8-8-85
Vol. 50 No. 153
Pages 32001-32156

Federal Register

Thursday
August 8, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

CONTINUED INSIDE

Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $300.00 per year, or $150.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

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

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: September 6 and 27; at 9 am (identical sessions).

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Call Martin Franks, Workshop Coordinator, 202-523-5239.

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington starting in November. The January 1986 workshop will include facilities for the hearing impaired. Dates will be announced later.

Contents

Federal Register
Vol. 50, No. 153
Thursday, August 8, 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. 153
Thursday, August 8, 1985

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 2429S]

General Administrative Regulations; Individual Yield Coverage Plan (IYCP) Insurance

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Individual Yield Coverage Plan Insurance Regulations (7 CFR Part 400, Subpart B), effective for the 1985 and succeeding crop years. The intended effect of this rule is to: (1) Delete certain crops from the Individual Yield Coverage Plan (IYCP) since they have been converted to Actual Production History (APH) coverage; and (2) define the terms "Appraised Production," "Average Yield," "Established Farm Yield," "FCIC Adjusted Yield," and "Indexed Yield." The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Room 4096 South Agriculture Building, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1989.

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

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

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

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

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

Other than minor changes in language and format, the principal changes in the IYCP Regulations are as follows:

1. Section 400.15 has been changed to reflect the crops covered under the IYCP for the 1985 and succeeding crop years (Barley, Dry Beans, Flax, Malting Barley, Oats, Rye, Soybeans, Sunflowers, and Wheat); deleting Corn, Grain Sorghum, Cotton, and Rice which are covered under the provisions of the APH program for the 1985 and succeeding crop years.

2. Section 400.16 has been changed to clarify certain definitions and to add definitions of the terms: "Appraised Production," "Average Yield," "Established Farm Yield," "FCIC Adjusted Yield," and "Indexed Yield."

On Friday, March 22, 1985, FCIC published a notice of proposed rulemaking in the **Federal Register** at 50 FR 11508 to revise and reissue the Individual Yield Coverge Plan Insurance Regulations. The public was given 60 days in which to submit written comments, data, and opinions on the rule, but none were received. Therefore, with the exception of minor changes in language and format, the proposed rule is hereby adopted as final.

List of Subjects in 7 CFR Part 400

Crop insurance, Individual yield coveage plan.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues 7 CFR Part 400, Subpart B—General Administrative Regulations—Individual Yield Coverage Plan (IYCP), effective for the 1985 and succeeding crop years, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

* * * * *

Subpart B—Individual Yield Coverage Plan Regulations for the 1985 and Succeeding Crop Years

Sec.

Authority: Sec. 508, Pub. L. 75-430, 52 Stat. 73, as amended (7 U.S.C. 1508).

Subpart B—Individual Yield Coverage Plan Regulations for the 1985 and Succeeding Crop Years

§ 400.15 Availability of Individual Yield Coverage Plan.

Individual Yield Coverage Plan (IYCP) shall be offered under the provisions contained in the following regulations:

7 CFR Part 418..... Wheat Crop Insurance
7 CFR Part 419.....Barley Crop Insurance
7 CFR Part 423.....Flax Crop Insurance
7 CFR Part 427.....Oat Crop Insurance
7 CFR Part 428.....Sunflower Crop Insurance
7 CFR Part 429.....Rye Crop Insurance

7 CFR Part 431.....Soybean Crop Insurance
7 CFR Part 433.....Dry Bean Crop Insurance

Within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section and in those areas where the actuarial table provides that IYCP is available. (IYCP is available only on those crops and in those areas where the Corporation's Actual Production History Program has not been implemented. The Actual Production History form will be used for both programs). All provisions of the applicable standard insurance contract for the crop apply, except those provisions which are in conflict with this subpart. Cropland acreage, which is defined as "new ground acreage" by the actuarial table or by the policy, will not be eligible for IYCP. Crops covered under the provisions of the Combined Crop Insurance policy will not be eligible for IYCP.

§ 400.16 Definitions.

In addition to the definitions contained in the crop insurance contract, the following definitions, for the purposes of Individual Yield Coverage Plan, are applicable:

(a) "Appraised Production" means production that was unharvested but reflected yield potential for the crop at the time of the appraisal. Appraisals will be determined by ASCS or FCIC.

(b) "Area Average Yield" is the average yield determined by FCIC upon which the guarantee is based for the insured crop, area, type, and practice and is the average for the area over the base period. It is contained in the actuarial table.

(c) "Area Coverage Plan" is the coverage and rate assigned by the FCIC Acturial Division for an Homogeneous group of areas and producers.

(d) "Average Yield" is the average of the recorded and/or indexed yields for the 10-year base period, dropping the highest and lowest yield in the 10-year period, including a combination of a minimum of the three most recent year's recorded yields.

(e) "Base period" means the 10-year period immediately preceding the crop year for which the yield is to be established.

(f) "Established Farm Yield" is the yield as shown on the Official Farm Record card (ASCS–156) on file in the county ASCS office.

(g) "FCIC Adjusted Yield" is production information derived by the Statistical Reporting Service on a county, crop, and practice basis modified by FCIC for factors necessary to conform to sound actuarial practices.

(h) "Individual Yield Certification" is the appraised result of the examination of the insured's records of planted acreage and production certified by the county Agricultural Stabilization and Conservation Service (ASCS) office.

(i) "Indexed Yield" means yield established for a year in which recorded (actual) yields are not available. It is determined by multiplying the FCIC adjusted yield, for each crop year (for which records of acreage and production are not available), by the producer's yield index.

(j) "IYCP" is the Individual Yield Coverage Plan.

(k) "ICYP" is the Individual Certified Yield Plan within IYCP. (7 CFR 400.20).

(l) "Recorded Yield" is the yield that is based on the producer's records of planted acreage and production certified by ASCS.

(m) "Yield Index" is the result obtained by dividing the total of the producer's recorded yields for the years FCIC adjusted yields are available by the total FCIC adjusted yields for those same years.

§ 400.17 Yield certification and acceptability.

The insured shall request Form FCIC 19A (APH) (Actual Production History) and shall provide records of acreage and production to ASCS county office. The request and records must be submitted at least 15 days prior to the acreage reporting date for the crop in the county. The ASCS county office will examine the insured's records and, if acceptable, record the actual yield obtained from the records, determine the relationship of such yields to the FCIC adjusted yield for the same years, and apply the yield index to the area average yield for those years for which the producer does not have acceptable records.

§ 400.18 Responsibilities.

(a) The insured is solely responsible for the timely submission of Form FCIC 19A (APH) to the service office after its completion by the ASCS office.

(b) The service office is responsible for the explanation of the Individual Yield Coverage Plan (IYCP) to the insured, and upon receipt of Form FCIC 19A (APH) is responsible for determining that the form is completed correctly.

§ 400.19 Qualifications for Individual Yield Coverage Plan.

The Insured may elect to substitute the IYCP Yield for the Area Average Yield.

(a) For the producer to qualify for IYCP for any crop year, the completed Form FCIC 19A (APH) must be received in the crop insurance service office not later than the acreage reporting date for the crop and the year.

(b) For a crop to qualify for IYCP, a minimum of 3 years of records of planted acreage and production, under the control of either the landlord or tenant, must be provided to ASCS for all units and be certified by ASCS. Records for up to 10 continuous years shall be used where such records are available and the same farming practices are followed for that period of time. There can be no break in continuity from the most recent crop year through preceding crop years. A year in which no acreage was planted to the crop on the unit or in which a different practice was followed will not be considered a break in continuity.

(c) Either the landlord's or tenant operator's records may qualify either party for the same IYCP guarantee. If a conflict exists between the records of the landlord and the tenant operator, the Corporation will determine which records will be used.

(d) If an insured wishes to obtain an IYCP yield on land newly added to production for the insured, the insured must comply with the provisions of this paragraph. If the IYCP yield being requested is for an ASCS program crop and if the added land has an ASCS established yield for that crop of 90 percent or more of the ASCS established yield of the unit to which the land is to be added or of the nearest unit then: when land without satisfactory records is added to a unit satisfactory records, the IYCP average yield will be that of the unit to which the land was added; and when land without satisfactory records is added as a separate unit, the IYCP average yield will be that of the closest unit of the same crop and practice. When the ASCS established farm yields for the added land are less than 90 percent of the program yields for the existing units, the IYCP yields will be the area average yield.

(e) When the yield being requested on land being added is for a crop for which the added land does not have an ASCS established farm yield, the ASCS established farm yield for the crop with the largest ASCS base acreage on the added land will be compared to the program yield for the crop on the existing units to determine if the 90-percent ratio is achieved. If the land is being added to a unit and there is no ASCS established farm yield on either the added land or the units or both to compare, the IYCP yield will be the area average yield. If the land is being added as a separate unit, and the nearest unit has no ASCS established farm yield to

compare to the added unit, the next nearest unit will be used. If no comparable yields are available on any unit, the yield of the added unit will be the area average yield.

(f) If a producer disposes of his entire operation and begins operation on completely different units, the new units will be compared to the old units in accordance with (d) and (e) above for adding new units.

(g) When land is being added but less than 3 continuous years of acceptable records are available, the acceptable production and acreage records will be used for the years they are available and paragraphs (d) and (e) of this section will be used for the years when adequate records are not available.

(h) When participation in IYCP is continuous, ASCS certification under this part for up to 10 years, dropping the highest and lowest yield in the 10-year period, will be used in calculating the IYCP average yield. When an insured has previously participated in IYCP, he must have at least the most recent three years records of production acceptable to ASCS. These records and all records previously certified by ASCS up to 10 years, will be used to ascertain the new yield.

(i) The premium shall be contained in the actuarial table and will be the same as applicable under the Area Coverage Plan.

§ 400.20 Modifications through individual certification of yield (Individual Certified Yield Plan—IYCP).

(a) In addition to the provisions contained in §§ 400.15 through 400.19 of this Part, producers who customarily feed crop production to livestock or poultry, and who are unable to provide adequate records sufficient to become eligible for the IYCP Plan, will be considered for eligibility for the Individual Certified Yield Plan (ICYP) in certain counties as announced by the Manager, FCIC.

(b) To qualify for this plan, producers must agree to the conditions contained herein and provide information to the county ASCS office including but not limited to, the following:

(1) Satisfactory acreage and yield records for at least the most recent crop year.

(2) Acreage and yield records for the prior crop years even though such records may be incomplete.

(3) Feeding records, fertilization and liming records, soil conservation methods used, land tillage practices, insecticide and herbicide records, planting pattern and population data, and equipment adequacy information as available.

(4) Certification of acreage and yield data for the previous 2nd and 3rd years when written records are unavailable.

(5) Agreement to disregard to the extent required by FCIC any unit division guideline provisions of the crop insurance policy.

(6) Records of acreage and yield for each future year that the insurance is in force. (Failure to provide such records in accordance with the provisions of §§ 400.17 and 400.19 will result in insurance being based on the area coverage plan.)

(7) Agreement to convert to the IYCP for determining yields as soon as 3 consecutive years acreage and yield records are available.

(8) Producer certified yields will be reviewed by FCIC and may be adjusted by the Corporation prior to the final yield determination by ASCS.

(9) The producer may request FCIC to assist in establishing satisfactory acreage and yield information through field appraisals of potential production, bin measurements, etc. FCIC will determine if any evidence offered by the producer is relevant to the determination of yield on the unit.

(10) The producer must request the certified yield plan in accordance with the provisions of §§ 400.17 and 400.19 from the county ASCS office.

(11) The premium per acre shall be the production guarantee per acre under this plan times the applicable price election, times the applicable premium rate for the crop insured, times any applicable premium adjustment factor.

§ 400.21 OMB control numbers.

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

Done in Washington, D.C., on May 24, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-18850 Filed 8-7-85; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

[Docket No. 85-11]

Interpretive Rulings; Accounts Without Service Charge

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: This final rule removes § 7.7517 which requires a newly organized national bank to obtain the approval of the Office of the Comptroller of the Currency (Office) prior to offering checking accounts without service charges. This action is necessary to remove an unnecessary and burdensome requirement and should have not impact on the safety and soundness of newly organized national banks.

EFFECTIVE DATE: September 9, 1985.

ADDRESS: Office of the Comptroller of the Currency, 490 L'Enfant Plaza, Washington, D.C. 20219.

FOR FURTHER INFORMATION CONTACT: Randall J. Miller, Director, Licensing Policy and Systems, Bank Organization and Structure, (202) 447-1184.

SUPPLEMENTARY INFORMATION:

Purpose

The purpose of this final rule is to reduce costs and burdens on newly organized national banks and the Office. This final rule eliminates the requirement that newly organized national banks obtain Office approval prior to offering checking accounts without service charges.

Background

This final rule is related to the Office's Corporate Activities Review and Evaluation (CARE) program. That program is described in 45 FR 68586, dated October 15, 1980, and involves a comprehensive review of the Office's rules, policies, procedures and forms governing filings for corporate expansion and structural changes for national banks. The goals of the CARE program are to minimize costs and burdens on applicants, the agency, and the public; to provide a better understanding of Office policies; to modify or eliminate rules, policies, procedures and forms which are unnecessary or lead to inefficiencies; and to remove barriers to competition.

Section 7.7517 states: "No newly organized national bank may offer checking accounts without service charge, without the prior approval of the Comptroller." This interpretive ruling was implemented in 1963. It resulted from problems incurred by a number of newly organized national banks which were offering checking accounts without service charges in order to obtain a quick share of the existing market. In many instances the influx of customers desiring to take advantage of these offers was overwhelming. This caused significant processing delays as bank personnel and data processing equipment were insufficient to handle the volume. On occasion, these delays resulted in the temporary closing of the

bank, thereby disrupting service to its customers and the community.

Discussion

Since the implementation of § 7.7517, bank data processing systems have become more sophisticated and allow more rapid data entry. As a result, the Office believes that it is highly unlikely that the safe and sound operation of a newly organized national bank will be disrupted by offering service charge free checking. It is the responsibility of bank management to determine whether sufficient facilities, equipment, personnel and other resources are available to deal with any influx of customers caused by their marketing decisions. Therefore, the requirement of Office approval in § 7.7517 is unnecessarily restrictive and burdensome and should be removed.

Reason for Not Allowing Notice and Comment Procedures

Notice and public comment regarding this rulemaking are unnecessary. Removal of § 7.7517 will facilitate competition and will eliminate an unnecessary burden on newly chartered national banks that desire to use service charge free checking accounts as a marketing tool. Bank management will have sole discretion to decide whether they have the facilities, equipment, personnel and other resources to deal with any influx of customers caused by their marketing decision. The impact of management's decision will be reviewed during routine examinations. Corrective actions will be required if the situation dictates.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 5 U.S.C. 601 *et seq.*), this final rule will not have a significant economic impact on a substantial number of small entities. This final rule eliminates an unnecessary regulatory requirement and its attendant burden.

Regulatory Impact Analysis

Pursuant to Executive Order 12291, it has been determined that this final rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions, and will not have an adverse effect on competition, employment, investment, productivity, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 12 CFR Part 7

Checking accounts, Service charges, National banks.

Authority and Issuance

For the reasons set out in the preamble, Part 7 of Chapter I of Title 12 of the Code of Federal Regulations is amended as follows:

PART 7—INTERPRETIVE RULINGS

1. The authority citation for 12 CFR Part 7 continues to read as follows:

Authority: R.S. 324 et seq., as amended; 12 U.S.C. 1 *et seq.*

§ 7.7517 [Removed]

2. Part 7 is amended by removing § 7.7517.

Dated: July 12, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85–18838 Filed 8–7–85; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 500

[No. 85–634]

Gender-Related Terminology

Dated: July 31, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: In order to implement Executive Order 12336, signed on December 21, 1981, which established the Task Force on Legal Equity for Women, the Board has adopted an amendment to its final regulations regarding the gender-related terminology contained in the Board's rules, regulations, policies, practices, publications, directives, and guidelines. The amendment adds a new § 500.6 to the Board's general regulations stating that the rules, regulations, policies, practices, publications, directives, and guidelines promulgated by the Board and the FSLIC that inadvertently use or contain gender-related terminology are to be interpreted as equally applicable to either sex.

EFFECTIVE DATE: August 7, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Samuel, Deputy Director ((202) 377–6445), or Carol Rosa, Legal Assistant ((202) 377–6464), Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On December 21, 1981, President Reagan signed Executive Order 12336 which established the Task Force on Legal Equity for Women to aid in the "systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities." 46 FR 62239 (1981). As part of that Executive Order, the Federal Home Loan Bank Board ("Board") was required to submit a report ("Report") to the Department of Justice, Civil Rights Division, to be included in the Fifth Quarterly Report of the Attorney General to the President and Cabinet Council on Legal Policy, concerning the Board's rules, regulations, policies, practices, publications, directives, and guidelines, and whether they contain sex discrimination, gender-related terminology or sex bias.

Certain guidelines and procedures used by the Board were found to contain gender-related terminology upon evaluation of the Report. The Board was advised that, in order to comply fully with Executive Order 12336, it should amend its rules, regulations, policies, practices, publications, directives, and guidelines indicating that the gender-related terminology contained therein is to be interpreted as equally applicable to either sex.

By its action today, the Board adds a new § 500.6 to its general regulations in order to implement the directives of Executive Order 12336. The new amendment states that the rules, regulations, policies, practices, publications, directives, and guidelines promulgated by the Board and the FSLIC that inadvertently use or contain gender-related terminology are to be interpreted as equally applicable to either sex.

Because this amendment involves Board interpretations and is a general statement of policy, the Board finds that observance of the notice and comment procedure pursuant to 5 U.S.C. 552(b) (1982) and 12 CFR 508.11 (1984) and the 30-day delay of effective date pursuant to 5 U.S.C. 552(d) (1982) and 12 CFR 508.14 (1984) is unnecessary and contrary to the public interest.

List of Subjects in 12 CFR Part 500

General, Organization and Channelling of functions, Functions and Responsibilities of the Board, General Statement Concerning Gender-Related Terminology, Organization and functions (Government agencies).

Accordingly, the Board hereby amends Part 500 of Subchapter A, Chapter V, Title 12 of the Code of Federal Regulations, as set forth below

SUBCHAPTER A—GENERAL

PART 500—ORGANIZATION AND CHANNELING OF FUNCTIONS

1. The authority for Part 500 continues to read as follows:

Authority: Federal Home Loan Bank Act, sec. 17, 47 Stat. 736, as amended; 12 U.S.C. 1437, Reorg. Plan No. 3 of 1974, 12 FR 4981, 3 CFR, 1943–48 Comp., p. 1071.

2. Add a new § 500.6, as follows:

§ 500.6 General statement concerning gender-related terminology.

The statutes administered by the Board and the rules, regulations, policies, practices, publications, directives, and guidelines promulgated pursuant to such statutes that prescribe the course and methods to be followed by the Board and the Federal Savings and Loan Insurance Corporation that inadvertently use or contain gender-related terminology are to be interpreted as equally applicable to either sex.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–18852 Filed 8–7–85; 8:45 am]

BILLING CODE 6720-01-M

---

12 CFR Parts 545 and 563

[No. 85–635]

Distribution of ARM Information

Dated: August 1, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System and the Federal Home Loan Bank Board, in conjunction with other federal agencies and interested parties, have published a booklet containing information for consumers about adjustable-rate mortgage loans. Because safe and sound lending practices require borrower awareness, the Board is hereby amending its regulations to require all insured institutions to distribute this publication or suitable substitute information to applicants for such loans.

EFFECTIVE DATE: October 8, 1985.

FOR FURTHER INFORMATION CONTACT: Gilda Morse, Consumer Affairs Officer, Office of Community Investment, at (202) 377–6822; Jerome Edelstein, Attorney, at (202) 377–7057, or Michael Solomon, Attorney, at (202) 377–6432, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Pursuant to section 407 of the National Housing Act, 12 U.S.C. 1730, the Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), has authority to ensure the safe and sound operation of institutions the accounts of which are insured by the FSLIC ("insured institutions"). The popularity and widespread availability of a variety of adjustable-rate mortgages ("ARMs") are a recent development in home finance. Compared to fixed-rate mortgages, however, ARMs present borrowers, particularly consumers, with unfamiliar and complicated options regarding changing payments, terms, and amortization. The Board believes that safe and sound lending using ARMs requires that the borrower have a full understanding of the type of obligation being incurred in order to make a reasonable and meaningful decision concerning ability to repay.

Although a responsible lender must also make an independent determination of the borrower's ability and commitment to repay the loan, the Board believes that the borrower's informed agreement is essential to a successful loan relationship. This requires, in turn, that the borrower fully understand the current and potential obligations under the loan arrangement at its inception. Such an understanding will do much to avoid "payment shock" and to preclude a reduced commitment to repayment based on a borrower's perception of unfair and unanticipated disadvantage.

For these reasons, on April 17, 1985, the Board proposed to adopt a regulation requiring insured institutions to disclose in simple terms to certain applicants the general nature of the ARM device, including all of its significant features (Board Res. No. 85–287, 50 FR 16094 (April 24, 1985)). The Board received 66 public comments in response to the proposed rule. The great majority (51) were submitted by savings and loan associations. Of the remaining comments, seven were received from savings banks, six from trade associations, and two from law firms.

Nineteen commenters expressed either unqualified support for the proposal or support with certain modifications. Forty-seven commenters opposed the proposed rule. The great majority of commenters, whether in support or opposition, praised the regulatory goal of public disclosure and the concomitant spirit and intent of the proposed rule. The objections focused on a perceived lack of need for the proposed rule and problems associated with its implementation. The Board has carefully reviewed all comments, which are discussed more fully below, and has determined to adopt the regulation substantially as proposed, with modifications as described.

Need for and Implementation of the Rule

A. Duplication

Some 34 commenters stated that the information required would duplicate information already provided to borrowers. Nine respondents argued that the proposal would duplicate information requirements set forth under 12 CFR 545.33 for federal associations, while 18 others referred to information otherwise provided by lenders or available to borrowers through the media, builders, or real estate agents. Seven commenters thought the information would duplicate information required under Regulation Z (Truth in Lending), either as currently in effect or as proposed by the Federal Reserve Board (50 FR 20221 (May 15, 1985)).

The Board notes that § 545.33 of its regulations applies only to federal associations, so there would be no "overlap" of Board rules with respect to insured institutions generally. Moreover, § 545.33(f)(7) provides for instrument-specific information, while the new rule fills a significant void by requiring the provision of general information to the borrower about the nature of ARM loans. This is designed as a tool to alert the borrower to the advantages and disadvantages of an ARM—to the features of ARM loans generally (whether or not they are included in the loan the borrower ultimately applies for)—and thus to aid him or her in shopping for a loan and determining which loan, and which loan terms and features, best meets his or her needs.

Second, with those goals in mind, the disclosures under the new regulation are required earlier in the lending process—by the time the lender provides an application form to a borrower or before the applicant becomes obligated to pay a nonrefundable fee, whichever comes first—than are the disclosures required by § 545.33(f). Under the provision, the information required must be distributed not later than three business days following receipt of a written application.

Third, the disclosure requirement of the new regulation may be satisfied by distribution of a booklet. No such standardized device exists for the § 545.33 disclosures.

Similarly, the Board believes the requirement is necessary despite information voluntarily provided by

lenders, builders, real estate agents, and the media. The Board believes that the disclosure required by the rule, unlike other sources of information available, will ensure that all applicants for certain ARM loans from insured institutions receive a standardized, clear, concise discussion of ARMs at a time when it can still be meaningful in the applicant's decision-making process, and thus will enable prospective borrowers to decide intelligently which features may or may not make an ARM loan right for them.

The Board also does not believe the regulation duplicates current Regulation Z requirements. Those required disclosures tend to be instrument-specific, *see* 12 CFR 226.18(f), and their timing is later than that required by the regulation adopted today. Specifically, the Regulation Z disclosures with regard to residential mortgaes are required to be delivered "before consummation, or . . . not later than 3 business days after the creditor receives the consumer's written application, whichever is earlier." 12 CFR 226.19(a). Amendments to Regulation Z proposed by the Federal Reserve Board on May 15, 1985 (50 FR 20221) would require that a creditor offering ARMs "shall make available at its place of business a clear and concise description of the nature of loans offered by the creditor." Distribution of the booklet "Consumer Handbook on Adjustable Rate Mortgages" would constitute compliance with that proposed amendment.

Consequently, for the reasons stated, the Board had decided that it is necessary and appropriate to adopt a requirement that insured institutions provide general ARM information to loan applicants, as described in its proposal, and notes that lenders are given flexibility in how they comply with the requirement.

B. Consumer Overload

As a corollary of the duplication argument, the next most frequent criticism of the proposal was that ARM consumers are already awash with sometimes duplicative disclosure documents. Nineteen commenters concluded that the quantity of information offered confuses consumers and makes them less likely to absorb the material. Commenters charged that the "overload" of information carries the lender's burden so far that consumers are unlikely to play their part by reading the material. The premise stated or implied in most of these comments is that the average ARM shopper discards written disclosures in favor of oral explanations and seeks little more than a quick decision on loan qualification.

As has been noted above, the Board believes that consumers need general ARM information at a meaningful point in their loan shopping. The Board further believes that the booklet entitled "Consumer Handbook on Adjustable Rate Mortgages" is the most readable, clear, and concise treatment of adjustable-rate mortgages available to the general public. It is one means of satisfying the disclosure requirement of the new rule, and it does not contradict or detract from other disclosure documents. In fact, it was specifically designed to enhance the consumer's understanding of the entire ARM device, and thus should be helpful in understanding other documents. The Board believes the benefits to the public from distribution of the handbook or comparable information will be significant and will far outweigh speculative concern that the consumer will be left overloaded and confused, unable or unwilling to read ARM material.

C. Cost

Eighteen commenters voiced concern over the cost of making the disclosure. Many commenters stated or implied that they would pass on those costs to consumers and thus concluded that the regulation would disserve the public.

The Board believes that the costs associated with printing and distribution of disclosures such as the handbook would be minimal and would be far outweighed by the public benefit gained from the disclosure and education offered and the dollars saved by lenders as a result of fewer delinquent and defaulting ARM borrowers.

D. Precision of Information

Nine commenters argued that the handbook offers an imprecise explanation of ARMs, either because it is too vague and simplistic or because it does not accurately reflect the ARM instrument assortment of a particular lender. As to the former point, commenters contended that complex and technical information such as ARM financing cannot be broken down into a general handbook of basic terms without misleading and omitting needed information. As to the latter point, commenters recited examples of their own unique ARM instruments which differ from examples in the handbook.

The "Consumer Handbook on Adjustable Rate Mortgages" is a document of significant but not exhaustive utility. As its title suggests, it is a handbook which sets out some of the basic concepts of ARMs and their practical effects. Its examples are illustrative. Its simplicity is based upon the belief that, however complex an ARM instrument, a consumer must be provided with a basic understanding of the relevant concepts in order to be an informed borrower. The Board would call to the attention of these commenters the introductory remarks on the first page of the booklet:

> It is designed to help consumers understand an important and complex new product available to home buyers.
>
> We believe a fully informed consumer is in the best position to make a sound economic choice. If you are buying a home, and looking for a home loan, this booklet will provide useful basic information about ARMs. It cannot provide all the answers you will need, but we believe it is a good starting point.

The Board also notes that institutions, if they prefer, may make the required disclosure through means other than the handbook so long as it complies with the regulation.

3. Mandatory v. Voluntary

Six commenters, including supporters of the proposed rule, expressed their preference for a voluntary distribution of the handbook or substitute information. Almost all of these commenters lauded the public disclosure purpose of the rule but either stated or implied that institutions offering ARM loans have sufficient business integrity to distribute the booklets on their own as a worthwhile "adjunct" or "handy device" to accompany existing disclosures.

The Board fully respects the integrity of insured institutions offering ARMs and appreciates the ongoing business practice of many lenders in voluntarily distributing the consumer handbook to ARM shoppers. However, this practice is not uniform, and thus the public benefit and information dissemination are neither uniform nor optimal. Therefore, the Board believes that the only guarantee of adequate consumer disclosure is the requirement set forth in the regulation.

F. Necessity

Five commenters argued that there has been no demonstrated need for distribution of the handbook. They challenged the Board's promulgation of the rule as resting on assumption rather than on market evaluation of need. They pointed to a public discussion of ARMs and the media and concluded that ARM shoppers are already informed by the time they reach the lender.

The Board believes these commenters have misjudged the impact of variable-rate lending upon the credit industry. It is a new socioeconomic phenomenon for consumers and lenders to turn from

fixed to adjustable-rate mortgages. ARM instruments evolve constantly and differ from lender to lender. This factor, combined with the potential of ARMs for significant payment changes, raises questions about the ability of consumers to understand and make informed decisions. There is a strong consensus in Congress and throughout the financial regulatory agencies and the financial industry that inadequate information about ARMs presents the potential for large-sclae delinquency and default.[1] Therefore, it would be irresponsible for the Board to wait for empirical data on defaults before proposing disclosure rules aimed at informing the consumer.

G. Reliability

Three commenters suggested that ARM instruments are evolving so rapidly that the information available in the handbook will be outdated and misleading by the time it is printed and distributed.

In response, the Board continues to emphasize that the consumer handbook is only a starting point and is not intended to be an exhaustive menu of available ARM instruments. Moreover, the Board will closely monitor the public response to the information conveyed. Finally, provision of the handbook is not an exclusive means of complying with the regulation.

H. Tone

Three commenters criticized the consumer handbook for the negative market effect its tone may have upon potential ARM consumers. They charged that the tone is excessively cautionary and may unduly frighten the public. They suggested a more positive slant to disclosure should be taken.

The Board rejects the criticism that the tone is alarming. The Board notes that the Board and the Federal Reserve Board painstakingly prepared the handbook with the assistance of several other government regulatory agencies and most of the major financial trade associations. Many drafts were undertaken and a wide array of comments considered before crafting what the Board believes to be a document with balanced tone. The Board is unaware of any negative market impact caused by the consumer handbook where it has been distributed.

[1] Among those calling for inproved disclosures are the Mortgage Bankers Associations, the National Association of Realtors, the National Association of Home Builders, the Mortgage Insurance Companies of America, and a coalition of 60 national and local civil rights, labor, neighborhood, church, and consumer organizations.

Scope of the Regulation

A. Lenders Covered by the Regulation

Four commenters felt that in its proposal the Board did not properly address the scope of the regulation with regard to the universe of lenders to which it would apply.

Two commenters, one of whom nevertheless supported the proposal, felt that the requirement should be applied to all institutions offering ARMs, such as mortgage bankers, banks, and credit unions. Such a broad application is beyond the authority of the Board.[2] The Board notes, however, that the Federal Reserve Board has proposed that all creditors subject to Regulation Z make similar material available at their place of business if they offer adjustable-rate loans secured by a consumer's principal residence (50 FR 20221 (1985)).

Another commenter suggested that the regulation should be incorporated into § 545.33(f) governing federal associations. As the Board understands the suggestion, it was made not with the intent of excluding state-chartered insured institutions from its reach, but as a means of consolidating and simplifying the applicable disclosure regulations of the Board. The Board believes this goal can best be accomplished by adopting the proposal as a final rule as set forth in new § 563.9–9, as proposed, but amending the disclosure requirements contained in § 545.33(f) to cross-refer to this additional requirement, thus alerting Federal associations to its existence. The Board notes that, as is the case with the other disclosure elements of § 545.33, this disclosure would apply to loans purchased from an affiliate or loans purchased from an unaffiliated entity as part of a business arrangement or agreement to purchase loans not yet originated.

