms that own them. Only firms are responsible for showing financial responsibility, not individual facilities. EPA estimates that the average number of facilities per firm is three.

Unit Costs—EPA assumes four possible mechanisms for firms to demonstrate financial responsibility for corrective action. The least expensive mechanism is the financial test or guarantee. This may be provided to a firm based on certain information about its financial condition for $400.

The other options all depend in some way on the expected cost of the corrective action that will be required. A letter of credit involves a $420 fee plus .7 percent of the undiscounted cost of the corrective action; a surety bond costs the same fixed fee plus 1 percent of the undiscounted costs; and a trust fund includes a $400 fee plus .9 percent of the undiscounted cost.

The undiscounted cost of the corrective action is simply the sum of the costs incurred cleaning up a plume as far as the facility boundary over the average length of time that pumping is required (48 years). The cost estimate reflects the cost of cleaning up a 500 foot plume. The undiscounted total cost for a 500 foot plume is $6.6 million.

The lower bound cost estimate assumes that all affected firms can satisfy the financial responsibility requirement with a financial test or guarantee. That means that the cost to each firm will be $400.

For the upper bound, EPA assumes that each firm must establish a trust fund to prove it can meet the corrective action costs. The cost of a trust fund to meet these corrective action costs is $59,930 per facility or $179,000 per firm.

The most likely estimate assumes that 83 percent of the firms use a financial test or guarantee, 9 percent use a letter of credit, 4 percent use surety bonds, and 4 percent a trust fund. This is based on the current distribution of allowable demonstrations for closure and post-closure care. Letters of credit will cost firms $139,000 for corrective action to the facility boundary. The corresponding cost for firms using surety bonds is $199,000.

Total Costs—The lower bound estimate is $100,400 for both the first year and the annualized costs. The upper bound is $241 million and the most likely is $9.8 million.

13. Underground Storage Tanks

Provision—The final rule bans the placement of new, unprotected steel tanks in "corrosive" soils. The ban is effective until EPA promulgates new regulations in 2 years.

Affected Population—EPA assumes that 100,000 tanks are replaced each year. Approximately 60,000 are for farm and home use and are not subject to these requirements. The remaining 40,000 tanks are for commercial/industrial use. Approximately 28,000 of these are metal tanks of which roughly 13,000 are unprotected carbon steel and are subject to these requirements. Most of those tanks (75 percent) are probably placed in noncorrosive soils, defined as soils with resistivity higher than 12,000 ohm-cms.

The owners or operators of all these tanks will need to perform a soil resistivity test. EPA assumes that two-thirds will install cathodically protected tanks instead of bare steel, and the rest will install externally coated tanks.

Unit Costs—The costs represent the increment required by the final rule and include the cost of a soil resistivity test ($36), and installing a protected tank that is either cathodically protected (an incremental cost above bare steel ranging from $2,367 to $4,340 per tank depending on the size of the tank), or externally coated (incremental cost from $832 to $1,774, depending on size).

The lower bound unit cost includes these incremental costs in the first year, and replacement costs in year 14. EPA assumes that unprotected steel tanks that would have been placed in corrosive soil without the regulation, would fail in an average of 14 years. At this time, the tank would have to be replaced. The regulation forces the owner to install a tank with a longer expected lifetime (20 years), so the owner pays more the first year, but saves money over the 20 year horizon because the tank lasts longer. This conclusion is dependent on the assumption that an owner would put an unprotected steel tank in corrosive soil, as well as an assumed life of 14 years for an unprotected tank, and the 3 percent discount rate.

The upper bound unit costs includes the same incremental cost, but assumes that even a bare steel tank would last the full 20 year period, so there is no replacement cost in year 14.

The most likely estimate of the unit cost is zero. EPA believes that owners operate to maximize net present value (and therefore minimize the present value of costs) and would therefore not install a tank that was expected to fail so quickly. Given EPA's assumptions, an owner would pursue the course of action that minimized the present value of costs. He would compare the incremental cost of protecting the tank now, to the discounted cost of replacing a failed tank in 14 years. If protecting the bare tank were cheaper in present value terms (which it is under these assumptions) the owner would opt to invest in a protected tank now. In short, the owner already optimizes, so there is no need to "force" him to comply with regulations.

Total Costs—Under the lower bound assumptions, the first year cost of the regulation is $6.2 million, but the annualized "cost" is a net savings per year of $870,000, because the owner will not have to replace a failed tank. The upper bound only includes the costs of installing protected tanks for two years, at which time the ban is replaced by new regulations. The first year cost is $6.2 million and the annualized present value over 20 years is $1.1 million. The most likely estimate is zero.

14. Total Cost of the Final Rule

The sum of all the annualized costs ranges from a lower bound of $365 million to $2.1 billion. Table VI-2 shows these annualized costs as well as the first year costs, which range between $1.9 billion and $14.5 billion. Corrective action costs dominate both first year and annualized costs in each scenario. The Agency is soliciting comments on these cost estimates.

TABLE VI-2.—COSTS OF FINAL RULE

Provisions	Lower bound		Upper bound		Most likely	
	First year costs	Annualized FY	First year costs	Annualized FY	First year costs	Annualized FY
Liquids in landfills	$7,419,100	$5,106,663	$14,838,200	$10,213,326	$11,128,650	$7,659,995
Minimum technological requirements	9,675,600	63,473,700	9,675,600	63,473,700	9,675,600	63,473,700
Corrective action [1]	1,831,591,141	279,506,264	14,179,396,623	1,789,394,619	3,765,989,500	475,814,066
Dust suppression	16,440,000	16,440,000	34,930,000	34,930,000	25,685,000	25,685,000
Small quantity generators	332,500	332,500	1,400,000	1,400,000	542,750	542,750
Burning and blending	0	0	166,920	166,920	107,640	107,640
Exposure assessments	1,906,560	176,213	1,906,560	176,213	1,906,560	176,213
Delisting procedures	1,515,000	482,295	1,515,000	482,295	1,515,000	482,295
Hazardous waste exports	2,250	2,250	12,000	12,000	6,563	6,563
Waste minimization	140,980	140,980	2,482,910	2,482,910	204,954	204,954
Financial responsibility	100,400	100,400	240,560,947	240,560,947	9,803,280	9,803,280
Underground storage tanks	6,215,000	(871,076)	6,215,000	1,113,446	0	0
Grand total	1,875,338,531	364,890,189	14,493,099,760	2,144,406,376	3,826,565,497	583,956,476

[1] Cost of corrective action includes the cost of source control for certain facilities.

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste, Liquids in landfills.

40 CFR Part 261

Hazardous waste, Small quantity generators, Recycling, Delisting.