B. Loans Covered by the Regulation

The rule, as proposed and as adopted today as a final rule, requires distribution of this information only to loan applicants who are natural persons and only in connection with applications for ARMs secured by the applicant's own home or the home of an immediate family member. Because the disclosure requirement applies only if the home is the principal residence of the borrower or a member of his immediate family, it would not affect applications for loans secured by second homes, vacation homes, or investment properties. While distribution is required in conjunction with applications for loans secured by both first and junior liens, it does not apply to applications for consumer credit (as defined in § 561.38) secured by a home but upon which security the lender is not relying primarily for repayment of the loan.

Several commenters felt that the scope of loans to be covered was either too narrow or too broad.

Commenters variously recommended that the regulation should in addition cover (1) home equity loans; (2) non-real estate loans; (3) all types of adjustable-rate loans; (4) loans secured by second homes; or (5) loans to owner occupants only. None of these recommendations was put forth by more than one commenter.

In making this proposal, the Board has attempted to balance the minimal expected burden which may be imposed on insured institutions against the significant advantages which it believes will accrue to institutions and borrowers by ensuring that borrowers have timely, clear, and concise information as to the nature of ARM loans. Thus, the Board has limited the requirement to those loans—adjustable-rate loans secured by homes—which tend to be the most complex and most important for the average borrower.

The Board focused on ARMs primarily secured by a consumer's principal residence for several reasons. A home is likely to be the largest purchase an individual will make, so that the size of the loan relative to a consumer's other obligations makes it more vulnerable than other debts. Almost any negative change in circumstances or unexpected increase in the obligation is likely to result in delinquency or default and the consequent loss of the home. Loans for the purchase of homes are also the most common usage for ARMs. Although some adjustable-rate loans are made to finance cars or other consumer purchases, the Board believes that such loans are likely to be for smaller amounts and shorter durations. The successful repayment of such nonhome loans, therefore, should be less vulnerable to changes in circumstances, and default should entail far less disastrous consequences for the borrower. The emotional investment an individual may have in his home also contributes to the Board's belief that the consumer is most in need of protection when his or her home is at stake.

Consequently, the Board believes that the types of loans identified in the regulation are those for which adequate,

[2] The Board notes, however, that housing creditors which utilize ARMs pursuant to Title VIII of the Garn-St Germain Depository Institutions Act of 1982, 12 U.S.C 3801–05, will be subject to the requirement under the provisions of that Act.

clear, and concise information as to the nature of ARM loans is most crucial.

Given these considerations, the Board believes that extending the rule to include loans secured by second homes and non-real estate loans would impose burdens on institutions not justified by the size and significance of the obligation to the borrower and the risk to the institution and the borrower of default.

The Board notes that home equity loans would be covered by the regulation if the borrower's principal residence is the primary security.

One commenter felt that all loans covered by the Real Estate Settlement Prodcedures Act ("RESPA") should be covered by the proposal. The basis for this suggestion was consistency among regulations rather than that RESPA loans were more appropriate for coverage. The scope of loans covered by the RESPA differs in many respects from that of the rule adopted by the Board. The RESPA, for instance, covers residential real property acquired for investment purposes and second homes. 24 CFR 3500.5. On the other hand, it would not cover home improvement loans, even if primarily secured by a borrower's principal residence. *Id.*

In adopting this regulation, the Board is seeking to focus on loans in which lack of information is most likely to result in significant disadvantages to borrowers and lenders. This purpose diverges from that of the RESPA, which addressed a range of problems including disclosure of settlement costs, elimination of kickbacks and referral fees, reductions in amounts required to be kept in escrow accounts, and modernization of recordkeeping of land-title information. While consistency among various regulations would be helpful, the Board believes that total parallelism in this case would unjustifiably compromise the Board's goal of focusing the regulation on lending situations in which timely, clear, and concise ARM disclosure is most critical to borowers and to industry-wide safety and soundness.

Commenters also questioned the extension of the rule to cover loans secured by a home of the applicant's immediate family. The Board's experience under the ARM regulations for federal associations has led to the identification of loans secured by the principal residence of a member of the borrower's immediate family as generally not for commercial or investment purposes. If the borrower is purchasing a home to be occupied, for example, by his or her mother or child, the borrower is not likely to be motivated by purely economic considerations: Such a loan is for a personal rather than a business purpose. Consequently, the Board has decided to include such loans within the scope of the regulation. One commenter posited a situation in which a borrower purchases an apartment to be shared by his college student son and a rent-paying roommate, and suggested that the purchase of such property was for investment purposes. No doubt there are many variations on this cenario in which investment and personal purposes mix. The Board believes that it would not be fruitful to try to draw fine distinctions as to which considerations prevail under a myriad of circumstances. Thus, the regulation as adopted will apply to such loans, but the Board's examiners will monitor the regulatory experience in such circumstances in order to review the appropriateness of this designation and modify it if necessary.

Technical Comments

A. Definition of Adjustable-Rate Mortgage Loan

As proposed, the definition of an ARM loan subject to the regulation is "a mortgage loan providing for adjustments to the interest rate, payment, balance or term to maturity." One commenter noted that this definition includes mortgages which provide for adjustments to interest or payments which are scheduled and fixed at the time of contracting. The Board agrees that it did not intend to include such loans in the definition and has modified the definition to exclude loans providing for adjustments to the interest rate causing adjustments to the balance, term to maturity, or payments in accordance with predetermined schedules.

B. Definition of Applicant

One commenter noted that the proposed definition of "applicant" differs from that in the RESPA and the Equal Credit Opportunity Act ("ECOA").

Under the definition as proposed, an applicant is a "natural person." The RESPA does not define "applicant." Its provisions are instead to protect "persons," including "individuals, corporations, associations, partnerships, and trusts." 12 U.S.C. 2602(5). However, as previously discussed the problems at which the RESPA is directed are different from and broader than lack of information for consumer homebuyers, and thus Congress required protection for a broader range of borrowers. The Board further believes that corporations, associations, partnerships, and trusts typically have the sophistication, expertise, and legal resources to acquaint themselves with problems related to ARM loans, and they are not likely to need the information required by this regulation.

Likewise the general purposes of the ECOA—to prohibit credit discrimination based on religion, race, sex, marital status, and other enumerated factors—are very different from those behind this regulation. The ECOA purposes justify the much broader definition of "applicant," which also includes corporate and governmental entities, contained in 12 CFR 202.2 (e), (x).

Consequently, the Board has decided to retain in the final rule the proposed definition of "applicant," although it has made a technical revision in order to include natural persons, as well as a natural person, within its scope.

C. Definition of Home

One commenter noted that because of its definitions of "home," the proposed regulation is inconsistent with the scope of 12 CFR 545.33. The proposed regulation defined "home" as "real estate comprised of a single-family dwelling or dwelling units for four or fewer families in the aggregate, including manufactured housing, condominiums, and shares of a non-profit residential cooperative-housing association." Section 545.33 encompasses loans made on the security of "homes (including a unit of a condominium or cooperative), combinations of homes and business property, farm residences, and combinations of farm residences and commenercial farm real estate". "Home" for purposes of § 545.33 is defined as "[r]eal estate comprising a single family dwelling(s) or a dwelling unit(s) for four or fewer families in the aggregate." 12 CFR 541.14.

The Board concurs that the goals of consistency and ease of interpretation, as well as adequate but tailored coverage, require a revision of the proposed definition of "home." Consequently, the Board has modified the definition of "home" to refer to the definition set forth in § 541.14, which already incorporates by reference condominiums and cooperatives, and also to include combinations of homes and business property, farm residences, and combinations of farm residences and commercial farm real estate as set forth in § 545.33. Manufactured housing is also included in the definition because loans which it secures are covered by the § 545.33 disclosures. *See* 12 CFR 545.45(d)(2).

D. Timeliness of Disclosure

Thirteen commenters objected to the proposal to require that the information be given to the prospective borrower before the applicant becomes obligated to pay a nonrefundable fee. Several commenters noted that they do not charge any nonrefundable fees or that no fees are charged until late in the loan application process or until closing. These commenters stated that under the regulation as proposed, the disclosure would never have to be made or would be made too late in the process to aid the prospective borrower who would have no viable funding options at that time.

The Board agrees that the proposal should be modified to avoid such results and is therefore requiring lenders to give the disclosure before the applicant becomes obligated to pay a nonrefundable fee or not later than the time a loan application form is provided to the applicant, whichever is earlier. Because of this change, the definition of "receipt of an application" has been deleted from the regulation because it is no longer necessary.

Three commenters reported that in many instances the lender does not see the borrower until the time of application. These commenters stated that disclosure at that point would not serve the purposes of the regulation by providing the borrower with timely information to aid in loan shopping. Three other commenters thought that the rule would require a delay between disclosure and receipt of the application if the lender's first opportunity to give the disclosure is at the time of application.

The required disclosure is intended to give prospective borrowers the opportunity to review the information and further educate themselves about ARM loans. Neither the Board nor the institutions it regulates can make the prospective borrower read the material or understand it, nor does the Board expect institutions to do the impossible and provide the applicant with the information before there is any contact between them. Consequently, as long as the institution provides the applicant with the information at the required time, the institution will have complied with the regulation.

One commenter questioned the applicability of the timing requirement when there is no face-to-face contact between the institution and the applicant. The Board believes that lenders should be fully subject to the rule under such circumstances. The simple answer is that when an institution provides an application to a prospective borrower or before the borrower becomes obligated to pay a nonrefundable fee to the institution, whichever is earlier and through whatever mechanism, the institution should arrange to provide the required disclosure.

Another commenter asked whether disclosure would be required when the customer does not state a preference for a fixed-rate or ARM loan. The Board notes that if the institution could treat the application as an application for an ARM loan, then the disclosure must be provided.

Another commenter asked whether, in order to comply with the disclosure requirement, a new application would be required if an applicant applied for a fixed-rate loan and subsequently asked that it be treated as an application for an ARM loan. The Board notes that no new application would be required; however, the disclosure would have to be given before the institution could permit the borrower formally to change the application.

Two commenters suggested that the information would be most helpful to the home buyer if delivered at the time the buyer and seller execute a preliminary contract of purchase for the property. However, the Board does not have jurisdiction over the relevant parties to impose such a requirement.

Two other commenters thought that the Board should merely require the lender to have the information available at its place of business, as proposed by the Federal Reserve Board at 50 FR 20221 (1985). The Board does not believe this procedure ensures the likelihood that the applicant will receive the information in a timely fashion. One of the commenters recommended that the lender provide the information to the borrower at the time of the RESPA, Regulation Z, and § 545.33 disclosures. The Board declines to follow this suggestion, because it would not only impose added burdens on lenders but would also provide the information to applicants later than under the regulation as adopted today, thus impairing its value.

Consequently, for the reasons set forth above, the Board has decided to modify the proposal to provide for disclosure no later than the time when the institution provides a written loan application to the applicant or before the applicant becomes obligated to pay a nonrefundable fee, whichever is earlier.

Clarification

The proposed rule would have required that the institution disclose the "nature of the loan being offered." However, the Board, as it explained in the preamble to the proposed regulation, intended that the disclosure be of the "general nature of the ARM device." The language of the final rule is modified to reflect this.

The Board is also amending § 545.33, which contains ARM disclosure requirements applicable to federal associations, to cross-refer to the regulation adopted today. The Board believes that this change will facilitate compliance by federal associations with all ARM disclosures required by the Board, as well as compliance by other housing creditors which utilize ARMs pursuant to title VIII of the Garn-St Germain Depository Institutions Act of 1982, 12 U.S.C. 3801–05.

Effective Date

To give those subject to the regulation time to secure or prepare supplies of the required information, the usual 30-day delay of effective date has been extended to October 8, 1985.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 1167 (1980), the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION** regarding the rule.

3. *Significant alternatives minimizing small-entity impact and agency response.* The Board rejected the alternatives discussed above in **SUPPLEMENTARY INFORMATION** for the reasons given therein.

List of Subjects in 12 CFR Parts 545 and 563

Savings and loan associations, Savings banks.

Accordingly, the Federal Home Loan Bank Board hereby amends parts 545 and 563, Subchapters C and D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

1. The statutory authority for Part 545 is revised to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Reorg. Plan No. 3 of 1947; 3 CFR 1071 (1943–48 Comp.).

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

§ 545.33 [Amended]

2. Amend § 545.33(f)(7) by adding at the end thereof the following sentence: "The requirements of § 563.9–9 shall also be complied with.".

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

3. The statutory authority for Part 563 is revised to read as follows:

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 202, 96 Stat. 1469; sec. 409, 94 Stat. 160; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); 1947 Reorg. Plan No. 3, 12 FR 4981, 3 CFR 1071 (1943–48 Comp.).

4. Add a new § 563.9–9 to read as follows:

§ 563.9–9 Adjustable-rate mortage loan disclosures.

(a) *Definitions.* For purposes of this section:

(1) "Adjustable-rate mortgage loan" means a mortgage loan providing for adjustments to the interest rate which cause a change in balance, term to maturity, or payment levels other than those established by a fixed, predetermined schedule at the time of contracting for the loan.

(2) "Applicant" means a natural person (or persons) making a loan application.

(3) "Home" means real estate as defined by § 541.14 of this Chapter, manufactured housing, combinations of homes and business property, and farm residences or combinations of farm residences and commercial farm real estate.

(b) In addition to any other required disclosures, an insured institution shall provide a clear and concise description of the nature of adjustable-rate mortgage loans to each applicant for such a loan secured by a home that is or is to become the principal place of residence of the applicant or of a member of the applicant's immediate family. This disclosure shall be made not later than the time the institution provides an applicant with an application form or before the applicant becomes obligated to pay a nonrefundable fee in connection with an application, whichever is earlier. The disclosure shall be in terms readily understandable by the layperson and shall include a description of the significant features of adjustable-rate mortgage loans.

(c) The booklet entitled "Consumer Handbook on Adjustable Rate Mortgages," published by the Federal Reserve Board and the Federal Home Loan Bank Board in consultation with other government agencies and nongovernmental entities, constitutes a disclosure in compliance with the requirements of paragraph (b) of this section.

(d) *Exception.* Disclosure is not required in connection with the extension of consumer credit as defined in § 561.38 of this Subchapter even if it is secured by a home, or in connection with any other loan if the home is not the primary seucurity for the loan.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–18851 Filed 8–7–85; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 84F–0152]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In FR Doc. 85–17528 beginning on page 30147 in the issue of Wednesday, July 24, 1985, make the following correction: In the second column, in the **ADDRESS** paragraph in the third line, "HRA" should read "HFA".

BILLING CODE 1505–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 27 and 602

[T.D. 8044]

Temporary Estate, Gift and Generation-Skipping Transfer Tax Regulations Under the Tax Reform Act of 1984; Reporting and Recordkeeping Requirements for Certain Transfers of Public Housing Bonds

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary estate, gift and generation-skipping transfer tax regulations relating to the reporting requirements for certain transfers of public housing bonds under the Tax Reform Act of 1984. The regulations provide Internal Revenue Service personnel who administer the Internal Revenue Code and members of the public with the guidance necessary to comply with the law.

DATES: Effective on August 8, 1985. The regulations apply to transfers of public housing bonds made after December 31, 1983, and before June 19, 1984.

FOR FURTHER INFORMATION CONTACT: Fred E. Grundeman of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) 202–566–3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary estate, gift and generation-skipping transfer tax regulations relating to certain reporting requirements involving public housing bonds. These amendments reflect section 642 of the Tax Reform Act of 1984 (the 1984 Act) (Pub. L. 98–369, 98 Stat. 939). This document adds a new Part 27, Temporary Estate, Gift and Generation-Skipping Transfer Tax Regulations under the Tax Reform Act of 1984, to Title 26 of the Code of Federal Regulations.

Transfers of Public Housing Bonds

In *Haffner v. United States*, 585 F. Supp. 354, affd. 757 F. 2nd 920, it was held that the value of public housing bonds issued under section 11(b) of the Housing Act of 1937 is not includible in a decedent's gross estate and thus the bonds are exempt from Federal estate tax. Section 641 of the 1984 Act clarifies that transfers of such bonds made after June 18, 1984, are subject to Federal estate, gift and generation-skipping transfer tax. Section 642(a) of the 1984 Act requires that taxpayers who transfer such bonds after December 31, 1983, and before June 19, 1984, must report the amount and date of such transfers so that determination of the tax and interest due can be made if it is ultimately determined that such transfers are subject to tax. Section 642(b) of the 1984 Act provides that a taxpayer who fails to provide the information required to be reported under section 642(a) and such regulations as are prescribed will be liable for a penalty. The amount of the penalty shall be 25 percent of the additional gift, estate or generation-skipping transfer tax that would be payable if such transfers were subject to

tax. The regulation requires that in order to avoid the penalty such reports must be made, on the appropriate Federal tax form, by the later of (1) the due date for the tax return covering the period when the transfer was made (including extensions); or (2) December 31, 1985.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

A general notice of proposed rulemaking is not required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to OMB for review under the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Drafting Information

The principal author of these regulations is Fred E. Grundeman, of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations both on matters of substance and style.

List of Subjects

26 CFR Part 27

Estate taxes, Gift Taxes, Generation-Skipping taxes, Tax Reform Act of 1984.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, a new Part 27, Temporary Estate, Gift and Generation-Skipping Transfer Tax Regulations under the Tax Reform Act of 1984 is added to Title 26 of the Code of Federal Regulations, and 26 CFR Part 602 is amended as follows:

Paragraph 1. A new Part 27 is adopted as set forth below.

PART 27—TEMPORARY ESTATE, GIFT AND GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1984

Sec.

27.642–1 Reports of transfers of public housing bonds.

Authority: 26 U.S.C. 7805; § 27.642–1 also issued under 26 U.S.C. 2001, note, Pub. L. 98–369, section 642.

§ 27.642–1 Reports of transfers of public housing bonds.

(a) *In general.* If a donor or a decedent transfers bonds issued under section 11(b) of the United States Housing Act of 1937 (public housing bonds) after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer in the time and manner provided in this section.

(b) *Manner of reporting*—(1) *Transfers from decedents.* The fair market value of public housing bonds transferred by a decedent dying after December 31, 1983, and before June 19, 1984, that are not reported for Federal estate tax purposes as part of the total value of the gross estate of the decedent shall be reported (along with sufficient information to identify the type of bonds) by the executor of the estate on Form 706 (or 706NA), United States Estate Tax Return, or on a statement attached to such return.

(2) *Transfers from donors.* The fair market value of public housing bonds transferred for less than full and adequate consideration in money or money's worth after December 31, 1983, and before June 19, 1984, that are not reported as part of the total amount of gifts made by a donor during the calendar year 1984 shall be reported by the donor along with the date of the transfer (and sufficient information to identify the type of bonds) on Form 709 (or Form 709A), United States Gift Tax Return, or on a statement attached to such return.

(3) *Generation-skipping transfers.* The fair market value of public housing bonds transferred in a generation-skipping transfer (as defined in section 2611(a)) occurring after December 31, 1983, and before June 19, 1984, and not reported as a generation-skipping transfer under chapter 26 of the Internal Revenue Code of 1954 shall be reported by the trustee of the generation-skipping trust (or trust equivalent) along with the date of the transfer (and sufficient information to identify the type of bonds) on Form 706–B, Generation-skipping Transfer Tax Return, or on a statement attached to such return.

(c) *Time for reporting.* If a taxpayer must report transfers of public housing bonds as provided in paragraph (b) of this section, the date and amount of such transfer shall be disclosed in an appropriate schedule on the appropriate return or in a statement attached to the return on or before the later of (1) the due date of the return (including extensions); or (2) December 31, 1985. If the taxpayer has previously filed Form 709, 709A or 706B without reporting such transfers the taxpayer shall file an amended Form disclosing the transfer. Where the executor of an estate has previously filed Form 706 or 706NA without reporting such transfers the executor must file a statement reporting the required information along with a copy of the first page of the previously filed return for association with that return.

(d) *Penalty for failure to report.* Except as provided below, any taxpayer failing to provide the amount and date of any transfer of public housing bonds as required in this section shall be liable for a penalty equal to 25 percent of the excess of (1) the estate tax, the 1984 gift tax, or the 1984 generation-skipping transfer tax that would be payable assuming such transfers are subject to tax, over (2) the applicable tax payable assuming such transfers are not subject to tax. This section shall not apply to any taxpayer if the total value of the taxpayer's transfers (including the value of the public housing bonds) is less than the minimum filing requirement for the appropriate Federal transfer tax return.

PART 602—[AMENDED]

Par. 2. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 3. Section 602.101(c) is amended by inserting in the appropriate place in the table:

"§ 27.642–1 ..... 1545–0020"

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective

date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: July 19, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85-18443 Filed 8-7-85; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 48, 154, and 602

[T.D. 8043]

Manufacturers Excise Taxes on Sporting Goods and Firearms and Other Administrative Provisions of Special Application to Manufacturers and Retailers Excise Taxes; Reporting and Recordkeeping Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations which revise and update the regulations on manufacturers excise taxes on sporting goods and firearms and other administrative provisions especially applicable to manufacturers and retailers excise taxes. These amendments revise and update Part 48 to achieve greater clarity and conform the regulations to numerous amendments to the Internal Revenue Code of 1954 made after 1964. These regulations provide necessary guidance to the public for compliance with the law.

DATES: Effective August 8, 1985, except as otherwise provided, the amendments made by this document are applicable to transactions made after December 31, 1954.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW. Washington, D.C. 20224—(Attention: CC:LR:T: 202-566-4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1983, the Federal Register published proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) under sections 4161, 4181, 4182, 6011, 6071, 6081, 6091, 6101, 6109, 6151, 6161, 6206, 6302, 6412, 6416, 6420, 6421, 6424, 6427 and 6675. Subsequent to the publication of the proposed amendments, certain changes to the applicable law were made by the Highway Revenue Act of 1982 (96 Stat. 2181) and the Tax Reform Act of 1984 (98 Stat. 494). These final regulations have been revised to reflect those changes to the law. A public hearing was neither held nor requested. One comment was received which suggested that the proposed regulation provided that the customer who either reloads his own cartridges or has another person reload the cartridges for him would be liable for the excise tax on the reloaded cartridges. However, that was not the proper interpretation. The proposed regulation merely provided that the customer who has cartridges reloaded would be liable for excise tax only in the event that the customer thereafter sold the reloaded cartridge. The use by the customer is not subject to the tax because of the personal use exemption under section 4218.

The existing regulation provides that a price readjustment to the purchaser is made when the price of an article on which tax has been paid is later readjusted because the article or its covering or container is returned or repossessed, or a bona fide discount, rebate or allowance against the sales price is made. That part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. Comments from within the Service indicated that the proposed regulation on the determination of a price readjustment was unclear after an example relating to a bona fide discount, rebate or allowance was deleted in the proposed regulation.

Since no change was intended with regard to a determination of price readjustment, *example (1)* of § 48.6416(b)(1)-2(e)(1) is reinserted in the final regulation.

Statutory Amendments Reflected in the Final Regulations

Many statutory changes enacted after 1964 have not previously been reflected in Part 48 of the regulations. The table set forth below enumerates the statutory changes reflected in these final regulations. The section numbers on the left margin list the sections of the Code to which the statutory changes relate.

4161: 1. Section 201 of the Act of October 25, 1972, Pub. L. 92-558, 86 Stat. 1173, relating to the imposition of tax on bows and arrows. The amendments to the regulations made under section 201 shall apply with respect to articles sold by the manufacturer, producer, or importer on or after July 1, 1974.

6206: 1. Section 207(d)(3) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to rules applicable to excessive claims. The amendments to the regulations made under section 207(d)(3) shall apply with respect to sales made on or after July 1, 1970.

Section 202(c)(2)(A) of the Excise Tax Reduction Act of 1965, Pub. L. 89-44, 79 Stat. 136, relating to special rules applicable to excessive claims. The amendments to the regulations made under section 202(c)(2)(A) shall apply only with respect to lubricating oil placed in use after December 31, 1965.

6412: 1. Section 502(c) of the Federal Aid Highway Act of 1978, Pub. L. 95-599, 92 Stat. 2689, relating to floor stock refunds.

2. Section 303(b) of the Federal Aid Highway Act of 1976, Pub. L. 94-280 90 Stat 425, relating to floor stock refunds.

6416: 1. Sections 205(b) (3) and (4) and 207(d)(4) through (d)(7) of the Airport and Airway Revenue Act of 1970, Pub. L. 91-258, 84 Stat. 219, allowing refund or credit of gasoline taxes when gasoline is used in the production of special fuels. The regulations under sections 205(b) (3) and (4) and 207(d)(4) through (d)(7) are effective after June 30, 1970.

2. Section 302 of the Excise, Estate and Gift Tax Adjustment Act of 1970, Pub. L. 91-614, 84 Stat. 1836, modifying the refund and credit provisions for the use of new tax-paid component parts in further manufacture. The regulations under section 302 are effective for claims filed after December 31, 1979, but only if the filing of the claim is not barred on January 1, 1971, by any law or rule of law.

3. Sections 401(a)(3)(C) and 401(g)(6) of the Revenue Act of 1971, Pub. L. 92-178, 85 Stat. 497, allowing a refund or credit for certain trash containers. The regulations under section 401(a)(3)(c) and 401(g)(6) are effective with respect to articles sold after December 10, 1971.

4. Sections 1904(b) (1) and (2), 1906(a)(24), 1906(b)(13)(A) and 2108 of the Tax Reform Act of 1976, Pub. L. 94-455, 90 Stat. 1520, eliminating numerous deadwood provisions and allowing refund or credit for certain truck parts and accessories. The regulations under sections 1904(b) (1) and (2), 1906(a)(24)(A) and 1906(B)(13)(A) are effective after January 31, 1977. The regulations under section 1906(a)(24)(B)(i) are effective with respect to uses or resales for use of liquids after December 31, 1976. The regulations under section 2108 are effective with respect to parts and accessories sold after October 4, 1976.

5. Section 2(b)(4) of the Black Lung Benefits Revenue Act of 1977, Pub. L. 95-227, 92 Stat. 11, modifying the refund and credit provisions for the excise tax on coal. The regulations under section 2(b)(4) are effective with respect to sales after March 31, 1978.

6420: 1. Section 809(a) the Excise Tax Reduction Act of 1965, Pub. L. 89-44, 79 Stat. 136, relating to income tax credit in lieu of payment with respect to gasoline used on farms. The regulations under section 809(a) are effective with respect to gasoline used on or after July 1, 1965.

2. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91-258, 84 Stat. 219, relating to the time for filing claims under section 6420. The regulations under section 207(b) are effective with respect to taxable years ending after June 30, 1970.

3. Section 3(a) of the Act of October 14, 1978, Pub. L. 95-458, 92 Stat. 1257, relating to entitlement of aerial applicators to refund of gasoline tax in certain cases. The regulations

under section 3(a) are effective for gasoline used after March 31, 1979.

6421: 1.Section 809(b) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to income tax credit in lieu of payment with respect to gasoline used for certain nonhighway purposes or by local transit systems. The regulations under section 809(b) are effective with respect to gasoline used after June 30, 1965.

2. Section 205(b)(1) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to credit or refund of gasoline used as a fuel in an aircraft (other than aircraft in non-commercial aviation). The regulations under section 205(b)(1) are effective after June 30, 1970.

3. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219 relating to the time for filing claims under section 6421. The regulations under section 207(b) are effective for taxable years ending after June 30, 1970.

4. Section 222(a)(1) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174, relating to refund or credit of tax on gasoline used in a qualified business use. The regulations under section 222(a)(1) are effective with respect to uses after December 31, 1978.

5. Section 233(a)(1) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174, relating to repayment of tax on gasoline used in intercity, local or school buses. The regulations under section 233(a)(1) are effective with respect to uses after November 30, 1978.

6. Section 108(c)(1) of the Technical Corrections Act of 1979, Pub. L. 96–222, 94 Stat. 194, relating to repayment of tax on gasoline used in vessels employed in the fisheries or the whaling business. The regulations under section 108(c)(1) are effective with respect to uses after December 31, 1978.

6424: 1. Section 202(b) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to refund or credit of tax on lubricating oil not used in highway motor vehicles. The regulations under section 202(b) are effective with respect to lubricating oil placed in use after December 31, 1965.

2. Section 207(b) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to the time for filing claims under section 6424. The regulations under section 207(b) are effective for taxable years ending after June 30, 1970.

3. Section 233(b)(1) of the Energy Tax Act of 1978, Pub. L. 95–618, 92 Stat. 3174, relating to credit or refund of tax on lubricating oil used in a qualified business use or in a qualified bus.

6427: 1. Section 207(a) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to credit or refund of tax on gasoline and special fuels used for certain purposes. The regulations under section 207(a) are effective with respect to taxable years ending after June 30, 1970.

2. Section 3(b) of the Act of October 14, 1978, Pub. L. 95–458, 92 Stat. 1257, relating to entitlement of aerial applicators to refunds of special fuels tax in certain cases. The regulations under section 3(b) are effective for gasoline used after March 31, 1979.

6675: 1. Section 202(c)(3)(A) of the Excise Tax Reduction Act of 1965, Pub. L. 89–44, 79 Stat. 136, relating to civil penalty for excessive claims under section 6424 with respect to lubricating oil. The regulations under section 202(c)(3)(A) are effective with respect to oil used after December 31, 1965.

2. Section 207(d)(8) of the Airport and Airway Development Act of 1970, Pub. L. 91–258, 84 Stat. 219, relating to civil penalty for excessive claims under section 6427 with respect to fuels not used for taxable purposes. The regulations under section 207(d)(8) are effective after June 30, 1970.

Statutory Amendments Not Reflected in the Final Regulations

The table set forth below enumerates the post-1964 statutory changes relating to manufacturers and retailers excise taxes which are not reflected in these final regulations.

4161: 1. Sections 1015 and 1017 of the Tax Reform Act of 1984 relating to taxes on the sale of sport fishing equipment and certain arrows. These amendments are expected to be the subject of another regulation project.

4162: 1. Section 1015(b) of the Tax Reform Act of 1984 relating to definitions of sport fishing equipment and the treatment of certain resales. This amendment will be the subject of another regulation project.

6302: 1. Section 1015(c) of the Tax Reform Act of 1984 relating to the time for payment of manufacturers excise tax on sport fishing equipment. The amendment will be the subject of another regulation project.

6416: 1. Sections 201(c)(3), 232(b) and 233 (c)(3) of the Energy Tax Act of 1978 relating to the refund and credit provisions for tread rubber, tires, inner tubes, and certain parts and accessories of automobile buses and light-duty trucks. These amendments are the subject of another regulation project.

2. Section 108(c) (2)(A)–(2)(B) and (c)(3)–(c)(4) of the Technical Corrections Act of 1979 relating to the refund and credit provisions for lubricating oil, tires, and inner tubes. This amendment is the subject of another regulation project.

3. Sections 1(a)–(b)(2)(D) and 4(c) of the Act of December 24, 1980, Pub. L. 96–598, 94 Stat. 3485, relating to the refund and credit provisions for tax paid on tread rubber used in recapping or retreading a tire. These amendments are the subject of another regulation project.

6427: 1. Section (1)(b) of the Act of October 17, 1976, Pub. L. 94–530, 90 Stat. 2487, relating to credit or refund of tax on gasoline and special fuels used by certain aircraft museums. This Act expired on October 1, 1982. The tax was reinstituted by the Tax Equity and Fiscal Responsibility Act of 1982., This amendment is the subject of another regulation project.

2. Section 505(a) of the Highway Revenue Act of 1978, relating to credit or refund for certain taxicabs of excise taxes on gasoline and other motor fuels. [The provisions of section 505(a) are not expected to be the subject of another regulation project.]