40 CFR Part 262

Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste minimization.

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Exposure assessments, Corrective action, Security measures, Surety bonds, Liner requirements.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Corrective action, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Burning and blending.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply, Permit application requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 280

Underground storage tanks.

Dated: July 8, 1985.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 is revised as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 3019, and 7004, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939 and 6974).

2. 40 CFR Part 260 is amended by revising § 260.22(a), (c)–(e) to read as follows:

§ 260.22 Petition to amend Part 261 to exclude a waste produced at a particular facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Subpart D of Part 261 may petition for a regulatory amendment under this section and § 260.20. To be successful:

(1) The petitioner must demonstrate to the satisfaction of the Administrator that the waste produced by a particular generating facility does not meet any of the criteria under which the waste was listed as a hazardous or an actutely hazardous waste; and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

* * * * *

(c) If the waste is listed with codes "I", "C", "R", or "E", in Subpart D,

(1) The petitioner must show that the waste does not exhibit the relevant characteristic for which the waste was listed as defined in § 261.21, § 261.22, § 261.23, or § 261.24 using any applicable methods prescribed therein. The petitioner also must show that the waste does not exhibit any of the other characteristics defined in § 261.21, § 261.22, § 261.23, or § 261.24 using any applicable methods prescribed therein;

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be hazardous waste, that such

factors do not warrant retaining the waste as a hazardous waste. A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(d) If the waste is listed with code "T" in Subpart D,

(1) The petitioner must demonstrate that the waste:

(i) Does not contain the constituent or constituents (as defined in Appendix VII of Part 261) that caused the Administrator to list the waste, using the appropriate test methods prescribed in Appendix III; or

(ii) Although containing one or more of the hazrdous constituents (as defined in Appendix VII of Part 261) that caused the Administrator to list the waste, does not meet the criterion of § 261.11(a)(3) when considering the factors used by the Administrator in § 261.11(a)(3) (i) through (xi) under which the waste was listed as hazardous; and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21, § 261.22, § 261.23, and § 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

(e) If the waste is listed with the code "H" in Subpart D,

(1) The petitioner must demonstrate that the waste does not meet the criterion of § 261.11(a)(2); and

(2) Based on a complete application, the Administrator must determine, where he has a reasonable basis to believe that additional factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste; and

(3) The petitioner must demonstrate that the waste does not exhibit any of the characteristics defined in § 261.21, § 261.22, § 261.23, and § 261.24 using any applicable methods prescribed therein;

(4) A waste which is so excluded, however, still may be a hazardous waste by operation of Subpart C of Part 261.

* * * * *

§ 260.22 [Amended]

3. Section 260.22(m) is hereby removed.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

4. The authority citation for Part 261 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001, and 3002, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

5. Section 261.4(b)(1) is revised to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel) or reused. "Household waste" means any material (including garbage, trash and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if such facility—

(i) Receives and burns only

(A) Household waste (from single and multiple dwellings, hotels, motels, and other residential sources) and

(B) Solid waste from commercial or industrial sources that does not contain hazardous waste; and

(ii) Such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

* * * * *

§ 261.5 [Amended]

6. Section 261.5 is amended by redesignating paragraphs (h) and (i) as (i) and (j) respectively.

7. 40 CFR Part 261 is amended by revising § 261.5(b), (f) and (g) and adding (h) to read as follows:

§ 261.5 Special requirements for hazardous waste generated by small quantity generators.

* * * * *

(b) Except for those wastes identified in paragraphs (e), (f), (g), and (h) of this section, a small quantity generator's hazardous wastes are not subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the notification requirements of section 3010 of RCRA, provided the generator complies with the requirements of paragraphs (f), (g) and (h) of this section.

* * * * *

(f) In order for hazardous wastes generated by a small quantity generator of acutely hazardous wastes in quantities equal to or less than those set forth in paragraph (e)(1) or (e)(2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 261.11 of this chapter;

(2) The small quantity generator may accumulate acutely hazardous waste on-site. If he accumulates at any time acutely hazardous wastes in quantities greater than those set forth in paragraph (e)(1) or (e)(2) of this section, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34 for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;

(3) A small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(g) In order for hazardous waste generated by a small quantity generator in quantities of less than 100 kilograms hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 261.11 of this chapter;

(2) The small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of this hazardous waste, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34 for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) A small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment, or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(h) In order for hazardous waste generated by a small quantity generator in a quantity greater than 100 kilograms but less than 1000 kilograms during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) Section 262.11 of this chapter;

(2) A small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time more than a total of 1000 kilograms of his hazardous waste, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under Parts 262 through 265 and Parts 270 and 124 of this chapter, and the applicable notification requirements of section 3010 of RCRA. The time period of § 262.34 for accumulation of hazardous waste on-site begins for a small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) Beginning August 5, 1985, for any hazardous waste shipped off-site, the generator must ensure that such waste is accompanied by a copy of the manifest (EPA form 8700–22) signed by him and containing the following information:

(i) The name and address of the generator of the waste;

(ii) The United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA);

(iii) The number and type of containers;

(iv) The quantity of waste being transported; and

(v) The name and address of the facility designated to receive the waste.

(4) A small quantity generator may either treat or dispose of his hazardous waste in an on-site facility, or ensure delivery to an off-site storage, treatment or disposal facility, either of which is:

(i) Permitted under Part 270 of this chapter;

(ii) In interim status under Parts 270 and 265 of this chapter;

(iii) Authorized to manage hazardous waste by a State with a hazardous waste management program approved under Part 271 of this chapter;

(iv) Permitted, licensed, or registered by a State to manage municipal or industrial solid waste; or

(v) A facility which:

(A) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(B) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

* * * * *

8. 40 CFR Part 261 is amended by revising the introductory text and adding an OMB control number to the end of the section of § 261.33 to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues and spill residues thereof.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, or when, in lieu of their original intended use, they are produced for use as (or as a component of) a fuel, distributed for use as a fuel, or burned as a fuel.

* * * * *

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050–0047.)

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

9. The authority citation for Part 262 is revised as follows:

Authority: Secs. 1006, 2002, 3002, 3003, 3004, 3005, and 3017, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937).

Appendix—[Amended]

10. The Uniform Hazardous Waste Manifest form in the Appendix to Part 262 is revised as follows:

BILLING CODE 6560-50-M

APPENDIX

Please print or type. *(Form designed for use on elite (12-pitch) typewriter.)*

Form Approved. OMB No. 2000-0404. Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST

1. Generator's US EPA ID No. Manifest Document No.

2. Page 1 of

Information in the shaded areas is not required by Federal law.