3. Section 232(d)(1) of the Crude Oil Windfall Profit Tax Act of 1980, relating to refund of tax on gasoline used to produce certain alcohol fuels. This statutory change is expected to be the subject of another regulation project.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget for review in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although a notice of a proposed rulemaking which solicited public comments was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirement of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of this regulation is Ada S. Rousso of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participatied in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 48

Agriculture, Arms and munitions, Coal, Excise taxes, Gasohol, Gasoline, Motor vehicles, Petroleum, Sporting goods, Tires.

26 CFR Part 154

Aircraft, Airports, Excise taxes, Airway Revenue Act of 1970.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 48, 154, and 602 are amended as follows:

PART 48—[AMENDED]

Paragraph 1. The authority citation for Part 48 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 48.0–1 is revised to read as follows. Sections 48.0–3 and

48.0–4 are removed. Section 48.0–5 is redesignated as § 48.0–3.

§ 48.0–1 Introduction.

The regulations in this part (Part 48, Subchapter D, Chapter I, Title 26, Code of Federal Regulations) are designated "Manufacturers and Retailers Excise Tax Regulations." The regulations relate to the taxes imposed by sections 4041, 4042 and 4051 or by chapter 32 of the Internal Revenue Code of 1954, as amended, and to certain related administrative provisions of subtitle F of the Code. Section 4041 imposes taxes on certain sales or uses of the special fuels described in that section, and on certain sales or uses of gasoline as a fuel in aircraft engaged in noncommercial aviation. Section 4042 imposes taxes on liquids used as fuel in certain vessels in commercial waterway transportation. Section 4051 imposes taxes on heavy trucks, trailers and certain tractors sold at retail. Chapter 32 of the Code imposes taxes on the sale or use by the manufacturer, producer, or importer of articles specified in that chapter. References in the regulations in this part to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, unless otherwise indicated. References to a section or other provision of law are references to a section or other provision of the Internal Revenue Code, as amended, unless otherwise indicated.

Par. 3. Section 48.4161(a)–1 is amended by revising paragraph (c) to read as follows.

§ 48.4161(a)–1 Imposition and rate of tax; fishing equipment.

* * * * *

(c) *Liability for tax.* The tax imposed by section 4161(a) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0–2(a)(4).

Par. 4. Section 48.4161(a)–2 is amended by revising paragraph (d) to read as follows.

§ 48.4161(a)–2 Meaning of terms.

* * * * *

(d) *Artificial lures, baits, and flies.* The term "artificial lures, baits, and flies" includes all artifacts, of whatever materials made, that simulate an article considered edible by fish and are designed to be attached to a line or hook to attract fish so that they may be captured. Thus, the term includes such artifacts as imitation flies, blades, spoons, and spinners, and edible materials that have been processed so as to resemble a different edible article considered more attractive to fish, such as bread crumbs treated so as to simulate salmon eggs, and pork rind cut and dyed to resemble frogs, eels, or tadpoles.

Par. 5. Section 48.4161(a)–3 is amended by revising paragraph (b) to read as follows.

§ 48.4161(a)–3 Parts and accessories.

* * * * *

(b) *Essential equipment.* If taxable articles are sold by the manufacturer, producer, or importer thereof, without parts or accessories that are essential for their operation, or are designed directly to improve the performance or appearance of the articles, the separate sale of the parts or accessories to the same vendee will be considered, in the absence of evidence to the contrary, to have been made in connection with the sale of the basic article, even though the parts or accessories are shipped separately at the same time or on a different date.

Par. 6. Section 48.4161(b)–1 is amended by revising paragraph (c) to read as follows.

§ 48.4161(b)–1 Imposition and rates of tax; bows and arrows.

* * * * *

(c) *Liability for tax.* The tax imposed by section 4161(b) is payable by the manufacturer, producer, or importer making the sale. For determining who is the manufacturer, producer, or importer, see § 48.0–2(a)(4).

Par. 7. Section 48.4181–2 is amended by revising paragraph (d) to read as follows.

§ 48.4181–2 Meaning of terms.

* * * * *

(d) *Shells and cartridges.* (1) The terms "shells" and "cartridges" include any article consisting of a projectile, explosive, and container that is designed, assembled, and ready for use without further manufacture in firearms, pistols or revolvers.

(2) A person who reloads used shells or cartridges is a manufacturer of shells or cartridges within the meaning of section 4181 if such reloaded shells or cartridges are sold by the reloader. However, the reloader is not a manufacturer of shells or cartridges if, in return for a fee and expenses, he reloads shells or cartridges submitted by a customer and returns the identical shells or cartridges to that customer. Under such circumstances, the customer would be the manufacturer of the shells or cartridges and may be liable for tax on the sale of the articles. See section 4218 and § 48.4218–2.

Par. 8. Section 48.4182–1 is amended by revising paragraph (b) to read as follows.

§ 48.4182–1 Exempt sales.

* * * * *

(b) *Sales to Defense Department or to U.S. Coast Guard*—(1) *Military department.* Section 4182(b) provides that the tax imposed by section 4181 shall not attach to the sale of firearms, pistols, revolvers, shells, or cartridges that are purchased with funds appropriated for a military department of the United States. For this purpose, the term "military department" means the Department of the Army, the Department of the Navy, and the Department of the Air Force. Included in the Department of the Navy are naval aviation and the Marine Corps and, when operating as a service in the Navy pursuant to the provisions of 14 U.S.C. 3, the Coast Guard.

(2) *Coast Guard.* (i) 14 U.S.C. 655, as added by sec. 5 of the Act of July 10, 1962, (Pub. L. 87–526, 76 Stat. 142), provides as follows:

Sec. 655. *Arms and ammunition: immunity from taxation.* No tax on the sale or transfer of firearms, pistols, revolvers, shells, or cartridges may be imposed on such articles when bought with funds appropriated for the United States Coast Guard.

(ii) In view of the provisions of 14 U.S.C. 655, the tax imposed by section 4181 shall not attach to the sale of firearms, pistols, revolvers, shells, or cartridges that are purchased with funds appropriated for the U.S. Coast Guard whether or not the Coast Guard is operating as a service in the Navy pursuant to 14 U.S.C. 3.

(3) *Supporting evidence.* (i) Any manufacturer, producer, or importer claiming an exemption from the tax imposed by section 4181 by reason of section 4182(b) must maintain such records and be prepared to produce such evidence as will establish the right to the exemption. Generally, clearly identified orders or contracts of a military department or the Coast Guard signed by an authorized officer of the military department or the Coast Guard will be sufficient to establish the right to the exemption. In the absence of such orders or contracts, a statement, signed by an authorized officer of a military department or the Coast Guard, that the prescribed articles were purchased with funds apropriated for that military department or the Coast Guard will constitute satisfactory evidence of the right to the exemption.

(ii)(A) *In general.* Under 18 U.S.C. 922(b)(5), a manufacturer, dealer, or importer licensed under 18 U.S.C. 923 is

required to record the name, age, and place of residence of an individual person, or the identity and principal and local places of business of a corporation or other business entity, to whom the licensee sells or delivers any firearm or ammunition. 18 U.S.C. 923(g) requires the licensee to maintain such records and to make them available for inspection.

(B) *Exception.* However, under section 4182(c) of the Internal Revenue Code, no person holding a license under 18 U.S.C. 933 shall be required to record the name, address, or other information about the purchaser of shotgun ammunition, ammunition suitable for use only in rifles generally available in commerce, or component parts for such ammunition.

Par. 9. Sections 48.6011(a)–1 and 48.6011(a)–2 are revised to read as follows.

§ 48.6011(a)–1 Returns.

(a) *In general.* (1) Liability for tax imposed under section 4041, 4042 or 4051 or chapter 32 of the Code shall be reported on Form 720. Except as provided in paragraph (b) of this section, a return on Form 720 shall be filed for a period of one calendar quarter.

(2) Every person required to make a return on Form 720 for the return period ended June 30, 1965, shall make a return for each subsequent calendar quarter, month, or semimonthly period (whether or not liability was incurred for any tax reportable on the return for the return period) until the person has filed a final return in accordance with § 48.6011(a)–2.

(3) Every person not required to make a return on Form 720 for the return period ended June 30, 1965, shall make a return for the first calendar quarter thereafter in which he incurs liability for tax imposed under section 4041, 4042 or 4051 or chapter 32, and shall make a return for each subsequent calendar quarter, month, or semimonthly period until the person has filed a final return in accordance with § 48.6011(a)–2.

(4) Each return required under the regulations in this part, together with any prescribed copies, records, or supporting data, shall be completed in accordance with the applicable forms, instructions, and regulations.

(b) *Monthly and semimonthly returns*—(1) *Requirement.* If the district director determines that any taxpayer who is required to deposit taxes under the provisions of § 48.6302(c)–1 has failed to make deposits of those taxes, the taxpayer shall be required, if so notified in writing by the district director, to file a monthly or semimonthly return on Form 720. Every person so notified by the district director shall file a return for the calendar month or semimonthly period (as defined in § 48.6302 (c)–1 (b)) in which the notice is received and for each calendar month or semimonthly period thereafter until the person has filed a final return in accordance with § 48.6011(a)–2 or is required to file returns on the basis of a different return period pursuant to notification as provided in paragraph (b)(2) of this section.

(2) *Change of requirement.* The district director may require the taxpayer, by notice in writing, to file a quarterly or monthly return, if the taxpayer has been filing returns for a semimonthly period, or may require the taxpayer to file a quarterly or semimonthly return, if the taxpayer has been filing monthly returns.

(3) *Return for period change takes effect.* (i) If a taxpayer who has been filing quarterly returns receives notice to file a monthly or semimonthly return, or a taxpayer who has been filing monthly returns receives notice to file a semimonthly return, the first return required pursuant to the notice shall be filed for the month or semimonthly period in which the notice is received and all months or semimonthly periods which are not includible in an earlier period for which the taxpayer is required to file a return.

(ii) If a taxpayer who has been filing monthly or semimonthly returns receives notice to file a quarterly return, the last month or semimonthly period for which a return shall be filed is the last month or semimonthly period of the calendar quarter in which the notice is received.

(iii) If a taxpayer who has been filing semimonthly returns receives notice to file a monthly return, the last semimonthly period for which a return shall be made is the last semimonthly period of the month in which the notice is received.

§ 48.6011(a)–2 Final returns.

(a) *In general.* Any person who is required to make a return on Form 720 pursuant to § 48.6011(a)–1, and who in any return period ceases operations in respect of which the person is required to make a return on the form, shall make the return for that period as a final return. Each return made as a final return shall be marked "Final Return" by the person filing the return. A person who has only temporarily ceased to incur liability for tax required to be reported on Form 720 because of temporary or seasonal suspension of business or for other reasons, shall not make a final return but shall continue to file returns.

(b) *Statement to accompany final return.* Each final return shall have attached a statement showing the address at which the records required by the regulations in this part will be kept, the name of the person keeping the records, and, if the business of the taxpayer has been sold or otherwise transferred to another person, the name and address of that person and the date on which the sale or transfer took place. If no sale or transfer occurred or if the taxpayer does not know the name of the person to whom the business was sold or transferred, that fact should be included in the statement.

(c) An individual's signature on a return, statement, or other document made by or for a corporation or a partnership shall be prima facie evidence that the individual is authorized to sign the return, statement, or other document.

Par. 10. Section 48.6071(a)–1 is revised to read as follows:

§ 48.6071(a)–1 Time for filing returns.

(a) *Quarterly returns.* Each return required to be made under § 48.6011(a)–1(a) for a return period of not less than one calendar quarter shall be filed on or before the last day of the first calendar month following the close of the period for which it is made. However, a return may be filed on or before the 10th day of the second calendar month following the close of the period if timely deposits under section 6302(c) of the Code and the regulations thereunder have been made in full payment of the taxes due for the period. For the purposes of the preceding sentence, a deposit which is not required by regulations in respect of the return period may be made on or before the last day of the first calendar month following the close of the period, and the timeliness of any deposit made otherwise than by mail will be determined by the earliest date stamped on the Federal Tax Deposit form by an authorized financial institution or by a Federal Reserve bank. For determining the timeliness of a deposit made by mail, see section 7502(e) and § 301.7502–1 of this chapter (Regulations on Procedure and Administration).

(b) *Monthly and semimonthly returns*—(1) *Monthly returns.* Each return required to be made under § 48.6011(a)–1(b) for a monthly period shall be filed not later than the 15th day of the month following the close of the period for which it is made.

(2) *Semimonthly returns.* Each return required to be made under § 48.6011(a)–1(b) for a semimonthly period shall be filed not later than the 10th day of the

semimonthly period following the close of the period for which it is made.

(c) *Last day for filing.* For provisions relating to the time for filing a return when the prescribed due date falls on a Saturday, Sunday, or legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration).

(d) *Late filing.* For additions to the tax in case of failure to file a return within the prescribed time, see § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

Par. 11. The following new § 48.6081(a)–1 is added immediately after § 48.6071(a)–1.

§ 48.6081(a)–1 Extension of time for filing returns.

(a) *In general.* Ordinarily, no extension of time will be granted for filing any return statement or other document required with respect to the taxes imposed by section 4041, 4042 or 4051 or chapter 32, because the information required for the filing of those documents is under normal circumstances readily available. However, if because of temporary conditions beyond the taxpayer's control, a taxpayer believes an extension of time for filing is justified, the taxpayer may apply to the district director, or to the director of the service center, for an extension. An extension of time for filing a return does not operate to extend the time for payment of the tax or any part of the tax unless so specified in the extension. For extensions of time for payment of the tax, see § 48.6161(a)–1.

(b) *Application for extension of time.* The application for an extension of time for filing the return shall be addressed to the district director, or director of the service center, with whom the return is to be filed and must contain a full recital of the causes for the delay. It should be made on or before the due date of the return, and failure to do so may indicate negligence and constitute sufficient cause for denial. It should, where possible, be made sufficiently early to permit consideration of the matter and reply before what otherwise would be the due date of the return.

(c) *Filing the return.* If an extension of time for filing the return is granted, a return shall be filed before the expiration of the period of extension.

Par. 12. Section 48.6091–1 is revised to read as follows.

§ 48.6091–1 Place for filing returns.

(a) *Persons other than corporations.* The return of a person other than a corporation shall be filed with the district director for the internal revenue district in which is located the principal place of business or legal residence of the person. If the person has no principal place of business or legal residence in any internal revenue district, the return shall be filed with the District Director, Internal Revenue Service, Baltimore, MD 21202, except as provided in paragraph (c) of this section.

(b) *Corporations.* The return of a corporation shall be filed with the district director for the district in which is located the principal place of business or principal office or agency of the corporation, except as provided in paragraph (c) of this section.

(c) *Returns of taxpayers outside the United States.* The return of a person (including a United States citizen), other than a corporation, outside the United States having no legal residence or principal place of business in any internal revenue district, or the return of a corporation having no principal place of business or principal office or agency in any internal revenue district, shall be filed with the Director, Foreign Operations District, Internal Revenue Service, Washington, D.C. 20225. If, however, the principal place of business or legal residence of the person, or the principal place of business or principal office or agency of the corporation, is located in the Virgin Islands or Puerto Rico, the return shall be filed with the Director of International Operations, U.S. Internal Revenue Service, Hato Rey, Puerto Rico 00917.

(d) *Returns filed with service centers.* Notwithstanding paragraphs (a), (b), and (c) of this section, whenever instructions applicable to any returns provide that the returns shall be filed with a service center, the returns shall be so filed in accordance with the instructions.

(e) *Hand-carried returns.* Except as provided in paragraph (e)(3) of this section, and notwithstanding paragraphs (1) and (2) of section 6091(b) and paragraph (d) of this section, the following rules apply.

(1) *Persons other than corporations.* Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (a) of this section.

(2) *Corporations.* Returns of corporations which are filed by hand carrying shall be filed with the district director as provided in paragraph (b) of this section.

(3) *Exceptions.* This paragraph (e) shall not apply to returns of—

(i) Persons who have no legal residence, no principal place of business, or no principal office or agency in any internal revenue district.

(ii) Citizens of the United States whose principal place of abode for the period with respect to which the return is filed is outside the United States,

(iii) Persons who claim the benefits of section 911 (relating to income earned by individuals from sources without the United States), section 913 (relating to deduction for certain expenses of living abroad), section 931 (relating to income from sources within possessions of the United States), section 933 (relating to income from sources within Puerto Rico), or section 936 (relating to Puerto Rico and possession tax credit), and

(iv) Nonresident alien persons and foreign corporations.

(f) *Permission to file in district other than required district.* The Commissioner may permit the filing of any return required to be made under the regulations in this part in any internal revenue district, notwithstanding the provisions of paragraphs (1), (2), and (4) of section 6091(b) and paragraphs (a), (b), (c), (d), and (e) of this section.

(g) *Cross reference.* For definition of the term "hand carried", see § 301.6091–1(c) of this chapter (Regulations on Procedure and Administration).

Par. 13. The following new § 48.6101–1 is added immediately after § 48.6091–1.

§ 48.6101–1 Period covered by returns or other documents.

The normal period for which returns are ordinarily required under this subpart is a calendar quarter. Under certain circumstances, however, the district director may require returns to be filed for monthly or semimonthly periods. For provisions relating to quarterly returns, see § 48.6011(a)–1(a). For provisions relating to monthly and semimonthly returns, see § 48.6011(a)–1(b).

Par. 14. Section 48.6109–1 is revised to read as follows:

§ 48.6109–1 Employer identification numbers.

(a) *Requirement of application*—(1) *In general.* An application on Form SS–4 for an employer identification number shall be made by every person who makes a sale or use of an article with respect to which a tax is imposed by section 4041, 4042 or 4051 or chapter 32 of the Code, but who has not earlier been assigned an employer identification number or has not applied for one. The application and any supplementary statement accompanying it shall be prepared in accordance with the applicable form, instructions, and regulations and shall set forth fully and clearly the date therein called for. Form SS–4 may be obtained from any district director or director of a service center.

The application shall be filed with the internal revenue officer designated in the instructions applicable to Form SS–4. The application shall be signed by (i) the individual if the person is an individual; (ii) the president, vice-president, or other principal officer, if the person is a corporation; (iii) a responsible and duly authorized member or officer having knowledge of its affairs, if the person is a partnership or other unincorporated organization; or (iv) the fiduciary, if the person is a trust or estate. An employer identification number will be assigned to the person in due course upon the basis of information reported on the application required under this section.

(2) *Time for filing Form SS–4.* The application for an employer identification number shall be filed on or before the seventh day after the date of the first sale or use of an article with respect to which a tax is imposed by section 4041, 4042, or 4051 or chapter 32 of the Code.

(b) *Use of employer identification number.* The employer identification number assigned to a person liable for a tax imposed by section 4041, 4042, or 4051 or chapter 32 of the Code shall be shown in any return, statement, or other document submitted to the Internal Revenue Service by the person.

(c) *Cross references.* For the definition of the term "employer identification number", see § 301.7701–12 of this chapter (Regulations on Procedure and Administration). For provisions relating to the penalty for failure to include the employer identification number in a return, statement, or other document, see § 301.6676–1 of this chapter (Regulations on Procedure and Administration).

Par. 15. Section 48.6151–1 is revised to read as follows:

§ 48.6151–1 Time and place for paying tax shown on return.

The tax required to be reported on each tax return under this subpart is due and payable to the internal revenue officer with whom the return is filed at the time prescribed in § 48.6071(a)–1 for filing such return. See the applicable sections in Part 301 of this chapter (Regulations on Procedure and Administration) for provisions relating to interest on underpayments, additions to tax, and penalties. For provisions relating to the use of Federal Reserve banks and authorized financial institutions in depositing the taxes, see § 48.6302(c)–1.

Par. 16. The following new § 48.6161(a)–1 is added immediately after § 48.6151–1.

§ 48.6161(a)–1 Extension of time for paying tax shown on return.

(a) *In General.* (1) Ordinarily, no extensions of time will be granted for payment of any tax imposed by section 4041, 4042 or 4051 or chapter 32 of the Code, and shown or required to be shown on any return. However, if because of temporary conditions beyond the taxpayer's control a taxpayer believes an extension of time for payment is justified, the taxpayer may apply to the district director, or to the director of the service center, for an extension. The period of any extension shall not be in excess of 6 months from the date fixed for payment of the tax, except that if the taxpayer is abroad the period of the extension may be in excess of 6 months.

(2) The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part of the tax unless so specified in the extension. See § 48.6081(a)–1.

(b) *Undue hardship required for extension.* An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the taxpayer from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension.* An application for an extension of time for payment of the tax shown or required to be shown on any return shall be made on Form 1127 and shall be accompanied by evidence showing the undue hardship that would result to the taxpayer if the extension were refused. The application shall also be accompanied by a statement of the assets and liabilities of the taxpayer and an itemized statement showing all receipts and disbursements for each of the 3 months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed, on or before the date prescribed for payment of the amount with respect to which the extension is desired, with the internal revenue officer to whom the tax is to be paid. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. If an additional extension is desired, the request for it must be made on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.* If an extension of time for payment is granted, the payment shall be made on or before the expiration of the period of the extension without the necessity of notice and demand. The granting of an extension of time for payment of the tax does not relieve the taxpayer from liability for the payment of interest on the tax during the period of the extension. See section 6601 and § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

Par. 17. Section 48.6206–1 is revised to read as follows.

§ 48.6206–1 Assessment and collection of excessive payment and penalty.

(a) *Treatment of excessive amount as tax.* If any portion of a payment made under section 6420 (relating to gasoline used on farms), section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), section 6424 (relating to lubricating oil sold prior to January 7, 1983 and not used in highway motor vehicles), or section 6427 (relating to special fuels not used for taxable purposes) constitutes an excessive amount as defined in section 6675(b) and § 48.6675–1(b), the excessive amount and any civil penalty provided by section 6675 may be assessed and collected by the district director—

(1) As if the excessive amount and civil penalty were a tax imposed by section 4081 (relating to tax on the sale of gasoline), section 4091 (relating to tax on sale of lubricating oil prior to January 7, 1983), or section 4041 (relating to tax on sale of special fuels), as the case may be, and

(2) As if the person who made the claim for payment were liable for tax imposed by section 4081, 4091, or 4041, in that amount.

(b) *Assessment period.* The period within which the portion of a payment constituting an excessive amount and any civil penalty may be assessed shall be 3 years from the last date prescribed by section 6420, 6421, 6424, or 6427, as the case may be, for the filing of the claim in respect of which the excessive amount is attributable.

Par. 18. Section 48.6302(c)–1 is revised to read as follows:

§ 48.6302(c)-1 Use of Government depositaries.

(a) *Monthly deposits.* Except as provided in paragraph (b) of this section, if for any calendar month (other than the last month of a calendar quarter) any person required to file a quarterly excise tax return on Form 720 has a total liability under this part of more than $100 for all excise taxes reportable on that form, the amount of liability for taxes shall be deposited by the person with a Federal Reserve Bank or authorized financial institution on or before the last day of the month following the calendar month.

(b) *Semimonthly deposits.* (1) If any person required to file an excise tax return on Form 720 for any calendar quarter has a total liability under this part of more than $2,000 for all excise taxes reportable on that form for any calendar month in the preceding calendar quarter, the amount of that liability for taxes under this part for any semimonthly period (as defined in paragraph (d)(1) of this section) in the succeeding calendar quarter shall be deposited by the person with a Federal Reserve Bank or authorized financial institution on or before the depositary date (as defined in paragraph (d)(2) of this section) applicable to the semimonthly period.

(2) A person will be considered to have complied with the requirements of paragraph (b)(1) of this section for a semimonthly period if—

(i)(A) The person's deposit for the semimonthly period is not less than 90 percent of the total amount of the excise taxes reportable by the person on Form 720 for the period, and

(B) If the semimonthly period occurs in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month; or

(ii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 45 percent of the total amount of the excise taxes reportable by the person on Form 720 for the month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iii)(A) The person's deposit for each semimonthly period in the calendar month is not less than 50 percent of the total amount of the excise taxes reportable by the person on Form 720 for the second preceding calendar month, and

(B) If such month is other than the last month in a calendar quarter, the person deposits any underpayment for such month by the 9th day of the second month following the calendar month; or

(iv)(A) The requirements of paragraph (b)(2) (i)(A), (ii)(A), or (iii)(A) of this section are satisfied for the first semimonthly period of a calendar month after January 1971,

(B) If the person's deposit for the second semimonthly period of the calendar month is, when added to the deposit for the first semimonthly period, not less than 90 percent of the total amount of the excise taxes reportable by the person on Form 720 for the calendar month, and

(C) If the semimonthly periods occur in a calendar month other than the last month in a calendar quarter, the person deposits any underpayment for the month by the 9th day of the second month following the calendar month.

(3)(i) Paragraph (b)(2) (ii) and (iii) of this section shall not apply to any person who normally incurs in the first semimonthly period in each calendar month more than 75 percent of the person's total excise tax liability under this part for the month.

(ii) Persons who make their deposits in accordance with paragraph (b)(2) (ii), (iii), or (iv) of this section will find it unnecessary to keep their books and records on a semimonthly basis.

(c) *Deposit of certain excess undeposited amounts.* Notwithstanding paragraphs (a) and (b) of this section, if any person required to file an excise tax return on Form 720 for any calendar quarter beginning after March 31, 1968, has a total liability under this part for all excise taxes reportable on the form for the calendar quarter which exceeds by more than $100 the total amount of taxes deposited by the person pursuant to paragraph (a) or (b) of this section for the calendar quarter, the person shall, on or before the last day of the calendar month following the calendar quarter for which the return is required to be filed, deposit with a Federal Reserve Bank or authorized financial institution the full amount by which the person's liability for all excise taxes reportable on the form for that calendar quarter exceeds the amount of excise taxes previously deposited by the person for that calendar quarter.

(d) *Definitions.* For purposes of this part—

(1) *Semimonthly period.* The term "semimonthly period" means the first 15 days of a calendar month or the portion of a calendar month following the 15th day of that month.

(2) *Depositary date.* (i) The term "depositary date" means, in the case of deposits for semimonthly periods beginning after January 31, 1971, the 9th day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(ii) The term "depositary date" means, in the case of deposits for semimonthly periods ending before February 1, 1971, the last day of the semimonthly period following the semimonthly period for which the taxes are reportable.

(iii) The term "depositary date" means, in the case of deposits by qualified persons whose liability for tax under section 4081 arises after March 31, 1983, and is payable with respect to semimonthly periods, 14 days after the close of the semimonthly period if payment is made either by wire transfer to any government depositary authorized under section 6302 or by transfer between accounts in the same government depositary. See § 145.3-1 (relating to extension of payment due date for certain fuel taxes) and section 518 of the Highway Revenue Act of 1982 (96 Stat. 2184).

(e) *Depositary forms and procedures*—(1) *In general.* A person required by this section to make deposits may make one or more remittances with respect to the amount required to be deposited. An amount of tax which is not otherwise required by this section to be deposited may, nevertheless, be deposited if the person liable for the tax so desires.

(2) *Deposits for 1968 and subsequent years.* Each remittance of amounts required to be deposited for periods subsequent to 1967 shall be accompanied by a Federal Tax Deposit form which shall be prepared in accordance with the applicable instructions. The remittance, together with the Federal Tax Deposit form shall be forwarded to a financial institution authorized as a depositary for Federal taxes in accordance with 31 CFR Part 214 or, at the election of the person making the remittance, to a Federal Reserve Bank. For procedures governing the deposit of Federal taxes at a Federal Reserve Bank, see 31 CFR Part 214.7. The timeliness of the deposit will be determined by the date it is received (or is deemed received under section 7502(e) and § 301.7502-1 of this chapter (Regulations on Procedure and Administration)) by the Federal Reserve Bank or by the authorized financial institution. Amounts deposited pursuant to this paragraph (e)(2) shall be considered to be paid on the last day prescribed for filing the return in respect of the tax (determined without regard to any extension of time for filing the returns), or at the time deposited, whichever is later.

(3) *Information required.* Each person making deposits pursuant to this section shall report on the return for the period with respect to which the deposits are made information regarding the deposits in accordance with the instructions applicable to the return and pay (or deposit by the due date of the return) the balance, if any, of the taxes due for the period.

(4) *Procurement of prescribed forms.* Copies of the Federal Tax Deposit form will be furnished, so far as possible, to persons required to make deposits under this section. Such a person will not be excused from making a deposit, however, by the fact that no form has been furnished. A person not supplied with the form is required to apply for it in ample time to make the required deposits within the time prescribed, supplying with the application the person's name, identification number, address, and the taxable period to which the deposits will relate. Copies of the Federal Tax Deposit form may be obtained by applying for them with the distinct director or the director of a service center.

(f) *Nonapplication to certain taxes.* This section does not apply to taxes for (1) any month or semimonthly period in which the taxpayer receives notice from the district director pursuant to § 48.6011(a)–1(b) to file Form 720 or (2) any subsequent month or semiannually period for which a return on Form 720 is required.

Par. 19. The following new § 48.6302(c)–2 is added immediately after § 48.6302(c)(1).

§ 48.6302(c)–2 Cross reference.

(a) *Failure to deposit.* For provisions relating to failure to make a deposit within the time prescribed, see § 301.6656–1 of this chapter (Regulations on Procedures and Administration).

(b) *Saturday, Sunday, or legal holiday.* For regulations relating to the time for performance of acts when the last day for the performance falls on a Saturday, Sunday, or a legal holiday, see § 301.7503–1 of this chapter (Regulations on Procedure and Administration). See § 145.3–1 (d) and section 518 of the Highway Revenue Act of 1982 (96 Stat. 2184) relating to the depositary date for persons required to make semimonthly deposits under section 4081 when the last day for performance falls on a Saturday, Sunday or legal holiday in the District of Columbia.

Par. 20. The following new §§ 48.6402(a)–1, 48.6404(a)–1, 48.6412–1, 48.6412–2, and 48.6412–3 are added immediately after § 48.6302(c)–2.

§ 48.6402(a)–1 Authority to make credits or refunds.

For provisions relating to credits and refunds of certain taxes on sales and services see section 6416 and the regulations thereunder. For regulations under section 6402 of general application in respect of credits or refunds, see §§ 301.6402–1, 301.6402–2, and 301.6402–4 of this chapter (Regulations on Procedure and Administration).

§ 48.6404(a)–(1) Abatements.

For regulations under section 6404 of general application in respect of abatements of assessments to tax, see § 301.6404–1 of this chapter (Regulations on Procedure and Administration).

§ 48.6412–1 Floor stocks credit or refund.

(a) *In general.* This section sets forth the procedures to be followed in claiming the credit or refund authorized by section 6412 for manufacturers excise taxes paid in respect of certain articles held by dealers as floor stocks on October 1, 1988. See § 48.6412–2 for definitions of the following terms when used in this section: "floor stocks", "inventory date", "dealer", "held by a dealer", "old rate", "new rate", "dealer request limitation date", "claim limitation date", and "tax paid". See § 48.6412–3 for determining the amount of tax paid on articles that are held as floor stocks. The manufacturers excise taxes for which credit or refund may be claimed under this section are those imposed by section 4071, relating to tires of the type used on highway vehicles; and section 4081, relating to gasoline. For definition of the term "highway vehicle", see § 48.4061(a)–1(d).

(b) *Computation of the amount of floor stocks credit or refund.* The amount of floor stocks credit or refund which may be claimed by the manufacturer under section 6412(a)(1) may not exceed an amount equal to the difference between the tax paid by the manufacturer on the sale of the article and the amount of tax made applicable to the article on the inventory date. No interest is allowable with respect to any amount of tax credited or refunded under section 6412 and this section. In applying the floor stocks credit or refund provisions, the date on which the manufacturer paid the tax with respect to the article held as floor stocks is not relevant. Thus, the period of limitations provided in section 6511 with respect to claims for credit or refund does not apply; however, see paragraph (f) of this section. For definition of the term "manufacturer", see § 48.0–2(a)(4).