3. Generator's Name and Mailing Address

A. State Manifest Document Number

B. State Generator's ID

4. Generator's Phone ( )

5. Transporter 1 Company Name

6. US EPA ID Number

C. State Transporter's ID

D. Transporter's Phone

7. Transporter 2 Company Name

8. US EPA ID Number

E. State Transporter's ID

F. Transporter's Phone

9. Designated Facility Name and Site Address

10. US EPA ID Number

G. State Facility's ID

H. Facility's Phone

11. US DOT Description *(Including Proper Shipping Name, Hazard Class, and ID Number)*	12. Containers No.	12. Containers Type	13. Total Quantity	14. Unit Wt/Vol	I. Waste No.
a.					
b.					
c.					
d.					

GENERATOR

J. Additional Descriptions for Materials Listed Above

K. Handling Codes for Wastes Listed Above

15. Special Handling Instructions and Additional Information

16. **GENERATOR'S CERTIFICATION:** I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations.

Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I also certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment.

Printed/Typed Name | Signature | *Month Day Year*

TRANSPORTER

17. Transporter 1 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | *Month Day Year*

18. Transporter 2 Acknowledgement of Receipt of Materials

Printed/Typed Name | Signature | *Month Day Year*

FACILITY

19. Discrepancy Indication Space

20. Facility Owner or Operator: Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19.

Printed/Typed Name | Signature | *Month Day Year*

EPA Form 8700-22 (Rev. 4-85) Previous edition is obsolete.

BILLING CODE 6560-50-C

11. The Appendix to Part 262 is further amended by adding the following sentence to Item 16 of the instructions two spaces below the last sentence, and preceeding the Note.

* * * * *

Item 16. Generator's Certification

* * * * *

In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements.

* * * * *

12. Section 262.41(a) is amended by revising (a)(6) and adding (a) (7) and (8) to read as follows:

§ 262.41 Biennial report.

(a) * * *

(6) A description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated.

(7) A description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984.

(8) The certification signed by the generator or authorized representative.

* * * * *

§ 262.50 [Amended]

13. In Section 262.50, existing paragraphs (d) and (e) are redesignated as paragraphs (e) and (f).

14. Section 262.50 is amended by adding a new paragraph (d) and the OMB control number to the end of the section to read as follows:

§ 262.50 International shipments.

* * * * *

(d) Any person exporting hazardous waste identified or listed under this chapter shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

* * * * *

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0024.)

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

15. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6925).

16. 40 CFR Part 264 is amended by adding a new paragraph § 264.1(f)(3) to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(f) * * *

(3) To a person who treats, stores, or disposes of hazardous waste in a State which is authorized under Subpart A or B of Part 271 of this chapter if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in § 271.1(j).

* * * * *

17. In § 264.18, new paragraph (c) is added to read as follows:

§ 264.18 Location standards.

* * * * *

(c) *Salt dome formations, salt bed formations, underground mines and caves.* The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

18. 40 CFR Part 264 is amended by revising § 264.70 as follows:

§ 264.70 Applicability.

The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources. Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

19. In § 264.73, new paragraph (b)(9) and an OMB control number are added to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(9) A certification by the permittee no less often than annually, that the permittee has a program in place to reduce the volume and toxicity of hazardous waste that he generates to the degree determined by the permittee to be economically practicable; and the proposed method of treatment, storage or disposal is that practicable method currently available to the permittee which minimizes the present and future threat to human health and the environment.

(The reporting and recordkeeping requirements contained in paragraph (b)(9) were approved by OMB under control number 2050-0037.)

20. In 40 CFR Part 264, the heading for Subpart F is revised to read as follows:

Subpart F—Releases From Solid Waste Management Units

21. In 40 CFR Part 264, § 264.90 is amended by revising paragraphs (a) and (b) to read as follows:

§ 264.90 Applicability.

(a)(1) Except as provided in paragraph (b) of this section, the regulations in this subpart apply to owners or operators of facilities that treat, store or dispose of hazardous waste. The owner or operator must satisfy the requirements identified in paragraph (a)(2) of this section for all wastes (or constituents thereof) contained in solid waste management units at the facility, regardless of the time at which waste was placed in such units.

(2) All solid waste management units must comply with the requirements in § 264.101. A surface impoundment, waste pile, and land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a "regulated unit") must comply with the requirements of §§ 264.91–264.100 in lieu of § 264.101 for purposes of detecting, characterizing and responding to releases to the uppermost aquifer. The finanical responsibility requirements of § 264.101 apply to regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this subpart if:

(1) The owner or operator is exempted under § 264.1; or

(2) He operates a unit which the Regional Administrator finds:

(i) Is an engineered structure,

(ii) Does not receive or contain liquid waste or waste containing free liquids,

(iii) Is designed and operated to exclude liquid, precipitation, and other run-on and run-off,

(iv) Has both inner and outer layers of containment enclosing the waste,

(v) Has a leak detection system built into each containment layer,

(vi) The owner or operator will provide continuing operation and maintenance of these leak detection systems during the active life of the unit and the closure and post-closure care periods, and

(vii) To a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the the post-closure care period.

(3) The Regional Administrator finds, pursuant to § 264.280(d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of § 264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subpart during the post-closure care period; or

(4) The Regional Administrator finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the port-closure care period specified under § 264.117. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any predictions made under this paragraph on assumptions that maximize the rate of liquid migration.

(5) He designs and operates a pile in compliance with § 264.250(c).

* * * * *

22. A new § 264.101 is added to Part 264, Subpart F to read as follows:

§ 264.101 Corrective action for solid waste management units.

(a) The owner or operator of a facility seeking a permit for the treatment, storage or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the permit. The permit will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

§ 264.221 [Amended]

23. In § 264.221, paragraphs (c), (d), and (e) are redesignated as paragraphs (f), (g), and (h), respectively.

24. In § 264.221, the introductory text of paragraph (a) is revised to read as follows:

§ 264.221 Design and operating requirements.

(a) Any surface impoundment that is not covered by paragraph (c) of this section or § 265.221 of this chapter must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or ground water or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with § 264.228(a)(1). For impoundments that will be closed in accordance with § 264.228(a)(2), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be: * * *

* * * * *

25. Section 264.221 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 264.221 Design and operating requirements.

* * * * *

(c) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit, must install two or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human health and the environment. The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit. The requirement for the installation of two or more liners in this paragraph may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(d) Paragraph (c) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this paragraph, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including but not limited to ground-water monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requrements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

§ 264.222 [Removed]

26. Section 264.222 is removed.

§ 264.226 [Amended]

27. Section 264.226(b)(3) is removed, and paragraph (b)(4) is redesignated as (b)(3).

§ 264.227 [Amended]

28. Section 264.227(d)(2)(i) is amended by removing the phrase "or § 264.228(b)(2)."

§ 264.228 [Amended]

29. Section 264.228(b)(2) is removed and paragraphs (b)(3) and (b)(4) are redesignated as (b)(2) and (b)(3), respectively.