(c) *Limitation.* Except as provided in § 48.6412–3, no credit or refund is allowable under this section for an amount paid as tax which may be credited or refunded under any provisions of law other than section 6412(a)(1), or which was allowable as a credit or refund under section 6412 with respect to an earlier inventory date.

(d) *Relationship between credits or refunds for floor stocks and credits or refunds for price readjustments.* The amount which may be credited or refunded for floor stocks and for price readjustments on an article may not in the aggregate exceed the tax paid in respect of the article. A credit or refund computed on the basis of the old tax rate will be allowed with respect to a price readjustment of an article on which a floor stock credit or refund was allowed, but only if the amount of the floor stock credit or refund otherwise allowable was reduced by taking into account such price readjustment, as determined under § 48.6412–3(e). The manufacturer must keep readily available for inspection sufficient records to enable examining officers of the Internal Revenue Service to ascertain the correctness of any claim for credit or refund for a price readjustment of an article on which a floor stock refund was claimed.

(e) *Participation of dealers*—(1) *Request by dealer.* On or before the dealer request limitation date, a dealer may submit to a manufacturer a request with respect to a credit or refund allowable under this section for tax paid by the manufacturer with respect to articles held by the dealer as floor stocks. This request may be submitted directly to the manufacturer, or it may be submitted to him indirectly through another dealer in the distribution chain if the request is received by the manufacturer or an authorized agent of the manufacturer on or before the dealer request limitation date.

(2) *Requirements for claim by manufacturer.* No amount of credit or refund under this section may be claimed by a manufacturer with respect to articles held by a dealer as floor stocks unless—

(i) The claim for the amount is based upon a request submitted by the dealer to the claimant on or before the dealer request limitation date;

(ii) The amount is paid by the claimant to the dealer, or the dealer's written consent to allowance of the credit or refund has been received by the claimant, on or before the claim limitation date; and

(iii) The request by the dealer is supported by an inventory statement, made under the penalties of perjury and signed by the dealer or by the dealer's

authorized representative, setting forth the following information:

(A) The name and address of the dealer and of the applicable manufacturer, (if the name and address of the applicable manufacturer is unknown to the dealer, these items may be added by any person in the chain of distribution);

(B) The identification number, if any, of the article, such as a serial, stock, model, type, or class number, or some other suitable means of identification;

(C) A brief description of the article, such as its common name or designation; and

(D) The quantity of articles held by the dealer as floor stocks on the inventory date.

(3) *Actual manufacturer unknown.* If a dealer addresses a request to the person, who from markings on the article the dealer presumes to be the manufacturer, the request may be treated as made to the actual manufacturer if the actual manufacturer accepts the dealer's request.

(4) *Payment to dealer by claimant.* Payment may be made directly to the dealer or to the dealer's authorized agent or representative by the claimant or by the claimant's authorized agent or representative. If a claimant pays a dealer through the claimant's agent or representative, the evidence must show that the dealer actually received the payment. If a dealer authorizes the claimant to pay the dealer through the dealer's agent or representative, evidence showing receipt of the payment by the agent or representative will be accepted as proof of actual payment to the dealer. Payment shall be made, at the manufacturer's option, in cash, by check, or by credit to the dealer's account as maintained by the claimant. The amount of the payment which may be made by crediting the dealer's account may not exceed the undisputed debit balance due at the time the credit is made. However, payment may be made in merchandise at the dealer's option with the concurrence of the manufacturer.

(5) *Date of performance.* The date on which any act described in this paragraph (e) is performed by an agent or representative on behalf of a claimant or dealer is deemed to be the date on which the act is performed by the principal.

(6) *Record of inventories.* For provisions relating to the record of a dealer's inventories to be kept by the claimant, see paragraph (g) of this section.

(7) *Sample written consent.* No particular form is prescribed or required for the written consent of the dealer described in paragraph (e)(2)(ii) of this section. However, the following is an example of an acceptable consent statement by a dealer:

Consent Statement of Dealer

(For use by dealer in requesting manufacturer, producer, or importer to obtain credit under section 6412 of the Internal Revenue Code of 1954 with respect to floor stocks.)

I hereby consent to the allowance to the manufacturer, producer, or importer of the floor stocks credit or refund of the excise tax imposed by the Internal Revenue Code of 1954 with respect to the articles in my inventory on _____.

_____
(Name)
By _____
(Signature of Officer)
_____
(Title)
_____
(Date)

(f) *Procedure for claiming credit or refund*—(1) *In general.* Each claim for credit or refund under this section shall be filed on or before the applicable claim limitation date, in the manner and subject to the conditions stated in this section and in § 301.6402–2 of this chapter (Regulations on Procedure and Administration). Either credit or refund, or a combination thereof, may be claimed, but the amount which may be claimed as a credit on a return shall not exceed the total tax liability shown on the return, reduced by the amount of any deposits made under § 48.6302(c)–1 with respect to the return and by any amount of credit claimed on the return pursuant to any provision of law other than section 6412. If the total amount which may be claimed exceeds the amount that may be claimed as credit on a return, the excess amount may be claimed on or before the applicable claim limitation date either as a refund or as a credit on a subsequent return. If credit is claimed the amount of the credit shall be entered as a credit on a timely-filed return of tax. The statement described in paragraph (f)(2) of this section must show the amount and date of each previous and concurrent claim for credit or refund under this section and indicate whether any future claims are expected to be filed.

(2) *Supporting evidence to be submitted by the manufacturer.* No credit or refund shall be allowed under this section unless there is submitted, in support of the claim for credit or refund, a statement signed by the person making the claim, that describes in general terms the articles covered by the claim, sets forth the method of computing the amount claimed (including a description of any procedures used pursuant to § 48.6412–3), and states that—

(i) The claimant paid to the district director or the director of the internal revenue service center the tax for which credit or refund is claimed;

(ii) The total amount claimed represents payments requested by dealers before the dealer request limitation date;

(iii) The total amount claimed either was paid by the claimant to the dealers, or the claimant received the written consent of the dealers to the allowance of the amount claimed;

(iv) The claimant has in his possession, and available for inspection by internal revenue officers, the evidence with respect to inventories required by paragraph (g)(2) of this section, and any written consents referred to in paragraph (f)(2)(iii) of this section; and

(v) No other claim for credit or refund under this section has been or will be made by the claimant with respect to any amount covered by the claim.

(g) *Evidence to be retained in the manufacturer's records.* Every person filing a claim for credit or refund pursuant to this section shall support the claim by keeping as part of the claimant's records—

(1) The dealer's inventory statements required by paragraph (e)(2)(iii) of this section, to the extent that the articles are covered by the claim;

(2) Records, in respect of the articles held by each dealer, showing—

(i) The name and address of the dealer,

(ii) The quantities of each article held by the dealer as floor stocks by taxable category, for example, by model or type number,

(iii) The amount of tax considered to be paid by the manufacturer with respect to each article held by the dealer, as determined under § 48.6412–3,

(iv) The amount of tax, if any, which the claimant would pay on the sale of each article held by the dealer if the tax were computed at the new rate,

(v) The total amount of reimbursement due the dealer,

(vi) The date on which the claimant received from the dealer the request described in paragraph (e)(1) of this section, but only if payment was not made to the dealer before the dealer request limitation date, and

(vii) The date and amount of each payment to a dealer, or the date of receipt by the claimant from the dealer of a written consent, as set forth in paragraph (e)(2)(ii) of this section; and

(3) Any such written consent received from a dealer.

(h) *Special rules where the presumed manufacturer is the agent of the actual manufacturer.* For purposes of this section, if a manufacturer sells articles tax-paid to a second manufacturer for resale by the second manufacturer under its own brand name, the second manufacturer may perform any acts and keep any records which are a prerequisite to the first manufacturer's filing a claim for floor stocks credit or refund with respect to the articles. If such a procedure is followed, the claim filed by the first manufacturer shall include a statement indicating the name and address of the second manufacturer and the amount of its claim which relates to articles sold to the second manufacturer.

(i) *Effect on other claims for credit or refund.* If a claim for credit or refund is made pursuant to section 6416 and the regulations thereunder, relating in part to returned sales, sales for export or for exempt use, sales to States, etc., with respect to a tax imposed by section 4071 or section 4081, and if the claim is made with respect to articles sold by the claimant before the date on which the tax is reduced in rate or terminated, the claim shall be based on the new rate of tax unless the claimant can establish that the tax was imposed at the old rate and that no refund or credit under this section was allowed with respect to the articles. See, however, paragraph (d) of this section.

(j) *Other applicable provisions.* All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4071 and 4081 shall, insofar as applicable and not inconsistent with section 6412, apply in respect to the credits and refunds provided for in section 6412 to the same extent as if the credits or refunds constituted overpayments of the taxes. For provisions under which timely mailing is treated as timely filing, and for provisions applicable to the time for performance of acts when the last day falls on Saturday, Sunday, or a legal holiday, see §§ 301.7502–1 and 301.7503–1, respectively, of this chapter (Regulations on Procedure and Administration).

§ 48.6412–2 Definitions for purposes of floor stocks credit or refund.

For purposes of section 6412 and the regulations thereunder—

(a) *Floor stocks.* The term "floor stocks" means any article subject to the tax imposed by section 4071 or section 4081 which—

(1) Is sold by the manufacturer (otherwise than in a tax-free sale) before October 1, 1988,

(2) Is held by a dealer at the first moment on October 1, 1988, and has not been used, and

(3) Is intended for sale.

However, the term "floor stocks" does not include gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(b) *Inventory date.* The term "inventory date" means the first moment on the date on which an article is treated as floor stocks within the meaning of paragraph (a) of this section.

(c) *Dealer.* The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

(d) *Held by a dealer*—(1) *In general.* (i) An article is considered as "held by a dealer" if title to the article has passed to the dealer (whether or not delivery to the dealer has been made), and if, for purposes of consumption, title to or possession of the article has not at any time been transferred to any person other than a dealer.

(ii) Floor samples, demonstrators, and articles undergoing repair (whether or not on the dealer's premises) that are carried in stock to be sold as new articles, and articles purchased tax-paid by a manufacturer or a sales subsidiary and held by the person on the inventory date for resale as such, will be considered as unused and held by a dealer, if title to or possession of the article has not at any time been transferred to any person for purposes of consumption.

(iii) Articles sold by a dealer to a consumer before the inventory date and thereafter repossessed by the dealer, and articles purchased tax-paid by a manufacturer for use in further manufacture within the meaning of section 4221(d)(6), will not be considered as held by a dealer.

(iv) The determination as to the time title or possession passes for purposes of consumption shall be made under applicable local law.

(2) *Examples.* The application of this paragraph (d) may be illustrated by the following examples:

Example (1). If, under local law, title to an article sold by a dealer under a conditional sales contract is in the dealer on the inventory date, but the consumer has physical possession of the article on that date, the article is not considered as held by the dealer.

Example (2). If, under local law, title to an article is in the consumer on the inventory date because the article is specifically identified with a contract, but on that date the dealer still has physical possession of the article, for example, in his will-call department, the article is not considered as held by the dealer on that date because title to the article has passed to the consumer for purposes of consumption.

Example (3). If, under local law, title to an article is in the consumer on the inventory date because the dealer transferred the article to a common carrier for delivery to the consumer, the article in transit is not considered as held by the dealer on that date because title has passed to the consumer for purposes of consumption, even though neither the dealer nor the consumer has physical possession of the article.

Example (4). If, under local law, title to an article is in the dealer on the inventory date and does not pass to the consumer until delivery by a common carrier, the article in transit shall be considered as held by the dealer on that date because neither the title nor possession has passed to the consumer for purposes of consumption.

Example (5). If an article has been mortgaged or otherwise hypothecated by a dealer as security for a loan and, under local law, title to the article is in the creditor on the inventory date, and physical possession is in the dealer, the article shall be considered as held by the dealer on that date because neither title nor possession has passed to the consumer for purposes of consumption.

(e) *Old rate.* The term "old rate" means the rate of tax in effect with respect to the sale of an article before the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(f) *New rate.* The term "new rate" means the rate of tax, if any, in effect with respect to the sale of an article on the date designated in paragraph (a) or (b) of this section on which the tax is reduced in rate or is terminated.

(g) *Dealer request limitation date.* The term "dealer request limitation date" is the date prescribed by section 6412(a)(1) before which the request on which the manufacturer's claim is based must be submitted to the manufacturer by the dealer who held the floor stocks on the inventory date. In the case of an article held by a dealer on October 1, 1988, the dealer request limitation date is January 1, 1989.

(h) *Claim limitation date.* The term "claim limitation date" means the last date prescribed by section 6412(a)(1) on which refund or credit with respect to floor stocks may be claimed by a manufacturer. In the case of an article

held by a dealer on October 1, 1988, the claim limitation date is March 31, 1989.

(i) *Tax paid.* A tax is considered paid if it was paid or was offset by an allowable credit on the return on which it was reported.

§ 48.6412–3 Amount of tax paid on each article.

(a) *General rule.* For purposes of making the claim for credit or refund under § 48.6412–1 in respect of floor stocks held by a dealer, the tax paid on each article must be separately computed. If desired, the procedures set forth in paragraphs (b) through (g) of this section may be used in making the computation. The procedure used in determining the tax paid on an article must also be used in determining the amount of tax, if any, made applicable to the article on the effective date of reduction or repeal of the tax involved. Prior approval of the Internal Revenue Service for the method of computation need not be obtained and should not be requested.

(b) *Selling price.* In determining the price of an article on which the tax paid is to be computed, the average of the gross selling prices of identical articles sold during a representative period may be used. For example, truck chassis of the same model that are sold by the manufacturer with the same equipment and accessories are identical articles whose selling prices may be computed on the basis of an average.

(c) *Transportation charges.* In determining the price of an article on which the tax paid is to be computed, the average of the exclusions authorized by section 4216(a) for transportation, delivery, insurance, installation, etc., for a reasonable category of articles during a representative period may be used.

(d) *Credits for tax paid on inner tubes.* The average of the credits authorized by section 6416(c) for tax paid on tires or inner tubes may be averaged for a reasonable category of articles during a representative period. The credits shall be subtracted from the gross excise tax to arrive at the net excise tax paid.

(e) *Price readjustments.* (1) In determining the price on which the tax paid is to be computed, there must be taken into account any price readjustments with respect to which the manufacturer has filed a claim for credit or refund under section 6416(b). Other price readjustments which have been, or are reasonably expected to be, made with respect to the article may, at the option of the manufacturer, be taken into account in computing the price of the article.

(2) Price readjustments which cannot be attributed to specific articles as of the inventory date (as, for example, a price readjustment of a flat dollar amount which is made to dealers who meet a sales quota) may be taken into account on the basis of an average of the adjustments which is computed for a reasonable category of articles over a representative period.

(3) Price readjustments related to specific items (as, for example, an automatic rebate of a specific percentage of the price of each unit sold to a dealer) may not be averaged, and in such a case only the actual price readjustment attributable to a particular article may be taken into account in computing the tax on that article.

(4) If, because of the facts in a case, a price readjustment can be attributed to specific articles for purposes of consumer refunds but cannot be attributed to specific articles for purposes of floor stocks credits or refunds, the price adjustment may be averaged for purposes of both consumer refunds and floor stocks credits and refunds.

(f) *Representative period.* A period will be considered a representative period if—

(1) It covers (i) at least four consecutive calendar quarters, the last of which ends with a period of six calendar months immediately preceding the effective date of the tax reduction or repeal involved or (ii) any other period of time which the taxpayer can demonstrate constitutes a representative period for the particular category, and

(2) The number of articles in the category involved sold by the manufacturer during the period either (i) equals or exceeds the number of articles in the category to which the average amount is to be applied or (ii) can be demonstrated by the taxpayer to be a representative quantity.

(g) *Reasonable category.* Examples of a reasonable category of articles are articles that are identified by a common stock or class number or which are of the same model, class, or line. For the purpose of averaging exclusions, another example of a reasonable category of articles is a grouping of articles that are shipped in the same container. If a manufacturer sells articles bearing his own trademark and also sells articles as private brands, separate computations of the two brands must be made under this section.

Par. 21. Section 48.6416(a)–1 is revised to read as follows:

§ 48.6416(a)–1 Claims for credit or refund of overpayments of taxes on special fuels and manufacturers taxes.

Any claims for credit or refund of an overpayment of a tax imposed by chapter 31 or chapter 32 shall be made in accordance with the applicable provisions of this subpart and the applicable provisions of § 301.6402–2 of this chapter (Regulations on Procedure and Administration). A claim on Form 843 is not required in the case of a claim for credit, but the amount of the credit shall be claimed by entering that amount as a credit on a return of tax under this subpart filed by the person making the claim. In this regard, see § 48.6416(f)–1.

Par. 22. The following new §§ 48.6416(a)–2 and 48.6416(a)–3 are added immediately after § 48.6416(a)–1 to read as follows.

§ 48.6416(a)–2 Credit or refund of tax on special fuels.

(a) *Overpayments not described in section 6416(b)(2)*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of tax imposed by section 4041(a)(1)(A) (relating to tax on the sale of diesel fuel), section 4041(a)(2)(A) (relating to tax on the sale of special motor fuels), section 4041(c)(1)(A) (relating to tax on the sale of fuel for use in noncommercial aviation), or section 4041(c)(2)(A) (relating to the tax on sale of gasoline for use in noncommercial aviation). It does not apply, however, to a claim for credit or refund of any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2).

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the fuel.

(3) *Ultimate purchaser.* The term "ultimate purchaser", as used in paragraph (a)(2) of this section, means the vendee to whom the fuel was sold tax-paid by the person claiming credit or refund.

(b) *Overpayments determined under section 6416(b)(2)*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of amounts paid as

tax under section 4041(a)(1)(A) (relating to tax on the sale of diesel fuel) or section 4041(a)(2)(A) (relating to tax on the sale of special motor fuels) that are determined to be overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article).

(2) *Supporting evidence required.* No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person has neither included the tax in the price of the fuel with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the fuel, or

(iii) The person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor.* The term "ultimate vendor", as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which gives rise to the overpayment.

(c) *Nonapplication to tax on use of special fuels.* This section shall not have any effect on overpayments of tax under section 4041(a)(1)(B) (relating to tax on the use of diesel fuel), section 4041(a)(2)(B) (relating to tax on the use of special motor fuels), section 4041(c)(1)(B) (relating to tax on the use of fuel other than gasoline in noncommercial aviation), section 4041(c)(2)(B) (relating to tax on the use of gasoline in noncommercial aviation), or section 4042 (relating to tax on fuel used in commercial transportation on inland waterways).

§ 48.6416(a)-3 Credit or refund of manufacturers tax under chapter 32.

(a) *Overpayment not described in section 6416(b)(3)(C) or (4) (prior to April 1, 1983) and section 6416(b)(2)*—(1) *Claims included.* This paragraph applies only to claims for credit or refund of an overpayment of manufacturers tax imposed by chapter 32. It does not apply, however, to a claim for credit or refund on any overpayment described in paragraph (b) of this section which arises by reason of the application of section 6416(b)(2), (3)(C), or (4).

(2) *Supporting evidence required.* No credit or refund of any overpayment to which this paragraph (a) applies shall be allowed unless the person who paid the tax submits with the claim a written consent of the ultimate purchaser to the allowance of the credit or refund, or submits with the claim a statement, supported by sufficient availabe evidence, asserting that—

(i) The person has neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person has repaid the amount of the tax to the ultimate purchaser of the article.

(3) *Ultimate purchaser*—(i) *General rule.* The term "ultimate purchaser", as used in paragraph (a)(2) of this section, means the person who purchased the article for consumption, or for use in the manufacture of other articles and not for resale in the form in which purchased.

(ii) *Special rule under section 6416(a)(3).* (A) *Conditions to be met.*—If tax under chapter 32 is paid in respect of an article and the Commissioner determines that the article is not subject to tax under chapter 32, the term "ultimate purchaser", as used in paragraph (a)(2) of this section, includes any wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of the determination, holds for sale any such article with respect to which tax has been paid, if the claim for credit or refund of the overpayment in respect of the articles held for sale by the wholesaler, jobber, distributor, or retailer is filed on or before the date on which the person who paid the tax is required to file a return for the period ending with the first calendar quarter which begins more than 60 days after the date of the determination by the Commissioner.

(B) *Supporting statement.*—A claim for credit or refund of an overpayment of tax in respect of an article as to which a wholesaler, jobber, distributor, or retailer is the ultimate purchaser, as provided in this paragraph (a)(3)(ii), must be supported by a statement that the person filing the claim has a statement, by each wholesaler, jobber, distributor, or retailer whose articles are covered by the claim, showing total inventory, by model number and quantity, of all such articles purchased tax-paid and held for sale as of 12:01 a.m. of the 15th day after the date of the determination by the Commissioner that the article is not subject to tax under chapter 32.

(C) *Inventory requirement.*—The inventory shall not include any such article, title to which, or possession of which, has previously been transferred to any person for purposes of consumption unless the entire purchase price was repaid to the person or credited to the person's account and the sale was rescinded or any such article purchased by the wholesaler, jobber, distributor, or retailer as a component part of, or on or in connection with, another article. An article in transit at the first moment of the 15th day after the date of the determination is regarded as being held by the person to whom it was shipped, except that if title to the article does not pass until delivered to the person the article is deemed to be held by the shipper.

(b) *Overpayments described in section 6416(b)(3)(C) or (4) (prior to April 1, 1983) and section 6416(b)(2)*—(1) *Claims included.*—This paragraph applies only to claims for credit or refund of amounts paid as tax under chapter 32 that are determined to be overpayments by reason of section 6416(b)(2) (relating to tax payments in respect of certain uses, sales, or resales of a taxable article), section 6416(b)(3)(C) (relating to tax-paid tires or inner tubes used for further manufacture), or section 6416(b)(4) (relating to tires or inner tubes used by the manufacturer on another manufactured article).

(2) *Supporting evidence required.*—No credit or refund of an overpayment to which this paragraph (b) applies shall be allowed unless the person who paid the tax submits with the claim a statement, supported by sufficient available evidence, asserting that—

(i) The person neither included the tax in the price of the article with respect to which it was imposed nor collected the amount of the tax from a vendee, and identifying the nature of the evidence available to establish these facts, or

(ii) The person repaid, or agreed to repay, the amount of the tax to the ultimate vendor of the article, or

(iii) The person has secured, and will submit upon request of the Service, the written consent of the ultimate vendor to the allowance of the credit or refund.

(3) *Ultimate vendor.*—(i) *General rule.*—The term "ultimate vendor", as used in paragraph (b)(2) of this section, means the seller making the sale which gives rise to the overpayment or which last precedes the exportation or use which has given rise to the overpayment.

(ii) *Special rule under section 6416(a)(3)(B) prior to revision by the Highway Revenue Act of 1982.*—In the case of an overpayment determined under section 6416(b) (2)(F), (3)(C), or (4) in respect of tires or inner tubes, where the taxable article is used as a

component part of, or sold on or in connection with or with the sale of, a second article which is exported, sold to a nonprofit educational organization for its exclusive use, sold to a State or local government for the exclusive use of a State or local government or used or sold for use as supplies for vessels or aircraft, the term "ultimate vendor", as used in paragraph (b)(2) of this section, means the ultimate vendor of the second article. See §§ 48.6416(b)(2)–2(g), 48.6416(b)(3)–2(d), and 48.6416(b)(4)–1(b), respectively.

(c) *Overpayments not included.* This section does not apply to any overpayment determined under section 6416(b)(1) (relating to price readjustments), section 6416(b)(3)(A) (relating to certain cases in which refund or credit is allowable to the manufacturer who uses, in the further manufacture of a second article, a taxable article purchased by the manufacturer tax-paid), section 6416(b)(3)(B) prior to April 1, 1983 (relating to parts or accessories taxable under section 4061(b) and used by a subsequent manufacturer or producer as material or a component part of any other article manufactured or produced by him), section 6416(b)(4) after March 31, 1983 (relating to tires), section 6416(b)(5) (relating to the return to the seller of certain installment accounts which the seller had previously sold) or section 6416(b)(6) (relating to truck chassis, bodies, and semi-trailers used for further manufacture). In this regard, see §§ 48.6416(b)(1)–1, 48.6416(b)(3)–1, and 48.6416(b)(5)–1.

Par. 23. Section 48.6416(b)–1 is removed, and the following new §§ 48.6416(b)(1)–1, 48.6416(b)(1)–2, 48.6416(b)(1)–3, and 48.6416(b)(1)–4 are added immediately after § 48.6416(a)–3.

§ 48.6416(b)(1)–1 Price readjustments causing overpayments of manufacturers tax.

In the case of any payment of tax under chapter 32 that is determined to be an overpayment by reason of a price readjustment within the meaning of section 6416(b)(1) and § 48.6416(b)(1)–2 or § 48.6416(b)(1)–3, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which the person subsequently files. Price readjustments may not be anticipated. However, if the readjustment has actually been made before the return is filed for the period in which the sale was made, the tax to be reported in respect of the sale may, at the election of the taxpayer, be based either (a) on the price as so readjusted or (b) on the original sale price and a credit or refund claimed in respect of the price readjustment. A price readjustment will be deemed to have been made at the time when the amount of the readjustment has been refunded to the vendor or the vendor has been informed that the vendor's account has been credited with the amount. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration), § 48.6416(a)–3(a)(2), and § 48.6416(b)(1)–4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

§ 48.6416(b)(1)–2 Determination of price readjustments.

(a) *In general.*—(1) *Rules of usual application*—(i) *Amount treated as overpayment.*—If the tax imposed by chapter 32 has been paid and thereafter the price of the article on which the tax was based is readjusted, that part of the tax which is proportionate to the part of the price which is repaid or credited to the purchaser is considered to be an overpayment. A readjustment of price to the purchaser may occur by reason of—

(A) The return of the article,

(B) The repossession of the article,

(C) The return or repossession of the covering or container of the article, or

(D) A bona fide discount, rebate, or allowance against the price at which the article was sold.

(ii) *Requirements of price readjustment.* A price readjustment will not be deemed to have been made unless the person who paid the tax either—

(A) Repays part or all of the purchase price in cash to the vendee,

(B) Credits the vendee's account for part or all of the purchase price, or

(C) Directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee.

In addition, to be deemed a price readjustment, the payment or credit must be contractually or economically related to the taxable sale that the payment or credit purports to adjust. Thus, commissions or bonuses paid to a manufacturer's own agents or salesperson for selling the manufacturer's taxable products are not price readjustments for purposes of this section, since those commissions or bonuses are not paid or credited either to the manufacturer's vendee or to a third party for the vendee's benefit. On the other hand, a bonus paid by the manufacturer to a dealer's salesperson for negotiating the sale of a taxable article previously sold to the dealer by the manufacturer is considered to be a readjustment of the price on the original sale of the taxable article, regardless of whether the payment to the salesperson is made directly by the manufacturer or to the salesperson through the dealer. In such a case, the payment is related to the sale of a taxable article and is made for the benefit of the dealer because it is made to the dealer's salesperson to encourage the sale of a product owned by the dealer. Similarly, payments or credits made by a manufacturer to a vendee as reimbursement of interest expense incurred by the vendee in connection with a so-called "free flooring" arrangement for the purchase of taxable articles is a price readjustment, regardless of whether the payment or credit is made directly to the vendee or to the vendee's creditor on behalf of the vendee.

(iii) *Limitation on credit or refund.* The credit or refund allowable by reason of a price readjustment in respect of the sale of a taxable article may not exceed an amount which bears the same ratio to the total tax originally due and payable on the article as the amount of the tax-included readjustment bears to the original tax-included sale price of the article.

Example. A manufacturer sells a taxable article for $100 plus $10 excise tax, and reports and pays tax liability accordingly. Thereafter, the manufacturer credits the customer's account for $11 (tax included) in readjustment of the original sale price. The overpayment of tax is $1, determined as follows:

$$\frac{\text{Tax-included readjustment}}{\text{Tax-included sale price}} \times \text{Original tax du} = \text{Tax overpayme}$$

$$\frac{\$11}{\$110} \times \$10 = \$1 \text{ tax overpaid.}$$

(2) *Rules of special application.*—(i) *Constructive sale price.*—If, in the case of a taxable sale, the tax imposed by chapter 32 is based on a constructive sale price determined under any paragraph of section 4216(b) and the regulations thereunder, as determined without reference to section 4218, then any price readjustment made with respect to the sale may be taken into account under this section only to the extent that the price readjustment reduces the actual sale price of the article below the constructive sale pric

Example. (A) A manufacturer sells a taxable article at retail for $110 tax included. Under section 4216(b)(1) the constructive sa price (tax included) of the article is determined to be $93. Thereafter, the

manufacturer grants an allowance of $10 to the purchaser, which reduces the actual selling price (tax included) to $100. Since the readjustment price still exceeds the amounts of the constructive sale price, this readjustment is not recognized as a price readjustment under this section.

(B) Subsequently, the manufacturer extends to the purchaser an additional price allowance of $10, thereby reducing the actual sale price to $90. Since the actual sale price is now $3 less than the constructive sale price of $93, the manufacturer has overpaid by the amount of tax attributable to the $3. Assuming the tax rate involved is 10 percent, and the prices involved are tax-included, the overpayment of tax would be $0.27, determined as follows:

$$\frac{\text{percentage tax rate}}{\text{100 plus percentage tax rate}} \times \text{tax-included readjustment} = \text{tax overpayment}$$

$$\left(\frac{10}{100} \times \$3 = \$0.27\right).$$

(ii) *Price determined under section 4223(b)(2).*—If a manufacturer (within the meaning of section 4223(a)) to whom an article is sold or resold free of tax in accordance with the provisions of section 4221(a)(1) for use in further manufacture diverts the article to a taxable use or sells it in a taxable sale, and pursuant to the provisions of section 4223(b)(2) computes the tax liability in respect of the use or sale on the price for which the article was sold to the manufacturer or on the price at which the article was sold by the actual manufacturer, a reduction of the price on which the tax was based does not result in an overpayment within the meaning of section 6416(b)(1) of this section. Moreover, if a manufacturer purchases an article tax free and computes the tax in respect of a subsequent sale of the article pursuant to the provisions of section 4223(b)(2), an overpayment does not arise by reason of readjustment of the price for which the article was sold by the manufacturer except where the readjustment results from the return or repossession of the article by the manufacturer, and all of the purchase price is refunded by the manufacturer. See, however, paragraph (b)(4) of this section as to repurchased articles.

(b) *Return of an article*—(1) *Price readjustment.*—If a taxable article is returned to the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, a price readjustment giving rise to an overpayment results—

(i) If the article is returned before use, and all of the purchase price is repaid to the vendee or credited to the vendee's account, or

(ii) If the article is returned under an express or implied warranty as to quality or service, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, or

(iii) If title is still in the seller, as, for example, in the case of certain installment sales contracts, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account.

(2) *Return of purchase price.*—For purposes of paragraph (b)(1) of this section, if all of the purchase price of an article has been returned to the vendee, except for an amount retained by the manufacturer pursuant to contract as reimbursement of expense incurred in connection with the sale (such as a handling or restocking charge), all of the purchase price is considered to have been returned to the vendee.

(3) *Taxability of subsequent sale or use.*—If, under any of the conditions described in paragraph (b)(1) of this section, an article is returned to the manufacturer who paid the tax and all of the purchase price is returned to the vendee, the sale is considered to have been rescinded. Any subsequent sale or use of the article by the manufacturer will be considered to be an original sale or use of the article by the manufacturer which is subject to tax under chapter 32 unless otherwise exempt. If under any such condition an article is returned to the manufacturer who paid the tax and only part of the purchase price is returned to the vendee, a subsequent sale of the article by the manufacturer will be subject to tax to the extent that the sale price exceeds the adjusted sale price of the first taxable sale.

(4) *Treatment of other transactions as repurchases.*—Except as provided in paragraph (b)(1) of this section, a price readjustment will not result when a taxable article is returned to the manufacturer who paid the tax on the sale of the article, even though all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, since such a transaction will be considered to be a repurchase of the article by the manufacturer.

(c) *Repossession of an article.* If a taxable article is repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a part of the purchase price is repaid to the vendee or credited to the vendee's account, a price readjustment giving rise to an overpayment will result. However, if the manufacturer later resells the repossessed article for a price in excess of the original adjusted sale price, the manufacturer will be liable for tax under chapter 32 to the extent that the resale price exceeds the original adjusted sale price.

(d) *Return or repossession of covering or container.* If the covering or container of a taxable article is returned to, or repossessed by the manufacturer who paid the tax imposed by chapter 32 on the sale of the article, and all or a portion of the purchase price is repaid to the vendee or credited to the vendee's account by reason of the return or repossession of the covering or container, a price adjustment giving rise to an overpayment will result. If a taxable article is considered to have been repurchased, as provided in paragraph (b)(4) of this section, and the covering or container accompanies the taxable article as part of the transaction, the covering or container will also be considered to have been repurchased.

(e) *Bona fide discounts, rebates, or allowances*—(1) *In general.* Except as provided in § 48.6416(b)(1)–3 (relating to readjustments in respect of local advertising), the basic consideration in determining, for purposes of this section, whether a bona fide discount, rebate, or allowance has been made is whether the price actually paid by, or charged against, the purchaser has in fact been reduced by subsequent transactions between the parties. Generally, the price will be considered to have been readjusted by reason of a bona fide discount, rebate, or allowance, only if the manufacturer who made the taxable sale repays a part of the purchase price in cash to the vendee, or credits the vendee's account, or directly or indirectly reimburses a third party for part or all of the purchase price for the direct benefit of the vendee, in consideration of factors which, if taken into account at the time of the original transaction, would have resulted at that time in a lower sale price. For example, a price readjustment will be considered to have been made when a bona fide discount, rebate, or allowance is given in consideration of such factors as prompt payment, quantity buying over a specified period, the vendee's inventory

of an article when new models are introduced, or a general price reduction affecting articles held in stock by the vendee as of a certain date. On the other hand, repayments made to the vendee do not effectuate price readjustments if given in consideration of circumstances under which the vendee has incurred, or is required to incur, an expense which, if treated as a separate item in the original transaction, would have been includible in the price of the article for purposes of computing the tax.

Examples. The provisions of paragraph (e)(1) of this section may be illustrated by the following examples:

Example (1). B, a manufacturer of fishing rods, bills its distributors in a specified amount per fishing rod purchased by them. Thereafter, B issues to each distributor a credit memorandum in the amount of X dollars for each demonstration by the distributor of the fishing rods at a sporting goods exhibition. The credit which B allows the distributor for demonstration of B's product does not effect a readjustment of price.

Example (2). C, a manufacturer of automobiles, bills its dealers in a specified amount per automobile purchased by them. Thereafter, C remits to the dealer X dollars of the original sale price for each automobile sold by the dealer in the last month of the model year. An additional amount of Y dollars is paid to the dealer upon a showing by the dealer that the dealer has paid Y dollars to the salesperson who made the sale. In this case, the X dollars paid to the dealer by C constitutes a bona fide discount, rebate, or allowance since payment of such amount is in the nature of a price reduction by reason of the dealer's inventory when new models are introduced. In addition, the Y dollars paid to the dealer in reimbursement for the amount paid by the dealer to the salesperson who made the sale, also constitutes a bona fide discount, rebate, or allowance.

(2) *Inability to collect price.* A charge-off of an amount outstanding in an open account, due to inability to collect, is not a bona fide discount, rebate, or allowance and does not, in and of itself, give rise to a price readjustment within the meaning of this section.

(3) *Loss or damage in transit.* If title to an article has passed to the vendee, the subsequent loss, damage, or destruction of the article while in the possession of a carrier for delivery to the vendee does not, in and of itself, affect the price at which the article was sold. However, if the article was sold under a contract providing that, if the article was lost, damaged, or destroyed in transit, title would revert to the vendor and the vendor would reimburse the vendee in full for the sale price, then the original sale is considered to have been rescinded. The vendor is entitled to credit or refund of the tax paid upon reimbursement of the full tax-included sale price to the vendee.

§ 48.6416(b)(1)–3 Readjustment for local advertising charges.

(a) *In general.* If a manufacturer has paid the tax imposed by chapter 32 on the price of any article sold by the manufacturer and thereafter has repaid a portion of the price to the purchaser or any subsequent vendee in reimbursement of expenses for local advertising of the article or any other article sold by the manufacturer which is taxable at the same rate under the same section of chapter 32, the reimbursement will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(e)(2) and § 48.4216(e)–2, determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made. The term "local advertising", as used in this section, has the same meaning as prescribed by section 4216(e)(4) and includes generally, advertising which is broadcast over a radio station or television station, or appears in a newspaper or magazine, or is displayed by means of an outdoor advertising sign or poster.

(b) *Local advertising charges excluded from taxable price in one year but repaid in following year*—(1) *Determination of price readjustments for year in which charge is repaid.* If the tax imposed by chapter 32 was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendee before May 1 of the following calendar year, the subsequent repayment of those charges by the manufacturer in reimbursement of expenses for local advertising will be considered a price readjustment constituting an overpayment which the manufacturer may claim as a credit or refund. The amount of the reimbursement may not, however, exceed the limitation provided by section 4216(e)(2) and § 48.4216(e)–(2), determined as of the close of the calendar quarter in which the reimbursement is made or as of the close of any subsequent calendar quarter of the same calendar year in which it is made.

(2) *Redetermination of price readjustments for year in which charge was made.* If the tax imposed by chapter 32 was paid with respect to local advertising charges that were excluded in computing the taxable price of an article sold in any calendar year but are not repaid to the manufacturer's purchaser or any subsequent vendor before May 1 of the following calendar year, the manufacturer may make a redetermination, in respect of the calendar year in which the charge was made, of the price readjustments constituting an overpayment which the manufacturer may claim as a credit or refund. This redetermination may be made by excluding the local advertising charges made in the calendar year that became taxable as of May 1 of the following calendar year.

§ 48.6416(b)(1)–4 Supporting evidence required in case of price readjustments.

No credit or refund of an overpayment arising by reason of a price readjustment described in § 48.6416(b)(1)–2 or § 48.6416(b)(1)–3 shall be allowed unless the manufacturer who paid the tax submits a statement, supported by sufficient available evidence—

(a) Describing the circumstances which gave rise to the price readjustment,

(b) Identifying the article in respect of which the price readjustment was allowed,

(c) Showing the price at which the article was sold, the amount of tax paid in respect of the article, and the date on which the tax was paid,

(d) Giving the name and address of the purchaser to whom the article was sold, and

(e) Showing the amount repaid to the purchaser or credited to the purchaser's account.

Par. 24. Section 48.6416(b)–2 is removed and the following new §§ 48.6416(b)(2)–1, 48.6416(b)(2)–2, 48.6416(b)(2)–3 and 48.6416(b)(2)–4 are added immediately after § 48.6416(b)(1)–4.

§ 48.6416(b)(2)–1 Certain exportations, uses, sales, or resales causing overpayments of tax.

In the case of any payment of tax under section 4041 (a)(1) or (a)(2) (diesel fuel and special fuels tax) or under chapter 32 (manufacturers tax) that is determined to be an overpayment by reason of certain exportations, uses, sales, or resales described in section 6416(b)(2) and § 48.6416(b)(2)–2, the person who paid the tax may file a claim for refund of the overpayment or, in the case of overpayments under chapter 32, may claim credit for the overpayment on

any return of tax under this subpart which the person subsequently files. However, under the circumstances described in section 6416(c) and § 48.6416(e)–1, the overpayments under chapter 32 may be refunded to an exporter or shipper. In the case of overpayments of tax under section 4041 resulting from certain nontaxable uses of tax-paid fuel after June 30, 1970, see also section 6427 and the regulations thereunder. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and §§ 48.6416(b)(2)–3 and 48.6416(b)(2)–4. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

§ 48.6416(b)(2)–2 Exportations, uses, sales, and resales included.

(a) *In general.* The payment of tax imposed by section 4041 (a)(1) or (a)(2), or by chapter 32, as the case may be, on the sale of any article, other than coal taxable under section 4121, will be considered to be an overpayment by reason of any exportation, use, sale, or resale described in any one of paragraphs (b) to (o), inclusive, of this section. This section applies only in those cases where the exportation, use, sale, or resale (or any combination thereof) referred to in any one or more of these paragraphs occurs before any other use. If any article is sold or resold for a use described in any one of these paragraphs and is not in fact so used, the paragraph is treated in all respects as inapplicable.

(b) *Exportation of tax-paid articles.* Subject to the limitation in section 6416(g) and § 48.6416(g)–1 (applying to articles subject to the tax imposed by section 4061(a) prior to April 1, 1983), a payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(A) if the article or fuel is by any person exported to a foreign country or shipped to a possession of the United States. Except in the case of articles subject to the tax imposed by section 4061(a), prior to April 1, 1983, it is immaterial for purposes of this paragraph (b), whether the person who made the taxable sale had knowledge at the time of the sale that the article or fuel was being purchased for export to a foreign country or shipment to a possession of the United States. See § 48.6416(e)–1 for the circumstances under which a claim for refund by reason of the exportation of an article may be claimed by the exporter or shipper, rather than by the person who paid the tax. For definition of the term "possession of the United States", see § 48.0–2(a)(11).

(c) *Supplies for vessels or aircraft.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(B) if the article or fuel is used by any person, or is sold by any person for use by the purchaser, as supplies for vessels or aircraft.

The term "supplies for vessels or aircraft", as used in this paragraph, has the same meaning as when used in sections 4041(g), 4221(a)(3), 4221(d)(3), and 4221(e)(1), and the regulations thereunder.

(d) *Use by State or local government.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(C) if the article of fuel is sold by any person to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia. For provisions relating to tax-free sales to a State, any political subdivision thereof, or the District of Columbia, see section 4221(a)(4) and the regulations thereunder.

(e) *Use by nonprofit educational organization.* A payment of tax under chapter 32 on the sale of any article, or under section 4041 (a)(1) or (a)(2) on the sale of diesel fuel or special motor fuel, will be considered to be an overpayment under section 6416(b)(2)(D) if the article or fuel is sold by any person to a nonprofit educational organization for its exclusive use. The term "nonprofit educational organization", as used in this paragraph (e), has the same meaning as when used in section 4221 (a)(5) or (d)(5), whichever applies, and the regulations thereunder.

(f) *Tax-paid tires or inner tubes resold for use in further manufacture.* A payment of tax under section 4071 on the sale of a tire or, prior to January 1, 1984, on the sale of an inner tube will be considered to be an overpayment under section 6416(b)(2)(E) if—

(1) The tire or inner tube is, after the original sale of the article by the manufacturer, resold by any person to another manufacturer;

(2) The other manufacturer sells the tire or inner tube on or in connection with, or with the sale of, any other article manufactured or produced by the other manufacturer; and

(3) That other article is by any person either—

(i) Exported to a foreign country or to a possession of the United States,

(ii) Sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia,

(iii) Sold to a nonprofit educational organization for its exclusive use, or

(iv) Used or sold for use as supplies for vessels or aircraft.

The overpayment described in this paragraph (f) is to be distinguished from the overpayment described in section 6416(b)(3)(C) prior to amendment by the Highway Revenue Act of 1982 and section 6416(b)(3) as amended by the Highway Revenue Act of 1982, and § 48.6416(b)(3)–2 (d) in that the overpayment here described arises from a "resale" for the use described in this paragraph, while the section 6416(b)(3)(C) overpayment arises from the "use" of tires or inner tubes in the manufacture of other articles by a subsequent manufacturer who purchases tax-paid tires or tubes and disposes of finished articles on the basis of one of the exemptions set forth in section 6416(B)(3)(C). A manufacturer claiming a credit or refund under this paragraph (f) must have substantially the same information available in support of the claim as is required under § 48.4221–7(c)(2) in support of exempt sales of tires or inner tubes under the provisions of section 4221(e)(2), except that none of the parties involved need be registered under section 4222.

(g) *Parts or accessories used on farm equipment.* A payment of tax under section 4061(b) prior to January 7, 1983 on the sale of parts or accessories (other than spark plugs and storage batteries) will be considered to be an overpayment under section 6416(b)(2)(F) if the parts or accessories are used by any person, or are sold by any person for use by the purchaser, as repair parts, replacement parts or accessories for farm equipment. The term "farm equipment," as used in this paragraph (g), does not include any article taxable under section 4061(a)(1) (relating to trucks, buses, tractors, etc.). The term "parts or accessories," as used in this paragraph (g), has the same meaning as in section 4061(b) and the regulations thereunder. This paragraph (g) does not apply to an overpayment of tax arising by reason of section 6416(b)(3) and § 48.6416(b)(3)–1, relating to articles purchased tax paid from a manufacturer by a subsequent

manufacturer and used by the subsequent manufacturer in further manufacture of a taxable or nontaxable article.

(h) *Tread rubber used for certain purposes.* All references in this paragraph to sections 4071(a)(4), 6416(b)(2)(G) and 4072 and the regulations thereunder, are to the Internal Revenue Code prior to its revision by the Highway Revenue Act of 1982. A payment of tax under section 4071(a)(4) prior to January 1, 1984, on the sale of tread rubber which is used by any person, or which is sold by any person for use by the purchaser, otherwise than in the recapping or retreading or tires of the type used on highway vehicles, will be considered to be an overpayment under section 6416(b)(2)(G). If the tread rubber is used in the recapping or retreading of tires, the type of vehicle on which the recapped or retreaded tire is be used and the actual or intended use of the recapped or retreaded tire are immaterial in determining whether an overpayment arises under this paragraph (h). The controlling factor is whether the tire resulting from the recapping or retreading is of a type which is not used on a highway vehicle. The term "tread rubber," "tires of the type used on highway vehicles", and "tires", as used in this paragraph (h) have the same meaning as in section 4072 and the regulations thereunder. This paragraph (h) does not apply to an overpayment arising by reason of section 6416(b)(3) and § 48.6416(b)(3)–1, relating to articles purchased tax paid from a manufacturer by a subsequent manufacturer and used by the subsequent manufacturer in further manufacture of another article taxable under chapter 32.

(i) *Gasoline used in production of special fuels.* A payment of tax under section 4081 on the sale of gasoline will be considered to be an overpayment under section 6416(b)(2)(H) (section 6416(b)(2)(F) after March 31, 1983), if the gasoline is used by any person, or sold by any person for use by the purchaser, in the production of a special fuel. The term "special fuel", as used in this paragraph (i), has the same meaning as in section 4041 and the regulations thereunder.

(j) *Articles sold for use as trash containers.* All references in this paragraph are to the Internal Revenue Code of 1954 prior to its revision by the Highway Revenue Act of 1954. See section 4053 (6) of the Internal Revenue Code of 1954 as amended by the Highway Revenue Act of 1982 for provisions relating to articles designed to be used as trash containers. A payment of tax under section 4061 (a) on a sale prior to April 1, 1983, of any box, container, receptacle, bin, or other similar article will be considered to be an overpayment under section 6416(b)(2)(J) if the article is—

(1) Sold by any person to any purchaser for use by the purchaser as a trash container,

(2) Not designed for the transportation of freight other than trash, and

(3) Not designed to be permanently mounted on, or permanently affixed to, a chassis or body of an automobile, truck, truck trailer, or truck semitrailer.

In addition, a payment of tax under section 4061(b) on parts or accessories for any such box, container, receptacle, etc., will be considered to be an overpayment under section 6416(b)(2)(J) if the part or accessory is designed primarily for use on, in connection with, or as a component part of, the box, container, receptacle, etc., and is installed on the box, container, receptacle, etc. at the time of sale or is sold with the article as an integral part of the container system. This paragraph (j) does not apply to parts or accessories sold for use as replacement parts or accessories, even if those parts or accessories are sold in connection with the sale of a box, container, receptacle, etc. Any term used in this paragraph (j) that is also used in section 4063(a)(7) or the regulations thereunder has the same meaning as in that section and the regulations thereunder.

(k) *Parts or accessories sold in connection with light-duty trucks.* All references in this paragraph are to the Internal Revenue Code of 1954 prior to its revision by the Highway Revenue Act of 1982. A payment of tax under section 4061(b) on the sale of parts or accessories will be considered to be an overpayment under section 6416(b)(2)(K) if—

(1) The parts or accessories are sold on or in connection with the first retail sale of a light-duty truck as described in section 4061(a)(2) and the regulations thereunder, and

(2) The credit or refund of tax is not available under any other provisions of law.

The term "parts or accessories," as used in this paragraph (k), has the same meaning as in section 4061(b) and the regulations thereunder. This paragraph (k) does not apply to an overpayment of tax arising by reason of section 6416(b)(2) and § 48.6416(b)(3)–1, relating to articles purchased tax-paid from a manufacturer by a subsequent manufacturer and used by the subsequent manufacturer in further manufacture of a taxable or nontaxable article.

§ 48.6416(b)(2)–3 Supporting evidence required in case of manufacturers tax involving exportations, uses, sales, or resales.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2, of tax under chapter 32 shall be allowed unless the person who paid the tax submits with the claim the evidence required by paragraph (b)(2) of § 48.6416(a)–3 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(2) and § 48.6416(b)(2)–1,

(2) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the article or articles and the dates of payment, and

(4) In the case of an overpayment determined under section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 in respect of an article which was taxable prior to April 1, 1983 under section 4061(a), indicating that, pursuant to section 6416(g), the person claiming a credit or refund possessed at the time that person shipped the article or at the time title to the article passed to the vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States, or

(5) In the case of any overpayment other than an overpayment determined under section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)–2, indicating that the person claiming a credit or refund possesses evidence (as set forth in paragraph (b)(1) of this section) that the article has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2, or

(6) In the case of an overpayment determined under section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)–2, relating to a tax-paid tire or inner tube sold on or in connection with, or with the sale of, a second article that has been manufactured, indicating that the person claiming credit or refund possesses (i) evidence (as set forth in paragraph (b)(2) of this section) that the second article has been exported, or has

been used or sold as provided in § 48.6416(b)(2)–2(f), and (ii) a statement, executed and signed by the ultimate purchaser of the tire or inner tube, that the ultimate purchaser purchased the tire or inner tube from a person other than the person who paid the tax on the sale of the tire or inner tube.

(b) *Evidence required to be in possession of claimant*—(1) *Evidence required under paragraph (a)(5)*—(i) *In general.* The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(5) of this section, must, in the case of an article exported, consist of proof of exportation in the form prescribed in the regulations under section 4221 or must, in the case of other articles sold tax-paid by that person, consist of a certificate, executed and signed by the ultimate purchaser of the article, in the form prescribed in paragraph (b)(1)(ii) of this section. However, if the article to which the claim relates has passed through a chain of sales from the person who paid the tax to the ultimate purchaser, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the article, in the form provided in paragraph (b)(1)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.*

(A) The certificate executed and signed by the ultimate purchaser of the article to which the claim relates must identify the article, both as to nature and quantity; show the address of the ultimate purchaser of the article, and the name and address of the ultimate vendor of the article; and describe the use actually made of the article in sufficient detail to establish that credit or refund is due, except that the use to be made of the article must be described in lieu of actual use if the claim is made by reason of the sale or resale of an article for a specified use which gives rise to the overpayment.

(B) If the certificate sets forth the use to be made of any article, rather than its actual use, it must show that the ultimate purchaser has agreed to notify the claimant if the article is not in fact used as specified in the certificate.

(C) The certificate must also contain a statement that the ultimate purchaser understands that the ultimate purchaser and any other party may, for fraudulent use of the certificate, be subject under section 7201 to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(D) A purchase order will be acceptable in lieu of a separate certificate of the ultimate purchaser if it contains all the information required by this paragraph (b)(1)(ii).

(iii) *Certificate of ultimate vendor.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax, as provided in paragraph (a)(5) of this section, may be executed with respect to any one or more overpayments by the person which arose under section 6416(b)(2) and §§ 48.6416(b)(2)–2 by reason of exportations, uses, sales or resales, occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate.

The certificate must be in substantially the following form:

Statement of Ultimate Vendor

(For use in claiming credit or refund of overpayment determined under section 6416(b)(2) (other than section 6416(b)(2)(E)) of the Internal Revenue Code.)

The undersigned or the

_____

(Name of ultimate vendor if other than undersigned) of which the undersigned is (Title), is the ultimate vendor of the article specified below or on the reverse side hereof.

The article was purchased by the ultimate vendor tax-paid and was thereafter exported, used, sold, or resold (as indicated below or on the reverse side hereof).

The ultimate vendor possesses

_____

(Proof of exportation in respect of the article, or a certificate as to use executed by the ultimate purchaser of the article)

The _____

(Proof of exportation or certificate)

(1) is retained by the ultimate vendor, (2) will, upon request, be forwarded to

_____

(Name or person who paid the tax)

at any time within 3 years from the date of this statement for use by that person to establish that credit or refund is due in respect of the article, and (3) will otherwise be held by the ultimate vendor for the required 3-year period.

According to the best knowledge and belief of the undersigned, no statement in respect of the

_____

(Proof of exportation or certificate)

has previously been executed, and the undersigned understands that the fraudulent use of this statement may, under section 7201, subject the undersigned or any other party making such fraudulent use to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

_____

(Signature)

_____

(Address)

_____

(Date)

Vendor's invoice	Articles	Date of resale	Quantity	Exported or use made or to be made (specify)

(2) *Evidence required under paragraph (a)(6).*—(i) *In general.*—The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(6) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221 or must, in other cases, consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (b)(2)(ii) of this section. However, the evidence required to be retained by the person who paid the tax may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form provided in paragraph (b)(2)(iii) of this section, rather than the proof of exportation itself or the certificate of the ultimate purchaser.

(ii) *Certificate of ultimate purchaser.*—The certificate of the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of this section, except that the information must be furnished in respect of the second article, rather than the article to which the claims relates.

(iii) *Certificate of ultimate vendor.*—Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person who paid the tax, as provided in paragraph (a)(6) of this section, may be executed with respect to any one of more overpayments by that person which arose under section 6416(b)(2)(E) and § 48.6416(b)(2)–2 (f) by reason of exportations, uses, sales, or resales of a second article occurring within any period of not more than 12 consecutive calendar quarters, the beginning and ending dates of which are specified in the certificate. The certificate must be in substantially the following form:

STATEMENT Of ULTIMATE VENDOR

(For use in claiming credit or refund of overpayment determined under section 6416 (b)(2)(E), Internal Revenue Code, involving tires or inner tubes sold on or with another article.)

The undersigned or the

_____

(Name of ultimate vendor of second article if other than undersigned)

of which the undersigned is (Title), is the

ultimate vendor of an article, specified below or on the reverse side hereof, on which or with which a tax-paid tire or inner tube was sold.

The ultimate vendor possesses

(Proof of exportation in respect of the article on which or with which the tire or inner tube was sold, or a certificate as to use of the article executed by the ultimate purchaser of the article)

The

(Proof of exportation or certificate) (1) is retained by the ultimate vendor, (2) will, upon request, be forwarded to

(Name of person who paid the tax on the tire or inner tube)

at any time within 3 years from the date of this statement for use in establishing that credit or refund is due in respect of the tire or inner tube, and (3) will otherwise be held by the ultimate vendor for the required 3-year period.

According to the best knowledge and belief of the undersigned, no statement in respect of the

(Proof of exportation or certificate)

has previously been executed, and the undersigned understands that the fraudulent use of this statement may, under section 7201, subject the undersigned or any other party making such fraudulent use to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

(Signature)

(Address)

(Date)

Tires or inner tubes (specify and state quantity)	Vendor's invoice on second article	Second article (specify and state quantity)	Date of sale of second article	Exported or use made of or to be made (specify in respect of second article)

(3) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required under this section to be retained by the person claiming the credit or refund. In this regard, see § 48.6416(a)–3(b)(2).

§ 48.6416(b)(2)–4 Supporting evidence required in case of special fuels tax involving exportations, uses, sales, or resales of special fuels.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2 of tax under section 4041 (a)(1) or (b)(2) shall be allowed unless the person who paid the tax submits with the claim the evidence required by paragraph (b)(2) of § 48.6416(a)–2 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, sales, or resales on which the claim is based and which give rise to right of credit or refund under section 6416(b)(2) and § 48.6416(b)(2)–1,

(2) Identifying the fuel, both as to nature and quantity, in respect of which credit or refund is claimed,

(3) Showing the amount of tax paid in respect of the fuel and the dates of payment, and

(4) Indicating that the fuel has been exported, or has been used, sold, or resold in a manner or for a purpose which gives rise to an overpayment within the meaning of section 6416(b)(2) and § 48.6416(b)(2)–2.

(b) *Evidence required to be in possession of claimant.* (1) The evidence required to be retained by the person who paid the tax, as provided in paragraph (a)(4) of this section, must, in the case of fuel exported, consist of proof of exportation or must, in the case of other fuel sold tax-paid by that person, consist of a certificate, executed and signed by the person who purchased the fuel in a resale or for the use which gave rise to the overpayment.

(2) The certificate must identify the fuel, both as to nature and quantity, in respect of which credit or refund is claimed; show the address of the purchaser; show the name and address of the person from whom the fuel was purchased and the date or dates on which the fuel was purchased; and show that the fuel was resold and the date of the resale.

(3) If the claim is not based on resale of the fuel, the certificate must describe the use actually made of the fuel in sufficient detail to establish that credit or refund is due. However, the use to be made of the fuel must be described in lieu of actual use if the claim is made by reason of the sale of the fuel for a specified use which gives rise to an overpayment under § 48.6416(b)(2)–2.

(4) If the certificate sets forth the use to be made of the fuel, rather than its actual use, it must show that the purchaser has agreed to notify the claimant if the fuel is not in fact used as specified in the certificate.

(5) The certificate must also contain a statement that the purchaser has not previously executed a certificate in respect of the fuel and understands that any party may, for fraudulent use of the certificate, be subject under section 7201 to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both, together with the costs of prosecution.

Par. 25. Section 48.6416(b)–3 is removed and the following new §§ 48.6416(b)(3)–1, 48.6416(b)(3)–2, and 48.6416(b)(3)–3 are added immediately after 48.6416(b)(2)–4.

§ 48.6416(b)(3)–1 Tax-paid articles used for further manufacture and causing overpayments of tax.

In the case of any payment of tax under chapter 32 that is determined to be an overpayment under section 6416(b)(3) and § 48.6416(b)(3)–2 by reason of the sale of an article (other than coal taxable under section 4121), directly or indirectly, by the manufacturer of the article to a subsequent manufacturer who uses the article in further manufacture of a second article or who sells the article with, or as a part of, the second article manufactured or produced by the subsequent manufacturer, the subsequent manufacturer may file claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart subsequently filed. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and §§ 48.6416(a)–3 and 48.6416(b)(3)–3. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

§ 48.6416(b)(3)–2 Further manufacture included.

(a) *In general.* The payment of tax imposed by chapter 32 on the sale of any article (other than coal taxable under

section 4121) by a manufacturer of the article will be considered to be an overpayment by reason of any use in further manufacture, or sale as part of a second manufactured article, described in any one of paragraphs (b) through (f) of this section. This section applies in those cases where the exportation, use, or sale (or any combination of those activities) referred to in any one or more of those paragraphs occurs before any other use. For provisions relating to overpayments arising by reason of resales of tax-paid articles for use in further manufacture as provided in this section, see section 6416(b)(2)(E) and paragraph (f) of § 48.6416(b)(2)–2.

(b) *Use of tax-paid articles in further manufacture described in section 6416(b)(3)(A).* A payment of tax under chapter 32 on the sale of any article (other than coal taxable under section 4121), directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(A) if the article is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer which is—

(1) Taxable under chapter 32, or

(2) An automobile bus chassis or an automobile bus body.

For this purpose it is immaterial whether the second article is sold or otherwise disposed of, or if sold, whether the sale is a taxable sale. Any article to which this paragraph (b) applies which would have been used in the manufacture or production of a second article, except for the fact that it was broken or rendered useless in the process of manufacturing or producing the second article, will be considered to have been used as a component part of the second article. This paragraph (b) does not apply to articles sold and used as provided in any of paragraphs (c) through (f) of this section.

(c) *Use of truck, bus, etc., parts or accessories.* A payment of tax under section 4061 (b) on the sale prior to January 7, 1983, of any truck, bus, etc., part or accessory, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(B) if the part or accessory is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the subsequent manufacturer. For this purpose it is immaterial whether the second article is or is not taxable under chapter 32. Any article to which this paragraph (c) applies which would have been used in the manufacture or production of a second article, except for the fact that it was broken or rendered useless in the process of manufacturing or producing the second article, will be considered to have been used as a component part of the second article.

(d) *Tax-paid tires or inner tubes used in further manufacture.* (1) A payment of tax under section 4071 on the sale prior to January 1, 1984, of a tire or inner tube, directly or indirectly, by the manufacturer of the article to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(C) if the subsequent manufacturer sells the tire or inner tube on or in connection with, or with the sale of, any other article manufactured or produced by the subsequent manufacturer and if the other article is—

(i) An automobile bus chassis or automobile bus body, or

(ii) By any person (A) exported to a foreign country or to a possession of the United States, (B) sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia, (C) sold to a nonprofit educational organization for its exclusive use, or (D) used or sold for use as supplies to vessels or aircraft.

For tax-paid tires used in further manufacture after December 31, 1983, see section 6416(b)(3)(A) and the regulations thereunder.

(2) The overpayment in this paragraph (d) is to be distinguished from that overpayment described in section 6416(b)(2)(E) and § 48.6416(b)(2)–2(f) in that this overpayment arises from the "use" described in this paragraph, whereas the overpayment under section 6416(b)(2)(E) arises from the "resale" of tax-paid tires or inner tubes by any person to a subsequent manufacturer who disposes of the articles on or in connection with, or with the sale of, a second article manufactured or produced by the subsequent manufacturer which is disposed of on the basis of one of the exemptions set forth in section 6416(b)(3)(C).

(3) If the second article is exported or shipped as provided in this paragraph (d), it is immaterial whether the subsequent manufacturer sold the article with the knowledge that it would be exported or shipped.

(4) An overpayment arises under paragraph (d)(1) of this section only if the tire or inner tube constitutes a part of, or is associated with, the second article at the time the second article is exported, shipped, sold, used, or sold for use, as prescribed in this paragraph.

(5) For definition of certain terms used in this paragraph, see section 4221 and the regulations thereunder.

(6) For provisions relating to overpayments arising by reason of tires or inner tubes sold tax-paid by the manufacturer of the same, on or in connection with, or with the sale of, any article manufactured or produced by that manufacturer and exported, sold, or used or sold for use, as provided in this paragraph (d), see section 6416(b)(4) and § 48.6416(b)(4)–1.

(7) For provisions relating to credit allowable in respect of tires and inner tubes sold on or in connection with, or with the sale of, another article taxable under chapter 32, prior to January 1, 1984, see section 6416(c) and § 48.6416(c)–1.

(8) If a second article referred to in paragraph (d)(1) of this section is sold for a use described in that paragraph and is not so used, this paragraph (d) is in all respects inapplicable.