30. Section 264.228(d) is removed.

§ 264.252 [Removed]

31. Section 264.252 is removed.

§ 264.253 [Removed]

32. Section 264.253 is removed.

§ 264.254 [Amended]

33. Section 264.254(b)(2) is removed, and paragraphs (b)(3) and (b)(4) are redesignated as (b)(2) and (b)(3), respectively.

§ 264.301 [Amended]

34. Section 264.301 is amended by redesignating paragraphs (c), (d), (e), (f), and (g) as paragraphs (f), (g), (h), (i), and (j), respectively.

35. Section 264.301 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.301 Design and operating requirements.

(a) Any landfill that is not covered by paragraph (c) of this section or § 265.301(a) of this chapter must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have: * * *

* * * * *

36. Section 264.301 is amended by adding new paragraphs (c), (d), (e), and (k), to read as follows:

§ 264.301 Design and operating requirements.

* * * * *

(c) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, must install two or more liners and a leachate collection system above and between the liners. The liners and leachate collection systems must protect human health and the environment. The requirement for the installation of two or more liners in this paragraph may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(d) Paragraph (c) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such landfill, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in paragraph (c) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

* * * * *

(k) Any permit under RCRA 3005(c) which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of RCRA.

§ 264.302 [Removed]

37. Section 264.302 is removed.

§ 264.303 [Amended]

38. Section 264.303(b)(2) is removed, and paragraphs (b)(3), and (b)(4) are redesignated (b)(2) and (b)(3), respectively.

§ 264.310 [Amended]

39. Section 264.310(b)(2) is removed, and paragraphs (b)(3) and (b)(4), (b)(5) and (b)(6) are redesignated (b)(2), and (b)(3), (b)(4) and (b)(5), respectively.

40. Section 264.310(c) is removed.

41. Section 264.314 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.314 Special requirements for bulk and containerized waste.

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985 only if:

* * * * *

42. Paragraph (b) of § 264.314 is redesignated paragraph (d), and a new paragraph (b) is added to read as follows:

§ 264.314 Special requirements for bulk and containerized waste.

* * * * *

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.

* * * * *

43. Section 264.314 is amended by adding paragraph (e) and an OMB control number to read as follows:

§ 264.314 Special requirements for bulk and containerized waste.

* * * * *

(e) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines, that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in § 144.3 of this chapter.)

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0037.)

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES

44. The authority citation for Part 265 is revised to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005 and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

45. Section 265.1 is amended by revising paragraph (c)(4) to read as follows:

§ 265.1 [Amended]

* * * * *

(c) * * *

(4) A person who treats, stores, or disposes of hazardous waste in a State with a RCRA hazardous waste program authorized under Subparts A or B of Part 271 of this chapter, except that the requirements of this part will continue to apply:

(i) As stated in paragraph (c)(2) of this section, if the authorized State RCRA program does not cover disposal of hazardous waste by means of underground injection; or

(ii) To a person who treats, stores, or disposes of hazardous waste in a State authorized under Subpart A or B of Part 271 of this chapter if the State has not been authorized to carry out the requirements and prohibitions applicable to the treatment, storage, or disposal of hazardous waste at his facility which are imposed pursuant to the Hazardous and Solid Waste Act Amendments of 1984. The requirements and prohibitions that are applicable until a State receives authorization to carry them out include all Federal program requirements identified in § 271.1(j).

* * * * *

46. In Part 265, Subpart B, a new § 265.18 is added to read as follows:

§ 265.18 Location standards.

The placement of any hazardous waste in a salt dome, salt bed formation, underground mine or cave is prohibited, except for the Department of Energy Waste Isolation Pilot Project in New Mexico.

47. Part 265, Subpart B, is amended by adding a new § 265.221 to read as follows:

§ 265.221 Design requirements.

(a) The owner or operator of a surface impoundment must install two or more liners and leachate collection system in accordance with § 264.221(c) of this chapter, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(b) The owner or operator of each unit referred to in paragraph (a) of this section must notify the Regional Administrator at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

(c) Paragraph (a) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(d) The double liner requirement set forth in paragraph (a) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i)(A) The monofill has at least one liner for which there is no evidence that such liner in leaking. For the purposes of this paragraph the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of paragraph (a) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil it is not removed or decontaminated, the owner of operator of such impoundment must comply with appropriate post-closure requirements, including but not limited to ground-water monitoring and corrective action;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of paragraph (a) of this section and in good faith compliance with paragraph (a) of this section and with guidance documents governing liners and leachate collection systems under paragraph (a) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to paragraph (a) of this section will be required for such unit by the Regional Administrator when issuing the first permit to such facility, except that the Regional Administrator will not be precluded from requiring installation of a new liner when the Regional Administrator has reason to believe that any liner installed pursuant to the requirements of paragraph (a) of this section is leaking.

48. Part 265 is amended by adding a new § 265.254 to read as follows:

§ 265.254 Design requirements.

The owner or operator of a waste pile is subject to the requirements for liners and leachate collection systems or equivalent protection provided in § 264.251 of this chapter, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area indentified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

49. Part 265 is amended by adding a new § 265.301 to read as follows:

§ 265.301 Design requirements.

(a) The owner or operator of a landfill must install two or more liners and leachate collection systems above and between such liners in accordance with § 264.301(c) of this chapter, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the area identified in the Part A permit application, and with respect to waste received beginning May 8, 1985.

(b) The owner or operator of each unit referred to in paragraph (a) of this section must notify the Regional Administrator at least sixty days prior to receiving waste. The owner or operator of each facility submitting notice must file a Part B application within six months of the receipt of such notice.

(c) Paragraph (a) of this section will not apply if the owner or operator demonstrates to the Regional Administrator, and the Regional Administrator finds for such landfill, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(d) The double liner requirement set forth in paragraph (a) of this section may be waived by the Regional Administrator for any monofill, if:

(1) The monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in § 261.24 of this chapter; and

(2)(i) (A) The monofill has at least one liner for which there is no evidence that such liner is leaking;

(B) The monofill is located more than one-quarter mile from an underground source of drinking water (as that term is defined in § 144.3 of this chapter); and

(C) The monofill is in compliance with generally applicable ground-water monitoring requirements for facilities with permits under RCRA § 3005(c); or

(ii) The owner or operator demonstrates that the monofill is located, designed and operated so as to assure that there will be no migration of any hazardous constituent into ground water or surface water at any future time.