(e) *Use of bicycle tires or tubes in further manufacture.* A payment of tax under section 4071 on the sale, prior to January 1, 1984, of a bicycle or tricycle tire or inner tube, directly or indirectly, by the manufacturer of the same to a subsequent manufacturer will be considered to be an overpayment under section 6416(b)(3)(E) if the tire or tube is used by the subsequent manufacturer as material in the manufacture or production of, or as a component part of, a bicycle or tricycle manufactured or produced by the subsequent manufacturer which is not a rebuilt or reconditioned bicycle or tricycle. For definition of the term "bicycle tire", see section 4221(e)(4)(B) and the regulations thereunder.

(f) *Use of gasoline in further manufacture.* A payment of tax under section 4061 on the sale of gasoline, directly or indirectly, by the manufacturer of the same to a subsequent manufacturer will be considered an overpayment under section 6416(b)(3)(B) if the gasoline is used for nonfuel purposes by the subsequent manufacturer as a material in the manufacture or production of any other article manufactured or produced by the subsequent manufacturer. For this purpose it is immaterial whether the other article is or is not taxable under chapter 32. For provisions relating to the use of gasoline for nonfuel purposes, see section 4221 and the regulations thereunder.

§ 48.6416(b)(3)–3 Supporting evidence required in case of tax-paid articles used for further manufacture.

(a) *Evidence to be submitted by claimant.* No claim for credit or refund of an overpayment, within the meaning of section 6416(b)(3) and § 48.6416(b)(3)–2 shall be allowed unless the subsequent manufacturer submits with the claim the evidence required by § 48.6416(a)–3 and a statement, supported by sufficient available evidence—

(1) Showing the amount claimed in respect of each category of exportations, uses, or sales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(3) and § 48.6416(b)(3)–1,

(2) Showing the name and address of the manufacturer, producer, or importer of the article in respect of which credit or refund is claimed,

(3) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(4) Showing the amount of tax paid in respect of the article by the manufacturer or producer of the article and the date of payment,

(5) Indicating that the article was used by the claimant as material in the manufacture or production of, or as a component part of, a second article manufactured or produced by the manufacturer or was sold on or in connection with, or with the sale of, a second article manufactured or produced by the manufacturer,

(6) Identifying the second article, both as to nature and quantity, and

(7) In the case of an overpayment determined under section 6416(b)(3)(C) as it existed prior to January 1, 1984, and paragraph (d)(1) of § 48.6416(b)(3)–2 in respect of a tire or inner tube taxable under section 4071, indicating that the manufacturer has evidence available (as set forth in paragraph (b) of this section) that the second article is an automobile bus chassis or automobile bus body, or has been exported, used, or sold as provided in section 6416(b)(3)(C)(ii) and § 48.6416(b)(3)–2(d)(1)(ii).

(b) *Evidence required to be in possession of claimant.*—(1) *In general.*—The evidence required to be retained by the person claiming credit or refund, as provided in paragraph (a)(7) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221, or must, in other cases (except when the second article is an automobile bus chassis or automobile bus body), consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (b)(2) of this section. However, if the second article has passed through a chain of sales from the manufacturer of the second article to the ultimate purchaser of the second article, the evidence may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form provided in paragraph (b)(3) of this section, rather than the proof of exportation itself of the second article or the certificate of the ultimate purchaser of the second article.

(2) *Certificate of ultimate purchaser of second article.* The certificate executed and signed by the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of § 48.6416(b)(2)–3, except that the information must be furnished in respect of the second article, rather than the article to which the claim relates.

(3) *Certificate of ultimate vendor of second article.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person claiming credit or refund must be executed in the same form and manner as that provided in paragraph (b)(2)(iii) and § 48.6416(b)(2)–3.

(4) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the credit or refund, a statement to that effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required to be retained by the person claiming the credit or refund. In this regard, see §48.6416(a)–3(b)(2).

Par. 26. Section 48.6416(b)–4 is removed and the following new § 48.6416(b)(4)–1 is added immediately after § 48.6416(b)(3)–3.

§ 48.6416(b)(4)–1 Tax-paid tires or inner tubes used for further manufacture.

(a) *In general.* In the case of any payment of tax under section 4071 on the sale of tires or prior to January 1, 1984, inner tubes that is determined to be an overpayment under section 6416(b)(4) and paragraph (b) of this section by reason of any exportation, use, or sale described in paragraph (b) of this section, the person who paid the tax may file a claim for refund of the overpayment or may claim a credit for the overpayment on any return of tax under this subpart subsequently filed. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administrations) and paragraph (c) of this section. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

(b) *Conditions causing overpayment.* (1) The payment of tax under section 4071 on the sale of a tire or inner tube by the manufacturer of the article will be considered to be an overpayment under section 6416(b)(4) if the tire or inner tube is sold by that manufacturer on or in connection with, or with the sale of, any other article manufactured or produced by that manufacturer and such other article—

(i) Is an automobile bus chassis or an automobile bus body, or

(ii) Is by any person (A) exported to a foreign country or shipped to a possession of the United States, (B) sold to a State, any political subdivision thereof, or the District of Columbia for the exclusive use of a State, any political subdivision thereof, or the District of Columbia, (C) sold to a nonprofit educational organization for its exclusive use, or (D) used or sold for use as supplies for vessels or aircraft.

(2) If the second article is exported or shipped as provided in this paragraph (b), it is immaterial whether the manufacturer sold the article with the knowledge that it would be exported or shipped.

(3) An overpayment arises under paragraph (b)(1) of this section only if the tire or inner tube constitutes a part of, or is associated with, the second article at the time the second article is exported, shipped, sold, used, or sold for use, as prescribed in this paragraph.

(4) Paragraph (b)(1) of this section applies only in those cases where the exportation, use, or sale (or any combination thereof) occurs before any other use.

(5) For definition of certain terms used in this paragraph (b), see section 4221 and the regulations thereunder.

(6) For provisions relating to overpayments arising by reason of the tax-paid sale of tires or inner tubes by the manufacturer of the same and their resale by any person to another manufacturer for use as provided in this paragraph, see section 6416(b)(2)(E) and § 48.6416(b)(2)–2(f).

(7) For provisions relating to overpayments arising by reason of the tax-paid sale of tires or inner tubes, directly or indirectly, by the manufacturer of the same, to a subsequent manufacturer who uses them as provided in this paragraph (b), see section 6416(b)(3)(C) as it existed prior to January 1, 1984, and section 6416

(b)(3) as amended by the Highway Revenue Act of 1982 and § 48.6416(b)(3)–2(d).

(8) For provisions relating to the credit allowable in respect of tires or inner tubes sold on or in connection with, or with the sale of, another article taxable under chapter 32, see section 6416(c) as it existed prior to January 1, 1984, and § 48.6416(c)–1.

(9) If a second article referred to in paragraph (b)(1)(ii) of this section is sold for a use described in that paragraph and is not so used, this paragraph (b) is in all respects inapplicable.

(c) *Evidence to be submitted by claimant.* (1) No claim for credit or refund of an overpayment prior to January 1, 1984, within the meaning of section 6416(b)(4) and paragraph (b) of this section, shall be allowed unless the person who paid the tax submits with the claim the evidence required by § 48.6416(a)–3(b)(2) and a statement, supported by sufficient available evidence—

(i) Showing the amount claimed in respect of each category of exportations, uses, or sales on which the claim is based and which give rise to a right of credit or refund under section 6416(b)(4) and paragraph (a) of this section,

(ii) Indicating that the person claiming the credit or refund is the manufacturer of the articles in respect of which credit or refund is claimed,

(iii) Identifying the article, both as to nature and quantity, in respect of which credit or refund is claimed,

(iv) Showing the amount of tax paid in respect of the article and the date of payment of the tax,

(v) Indicating that the person claiming the credit or refund sold the article on or in connection with, or with the sale of, or used the article as a component part of, a second article manufactured or produced by that person,

(vi) Identifying the second article, both as to nature and quantity, and

(vii) Indicating that the person claiming the credit or refund has evidence available (as set forth in paragraph (b) of this section) that the second article is an automobile bus chassis or body, or has been exported, used, or sold as provided in section 6416(b)(4)(B)(ii) and paragraph (b)(1)(ii) of this section.

(2) No claim for credit or refund of an overpayment after December 31, 1983, within the meaning of section 6416 (b)(4) and paragraph (b) of this section shall be allowed unless the person who paid the tax submits with the claim a statement supported by the evidence listed in paragraph (c)(1)(i) through (vii) of this section.

(d) *Evidence required to be in possession of claimant.*—(1) *In general.*—The evidence required to be retained by the person claiming credit or refund, as provided in paragraph (c)(1)(vii) of this section, must, in the case of an exportation of the second article, consist of proof of exportation of the second article in the form prescribed in the regulations under section 4221 or must, in other cases (except when the second article is an automobile bus chassis or automobile body) consist of a certificate, executed and signed by the ultimate purchaser of the second article, in the form prescribed in paragraph (d)(2) of this section. However, if the second article has passed through a chain of sales from the manufacturer of the second article to the ultimate purchaser of the second article, the evidence may consist of a certificate, executed and signed by the ultimate vendor of the second article, in the form prescribed in paragraph (d)(3) of this section, rather than the proof of exportation itself of the second article or the certificate of the ultimate purchaser of the second article.

(2) *Certificate of ultimate purchaser of second article.* The certificate executed and signed by the ultimate purchaser of the second article must contain the same information as that required in paragraph (b)(1)(ii) of § 48.6416(b)(2)–3, except that the information shall be furnished in respect of the second article, rather than the article to which the claim relates.

(3) *Certificate of ultimate vendor of second article.* Any certificate executed and signed by an ultimate vendor as evidence to be retained by the person claiming credit or refund must be executed in the same form and manner as that provided in paragraph (b)(2)(iii) of § 48.6416(b)(2)–3.

(4) *Repayment or consent of ultimate vendor.* If the person claiming credit or refund of an overpayment to which this section applies, has repaid, or agreed to repay, the amount of the overpayment to the ultimate vendor or if the ultimate vendor consents to the allowance of the refund or credit, a statement to the effect, signed by the ultimate vendor, must be shown on, or made a part of, the evidence required to be retained by the person claiming refund or credit. In this regard, see § 48.6416(a)–3(b)(2).

Par. 27. Section 48.6416(b)–5 is removed and the following new § 48.6416(b)(5)–1 is added immediately after § 48.6416(b)(4)–1.

§ 48.6416(b)(5)–1 Return of installment accounts causing overpayments of tax.

(a) *In general.* In the case of any payment of tax under section 4216(d)(1) in respect of the sale of any installment account that is determined to be an overpayment under section 6416(b)(5) and paragraph (b) of this section upon return of the installment account, the person who paid the tax may file a claim for refund of the overpayment or may claim credit for the overpayment on any return of tax under this subpart which that person subsequently files. No interest shall be paid on any credit or refund allowed under this section. For provisions relating to the evidence required in support of a claim for credit or refund under this section, see § 301.6402–2 of this chapter (Regulations on Procedure and Administration) and paragraph (c) of this section. For provisions authorizing the taking of a credit in lieu of filing a claim for refund, see section 6416(d) and § 48.6416(f)–1.

(b) *Overpayment of tax allocable to repaid consideration.* The payment of tax imposed by section 4216(d)(1) on the sale of an installment account by the manufacturer will be considered to be an overpayment under section 6416(b)(5) to the extent of the tax allocable to any consideration repaid or credited to the purchaser of the installment account upon the return of the account to the manufacturer pursuant to the agreement under which the account originally was sold, if the readjustment of the consideration occurs pursuant to the provisions of the agreement. The tax allocable to the repaid or credited consideration is the amount which bears the same ratio to the total tax paid under section 4216(d)(1) with respect to the installment account as the amount of consideration repaid or credited to the purchaser bears to the total consideration for which the account was sold. This paragraph (b) does not apply where an installment account is originally sold pursuant to the order of, or subject to the approval of, a court of competent jurisdiction in a bankruptcy or insolvency proceeding.

(c) *Evidence to be submitted by claimant.* No claim for credit of refund of an overpayment, within the meaning of section 6416(b)(5) and paragraph (b) of this section, of tax under section 4216(d)(1) shall be allowed unless the person who paid the tax submits with the claim a statement supported by sufficient available evidence, indicating—

(1) The name and address of the person to whom the installment account was sold,

(2) The amount of tax due under section 4216(d)(1) by reason of the sale of the installment account, the amount of the tax paid under section 4216(d)(1)

with respect to the sale, and the date of payment.

(3) The amount for which the installment account was sold,

(4) The amount which was repaid or credited to the purchaser of the account by reason of the return of the account to the person claiming the credit or refund, and

(5)(i) The fact that the amount repaid or credited to the purchaser of the account was so repaid or credited pursuant to the agreement under which the account was sold, and

(ii) The fact that the account was returned to the manufacturer pursuant to that agreement.

Par. 28. Section 48.6416(c)–1 is revised to read as follows:

§ 48.6416(c)–1 Credit for tax paid on tires or, prior to January 1, 1984, inner tubes.

(a) *Allowance of credit against tax on sale of taxable article.* If tax has been paid under section 4071 on the sale, or under section 4218 on the use, of a tire or inner tube, and the manufacturer of a another article taxable under chapter 32 sells the tire or inner tube on or in connection with the sale of that other article, a credit in respect of the tire or inner tube is allowable under section 6416(c) against the tax imposed on the sale of that other article. The amount of the credit is to be determined as provided in paragraph (b) or (c) of this section.

(b) *Tires or tubes purchased by manufacturer of the other article.* If the manufacturer of the other article purchased the tire or inner tube tax-paid, the amount of the credit shall be determined by applying to the purchase price of the tire or inner tube the percentage rate of tax applicable to the sale of the other article. For this purpose, the purchase price shall be determined by including any tax passed on to the manufacturer and, in the case of a tire, by excluding any part of the price attributable to the metal rim or rim base. For example, if the selling price of an automobile truck is $24,000, tax equivalent to 10 percent of the price (*i.e.*, $2,400) is imposed under section 4601(a) on the sale (before April 1, 1983) of the automobile truck. If the tires or inner tubes sold on or in connection with the automobile truck are purchased by the manufacturer of the automobile truck for $1,500 (computed as provided in this paragraph) a credit of $150 (10 percent of $1,500) is allowable against the tax imposed on the sale of the automobile truck.

(c) *Tires or tubes manufactured by manufacturer or other articles.* If the manufacturer of the other article is also the manufacturer of the tire or inner tube and incurs tax liability under section 4218 on the use by that manufacturer of the tire or inner tube, the amount of the credit shall be determined by applying to the fair market price of the tire or inner tube, the percentage rate of tax applicable to the sale of the other article. For this purpose, the fair market price of the tire or inner tube shall be the price at which the same or similar tires or inner tubes are sold by manufacturers of tires or inner tubes in the ordinary course of trade, as determined by the Commissioner, and by excluding, in the case of a tire, any part of the price attributable to the metal rim or rim base. The determination of the Commissioner shall be made in the same manner as determinations made under section 4218.

(d) *Other applicable rules.* (1) For purposes of this section, the term "manufacturer" includes the original manufacturer of the other article and any succeeding purchaser of the article who further manufactures the article so as to become liable as a manufacturer of an article taxable under chapter 32. Therefore, the credit provided by section 6416(c) and this section is available both to the original manufacturer of the other article and also to every succeeding purchaser of that article who sells that article on or in connection with, or with the sale of, another article taxable under chapter 32.

(2) No interest shall be paid on any credit allowed under this section.

(3) If credit is not claimed under this section against the tax applicable to the sale of the other article, the manufacturer of the other article may claim refund of an amount equivalent to the credit or may claim credit on any return of tax under this subpart subsequently filed.

Par. 29. Section 48.6416(e)–1 is revised to read as follows.

§ 48.6416(e)–1 Refund to exporter or shipper.

(a) *In general.* Any payment of tax imposed by sections 4041, 4051 or chapter 32 that is determined to be an overpayment within the meaning of section 6416(b)(2) (A) or (E), section 6416(b)(3)(C) (prior to January 7, 1983), or section 6416(b)(4), and the regulations thereunder, by reason of the exportation of any article may be refunded to the exporter or shipper of the article pursuant to section 6416(c) of this section, if—

(1) The exporter or shipper files a claim for refund of the overpayment, and

(2) The person who paid the tax waives the right to claim credit or refund of the tax.

No interest shall be paid on any refund allowed under this section. For provisions relating to the evidence required in support of a claim under this paragraph (a), see § 301.6402 of this chapter (Regulations on Procedure and Administration) and paragraph (b) of this section.

(b) *Supporting evidence required.* No claim for refund of any overpayment of tax to which this section applies shall be allowed unless the exporter or shipper submits with that claim proof of exportation in the form prescribed by the regulations under section 4221, and a statement, signed by the person who paid the tax, showing—

(1) That the person who paid the tax waives the right to claim credit or refund of the tax,

(2) In the case of an overpayment determined under section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 in respect of a truck, bus, tractor, etc., taxable under section 4061(a), that, pursuant to section 6416(g), the person who paid the tax possessed at the time that person shipped the article or at the time title to the article passed to that perons's vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States.

(3) The amount of tax paid on the sale of the article and the date of payment, and

(4) The internal revenue service office to which the tax was paid.

Par. 30. Section 48.6416(f)–1 is revised to read as follows:

§ 48.6416(f)–1 Credit on returns.

Any person entitled to claim refund of any overpayment of tax imposed by section 4041, 4042, 4051 or chapter 32 may, in lieu of claiming refund of the overpayment, claim credit for the overpayment on any return of tax under this subpart subsequently filed. Any such credit claimed on a return must be supported by the evidence prescribed in the applicable regulations in this subpart and § 301.6402 of this chapter (Regulations on Procedure and Administration).

Par. 31. Section 48.6416(g)–1 is revised to read as follows:

§ 48.6416(g)–1 Intent to export trucks, buses, tractors, etc.

In the case of any payment of tax imposed by section 4061(a) in respect of the sale prior to April 1, 1983, of a truck, bus, tractor, etc., an overpayment of tax will not be considered to arise by reason of an exportation described in section 6416(b)(2)(A) and paragraph (b) of § 48.6416(b)(2)–2 unless the

manufacturer of the article possessed at the time the article was shipped or at the time title to the article passed to that manufacturer's vendee, whichever is earlier, evidence that the article was to be exported to a foreign country or shipped to a possession of the United States.

Par. 32. Section 48.6416(h)–1 is revised to read as follows:

§ 48.6416(h)–1 Accounting procedures for like articles.

(a) *Identification of manufacturer.* In applying section 6416 and the regulations thereunder, a person who has purchased like articles from various manufacturers may determine the particular manufacturer from whom that person purchased any one of those articles by a first-in-first-out (FIFO) method, by a last-in-first-out (LIFO) method, or by any other consistent method approved by the district director. For the first year for which a person makes a determination under this section, the person may adopt any one of the following methods without securing prior approval by the district director.

(1) FIFO method.

(2) LIFO method.

(3) Any method by which the actual manufacturer of the article is in fact identified.

Any other method of determining the manufacturer of a particular article must be approved by the district director before its adoption. After any method for identifying the manufacturer has been properly adopted, it may not be changed without first securing the consent of the district director.

(b) *Determining amount of tax paid.* In applying section 6416 and the regulations thereunder, if the identity of the manufacturer of any article has been determined by a person pursuant to a method prescribed in paragraph (a) of this section, that manufacturer of the article must determine the tax paid under chapter 32 with respect to that article consistently with the method used in identifying the manufacturer.

Par. 33. Sections 48.6420(a)–1, 48.6420(b)–1, 48.6420(c)–1, 48.6420(d)–1, 48.6420(e)–1, 48.6420(f)–1, 48.6420(g)–1, 48.6420(h)–1, and 140.6420–1 are removed. The following new §§ 48.6420–1, 48.6420–2, 48.6420–3, 48.6420–4, 48.6420–5, 48.6420–6, and 48.6420–7 are added immediately after § 48.6416(h)–1.

§ 48.6420–1 Credits or payments to ultimate purchaser of gasoline used on a farm.

(a) *In general.* If gasoline is used on a farm for farming purposes after June 30, 1965, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the gasoline shall be allowed or made to the ultimate purchaser of the gasoline in an amount determined by multiplying (1) the number of gallons of gasoline so used by (2) the rate of tax on gasoline under section 4081 that applied on the date the gasoline was purchased by the ultimate purchaser. No interest shall be paid on any payment, allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 34(a), relating to credit for certain uses of gasoline and special fuels, and lubricating oil used prior to January 7, 1983). See § 48.6420–2 for the time within which a claim for credit or payment must be made. See section 4081 and the regulations thereunder for the rates of tax on gasoline. See § 48.6420–2 for meaning of the terms "Used on a farm for farming purposes," "farm," "gasoline," "ultimate purchaser," and "taxable year."

(b) *Allowance of income tax credit in lieu of payment.* With respect to persons subject to income tax, repayment of the tax paid under section 4081 on gasoline used on a farm for farming purposes may be obtained only by claiming a credit for the amount of this tax against the income tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes if section 6420(g)(1) and paragraph (c) of this section did not apply. See section 34(a)(1).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used on a farm for farming purposes shall be made only to—

(1) The United States or agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia, or

(2) An organization which is exempt from tax under section 501(a) and is not required to made a return of the income tax imposed under subtitle A for its taxable year.

(d) *Use of gasoline.* (1) The credit or payment described in paragraph (a) of this section is allowable only in respect of gasoline used on a farm in the United States for farming purposes. The credit or payment is not allowable with respect to gasoline used for nonfarming purposes, or gasoline used off a farm, regardless of the nature of the use. If a vehicle or other equipment is used both on a farm and off the farm, or if it is used on a farm both for farming and nonfarming purposes, the credit or payment is allowable only with respect to that portion of the gasoline which was "used on a farm for farming purposes" as defined in paragraph (a) of § 48.6420–4. In determining if this requirement is met, neither the type of equipment or vehicle used nor its registration for highway use is material. However, the actual use of the equipment or vehicle and the place where it is used are material. For example, if a truck used on a farm for farming purposes is also used on the highways, gasoline used in connection with operating the truck on the highways is not taken into account in computing the credit or payment.

(2) For purposes of determining the allowable credit or payment in respect of gasoline used on a farm for farming purposes, gasoline on hand shall be considered used in the order in which it was purchased. Thus, if the owner, tenant, or operator of a farm has on hand gasoline acquired in two purchases made at different times and subject to different rates of tax, in determining credit or payment for gasoline used on a farm for farming purposes, it will be assumed that the gasoline purchased first was the first gasoline used, and the rate applicable to that purchase will apply in determining the credit or payment, until all that gasoline is accounted for.

§ 48.6420–2 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6420–1 with respect to gasoline used after June 30, 1965, on a farm for farming purposes, shall cover only gasoline used during the taxable year on a farm for farming purposes. Therefore, gasoline on hand at the end of a taxable year as, for example, in fuel supply tanks of farm machinery or in storage tanks or drums, must be excluded from a claim filed for that taxable year (but may be included in a claim filed for a later taxable year if used during that later year on a farm for farming purposes). Gasoline used during a taxable year may be covered by a claim filed for that taxable year although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6420–1 (c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it

regularly keeps its books; see paragraph (h) of this section.

(b) *Time for filing.* (1) A claim for credit with respect to gasoline used on a farm for farming purposes shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(2) A claim for payment of a governmental unit or exempt organization described in § 48.6420–1(c) must be filed no later than 3 years following the close of its taxable year. (See paragraph (h) of this section.)

(3) See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7502–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit of one claim per taxable year.* Not more than one claim may be filed under section 6420 by any person with respect to gasoline used during the same taxable year.

(d) *Form and content of claim.*—(1) *Claim for credit.* (i) The claim for credit with respect to gasoline used on a farm for farming purposes must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(ii) If an individual dies during the taxable year, the claim for credit may be made only for that portion of the individual's taxable year ending with the date of death. If a sole proprietorship, a partnership or corporation is terminated or liquidated during the taxable year, the claim for credit may be made only for the portion of its year ending with the date of the termination or liquidation.

(2) *Claim for payment.* The claim for payment with respect to gasoline used on a farm for farming purposes by a governmental unit or exempt organization described in § 48.6420–1(c) must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. The claim by such a unit or organization must be filed with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

§ 48.6420–3 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* Credits or payments are allowable only for gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. No credit or payment shall be allowed or made under § 48.6420–1 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, a State or local government may not file a claim with respect to any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline on a farm for farming purposes. Similarly, payment may not be made with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221, which is used on a State prison farm for farming purposes.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6420(d) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6420–1 with respect to any gasoline is reduced by any other amount which is allowable as a credit or payable under section 6420, or is refundable under any other provision of the Code, to any person with respect to the same gasoline. Thus, a person who is the ultimate purchaser of gasoline may not file a claim for credit or payment with respect to that gasoline if another person is entitled to claim a payment, credit, or refund with respect to the same gasoline. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3(b)(2), 48.6416(b)(2)–2(d), and 48.6416(b)(2)–3(b)(1).

§ 48.6420–4 Meaning of terms.

For purposes of the regulations under section 6420, unless otherwise expressly indicated—

(a) *Used on a farm for farming purposes.* The term "used on a farm for farming purposes" applies only to gasoline which is used (1) in carrying on a trade or business of farming, (2) on a farm in the United States, and (3) for farming purposes. Gasoline used in an aircraft will qualify if its use otherwise satisfies these requirements. For the meaning of the term "trade or business of farming," see paragraph (b) of this section. For the definition of the term "farm," see paragraph (c) of this section. For the definition of the term "farming purposes," see paragraphs (d) through (g) of this section. The term "United States" has the meaning assigned to it by section 7701(a)(9).

(b) *Trade or business of farming.* A person will be considered to be engaged in the trade or business of farming if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. A person who operates a garden plot, orchard, or farm for the primary purpose of growing produce for the person's own use is not considered to be engaged in the trade or business of farming. Generally, the operation of a farm does not constitute the carrying on of a trade or business if the farm is occupied by a person primarily for residential purposes or is used primarily for pleasure, such as for the entertainment of guests or as a hobby.

(c) *Farm.* The term "farm" is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, and captive fur-bearing animals. The term "poultry" includes chickens, turkeys, geese, ducks, and pigeons. Thus, a farm includes livestock, dairy, poultry, fish, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, feed yards for fattening cattle, and greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures that are used primarily for purposes other than the raising of agricultural or horticultural commodities do not constitute farms, as, for example, structures that are used primarily for the display, storage, fabrication, or sale of wreaths, corsages, and bouquets. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested.

(d) *Gasoline used in cultivating, raising, or harvesting.* Gasoline is used for "farming purposes" when it is used on a farm by the owner, tenant, or operator of the farm in connection with cultivating the soil, raising or harvesting any agricultural or horticultural commodity, or raising, shearing, feeding, caring for, training, or managing livestock, poultry, bees, or wildlife. Examples of operations which are considered to be operations for "farming purposes" within the meaning of this

paragraph include plowing, seeding, fertilizing, weed killing, corn or cotton picking, threshing, combining, baling, silo filling, and chopping silage.

(e) *Gasoline used in handling, packing, or storing.* (1) Gasoline is used for "farming purposes" when it is used by the owner, tenant, or operator of the farm in handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator produced more than one-half of the commodity which was so treated during the taxable year for which claim for credit or payment is filed.

(2) Gasoline used in connection with canning, freezing, packaging, or processing operations will not be considered to be used for farming purposes, even though these operations are performed on a farm. Thus, for example, although gasoline used on a farm in connection with the production or harvesting of maple sap or oleoresin from a living tree is considered to be used for farming purposes under paragraph (d) of this section, gasoline used in the processing of maple sap into maple syrup or maple sugar or used in the processing of oleoresin into gum spirits of turpentine or gum resin is not used for farming purposes, even though these processing operations are conducted on a farm.

(3) Gasoline used in connection with processing operations which change a commodity from its raw or natural state, or operations performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation, will not be considered to be used for farming purposes. For example, gasoline used for the extraction of juices from fruits or vegetables is used in a processing operation which changes the character of the fruits or vegetables from their raw or natural state and will not be considered to be used for "farming purposes."

(4) The term "commodity," as used in this paragraph (e), refers to a single agricultural or horticultural product. For example, all apples are treated as a single commodity while apples and peaches are treated as two separate commodities. Operations with respect to each commodity are to be considered separately in applying the "one-half" production test described in paragraph (e)(1) of this section.

(f) *Gasoline used in planting, cultivating, or caring for trees.* Gasoline is used "for farming purposes" when it is used by the owner, tenant, or operator of the farm in connection with the planting, cultivating, caring for, or cutting of trees that is incidental to the farming operations of the farm on which it is performed or incidental to the farming operations of the owner, tenant, or operator of the farm, or in connection with the preparation (other than milling) of trees for market that is incidental to these farming operations. These operations include the felling of trees and cutting them into logs or firewood but do not include sawing logs into lumber, chipping, or other milling operations. Operations of the prescribed character will be considered incidental to farming operations only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a tree farmer or timber grower may not claim credit or payment under § 48.6420–1 with respect to gasoline used in connection with the trade or business of tree farming or timber growing.

(g) *Gasoline used in the maintenance of a farm or farm equipment.* Gasoline is used "for farming purposes" when it is used by the owner, tenant, or operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment. The activities included are those which contribute in any way to the conduct of the farm as such, as distinguished from any other enterprise in which the owner, tenant, or operator may be engaged. Examples of included operations are clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, and painting farm buildings. Since the gasoline must be used by the owner, tenant, or operator of the farm to which the operations relate, gasoline used by an organization which contracts with a farmer to renovate his farm properties is not used for farming purposes. Gasoline used in a gasoline-powered lawn mower for maintaining a lawn is not used for farming purposes.

(h) *Taxable year.* The "taxable year" of a governmental unit or tax-exempt organization described in § 48.6420–1(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning as it has under section 7701(a)(23).

(i) *Gasoline.* The term "gasoline" has the same meaning given to this term by section 4082(b) and the regulations thereunder.

(j) *Ultimate purchaser.* The term "ultimate purchaser" includes only a person who is an owner, tenant, or operator of a farm. A person who is an owner, tenant, or operator of a farm is an ultimate purchaser of gasoline only with respect to such gasoline as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus the owner of a farm who purchases gasoline which is used on the farm by its owner, tenant, or operator for farming purposes is generally the ultimate purchaser of the gasoline. If, however, the cost of gasoline supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, or operator of the farm, the second person who bore the cost of the gasoline is considered to be the ultimate purchaser of the gasoline.

(k) *Certain farming use by persons other than the owner, tenant or operator.*—(1) *In general.* Except as provided in paragraph (l) of this section, the owner, tenant, or operator of a farm on which gasoline is used by any other person for the purposes described in section 6420(c)(3)(A) and paragraph (d) of this section (relating to gasoline used in cultivating, raising, or harvesting) will be treated, for the purposes of § 48.6420–1 (a), as the ultimate purchaser who used the gasoline on the farm for farming purposes.

(2) *Example.* The rule of paragraph (k)(1) of this section may be illustrated by the following example.

Example. Farmer A hired custom operator B to cultivate the soil on A's farm. B used 200 gallons of gasoline which B had purchased in performing the work on A's farm. In addition, A hired Farmer C to do some plowing on A's farm, using C's own tractor and 50 gallons of gasoline which C had purchased. A is deemed to be the ultimate purchaser and user of the gasoline used on A's farm by B and C, and A is entitled to take a credit in respect of the gasoline. Accordingly, no credit in respect to the gasoline may be taken by either B or C.