(e) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of paragraph (a) of this section and in good faith compliance with paragraph (a) of this section and with guidance documents governing liners and leachate collection systems under paragraph (a) of this section, no liner or leachate collection system which is different from that which was so installed pursuant to paragraph (a) of this section will be required for such unit by the Regional Administrator when issuing the first permit to such facility, except that the Regional Administrator will not be precluded from requiring installation of a new liner when the Regional Administrator has reason to believe that any liner installed pursuant to the requirements of paragraph (a) of this section is leaking.

§ 265.314 [Amended]

50. Paragraphs (b) and (c) of § 265.314 are redesignated as paragraphs (c) and (e), respectively, and paragraph (d) is reserved.

51. Section 265.314 is amended by revising the introductory text of paragraph (a), and by adding new paragraph (b) to read as follows:

§ 265.314 Special requirements for liquid bulk and containerized waste.

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985 only if:

* * * * *

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.

* * * * *

52. Section 265.314 is amended by revising newly designated paragraph (e), adding a new paragraph (f), and adding an OMB control number to the end of the section to read as follows:

§ 265.314 Special requirements for bulk and containerized waste.

* * * * *

(e) The date for compliance with paragraph (a) of this section is November 19, 1981. The date for compliance with paragraph (c) of this section is March 22, 1982.

(f) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines, that:

(1) The only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) Placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in § 144.3 of this chapter).

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0037)

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

53. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3004, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

54. In Part 266, Subpart C, the text of 266.23 is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 266.23 Standards applicable to users of materials that are used in a manner that constitutes disposal.

* * * * *

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

55. In Part 266, Subpart D is amended by adding § 266.31 as set forth below.

§ 266.31 Prohibitions.

(a) [Reserved]

(b)(1) Except as provided in paragraph (b)(2) of this section, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than 500,000 (based on the most recent census statistics) unless such kiln fully complies with regulations under this chapter that are applicable to incinerators.

(2) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more of the characteristics of hazardous waste in Part 261, Subpart C.

56. In Part 266, Subpart D, § 266.34 is amended by adding paragraph (d) and adding an OMB control number to the end of the section.

§ 266.34 [Amended]

* * * * *

(d) Labelling. (1) Except as provided in paragraphs (d)(2)-(4) of this section, after February 6, 1985, it shall be unlawful for any person who produces, distributes, or markets any fuel that contains a hazardous waste to distribute or market such fuel if the invoice or the bill of sale fails:

(i) To bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTE", and

(ii) To list the hazardous wastes contained therein. Such statement must be located in a conspicuous place on every such invoice or bill of sale and must appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the invoice or bill of sale.

(2) This requirement does not apply to fuels produced from petroleum refining hazardous waste containing oil if

(i) Such materials are generated and reinserted on-site into the refining process;

(ii) Contaminants are removed; and

(iii) Such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) This requirement does not apply to fuels produced from oily materials resulting from normal petroleum refining production and transportation practices; if

(i) Contaminants are removed; and

(ii) Such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(4) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more of the characteristics of hazardous waste in Part 261, Subpart C.

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0047)

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

57. The authority citation for Part 270 is revised to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

58. In Part 270, § 270.10 is amended by revising paragraphs (a) and (c), the paragraph heading of (e), paragraphs (e)(1), (f)(1), (f)(3), adding (j), amending paragraph (e)(4) by adding two sentences to the end and by adding an OMB control number to the end of the section to read as follows:

§ 270.10 General application requirements.

(a) *Permit application.* Any person who is required to have a permit (including new applicants and permittees with expiring permits) shall complete, sign, and submit an application to the Director as described in this section and §§ 270.70 through 270.73. Persons currently authorized with interim status shall apply for permits when required by the Director. Persons covered by RCRA permits by rule (§ 270.60), need not apply. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 270.61. Procedures for application, issuance and administration of research, development, and demonstration permits are found exclusively in § 270.65.

* * * * *

(c) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for permits by rule, or emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his satisfaction. An application for a permit is complete notwithstanding the failure of the owner or operator to submit the exposure information described in paragraph (j) of this section.

* * * * *

(e) *Existing HWM facilities and interim status qualifications.* (1) Owners and operators of existing hazardous waste management facilities or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the act that render the facility subject to the requirement to have a RCRA permit must submit Part A of their permit application no later than —

(i) Six months after the date of publication of regulations which first require them to comply with the standards set forth in 40 CFR Parts 265 or 266, or

(ii) Thirty days after the date they first become subject to the standards set forth in 40 CFR Part 265 or 266, whichever first occurs.

* * * * *

(4) * * * Notwithstanding the above, any owner or operator of an existing HWM facility must submit a Part B permit application in accordance with the dates specified in § 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under this Act that render the facility subject to the requirement to have a RCRA permit must submit a Part B application in accordance with the dates specified in § 270.73.

* * * * *

(f) *New HWM facilities.* (1) Except as provided in paragraph (f)(3) of this section, no person shall begin physical construction of a new HWM facility without having submitted Part A and Part B of the permit application and having received a finally effective RCRA permit.

* * * * *

(3) Notwithstanding paragraph (f)(1) of this section, a person may construct a facility for the incineration of polychlorinated biphenyls pursuant to an approval issued by the Administrator under section (6)(e) of the Toxic Substances Control Act and any person owning or operating such a facility may, at any time after construction or operation of such facility has begun, file an application for a RCRA permit to incinerate hazardous waste authorizing such facility to incinerate waste identified or listed under Subtitle C of RCRA.

* * * * *

(j) *Exposure information.* (1) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, treats, or dispose of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(i) Reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(ii) The potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (i); and

(iii) The potential magnitude and nature of the human exposure resulting from such releases.

(2) By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required in paragraph (j)(1) of this section.

(Reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0007.)

§ 270.17 [Amended]

59. Section 270.17 is amended by removing paragraph (c), redesignating paragraphs (d), (e), (f), (g), (h), (i) and (j) as (c), (d), (e), (f), (g), (h), and (i) respectively.

60. Section 270.18 is amended by revising paragraph (b) to read as follows:

§ 270.18 Specific Part B information requirements for waste piles.

* * * * *

(b) If an exemption is sought to § 264.251 and Subpart F of Part 264 as provided by § 264.250(c) or § 264.90(2), an explanation of how the standards of § 264.250(c) will be complied with or detailed plans and an engineering report describing how the requirements of § 264.90(b)(2) will be met.

* * * * *

61. Section 270.18 is amended by removing paragraph (d), redesignating paragraphs (e), (f), (g), (h), (i) and (j) as (d), (e), (f), (g), (h) and (i) respectively.