(l) *Aerial applicators treated as ultimate purchasers.*—(1) *General rule.* Section 6420(c)(3)(A) provides that only the owner, tenant, or operator of a farm is entitled to be treated as a user and ultimate purchaser. Section 6420(c)(4) provides that, under section 6420(c)(3)(A), an aerial applicator is entitled to be treated as the user and ultimate purchaser of gasoline used by it on a farm for the purposes described in section 6420(c)(3)(A), but only if the owner, tenant, or operator who is otherwise entitled to treatment as the user and ultimate purchaser waives the right to credit or payment. See paragraph (l)(2) of this section.

(2) *Form and manner of waiver.* To waive the right to be treated as user and ultimate purchaser of gasoline which is used on a farm by an aerial applicator, the owner, tenant, or operator of a farm

who is otherwise entitled to treatment as user and ultimate purchaser must execute an irrevocable written agreement (as here described) no later than the date on which the aerial applicator claiming the credit or payment files its return for the taxable year in which the gasoline is used. The agreement must identify the period for which the owner, tenant, or operator waives the right to credit or payment. The effective period of the waiver cannot extend beyond the last day of the taxable year of the owner, tenant, or operator of the farm on which the gasoline was used. If the owner, tenant, or operator's taxable year extends beyond the taxable year of the applicator, the applicator can only claim a credit or payment for periods included in the applicator's taxable year. Periods after the last day of the applicator's taxable year which are included under the agreement must be claimed on the applicator's return for the next succeeding taxable year. The waiver may be in the form shown under paragraph (l)(6) of this section or in any other form that meets the requirements of this paragraph and clearly states that the owner, tenant, or operator of the farm knowingly waives the right to receive the credit or payment.

(3) *Agreement included on aerial applicator's invoice.* The agreement waiving a right to receive a credit or payment under section 6420 may be a separate document or may appear on the invoice for aerial application services or other unrelated document from the aerial applicator to the owner, tenant, or operator of the farm. If the waiver agreement appears on an invoice or other unrelated document, however, it must be printed in a section of the invoice or other document clearly set off from all other material contained in the invoice or other document, and it must be printed in type sufficieptly large to put the owner, tenant, or operator of the farm on notice that the person has waived the right to receive a credit or payment under section 6420. Additionally, if the waiver agreement appears as part of any invoice or other unrelated document, it must be executed separately from any other item included in the invoice or other document which requires the owner, tenant, or operator's signature.

(4) *Copies of agreement waiving right to credit or payment.* No copies of any agreement waiving a right to credits or payments under section 6420 are to be submitted to the Internal Revenue Service unless a request is made by the Service to the taxpayer for the waivers. Aerial applicators must, however, retain copies of all waivers, and a copy of each waiver must be supplied by the aerial applicator to the owner, tenant, or operator of the farm who waives the right to receive a credit or payment. See regulations § 48.6420-6 for general requirements for records to be kept.

(5) *Waiver on behalf of owner, tenant, or operator of farm.* An agent of the owner, tenant, or operator of a farm who is expressly authorized to act on behalf of and to bind the owner, tenant, or operator may waive that person's rights to a credit or payment under section 6420 by signing the waiver on the person's behalf.

(6) *Sample form of agreement.* While no specific form is required for an effective waiver, an acceptable form waiving the right to receive a credit or payment under section 6420 follows:

I hereby waive my right as owner/tenant/operator of a farm located at (address) to receive credit or payment from the United States for gasoline used by (aerial applicator) on the farm in connection with cultivating the soil, or the raising or harvesting of any agricultural or horticultural commodity. This waiver applies to gasoline used during the period , both dates inclusive. I understand that by signing this waiver, I give up my right to claim any credit or payment for gasoline used by the aerial applicator during the period indicated, and I acknowledge that I have not previously claimed any credit for that gasoline.

(Signature of Owner/Tenant/Operator)

§ 48.6420-5 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6420, apply in respect of the payments provided for in section 6420 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline under section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6420, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6420, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6420, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6420 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6420 were the person liable for tax.

(c) *Fractional part of a dollar.* Section 6420(e)(3) provides that section 7504, relating to fractional parts of a dollar, shall not apply with respect to the allowance of any amount as a credit or payment under section 6420. Accordingly, credits or payments authorized by section 6420 shall be made in the exact amount to which the claimant is entitled and shall not be rounded to the nearest whole dollar amount.

§ 48.6420-6 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6420 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6420 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the taxable year covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the taxable year for farming purposes on a farm of which the claimant is the owner, tenant, or operator,

(4) The number of gallons of gasoline used during the taxable year for the purposes described in section 6420(c)(3)(A) and § 48.6420-4(d) (relating to cultivating, raising, or harvesting) by a person other than the owner, tenant, or operator on a farm of which the claimant is the owner, tenant, or operator, and

(5) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and

detailed records of all fuel used which show the amount consumed on a farm for farming purposes and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6420. However, the records must show separately the number of gallons of gasoline used on a farm for farming purposes.

(3) If trucks or other vehicles are used both on and off the farm, an allocation of gasoline used in the vehicle will be required to show separately the number of gallons of gasoline used on a farm for farming purposes in respect of which the claim is made.

(4) If the owner, tenant, or operator is entitled under section 6420(c)(4)(A) to claim credit or payment in respect of gasoline used on the person's farm by another person other than an owner, tenant, or operator of the farm for a purpose described in section 6420(c)(3)(A) and § 48.6420–4(d), the claimant must have records showing (i) the name and address of the person who performed the farming operation, (ii) a description of the type of work (such as plowing, threshing, combining, etc.) and the type of equipment used, (iii) the date or dates on which the work was done, and (iv) the number of gallons of gasoline so used on the claimant's farm.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6420 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

§ 48.6420–7 Cross references.

(a) *Gasoline used by local transit systems or for certain nonhighway purposes other than farming.* For provisions with respect to payments to the ultimate purchaser of gasoline used for certain nonhighway purposes (other than farming) or by local transit systems, see section 6421 and the regulations thereunder.

(b) *Diesel fuel and special motor fuels used on a farm for farming purposes.* For provisions with respect to exemption from tax in the case of diesel fuel and special motor fuels used on a farm for farming purposes, see section 4041(f) and the regulations thereunder. For credit or payment in respect of special fuels used after June 30, 1970, for farming purposes, see section 6427(c) and § 48.6427–1.

Par. 34. Sections 48.6421(a)–1, 48.6421(b)–1, 48.6421(c)–1, 48.6421(d)–1, 48.6421(e)–1, 48.6421(f)–1, and 48.6421(g)–1 are removed and the following new §§ 48.6421–0, 48.6421–1, 48.6421–2, 48.6421–3, 48.6421–4, 48.6421–5, 48.6421–6, and 48.6421–7 are added immediately after § 48.6420–7.

§ 48.6421–0 Off-highway business use.

For purposes of the regulations under section 6421, after March 31, 1983, the term "off-highway business use" is used in lieu of the term "qualified business use" and has the same meaning as "qualified business use" under § 48.6421–4(b).

§ 48.6421–1 Credits or payments to ultimate purchaser of gasoline used for certain nonhighway purposes.

(a) *In general.* (1) If gasoline is used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the gasoline shall be allowed or made to the ultimate purchaser of the gasoline. For gasoline used in a qualified business use prior to April 1, 1983, the credit or payment under this section shall be an amount equal to 1 cent for each gallon of gasoline so used on which the tax was paid at the rate of 3 cents a gallon, and 2 cents for each gallon of gasoline so used on which the tax was paid at the rate of 4 cents a gallon. For gasoline used in an off-highway business use after March 31, 1983, the credit or payment under this section shall be an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on such gasoline under section 4081. For gasoline used as a fuel in an aircraft (other than aircraft in noncommercial aviation) the credit or payment under this section shall be an amount equal to the amount determined by multiplying the number of gallons so used by the rate at which tax was imposed on the gasoline under section 4081. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 34(a), relating to credit for certain uses of gasoline and special fuels (and lubricating oil used prior to January 7, 1983). See § 48.6421–3 for the time within which a claim for credit or payment must be made under this section. See § 48.6421–4 for the meaning of the terms "gasoline," "qualified business use," "noncommercial aviation," and "taxable year."

(2) For purposes of determining the allowable credit or payment in respect of gasoline used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), gasoline on hand shall be considered used in the order in which it was purchased. Thus, if the ultimate purchaser has on hand gasoline acquired in two purchases made at different times and subject to different rates of tax, in determining credit or payment for the gasoline used in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation), it will be assumed that the gasoline first purchased was the first gasoline used, and the rate applicable to that purchase will apply in determining the credit or payment, until all that gasoline is accounted for.

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4081 on gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6421 with respect to gasoline used during the taxable year in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) if section 6421(i) and paragraph (c) of this section did not apply. See section 34(a)(2).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more State political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6421(c)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to gasoline used during any of the first three quarters of the person's taxable year.

(d) *Dual use of gasoline.* (1) No credit or payment may be claimed in respect of gasoline used in a highway vehicle used in a trade or business or for the production of income solely by reason of the fact that the propulsion motor in the vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle (used in a trade or business or for the production of income) also operates special equipment, such as a mixing unit on a concrete mixer truck or a pump for discharging fuel from a tank truck, by means of a power takeoff or power transfer, no credit or payment may be claimed in respect of the gasoline used to operate the special equipment, even though the special equipment is mounted on the highway vehicle.

(2) If a highway vehicle is equipped with a separate motor to operate the special equipment used in a trade or business or for the production of income, such as a refrigeration unit, pump, generator, or mixing unit, credit or payment may be claimed in respect of the gasoline used in the separate motor.

(3) If gasoline used in a separate motor is drawn from the same tank as the one which supplies gasoline for the propulsion of the highway vehicle, the determination as to the quantity of gasoline used in the separate motor operating the special equipment must be based on operating experience and supported by records.

(4) Devices to measure the number of miles the highway vehicle has traveled, such as hubometers, may be used in making a preliminary determination of the number of gallons of gasoline used to propel the vehicle. In order to make a final determination of the number of gallons of gasoline used to propel the vehicle, there must be added to this preliminary determination the number of gallons of gasoline consumed while idling or warming up the motor preparatory to propelling the vehicle.

(e) *Gasoline lost or destroyed.* Gasoline lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" in a qualified business use or as fuel in an aircraft (other than aircraft in noncommercial aviation) and, accordingly, credit or payment in respect of the gasoline may not be claimed.

(f) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of gasoline purchased and used during the period covered by the claim in a qualified business use multiplied by the rate of payment allowable in respect of the gasoline. (For the rate of payment allowable, see paragraph (a)(1) of this section.)

(2) The total number of gallons of gasoline purchased and used during the period covered by the claim for use as fuel in an aircraft (other than aircraft in noncommercial aviation) multiplied by the rate of payment allowable in respect of the gasoline.

(3) The purpose or purposes for which the gasoline was used, determined by reference to general categories, and the amount used for each purpose; and

(4) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return (if any).

§ 48.6421-2 Credits or payments to ultimate purchasers of gasoline used in intercity, local, or school buses.

(a) *In general.* If gasoline is used in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in a school bus engaged in the transportation of students or employees of schools, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect to the gasoline shall be allowed or made to the ultimate purchaser of the gasoline. The credit or payment under this section shall be an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on the gasoline by section 4081. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on an overpayment (as defined by section 6401) arising from a credit allowed under paragraph (b) of this section. See section 34(a) relating to credit for certain uses of gasoline and special fuels, (and lubricating oil used prior to January 7, 1983). See § 48.6421-3 for the time within which a claim for credit or payment must be made under this section. See § 48.6421-4 for the meaning of "gasoline." See section 4221(d)(7) and the regulations thereunder for the definition of "intercity bus," "local bus" and "school bus."

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4081 of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6421 with respect to gasoline used during the taxable year for this passenger land transportation or school bus operations if section 6421(i) and paragraph (c) of this section did not apply. See section 34(a)(2).

(c) *Allowance of payment.* Payments in respect of gasoline upon which tax was paid under section 4081 that is used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, or political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6421(c)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to gasoline used during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of gasoline purchased and used during the period covered by the claim for each intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public multiplied by the rate at which tax was imposed on the gasoline by section 4081.

(2) The total number of gallons of gasoline purchased and used in each bus while engaged in school bus transportation operations multiplied by

the rate at which tax was imposed on the gasoline by section 4081, and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return (if any).

§ 48.6421–3 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6421–1 with respect to gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft in noncommercial aviation) or in § 48.6421–2 with respect to gasoline used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall cover only gasoline used during the taxable year, or when paragraph (b)(2) of this section applies, gasoline used during the calendar quarter. Therefore, gasoline on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as gasoline in fuel supply tanks of vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this gasoline may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter in a qualified business use, as fuel in an aircraft (other than aircraft in noncommercial aviation), or in intercity, local, or school buses. Gasoline used during the taxable year or calendar quarter may be covered by the claim for that period although the gasoline was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6421–1(c) or § 48.6421–2(c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books; see § 48.6421–4(g).

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to gasoline shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6421–1(c) or § 48.6421–2(c) must be filed no later than 3 years following the close of its taxable year (see § 48.6421–4).

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect of gasoline used during any of the first three quarters of the taxable year, filed either under § 48.6421–1(c)(3) in respect of gasoline used in a qualified business use or as a fuel in an aircraft (other than aircraft used in noncommercial aviation) or under § 48.6421–2(c)(3) in respect of gasoline used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus operations, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6421–1 or § 48.6421–2 by any person with respect to gasoline used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of gasoline are allocated to each partner and the use made of the gasoline.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6421–1(c) or § 48.6421–2(c), with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of gasoline used during the short taxable year in the same manner as is provided for gasoline used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6421–1 in respect of gasoline used in a qualified business use for the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the gasoline used during the calendar quarters ending June 30, and September 30, 1981, and take a credit of $900 on its income tax return for the short taxable year in respect of the gasoline used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters testamentary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer). The claim may cover only gasoline in respect of which the decedent would have been entitled to claim payment. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6421–1 or $1,000 or more applicable to gasoline purchased and used in a qualified business use during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(2) against the decedent's income tax on the income tax return for the short taxable year in respect of gasoline purchased by the decedent and so used during the period from July 1, 1982 to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of gasoline that was sold by the producer or importer in a transaction that was subject to tax under section 4081. For example, a State or local government may not file a claim with respect to any gasoline which it purchased tax free from the producer, even though the State or local government used the gasoline as a fuel for the purposes described in paragraph (a) of this section. Similarly, a governmental unit or tax-exempt organization that is the ultimate purchaser of gasoline may not file a claim for payment if it is known that another person is entitled to claim credit, payment, or refund with respect to the same gasoline. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent, or other documentation, to enable the producer to claim credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3 and 48.6416(b)(2)–3(b)(1).

§ 48.6421–4 Meaning of terms.

For purposes of the regulations under section 6421, unless otherwise expressly indicated—

(a) *Gasoline.* The term "gasoline" has the same meaning given to such term by section 4082(b) and regulations thereunder.

(b) *Qualified business use.* (1) The term "qualified business use" means any use by a person in a trade or business of the person or in an activity of the person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

(i) That at the time of the use is registered, or is required to be registered, for highway use under the laws of any state, the District of Columbia, or a foreign country, or

(ii) That, in the case of a highway vehicles owned by the United States, is used on the highway.

The term "qualified business use" does not include any use in a motorboat, other than a vessel used in the fisheries or whaling business. See paragraph (c) of this section for the definition of "highway vehicle." See paragraph (d) of this section for the definition of "highway."

(2) Any highway vehicle operated under a dealer's tag, license, or permit will be considered to be registered. A highway vehicle is not considered to be "registered" solely because there has been issued a special permit for operation of the vehicle at particular times and under specified conditions. However, a highway vehicle that is required to be registered and that is also issued a special permit for operation of the vehicle under specified conditions, such as carrying an oversize load, is still considered to be "registered."

(3) Nonbusiness, off-highway use of gasoline by such vehicles and equipment as minibikes, snowmobiles, power lawn mowers, chain saws, and other yard equipment does not qualify as gasoline used a qualified business use.

(4) Examples of gasoline used in a qualified business use include: (i) gasoline used (in a trade or business or for the production of income) in stationary engines to operate pumps, generators, compressors, and power saws; (ii) gasoline used (in a trade or business or for the production of income) for cleaning purposes; (iii) gasoline used (in a trade or business or for the production of income) in forklift trucks, bulldozers, and earthmovers; and (iv) gasoline used by a nonhighway vehicle in connection with the trade or business of construction, mining or logging.

(5) *Illustration.* The application of this paragraph (b) may be illustrated by the following example:

Example. M Corporation, a logging company, files its income tax return on the basis of the calendar year. During 1982, the company used 20,000 gallons of gasoline in its logging business. Of this amount, 12,000 gallons were used as fuel in registered highway vehicles which were operated both on the public highways and on the company's private roads. Of the remaining 8,000 gallons, 6,000 were used in nonhighway vehicles, such as tractors and bulldozers, and 2,000 gallons were used in highway vehicles, such as heavy trucks which, at the time of use, were neither registered nor required to be registered under state law for highway use by reason of being operated entirely on the company's property. As the ultimate purchaser, M may take a credit on its income tax return for 1982 under this section in respect of the 6,000 gallons used in the nonhighway vehicles and the 2,000 gallons used in the unregistered highway vehicles. However, no credit may be allowed with respect to the 12,000 gallons used in the registered highway vehicles even though a portion of this gasoline was used in operating the vehicles on the company's own property.

(c) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to this term under § 48.4061(a)–1(d).

(d) *Highway.* The term "highway" includes any road, whether a Federal highway, State highway, city street, or otherwise, in the United States which is not a private roadway.

(e) *Noncommercial aviation.* The term "non-commercial aviation" has the same meaning given to such term by section 4041(c)(4).

(f) *Calendar quarter.* The term "calendar quarter" means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(g) *Taxable year.* The "taxable year" of a governmental unit or tax-exempt organization described in § 48.6421–1(c) or § 48.6421–2(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning it has under section 7701(a)(23).

§ 48.6421–5 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6421–1 or § 48.6421–2 with respect to gasoline which was exempt from the tax imposed by section 4081. For example, credit or payment may not be allowed or made with respect to gasoline purchased tax free for use as supplies for certain vessels and airplanes, or with respect to gasoline purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amount which, without regard to the second sentence of section 6421(e)(1) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6421–1 or § 48.6421–2 is reduced by any other amount which is allowable as a credit or payable under section 6421, or is refundable under any other provision of the Code, to any person with respect to the same gasoline.

(c) *Gasoline used on farms.* Payments with respect to gasoline used on a farm for farming purposes shall be claimed under section 6420 and § 48.6420–1, and no claim in respect of that gasoline may be made under section 6421 and the regulations thereunder.

§ 48.6421–6 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4081 shall, to the extent applicable and consistent with section 6421, apply in respect of the payments provided for in section 6421 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of gasoline by section 4081. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6421, see section 6206 and the regulations

thereunder. For the civil penalty assessable in the case of excessive claims under section 6421, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 34 (section 39 of the Internal Revenue Code of 1954 prior to its revision by the Tax Reform Act of 1984) with respect to amounts payable under section 6421, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6421 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credits or payment under section 6421 were the person liable for tax.

§ 48.6421-7 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6421 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under section 6421 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of gasoline purchased and the dates of purchase,

(2) The name and address of each vendor from whom gasoline was purchased and the total number of gallons purchased from each,

(3) The number of gallons of gasoline purchased by the claimant and used during the period covered by the claim for nonhighway purposes or in intercity, local or school buses,

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of gasoline, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the gasoline dealer or other vendor, and detailed records of all fuel used which show the amount used for the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on gasoline, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6421. However, the records must show separately the number of gallons of gasoline used for nonhighway purposes or in intercity, local, or school buses during the period covered by the claim.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6421 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 35. The following new §§ 48.6424–0, 48.6424–1, 48.6424–2, 48.6424–3, 48.6424–4, 48.6424–5, and 48.6424–6 are added immediately following § 48.6421–7.

§ 48.6424-0 Effective date.

All references in section 6424 apply to uses prior to January 7, 1983.

48.6424-1 Credits or payments to ultimate purchaser of lubricating oil used in a qualified business use or in a qualified bus.

(a) *In general.* If lubrication oil (other than cutting oils, as defined in section 4092(b) and other than previously used oil) is used prior to January 7, 1983, in a qualified business use or in a qualified bus, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the lubricating oil shall be allowed or made to the ultimate purchaser of the lubricating oil in an amount equal to 6 cents for each gallon of lubricating oil so used on which tax was paid under section 4091. No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on an overpayment (as defined by section 6401) of tax arising from a credit allowed under paragraph (b) of this section. See section 39(a) (prior to its revision by the Tax Reform Act of 1984), relating to credit for certain uses of gasoline, special fuels, and lubricating oil. See § 48.6424–2 for the time within which a claim for credit or payment must be made under this section. See § 48.6424–3 for the meaning of the terms "lubricating oil," "use in a qualified business use," "qualified bus," "calendar year," and "taxable year." See § 48.6424–2 for the time within which a claim for credit or payment must be made under this section. See § 48.6424–3 for the meaning of the terms "lubricating oil," "use in a qualified business use," "qualified bus," "calendar year," and "taxable year."

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4091 on lubricating oil used in a qualified business use or in a qualified bus by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6424 with respect to lubricating oil used during the taxable year in a qualified business use or in a qualified bus if section 6424(f) and paragraph (c) of this section did not apply. See section 39(a)(3) (prior to its revision by the Tax Reform Act of 1984).

(c) *Allowance of payment.* Payments in respect of lubricating oil upon which tax was paid under section 4091 that is used in a qualified business use or a qualified bus shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6424(b)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to lubricating oil used during any of the first three quarters of the person's taxable year.

(d) *Uses which qualify for credit or payment.* The use contemplated by section 6424 is a use of lubricating oil (previously unused) through which the oil is consumed or rendered unfit for further use as a lubricant or for sale as a lubricant. If previously unused lubricating oil is blended or mixed with previously used lubricating oil which has been reclaimed or rerefined, the unused oil is considered to have lost its identity and the resulting product will be treated as previously used. Thus, no credit or payment will be allowed under this section with respect to the use of such blended lubricating oil regardless of how this mixture is eventually used.

(e) *Dual use of lubricating oil.* (1) No credit or payment may be claimed in respect of lubricating oil used as a lubricant in a highway vehicle used in a trade or business or for the production of income solely by reason of the fact that the propulsion motor in the vehicle is also used for a purpose other than the propulsion of the vehicle. Thus, if the propulsion motor of a highway vehicle (used in a trade or business or for the production of income) also operates special equipment, such as a mixing unit on a concrete mixer truck, by means of a power takeoff or power transfer, no credit or payment may be claimed in respect of the lubricating oil used to operate the special equipment, even though the special equipment is mounted on the highway vehicle.

(2) If a highway vehicle is equipped with a separate motor to operate special equipment (used in a trade or business or for the production of income) such as a refrigeration unit, pump, generator, or mixing unit, the credit or payment may be claimed in respect of the lubricating oil used in the separate motor.

(f) *Lubricating oil lost or destroyed.* Lubricating oil lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" in a qualified business use or in a qualified bus and, accordingly, credit or payment in respect of this lubricating oil may not be claimed.

(g) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of lubricating oil purchased and used in a qualified business or in a qualified bus during the period covered by the claim, multiplied by 6 cents;

(2) The purpose or purposes for which the lubricating oil was used, determined by reference to general categories, and the amount used for each purpose; and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return, if any.

§ 48.6424–2 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6424–1 with respect to lubricating oil used in a qualified business use or in a qualified bus shall cover only lubricating oil used during the taxable year, or when paragraph (b)(2) of this section applies, used during the calendar quarter, for these purposes. Therefore, lubricating oil on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as lubricating oil in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this lubricating oil may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter in a qualified business or in a qualified bus. Lubricating oil used during the taxable year or calendar quarter may be covered by the claim for that period although the lubricating oil was not paid for at the time the claim is filed. For purposes of applying this section, a governmental unit or exempt organization described in § 48.6424–1(c) is considered to have as its taxable year, the calendar year or fiscal year on the basis of which it regularly keeps its books. See § 48.6424–3(g).

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to lubricating oil used during a taxable year, shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in §48.6424–1(c) must be filed no later than 3 years following the close of its taxable year. See §48.6424–3(f).

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect of lubricating oil used during any of the first three quarters of the taxable year, filed under § 48.6424–1(c)(3) in respect of lubricating oil used in a qualified business use or in a qualified bus, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6424–1 by any person with respect to lubricating oil used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136 to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of lubricating oil are allocated to each partner and the use made of the lubricating oil.

(2) *Claim for payment.* The claim for payment to which this section applies must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6424–1(c) with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of lubricating oil used during the short taxable year in the same manner as is provided for lubricating oil used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6424–1 in respect of lubricating oil used in a qualified business use of in a qualified bus for the calendar quarter ending March 31 and is also entitled to payments of $1,500 for each of the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the lubricating oil used during the calendar quarters ending June 30, and September 30, 1982, and take a credit of $900 on the corporation's income tax return for the short taxable year in respect of the

lubricating oil used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters, testamentary letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer). The claim may cover only lubricating oil in respect of which the decedent would have been entitled to claim payment. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6424–1 of $1,000 or more applicable to lubricating oil purchased and used in a qualified business use during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(3) (prior to its revision by the Tax Reform Act of 1984) against the decedent's income tax on the income tax return for the short taxable year in respect of lubricating oil purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of lubricating oil that was sold by the manufacturer in a transaction that was subject to tax under section 4091. For example, a State or local government may not file a claim with respect to any lubricating oil which it purchased tax free from the manufacturer, even though the State or local government used the lubricating oil in a qualified business use or in a qualified bus. Similarly, a governmental unit or tax-exempt organization that is the ultimate purchaser of lubricating oil may not file a claim for payment if it is known that another person is entitled to claim a credit, payment, or refund with respect to the same lubricating oil. For example, a State or local government may not file a claim for payment if it has executed, or intends to execute, a written consent, or other documentation, to enable the producer to claim a credit or refund for the tax that was paid. See, for example, §§ 48.6416(a)–3(b)(2), 48.6416(b)(2)–2(d), and 48.6416(b)(2)–3(b)(1).

§ 48.6424–3 Meaning of terms.

For purposes of the regulations under section 6424, unless otherwise expressly indicated—

(a) *Lubricating oil.* The term "lubricating oil" has the same meaning given to this term by the regulations under section 4091. It does not include cutting oil, as defined in section 4092(b) and the regulations thereunder, or any oil which has previously been used.

(b) *Qualified business use.* The term "qualified business use" means any use by a person in a trade or business of such person or in an activity of the person described in section 212 (relating to production of income).

Qualified business use does not include:

(1) use in a highway vehicle which is registered or required to be registered for highway use in any State or foreign country,

(2) use on the highway in a highway vehicle owned by the United States, or

(3) use in a motor boat.

Lubricating oil in respect of which credit or payment may be claimed under section 6424 includes, for example, previously unused lubricating oil used—

(i) In stationary engines (used in a trade or business or for the production of income) to operate pumps, generators, compressors, or power saws; or

(ii) In forklift trucks, bulldozers, earthmovers, trench diggers, road graders, farm tractors, cotton pickers, and other motorized agricultural equipment of similar nature, if used in a trade or business or for the production of income.

(c) *Qualified bus.* The term "qualified bus" has the same meaning assigned to this term by section 4221(d)(7) and the regulations thereunder.

(d) *Highway vehicle.* The term "highway vehicle" has the same meaning assigned to this term under § 48.4061(a)–1(d).

(e) *Highway.* The term "highway" includes any road, whether a Federal highway, State highway, city street, or otherwise, in the United States which is not a private roadway.

(f) *Calendar quarter.* The term "calendar quarter" means a period of three calendar months ending March 31, June 30, September 30, or December 31.

(g) *Taxable year.* The "taxable year" of a governmental unit or a tax-exempt organization described in § 48.6424–1(c) is the calendar or fiscal year on the basis of which it regularly keeps its books. The "taxable year" of persons subject to income tax shall have the meaning it has under section 7701(a)(23).

§ 48.6424–4 Exempt sales; other payments or refunds available.

(a) *Exempt sales.* No credit or payment shall be allowed or made under § 48.6424–1 with respect to lubricating oil which was exempt from the tax imposed by section 4091. For example, credit or payment may not be allowed or made with respect to lubricating oil purchased tax free for use as supplies for certain vessels and airplanes, or with respect to lubricating oil purchased by a State tax free for its exclusive use, as provided in section 4221.

(b) *Other payments or refunds available.* Any amounts which, without regard to the second sentence of section 6424(c) and this paragraph (b), would be allowable as a credit or payable to any person under § 48.6424–1 is reduced by any other amount which is allowable as a credit or payable under section 6424, or is refundable under any other provision of the Code, to any person with respect to the same lubricating oil.

§ 48.6424–5 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4091 shall, to the extent applicable and consistent with section 6424, apply in respect of the payments provided for in section 6424 to the same extent as if these payments were refunds of overpayments of the tax imposed on the sale of lubricating oil by section 4091. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6424, see section 6406 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6424, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 39 with respect to amounts payable under section 6424, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6424, or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6424 were the person liable for tax.

§ 48.6424–6 Records to be kept in substantiation of credit or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6424 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under

section 6424 and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of lubricating oil purchased and the dates of purchase.

(2) The name and address of each vendor from whom lubricating oil was purchased and the total number of gallons purchased from each.

(3) The number of gallons of lubricating oil purchased by the claimant and used, during the period covered by the claim in a qualified business use or in a qualified bus, and

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of lubricating oil, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the dealer or other vendor, and detailed records of all lubricating oil used which show the amount used for the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on lubricating oil, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6424.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6424 must be maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 36. The following §§ 48.6427–0, 48.6427–1, 48.6427–2, 48.6427–3, 48.6427–4 and 48.6427–5 are added immediately following new § 48.6424–6.

§ 48.6427–0 Off-highway business use.

For purposes of the regulations under section 6427, after March 31, 1983, the term "off-highway business use" is used in lieu of the term "qualified business use" and has the same meaning as "qualified business use" under § 48.6421–1(b).

§ 48.6427–1 Credit or payments to purchaser of special fuels resold or used for nontaxable, farming, or other purposes.

(a) *Amount of repayment*—(1) *Nontaxable or other uses.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser for a nontaxable purpose or for a purpose taxable at a lower rate than the purposes for which sold, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to—

(A) The amount of the tax imposed on the sale of the fuel to the purchaser if the purchaser resells the fuel, or

(B) If the purchaser uses the fuel, the amount of tax imposed on the sale of the fuel to the purchaser, less the amount of tax, if any, that would have been imposed on the purchaser's use of the fuel if no tax had been imposed on the sale of the fuel to the purchaser.

(ii) For purposes of paragraph (a)(1)(i) of this section, and for the regulations under section 6427 applying such paragraph, tax imposed on the sale of fuel will be treated as an overpayment by the purchaser if the person resells the fuel or uses it for a nontaxable purpose or for a purpose taxable at a lower rate than that for which sold to the purchaser. Thus, for example, special motor fuel which was sold tax paid to the purchaser for use otherwise than in a qualified business use in a motor vehicle will qualify for the payment under section 6427 if the purchaser uses it as a fuel in a qualified business use.

(2) *Used for farming purposes.* (i) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle, or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motor boat and the fuel is used on a farm for farming purposes, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) (1) or (2) of this section) in respect of the fuel shall be allowed or made to the purchaser of the fuel in an amount equal to the amount of tax that was imposed under section 4041 on the sale of the fuel. The provisions of section 6420(c) (1), (2), and (3) and § 48.6420–4 shall apply under this paragraph (a)(2) in determining whether the fuel is used on a farm for farming purposes.