62. Section 270.18 is amended by revising newly designated paragraph (d) to read as follows:

* * * * *

(d) A description of how each waste pile, including the liner and appurtenances for control of run-on and run-off, will be inspected in order to meet the requirements of § 264.254(a) and (b). This information should be included in the inspection plan submitted under § 270.14(b)(5).

* * * * *

63. Section 270.21 is amended by revising paragraph (h) to read as follows:

§ 270.21 Specific Part B information requirements for landfills.

* * * * *

(h) If bulk or non-containerized liquid waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of § 264.314(a) will be complied with;

* * * * *

64. Section 270.30 is amended by revising the first sentence of paragraph (j)(2) to read as follows:

§ 270.30 Conditions applicable to all permits.

* * * * *

(j) * * *

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, the certification required by § 264.73(b)(9) of this chapter, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, certification, or application. * * *

* * * * *

65. Section 270.32 is amended by revising paragraph (b) to read as follows:

§ 270.32 Establishing permit conditions.

* * * * *

(b) (1) Each RCRA permit shall include permit conditions necessary to achieve compliance with the Act and regulations, including each of the applicable requirements specified in 40 CFR Parts 264, 266, and 267. In satisfying this provision, the Director may incorporate applicable requirements of 40 CFR Parts 264, 266, and 267 directly into the permit or establish other permit conditions that are based on these parts.

(2) Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.

* * * * *

66. Section 270.41 is amended by adding a new paragraph (a)(6) to read as follows:

§ 270.41 Major modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(6) Notwithstanding any other provision in this section, when a permit for a land disposal facility is reviewed by the Director under § 270.50(d), the Director shall modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in Parts 124, 260-266, and 270.

* * * * *

67. Section 270.50 is amended by adding a new paragraph (d) to read as follows:

§ 270.50 Duration of permits.

* * * * *

(d) Each permit for a land disposal facility shall be reviewed by the Director five years after the date of permit issuance or reissuance and shall be modified as necessary, as provided in § 270.41.

68. Section 270.60 is amended by adding new paragraphs (b)(3) and (c)(3)(vii) to read as follows:

§ 270.60 Permits by rule.

* * * * *

(b) * * *

(3) For UIC permits issued after November 8, 1984, complies with 40 CFR 264.101.

(c) * * *

(3) * * *

(vii) for NPDES permits issued after November 8, 1984, 40 CFR 264.101.

* * * * *

69. In Part 270, Subpart F, a new § 270.65 is added to read as follows:

§ 270.65 Research, development, and demonstration permits.

(a) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part 264 or 266. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits:

(1) Shall provide for the construction of such facilities as necessary, and for operation of the facility for not longer than one year unless renewed as provided in paragraph (d) of this section, and

(2) Shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance

capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(3) Shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, financial responsibility, closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

(b) For the purpose of expediting review and issuance of permits under this section, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Parts 124 and 270 except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures regarding public participation.

(c) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(d) Any permit issued under this section may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

70. Section 270.70 is amended by revising the introductory text of paragraph (a) and by adding paragraph (c) to read as follows:

§ 270.70 Qualifying for interim status.

(a) Any person who owns or operates an "existing HWM facility" or a facility in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have an RCRA permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has: * * *

* * * * *

(c) Paragraph (a) of this section shall not apply to any facility which has been previously denied a RCRA permit or if authority to operate the facility under RCRA has been previously terminated.

71. Section 270.73 is amended by adding paragraphs (c), (d), (e), and (f) and by adding an OMB control number to the end of the section to read as follows:

§ 270.73 Termination of interim status.

* * * * *

(c) For owners or operators of each land disposal facility which has been granted interim status prior to November 8, 1984, on November 8, 1985, unless:

(1) The owner or operator submits a Part B application for a permit for such facility prior to that date; and

(2) The owner or operator certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(d) For owners or operators of each land disposal facility which is in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have a RCRA permit and which is granted interim status, twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Submits a Part B application for a RCRA permit for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground water monitoring and financial responsibility requirements.

(e) For owners or operators of each incinerator facility on November 8, 1989, unless the owner or operator of the facility submits a Part B application for a RCRA permit for an incinerator facility by November 8, 1986.

(f) For owners or operators of any facility (other than a land disposal or an incinerator facility) on November 8, 1992, unless the owner or operator of the facility submits a Part B application for a RCRA permit for the facility by November 8, 1988.

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0037.)

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

72. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

73. Section 271.1 is amended by revising paragraphs (a) and (f) and adding paragraph (j) to read as follows:

§ 271.1 Purpose and scope.

(a) This subpart specifies the procedures EPA will follow in approving, revising, and withdrawing approval of State programs and the requirements State programs must meet to be approved by the Administrator under Sections 3006 (b) and (f) of RCRA.

* * * * *

(f) Except as provided in § 271.3(a)(3), upon approval of a State permitting program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

* * * * *

(j) Requirements and prohibitions which are applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) include:

(1) Any requirement or prohibition which has taken effect under HSWA, and

(2) All regulations specified in Table 1.

Note.—See §§ 264.1(f)(3), 265.1(c)(4)(ii), 271.3(a), 271.21(e), and 271.121(c)(3) for applicability.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation	Federal Register reference
1-14-85	Dioxin-Containing Wastes.	50 FR 1978-2006.
July 15, 1985	Codification Rule	50 FR [insert **Federal Register**, page numbers].

74. Section 271.3 is amended by revising paragraph (a) to read as follows:

§ 271.3 Availability of final authorization.

(a) States approved under this subpart are authorized to administer and enforce their hazardous waste program in lieu of the Federal program, except as provided below:

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 takes effect in each State having a finally authorized State program on the same date as such requirement takes effect in other States. These requirements and prohibitions are identified in § 271.1(j).

(2) The requirements and prohibitions in § 271.1(j) supersede any less stringent provision of a State program. The Administrator is authorized to carry out each such Federal requirement and prohibition in an authorized State

except where, pursuant to Sections 3006(b) or 3006(g)(2) of RCRA, the State has received final or interim authorization to carry out the particular requirement or prohibition. Violations of Federal requirements and prohibitions effective in authorized States are enforceable under Sections 3008, 3013 and 7003 of RCRA.

(3) Until an authorized State program is revised to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program revisions receive final or interim authorization pursuant to sections 3006(b) or 3006(g)(2) of RCRA, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984.

* * * * *

75. Section 271.17 is amended by adding a new paragraph (c) to read as follows:

§ 271.17 Sharing of information.

* * * * *

(c) The State program must provide for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste. Such information must be made available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of Subtitle C of RCRA in the State. Interim authorization under § 271.24 is not available to demonstrate compliance with this section.

76. Section 271.19 is amended by adding a new paragraph (f) to read as follows:

§ 271.19 EPA review of State permits.

* * * * *

(f) Notwithstanding the above provisions, EPA shall issue permits, or portions of permits, to facilities in authorized States as necessary to implement the Hazardous and Solid Waste Amendments of 1984.

77. Section 271.21(e)(1)(ii) is removed, paragraph (e)(1)(iii) is redesignated as (e)(1)(ii), and paragraphs (e)(1)(i) and (e)(2) are revised to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(e)(1)(i) Official State applications for final authorization shall be reviewed on the bases of Federal self-implementing statutory provisions that were in effect 12 months prior to the State's submission of its official application and the regulations in 40 CFR Parts 124, 260–266, 270 and 271 that were promulgated 12 months prior to the State's submission of its official application. Where a State program meets the requirements of section 3006(b) of RCRA and this subpart it may receive final authorization for any provision of its program corresponding to a Federal provision in effect on the date of the State's authorization. For purposes of the Federal requirements identified in § 271.1(j), a State may seek interim authorization under § 271.21 in lieu of final authorization.

* * * * *

(2) Any authorized State program which requires revision because of a Federal program change to this Part or 40 CFR Parts 124, 260–266, or 270 shall be modifed within one year (or two years if a State statutory amendment is required) of the date of promulgation of the Federal regulation. Authorized States shall have one year (two years if a statutory amendment is required) from the effective date of self-implementing RCRA statutory amendments to modify their programs. For purposes of the Federal requirements identified in § 271.1(j), a State may satisfy this requirement for modification by applying for interim authorization under § 271.24 or by revising its program as provided in this section.

* * * * *

78. Part 271 is amended by adding a new § 271.24 to Subpart A to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

Any State which is applying for or has been granted final authorization pursuant to Section 3006(b) of RCRA may submit to the Administrator evidence that its program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement identified § 271.1(j). Such States may request interim authorization under Section 3006(g) of RCRA to carry out the State requirement in lieu of the Administrator carrying out the Federal requirement in the State.

79. Section 271.121 is amended by revising paragraphs (a), (c)(3) and (f) as follows:

§ 271.121 Purpose and scope.

(a) This subpart specifies requirements a State program must meet in order to obtain interim authorization under Section 3006(c) of RCRA. A State must meet all the requirements of this Subpart in order to qualify for interim authorization. The requirements a State program must meet in order to obtain final authorization under Section 3006(b) of RCRA are specified in Subpart A. In addition, § 271.138 addresses the availability of interim authorization under Section 3006(g)(2) of RCRA for States with interim authorization under Section 3006(c) of RCRA.

* * * * *

(c) * * *

(3) States meeting the requirements of this Subpart will be allowed to administer a permit program in lieu of the corresponding Federal hazardous waste permit program for each component for which they have received interim authorization, except as provided below:

(i) Any requirement of prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 takes effect in each State having an interim authorized State program on the same date as such requirement takes effect in other States. These requirements and prohibitions are identified in § 271.1(j).

(ii) The requirements and prohibitions in § 271.1(j) supersede any less stringent provision of the State program. The Administrator is authorized to carry out each Federal requirement and prohibition identified in § 271.1(j) in an authorized State except where the State has received interim authorization under Section 3006(g)(2) of RCRA to carry out the particular requirement or prohibition. Violations of Federal requirements and prohibitions effective in authorized States are enforceable under Sections 3008, 3013, and 7003 of RCRA.

(iii) Until an authorized State program is revised to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program revisions receive interim authorization under Section 3006(g)(2) of RCRA, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984.

* * * * *

(f) Except as provided in paragraph (c)(3) of this section, upon approval of a State program for a component of Phase II, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

* * * * *

80. Section 271.122 is amended by revising paragraph (b)(1) to read as follows and by removing the note which follows (b)(1):

§ 271.122 **Schedule.**

* * * * *

(b)(1) Interim authorization for Phase I and Phase II expires on January 31, 1986.

* * * * *

81. Section 271.134 is amended by adding a new paragraph (f) to read as follows:

§ 271.134 **EPA review of State permits.**

* * * * *

(f) Notwithstanding the above provisions, EPA shall issue permits, or portions of permits, to facilities in authorized States as necessary to implement the Hazardous and Solid Waste Amendments of 1984.

82. Part 271 is amended by adding a new § 271.138 to read as follows:

§ 271.138 **Interim authorization under section 3006(g) of RCRA.**

(a) Any State which, before the date of enactment of the Hazardous and Solid Waste Amendments of 1984, has an existing hazardous waste program which has been granted interim authorization for all components of Phase II may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in § 271.1(j) of this chapter. Such States may request interim authorization under section 3006(g) of RCRA to carry out such requirement in lieu of the Administrator carrying out the Federal requirement in the State.

(b) Any such interim authorization under section 3006(g) expires on January 31, 1986, if a State program with interim authorization under section 3006(c) reverts to EPA on that date. See § 271.122(b)(2) of this chapter.

(The reporting and recordkeeping requirements contained in this section were approved by OMB under control number 2050-0037.)

83. 40 CFR Part 280 is added as follows:

PART 280—UNDERGROUND STORAGE TANKS

Authority: Secs. 9001 and 9003(g) of the Solid Waste Disposal Act, as revised by the Resource Conservation and Recovery Act, as amended [42 U.S.C. 6991 and 6993(g)].

§ 280.1 **Definitions and exemptions.**

"Person" has the same meaning as provided in Section 1004(15) of the Resource Conservation and Recovery Act, as amended, except that such term includes a consortium, a joint venture, a commercial entity, and the United States Government.

"Regulated substance" means

(a) Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act, as amended), and

(b) Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

"Underground storage tank" means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(b) Tank used for storing heating oil for consumptive use on the premises where stored,

(c) Septic tank,

(d) Pipeline facility (including gathering lines):

(e) Regulated under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et. seq.), or

(f) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et. seq.*), or

(g) Which is an intrastate pipeline facility regulated under State laws comparable to the provisions of law referred to in clause (e) and (f) of this definition,

(h) Surface impoundment, pit, pond, or lagoon,

(i) Storm water or waste water collection system,

(j) Flow-through process tank,

(k) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(l) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the undesignated floor.

(m) Any pipes connected to any tank which is described in paragraphs (a) through (l) of this section.

§ 280.2 **Interim prohibition.**

(a) Between May 7, 1985 and the effective date of the standards promulgated by the Administrator under section 9003(e) of the Hazardous and Solid Waste Amendments of 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the tank;

(2) Is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) The material used in the construction or lining of the tank is compatible with the substance to be stored.

(b) Notwithstanding paragraph (a) of this section, if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm-cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (a) of this section.

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FEDERAL REGISTER PAGES AND DATES, JULY

26961-27212	1
27213-27408	2
27409-27570	3
27571-27812	5
27813-27926	8
27927-28092	9
28093-28190	10
28191-28362	11
28363-28554	12
28555-28756	15

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Last List July 12, 1985

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200-End	9.50	Jan. 1, 1985
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1-239	20.00	Apr. 1, 1985
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1-149	12.00	Apr. 1, 1984
150-399	15.00	Apr. 1, 1984
400-End	7.00	Apr. 1, 1985
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1-399	8.00	Apr. 1, 1985
400-499	16.00	Apr. 1, 1985
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21 Parts:		
1-99	9.00	Apr. 1, 1985
100-169	11.00	Apr. 1, 1985
170-199	13.00	Apr. 1, 1985
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0-199	11.00	Apr. 1, 1985
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700-1699	12.00	Apr. 1, 1984
1700-End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0-1.169	21.00	Apr. 1, 1985
§§ 1.170-1.300	12.00	Apr. 1, 1985
§§ 1.301-1.400	7.50	Apr. 1, 1985
§§ 1.401-1.500	15.00	Apr. 1, 1985
§§ 1.501-1.640	12.00	[2] Apr. 1, 1984
§§ 1.641-1.850	11.00	Apr. 1, 1985
§§ 1.851-1.1200	14.00	Apr. 1, 1984
§§ 1.1201-End	17.00	Apr. 1, 1984
2-29	15.00	Apr. 1, 1985
30-39	9.50	Apr. 1, 1985
40-299	18.00	Apr. 1, 1985
300-499	11.00	Apr. 1, 1985
500-599	8.00	[1] Apr. 1, 1980
600-End	4.75	Apr. 1, 1985
27 Parts:		
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200-End	12.00	Apr. 1, 1984
28	13.00	July 1, 1984
29 Parts:		
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1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
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31 Parts:		
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Title	Price	Revision Date
32 Parts:		
1-39, Vol. I	15.00	July 1, 1984
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33 Parts:		
1-199	14.00	July 1, 1984
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36 Parts:		
1-199	9.00	July 1, 1984
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37	8.00	July 1, 1984
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0-17	14.00	July 1, 1984
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39	8.00	July 1, 1984
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1-51	13.00	July 1, 1984
52	14.00	July 1, 1984
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81-99	14.00	July 1, 1984
100-149	9.50	July 1, 1984
150-189	13.00	July 1, 1984
190-399	13.00	July 1, 1984
400-424	13.00	July 1, 1984
425-End	14.00	July 1, 1984
41 Chapters:		
1, 1-1 to 1-10	13.00	July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3-6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
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18, Vol. I, Parts 1-5	13.00	July 1, 1984
18, Vol. II, Parts 6-19	13.00	July 1, 1984
18, Vol. III, Parts 20-52	13.00	July 1, 1984
19-100	13.00	July 1, 1984
101	15.00	July 1, 1984
102-End	9.50	July 1, 1984
42 Parts:		
1-60	12.00	Oct. 1, 1984
61-399	8.00	Oct. 1, 1984
400-End	18.00	Oct. 1, 1984
43 Parts:		
1-999	9.50	Oct. 1, 1984
1000-3999	14.00	Oct. 1, 1984
4000-End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
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200-499	6.50	Oct. 1, 1984
500-1199	13.00	Oct. 1, 1984
1200-End	9.50	Oct. 1, 1984
46 Parts:		
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70-89	6.00	Oct. 1, 1984
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156-165	10.00	Oct. 1, 1984
166-199	9.00	Oct. 1, 1984
200-499	13.00	Oct. 1, 1984
500-End	7.50	Dec. 31, 1984
47 Parts:		
0-19	13.00	Oct. 1, 1984
20-69	14.00	Oct. 1, 1984
70-79	13.00	Oct. 1, 1984
80-End	14.00	Oct. 1, 1984
48 Chapters:		
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1 (Parts 52-99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3-6	12.00	Oct. 1, 1984
7-14	14.00	Oct. 1, 1984
15-End	12.00	Oct. 1, 1984
49 Parts:		
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178-199	13.00	Nov. 1, 1984
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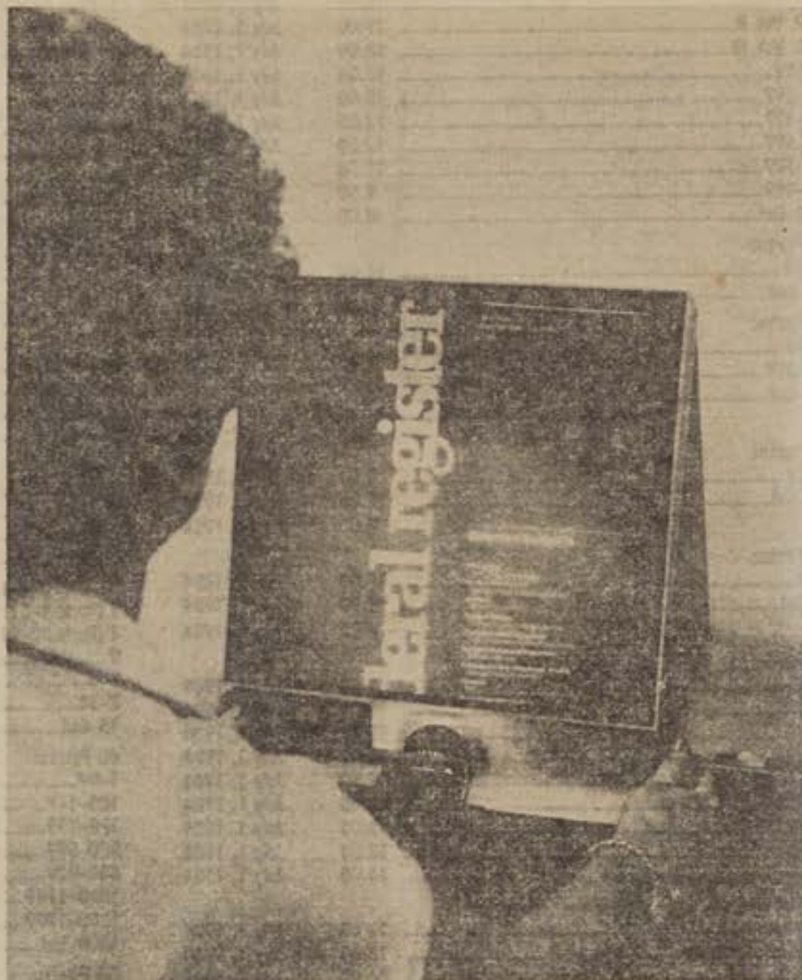

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