(ii) The term "purchaser," as used in paragraph (a)(2)(i) of this section, includes only a person who is an owner, tenant, or operator of a farm. A person who is owner, tenant, or operator of a farm is a purchaser of fuel only with respect to such fuel as is purchased by the person and used for farming purposes on a farm of which the person is the owner, tenant, or operator. Thus, the owner of a farm who purchases fuel which is used on the farm by its owner, tenant, or operator for farming purposes is generally the purchaser of the fuel. If, however, the cost of fuel supplied by an owner, tenant, or operator of a farm, is by agreement or other arrangement borne by a second person who is an owner, tenant, or operator of the farm, the second person who bore the cost of the fuel is considered to be the purchaser of the fuel.

(iii) Except as provided in paragraph (a)(2)(iv) of this section, if fuel is used on a farm by any person other than the owner, tenant, or operator for the purposes described in section 6420(c)(3)(A) and § 48.6420–4(d) (relating to gasoline used in cultivating, raising, or harvesting), the owner, tenant, or operator (as the case may be) will be treated for the purposes of § 48.6427–1(a)(2)(i) as the purchaser who used the fuel on the farm for farming purposes.

(iv) Section 6427(c) provides that an aerial applicator is entitled to be treated as the user and ultimate purchaser of fuel that the applicator uses on a farm for the purposes described in section 6420(c)(3)(A), but only if the owner, tenant, or operator of the farm who is otherwise entitled to be treated as the ultimate purchaser waives the right to credit or payment. The rules contained in section 6420 and the regulations under the section regarding waivers by owners, tenants, and operators of farms of their rights to payments under section 6420 for gasoline used by aerial applicators on a farm for farming purposes apply to waivers under this section.

(3) *Definitions, uses, and other rules.* (i) No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 34(a), relating to credit for certain uses of gasoline and special fuels. See section 39(a) of the Internal Revenue Code of 1954 prior to its

revision by the Highway Revenue Act of 1982, relating to credit for certain uses of lubricating oil. See section 6611, relating to interest on overpayments.

(ii) See § 48.6427–3 for the time within which a claim for credit or payment must be made under this section.

(iii) See § 48.6420–4 for the meaning of the terms "used on a farm for farming purposes" and "farm." The term "gasoline" has the same meaning given to this term by section 4082(b) and the regulations thereunder. For the meaning of the terms "diesel fuel," "special motor fuel," "motor vehicle," "highway vehicle," and "registered" see section 4041 and the regulations thereunder. The term "fuel" means diesel fuel, special motor fuel, or gasoline, as the context requires. Where appropriate, the term "use" includes a resale. See § 48.6421–4 for the meaning of "calendar quarter" and "taxable year".

(iv) For purposes of determining the allowable credit or payment in respect of fuel used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, fuel on hand shall be considered used in the order in which it was purchased. Thus, if the purchaser made purchases at different times and subject to different rates of tax, then in determining credit or payment for fuel used for a described purpose, it will be assumed that the fuel first purchased was the first fuel used, and the rate applicable to that purchase will apply in determining the credit of payment, until all of that fuel is accounted for.

(v) Fuel lost or destroyed through spillage, fire, or other casualty is not considered to have been "used" within the meaning of this section, and, accordingly, no credit or payment of the tax paid on the sale of the fuel may be made under this section.

(b) *Allowance of income tax credit in lieu of payment.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041 on fuel used by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for nontaxable purposes on a farm for farming purposes, or for purposes taxable at a lower rate, if section 6427(i) and paragraph (c) of this section did not apply. See section 34(a)(3).

(c) *Allowance of payment.* Payments in respect of fuel upon which tax was paid under section 4041 that is used for nontaxable purposes, on a farm for farming purposes, or for purposes taxable at a lower rate, shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) In the case of fuel used for nontaxable purposes to which section 6427(a) applies, to a person described in section 6427(g)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of his taxable year.

(d) *Dual use of fuel.* The principles set forth in § 48.4041–7, relating to dual use of fuel, for determining whether liability is incurred under section 4041 at the time of sale of the fuel, are equally applicable in determining whether a credit or payment is to be allowed under this section. Thus, if diesel fuel or special motor fuel used in a separate motor is drawn from the same tank as the one which supplies fuel for the propulsion of the vehicle, a reasonable determination of the quantity of the fuel used in the separate motor will be acceptable for purposes of computing the payment or credit under this section. The determination must be based, however, on the operating experience of the person using the fuel, and a statement, signed by the person, evidencing the operating experience must be maintained as a part of the records of the person claiming the payment or credit.

(e) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used for nontaxable or farming purposes during the period covered by the claim, multiplied by the rate of payment allowable under this section with respect to such fuel;

(2) The purpose or purposes for which the fuel was used, determined by reference to general categories, and the amount used for each of the purposes; and

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the claimant last filed an income tax return, (if any).

(f) *Illustrations.* The application of this section may be illustrated by the following example:

Example. Special motor fuel was sold for use as fuel in a highway vehicle that was registered for highway use. Tax was imposed on the sale at the rate of 9 cents a gallon under section 4041(a)(2). The special motor fuel was eventually used by the purchaser in a qualified business use. The credit or payment of tax is to be computed as follows:

	Cents per gallon
Rate at which tax was paid	9
Less: Rate at which tax would have been imposed on a qualified business use under sec. 4041(b)	0
Net credit or payment under sec. 6427(a)	9

§ 48.6427–2 Credits or payments to purchaser of diesel or special motor fuels used in intercity, local, or school buses.

(a) *In general.* (1) If tax has been paid under section 4041(a)(1) on the sale of diesel fuel for use as a fuel in a diesel-powered highway vehicle or under section 4041(a)(2) on the sale of special motor fuel for use as a fuel in a motor vehicle or a motorboat and the fuel is used by the purchaser in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in a school bus in the transportation of students and employees of schools, a credit (under the circumstances described in paragraph (b) of this section) or a payment (under the circumstances described in paragraph (c) of this section) in respect of the fuel so used shall be allowed or made to the purchaser of the fuel. The credit or payment under this section shall be an amount equal to the product of the number of gallons of fuel so used multiplied by the rate at which tax was imposed on the fuel by section 4041(a)(1) or section 4041(a)(2), reduced as limited by section 6427(b)(2). No interest shall be paid on any payment allowed under paragraph (c) of this section. However, interest may be paid on any overpayment (as defined by section 6401) arising from a credit. See section 34(a), relating to credit for certain uses of gasoline and special fuels, (and lubricating oil prior to January 7, 1983). See section 6611, relating to interest on overpayments. See § 48.6427–3 for the time within which a claim for credit or payment must be made under this section.

(2) The terms "diesel fuel" and "special motor fuel" have the same meaning as in section 4041 and the regulations thereunder. The term "fuel" means diesel fuel and special motor fuel.

See § 48.6421–4 for the meaning of "calendar quarter" and "taxable year."

(b) *Allowance of income tax credit.* Except as provided in paragraph (c) of this section, repayment under this section of the tax paid under section 4041(a)(1) or section 4041(a)(2) on diesel or special motor fuel used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations by a person subject to income tax may be obtained only by claiming a credit for the amount of this tax against the tax imposed by subtitle A of the Code. The amount of the credit shall be an amount equal to the payment which would be made under section 6427 with respect to fuel used during the taxable year for passenger land transportation or school bus operations if section 6427(i) and paragraph (c) of this section did not apply. See section 34(a)(3).

(c) *Allowance of payment.* Payments in respect of diesel or special motor fuel upon which tax was paid under section 4041(a)(1) or section 4041(a)(2) that is used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall be made only to—

(1) The United States or any agency or instrumentality thereof, a State, a political subdivision of a State, or an agency or instrumentality of one or more States or political subdivisions of a State, or the District of Columbia,

(2) An organization which is exempt from tax under section 501(a) and is not required to make a return of the income tax imposed under subtitle A for its taxable year, or

(3) A person described in section 6427(g)(2) to whom $1,000 or more is payable (without regard to paragraph (b) of this section) under this section with respect to fuel used during any of the first three quarters of the person's taxable year.

(d) *Supporting evidence required.* Each claim under this section for credit or payment must include a statement showing—

(1) The total number of gallons of fuel purchased and used in each intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public multiplied by the rate at which tax was imposed on the fuel by section 4041(a)(1) or section 4041(a)(2). See, however, section 6427(b)(2) with respect to the limitation on the amount of credit for buses other than qualified local buses.

(2) The total number of gallons of fuel purchased and used in each bus while engaged in school bus transportation operations multiplied by the rate at which tax was imposed on the fuel by subsection (a)(1) or (a)(2) of section 4041. See, however, section 6427(b)(2) with respect to the limitation on the amount of credit for buses other than qualified local buses.

(3) If a claim on Form 843 is being filed, the internal revenue district or service center with which the purchaser last filed an income tax return (if any).

§ 48.6427–3 Time for filing claim for credit or payment.

(a) *In general.* A claim for credit or payment described in § 48.6427–1 with respect to fuel used for nontaxable, farming, or other purposes taxable at a lower rate or in § 48.6427–2 with respect to fuel used either in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations shall cover only fuel used during the taxable year, or when paragraph (b)(2) of this section applies, used during the calendar quarter. Therefore, fuel on hand at the end of a taxable year, or, if applicable, a calendar quarter, such as fuel in supply tanks of vehicles or in storage tanks or drums, must be excluded from a claim filed for the taxable year or calendar quarter, as the case may be. However, this fuel may be included in a claim filed for a later taxable year or a later calendar quarter if it is used during that later year or quarter for nontaxable or farming purposes, or in an intercity or local bus while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations. Fuel used during the taxable year or calendar quarter may be covered by the claim for that period although the fuel has not been paid for at the time the claim is filed. The purposes of applying this section, a governmental unit or exempt organization described in § 48.6427–1(c) or § 48.6427–2(c) is considered to have as its taxable year the calendar year or fiscal year on the basis of which it regularly keeps its books; see § 48.6421–4.

(b) *Time for filing*—(1) *Annual claims.* (i) A claim under this section for credit or payment with respect to fuel used during a taxable year shall not be allowed unless it is filed no later than the time prescribed by section 6511 and the regulations thereunder for filing a claim for credit or refund of income tax for the particular taxable year.

(ii) A claim for payment of a governmental unit or exempt organization described in § 48.6427–1(c) or unit or exempt organization described in § 48.6427–2(c), must be filed no later than 3 years following the close of its taxable year. See § 48.6421–4.

(2) *Quarterly claims.* A claim for payment of $1,000 or more in respect to fuel used during any of the first three quarters of the taxable year, filed either under § 48.6427–1(c)(3) in respect of fuel used for nontaxable purposes or for purposes taxable at a lower rate, or under § 48.6427–2(c)(3) in respect of fuel used while engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations, shall not be allowed unless the claim is filed on or before the last day of the first calendar quarter following the calendar quarter for which the claim is filed. No quarterly claim may be filed for the last calendar quarter of the taxable year. Amounts for which payment is disallowed under this paragraph (b)(2) merely because the claim was not filed on time may be included in an annual claim filed under paragraph (b)(1) of this section, but other amounts for which a claim for payment has been filed under this paragraph (b)(2) may not be included in an annual claim filed under paragraph (b)(1) of this section.

(3) *Other applicable rules.* See § 301.7502–1 of this chapter (Regulations on Procedure and Administration) for provisions treating timely mailing as timely filing and § 301.7503–1 of this chapter for time for performance of an act where the last day falls on Saturday, Sunday, or a legal holiday.

(c) *Limit on claims per taxable year.* Not more than one claim may be filed under § 48.6427–1 or § 48.6427–2 by any person with respect to fuel used during any taxable year, except to the extent that quarterly claims may be filed under paragraph (b)(2) of this section with respect to any calendar quarter (other than the last calendar quarter) of the taxable year.

(d) *Form and content of claim.*—(1) *Claim for credit.* The claim for credit to which this section applies must be made by attaching a Form 4136, to the income tax return of an individual or a corporation. Form 4136 must be executed in accordance with the instructions prescribed for the preparation of the form. A partnership may not file Form 4136. When a partnership files Form 1065, U.S. Partnership Return of Income, it must include a statement showing how many gallons of fuel are allocated to each partner and the use made of the fuel.

(2) *Claim for payment.* The claim for payment to which this section applies

must be made on Form 843 in accordance with the instructions prescribed for the preparation of the form. Each form must designate the taxable year, or calendar quarter, for which it is filed. The form must be filed with the same service center where the income tax return was last filed or, in the case of a governmental unit or exempt organization described in § 48.6427–1(c) or § 48.6427–2(d), with the service center for the internal revenue region in which the principal place of business or principal office of the claimant is located.

(3) *Death or termination.* (i) If an individual dies, or if a sole proprietorship, partnership, or corporation is terminated or liquidated, during the taxable year, the claim for credit or payment may be filed in respect of fuel used during the short taxable year in the same manner as is provided for fuel used in a full taxable year. Those months which constitute a quarter of a full taxable year will constitute the same quarter of the short taxable year. For example, if a corporation using the calendar year is liquidated on September 30, 1982, and is entitled to $900 under § 48.6427–1 in respect of fuel used for nontaxable purposes for the calendar quarter ending March 31 and is also entitled to payments of $1,500 for each of the calendar quarters ending June 30 and September 30, it may file a claim for payment in respect of the fuel used for nontaxable purposes during the calendar quarters ending June 30, and September 30, 1982, and take a credit of $900 on its income tax return for the short taxable year in respect of the fuel used during the calendar quarter ending March 31, 1982.

(ii) A claim for payment on behalf of a decedent may be filed by the decedent's executor, administrator, or any other person charged with responsibility for the decedent's affairs. Such a claim must be accompanied by copies of the letters testamentary, letters of administration, or, in the case of a claim filed by other than the executor or administrator, the information called for in Form 1310 (Statement of Person Claiming Refund Due a Deceased Taxpayer).

The claim may cover only fuel in respect of which the decedent would have been entitled to claim payments. For example, if an individual dies on July 15, 1982, prior to claiming payment under § 48.6427–1 of $1,000 or more applicable to fuel purchased and used for nontaxable purposes during the calendar quarter ending June 30, 1982, the decedent's executor or other legal representative may file a claim for payment covering that calendar quarter, and take the credit provided by section 39(a)(3) against the decedent's income tax on the income tax return for the short taxable year in respect of fuel purchased by the decedent and so used during the period from July 1, 1982, to July 15, 1982, the date of death.

(e) *Restrictions on claims for credit or payment.* Credits or payments are allowable only in respect of fuel that was sold by the producer or importer in a transaction that was subject to tax under section 4041. For example, a State or local government may not file a claim with respect to any fuel which it purchased tax free from the producer, even though the State or local government used the fuel for the purposes described in paragraph (a) of this section. Similarly, a State or local government may not file a claim with respect to the use of fuel if it is known that another person is entitled to claim a payment, credit, or refund with respect to the same fuel. For example, a State or local government may not file a claim in respect of tax-paid fuel that has been resold by the purchaser to the State or local government.

§ 48.6427–4 Applicable laws.

(a) *Penalties, excessive claims, etc.* All provisions of law, including penalties, applicable in respect of the tax imposed by section 4041 shall, to the extent applicable and consistent with section 6427, apply in respect of the payments provided for in section 6427 to the same extent as if these payments constituted refunds of overpayments of the tax imposed on the sale of fuels by section 4041. For special rules applicable to the assessment and collection of amounts constituting excessive payments under section 6427, see section 6206 and the regulations thereunder. For the civil penalty assessable in the case of excessive claims under section 6427, see section 6675 and the regulations thereunder. For the treatment as an overpayment of an amount allowable as an excessive credit under section 34 with respect to amounts payable under section 6427, see section 6401(b).

(b) *Examination of books and witnesses.* For the purpose of ascertaining (1) the correctness of any claim made under section 6427 or (2) the correctness of any credit or payment made in respect of the claim, the Commissioner shall have the same authority granted by paragraphs (1), (2), and (3) of section 7602, relating to examination of books and witnesses, as if the person claiming credit or payment under section 6427 were the person liable for tax.

§ 48.6427–5 Records to be kept in substantiation of credits or payments.

(a) *In general.* Every person making a claim for credit or payment under section 6427 must keep records sufficient to enable the district director to determine whether the person is entitled to credit or payment under such section and, if so, the amount of the credit or payment. No particular form is prescribed for keeping the records, but the records must include a copy of the income tax return or claim and a copy of any statement or document submitted with the return or claim. The records must also show with respect to the period covered by the claim—

(1) The number of gallons of fuel purchased and the dates of purchase,

(2) The name and address of each vendor from whom fuel was purchased and the total number of gallons purchased from each,

(3) The number of gallons of fuel purchased by the claimant and used during the period covered by the claim for nontaxable purposes, farming purposes, for other purposes taxable at a lower rate, in local, intercity, or school buses, and

(4) Other information as necessary to establish the correctness of the claim.

(b) *Acceptable records.* (1) Evidence of purchases of fuel, and the purposes for which it was used, to substantiate claims may include paid duplicate sales invoices or tickets from the fuel dealer or other vendor, and detailed records of all fuel used which show the amount used the prescribed purpose and the amount used for other purposes.

(2) Records maintained for Federal or State income tax purposes, or to support claims for refund of a State tax on fuel, may be used to the extent that they contain the information necessary to substantiate the accuracy of the claim for credit under section 6427. However, the records must show separately the number of gallons of fuel used for nontaxable purposes, farming purposes, other purposes taxable at a lower rate, or in intercity, local, or school buses during the period covered by the claim.

(c) *Place and period for keeping records.* (1) All records required by this section must be kept by the claimant at a convenient and safe location within the United States which is accessible to internal revenue officers and shall during normal business hours be available for inspection by internal revenue officers. If the claimant has a principal place of business in the United States, the records must be kept at that place of business.

(2) Records required to substantiate a claim under section 6427 must be

maintained for a period of at least 3 years from the last date prescribed for the filing of the claim for credit or payment.

Par. 37. Section 48.6675–1 is revised to read as follows:

§ 48.6675–1 Excessive claims under section 6420, 6421, 6424, or 6427.

(a) *Civil penalty.* Any person making a claim for credit or payment under section 6420 (relating to gasoline used on farms), section 6421 (relating to gasoline used for certain non-highway purposes or by local transit system), section 6424 (relating to lubricating oil used for certain nontaxable purposes prior to January 7, 1983), or section 6427 (relating to fuels not used for taxable purposes) for an excessive amount shall be liable, in addition to any criminal penalty provided by law, to penalty in an amount equal to the greater of either (1) two times the excessive amount or (2) ten dollars, unless the person shows that the making of the excessive claim was due to reasonable cause. For provisions relating to the assessment and collection of the civil penalty provided by section 6675, see section 6206 and the regulations thereunder.

(b) *Excessive amount defined.* For purposes of section 6675(a), the term "excessive amount" means the amount by which—

(1) The claim for credit or payment under section 6420, section 6421, section 6424 or section 6427 exceeds

(2) The amount of credit or payment under the section for the period covered by the claim.

Par. 38. The authority citation for Part 154 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

PART 154—[AMENDED]

§ 154.4–1 [Amended]

Par. 39. Paragraph (e) of § 154.4–1 (Temporary Regulations in connection with the Airport and Airway Revenue Act of 1970) is removed.

PART 602—REPORTING AND RECORDKEEPING REQUIREMENTS

Par. 40. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 41. Section 602.101(c) is amended as follows:

1. The following tabular entries are inserted in the appropriate places in the table:

Sections	
48.0–1	1545–0723
48.4084–1	1545–0725
48.4091–0	1545–0725
48.4092–1	1545–0725
48.4101–1	1545–0725
48.4102–1	1545–0725
48.4161(a)–1	1545–0723
48.4161(a)–2	1545–0723
48.5161(a)–3	1545–0723
48.4161(b)–1	1545–0723
48.4181–2	1545–0723
48.4182–2	1545–0723
48.6011(a)–1	1545–0723
48.6011(a)–2	1545–0723
48.6071(a)–1	1545–0723
48.6081(a)–1	1545–0723
48.6091–1	1545–0723
48.6101–1	1545–0723
48.6109–1	1545–0723
48.6416(a)–1	1545–0723
48.6416(a)–2	1545–0723
48.6416(a)–3	1545–0723
48.6416(b)(1)–1	1545–0723
48.6416(b)(1)–2	1545–0723
48.6416(b)(1)–3	1545–0723
48.6416(b)(1)–4	1545–0723
48.6416(b)(2)–1	1545–0723
48.6416(b)(2)–2	1545–0723
48.6416(b)(2)–3	1545–0723
48.6416(b)(2)–4	1545–0723
48.6416(b)(3)–1	1545–0723
48.6416(b)(3)–2	1545–0723
48.6416(b)(3)–3	1545–0723
48.6416(b)(4)–1	1545–0723
48.6416(b)(5)–1	1545–0723
48.6416(c)–1	1545–0723
48.6416(e)–1	1545–0723
48.6416(f)–1	1545–0723
48.6416(g)–1	1545–0723
48.6416(h)–1	1545–0723
48.6420–1	1545–0723
48.6420–2	1545–0723
48.6420–3	1545–0723
48.6420–4	1545–0723
48.6420–5	1545–0723
48.6420–6	1545–0723
48.6420–7	1545–0723
48.6421–0	1545–0723
48.6421–1	1545–0723
48.6421–2	1545–0723
48.6421–3	1545–0723
48.6421–4	1545–0723
48.6421–5	1545–0723
48.6421–6	1545–0723
48.6421–7	1545–0723
48.6424–0	1545–0723
48.6424–1	1545–0723
48.6424–2	1545–0723
48.6424–3	1545–0723
48.6424–4	1545–0723
48.6424–5	1545–0723
48.6424–6	1545–0723
48.6424–7	1545–0723
48.6427–0	1545–0723
48.6427–1	1545–0723
48.6427–2	1545–0723
48.6427–3	1545–0723
48.6427–4	1545–0723
48.6427–5	1545–0723
48.6675–1	1545–0723

2. The entry in the table reading "§ 48.0–5 ..... 1545–0685" is revised to read: "§ 48.0–3 ..... 1545–0685".

3. The following tabular entries are removed from the table:

6416(b)–1 (d)	1545–0023
6416(b)–2 (b)	1545–0023
6416(b)–2 (c)	1545–0023
6416(b)–3 (a) and (c)	1545–0023
6416(b)–4 (c)	1545–0023
6416(b)–5 (c)	1545–0023
6420(f)–1 (a) and (b)	1545–0023
6420(c)–2 (c), (d) and (e)	1545–0023
6421(c)–1 (a), (b), (c), (d)	1545–0024
6421(g)–1 (a), (b), (c)	1545–0024
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023
64	1545–0023

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805).

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: July 18, 1985.

Ronald A. Pearlman,
Assistant Secretary of the Treasury.

[FR Doc. 85–18444 Filed 8–7–85; 8:45 am]
BILLING CODE 4830–01–M

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 96

Public Contracts and Property Management; Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements

AGENCY: Office of the Secretary, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: The Single Audit Act of 1984 (Act), Pub. L. 98–502, places the responsibility of obtaining annual organization-wide audits on State and local governments (including Indian tribes) receiving Federal assistance equal to or in excess of $100,000 annually. Governmental units receiving between $25,000 and $100,000 annually may follow either the audit requirements of the Act or those contained in the Federal statutes and regulations governing programs under which such Federal assistance is provided. Pursuant to Section 7505 of the Act, the Office of Management and Budget (OMB) has issued Circular A–128, "Uniform Audit

Requirements for State and Local Governments." OMB Circular A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Attachment F, places a similar audit responsibility on organizations covered by that Circular. Audit responsibility for organizations not covered by OMB Circulars A-128 and A-110 are found throughout the Department of Labor (DOL) regulations. This rule implements OMB Circular A-128 and Attachment F of OMB Circular A-110, and also consolidates into 29 CFR Part 96 the audit requirements currently contained throughout the DOL regulations .

DATE: This interim final rule will become effective on August 8, 1985. Written comments must be received on or before October 7, 1985. These comments will be shared with other Federal agencies facing the same requirement to implement the Single Audit Act of 1984.

ADDRESS: Interested persons should submit written comments to Mr. Thomas C. Komarek, Assistant Secretary for Administration and Management, Frances Perkins Building, 200 Constitution Avenue, NW., Rm 2514, Washington, D.C.

Comments will be available for public inspection at the above address from 8:15 a.m. to 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas K. Delaney, Telephone: (202) 523-9174.

SUPPLEMENTARY INFORMATION: On August 19, 1983, the DOL published final regulations (41 CFR 29-70.217) implementing the single audit requirements contained in Attachment P of OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-aid to State and Local Governments." In response to Congressional concern over the limited success of Attachment P, the Single Audit Act was signed into law on October 19, 1984. In addition to requiring annual organization-wide audits for State and local governments and Indian tribes receiving Federal assistance equal to or in excess of $100,000 and making it an option for those receiving between $25,000 and $100,000, the law specifies that these audits shall be in lieu of any financial or financial and compliance audit of any individual Federal assistance program which a State or local government or Indian tribe is required to conduct under any other Federal law or regulation. This provision does not, however, preclude Federal agencies from conducting or contracting for such additional audits (including financial and compliance audits) as they may deem necessary.

Publication as a Final Rule

As stated earlier, the major portion of this regulation implements OMB Circular A-128. A Notice of Issuance of this Circular was published on May 6, 1985 (50 FR 19114), following a public comment period. The preamble to the Notice of Issuance contained a detailed summary of the public comments received by the Office of Management and Budget. In order to expeditiously implement OMB Circular A-128 and the provisions of the Single Audit Act, the Department has determined that there is good cause of publishing this regulation as an interim final rule. This publication is being done in accordance with 5 U.S.C. 552(b) since any further delay in implementing this regulation would be impracticable, unnecessary, and contrary to the public interest. However, the Department will consider any additional comments on this regulation and will share them with other Federal agencies facing the same requirement to implement the Single Audit Act of 1984. Such comments should be in writing and must be received on or before October 7, 1985.

Effective Date

Because there has been a previous opportunity for members of the public to comment on the underlying provisions of this regulation, and due to the need to expeditiously implement OMB Circular A-128 and the provisions of the Single Audit Act, this regulation shall become effective immediately instead of 30 days after publication. This determination is made pursuant to 5 U.S.C. 553(d)(3).

Executive Order 12291

This rule is not a "major rule" under Executive Order 12291 because it will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In fact, this rule includes procedures that encourage small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals to participate in contracts awarded to fulfill the single audit requirement. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Public Law 96-511) the reporting or recordkeeping provisions included in this rule have been submitted to OMB for approval. Requirements for this rule increase those approved by OMB for audtis conducted under Circular A-102, Attachment P (OMB No. 1225-0017), due to the increased frequency of audit per the Single Audit Act of 1984.

List of Subjects in 29 CFR Part 96

Government procurement, Grant programs—labor, Government contracts, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, Subtitle A of Title 29 of the Code of Federal Regulations is amended by adding a new Part 96 to read:

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS AND OTHER AGREEMENTS

Authority: 31 U.S.C. 7500 *et seq.*, OMB Circular No. A-128 and OMB Circular No. A-110.

§ 96.0 Purpose and scope of part.

The regulations in this part implement Office of Management and Budget (OMB) Circular A-128, "Uniform Audit Requirements for State and Local Governments," Attachment F of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and also consolidates the audit requirements contained throughout the DOL regulations. This part applies to all grants and contracts and other Federal assistance provided by or on behalf of the DOL.

Subpart 96.1—Audits of State and Local Governments and Indian Tribes

§ 96.101 Purpose and scope of subpart.

The Single Audit Act of 1984 (Act), Pub. L. 98-502 builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State and local governments and Indian tribes that receive Federal assistance equal to or in excess of $100,000 a year to have an audit made annually, or under certain circumstances, biennially. Governmental units receiving between $25,000 and $100,000 annually may follow either the audit requirements of the Act or those contained in the Federal statutes and regulations under which such Federal assistance is provided. OMB Circular A-128 was issued pursuant to section 7505 of the Act, which requires the Director of the Office of Management and Budget to issue implementing guidelines. It specifies that the guidelines include procedures for the assignment of cognizant Federal agencies, criteria for determining the appropriate charges to Federal programs for the cost of audits and procedures to assure that small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals have the opportunity to participate in contracts awarded to fulfill the single audit requirements. This subpart implements the guidance provided in Circular A-128 by establishing uniform audit requirements and policy for State and local governments and Indian tribes that receive Federal assistance from DOL.

§ 96.102 Audit requirements.

The audit requirements contained in OMB Circular A-128, attached as Appendix A of this part, shall be followed for audits of all fiscal years beginning after December 31, 1984. For audits of fiscal years beginning on or before December 31, 1984, organizations covered by this subpart have the option of following the requirements of OMB Circular A-128, or those contained in 41 CFR 29-70.217.

Subpart 96.2—Audits of Colleges and Universities, Hospitals and Other Nonprofit Organizations

§ 96.201 Purpose and scope of subpart.

OMB Circular A-110, Attachment F, "Standards for Financial Management Systems," provides that the organization-wide audit is the preferred form of audit coverage for colleges and universities, hospitals, and other nonprofit organizations. This subpart implements the guidance provided in Attachment F of OMB Circular A-110 by establishing uniform audit requirements for colleges and universities, hospitals, and other nonprofit organizations that receive Federal assistance from DOL equal to or in excess of $25,000 in any one fiscal year.

§ 96.202 Audit requirements.

The audit requirement contained in OMB Circular A-110, Attachment F, attached as Appendix B of this part, shall be followed for audits of all fiscal years beginning on or after August 8, 1985. The audit requirement contained in 41 CFR 29-70.217a shall be followed for audits of fiscal years beginning before August 8, 1985. Organizations covered by this subpart are responsible for arranging for independent audits that meet the requirements of this section. Such audits should be made annually, but must be made at least biennially. Audits conducted biennially under the provisions of this subpart shall cover both years within the biennial period. OMB Circular A-128 provides detailed guidance on the conduct of organization-wide audits. Colleges and universities, hospitals, and other nonprofit organizations are required to follow this guidance in the conduct of audits made pursuant to this subpart.

Subpart 96.3—Audits of Entities Not Covered by Either Subpart 96.1 or Subpart 96.2

§ 96.301 Purpose and scope of subpart.

This subpart prescribes the requirement for audit of grantees, contractors, subgrantees, and subcontractors that receive funds from DOL and are not covered by either Subpart 96.1 or Subpart 96.2.

§ 96.302 Audit requirement.

The Secretary of Labor is responsible for the survey, audit or examination of grantees/contractors and their subgrantees and subcontractors covered by this subpart. Such surveys, audits, or examinations shall be conducted at the Secretary's discretion.

Subpart 96.4—Access to Records, Audit Standards and Relation of Organization-wide Audits to Other Audit Requirements

§ 96.401 Access to records.

The Secretary, the DOL Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives (including certified public accountants under contract), shall have access to any books, documents, papers, and records (manual and automated) of the entity receiving funds from the DOL and its subgrantees/subcontractors for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

§ 96.402 Audit standards.

Surveys, audits and examinations will conform to the Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, issued by the Comptroller General of the United States, and guides issued by the Secretary. For purposes of meeting audit requirements under Subparts 96.1, 96.2 and 96.3, only the standards for financial and compliance audits need apply.

§ 96.403 Relation of organization-wide audits to other audit requirements.

To the extent that audits conducted in accordance with Subpart 96.1 or Subpart 96.2 provide DOL officials with the information needed to carry out their responsibilities under Federal law or DOL regulations, the Secretary shall rely upon and use the information. Additional audit efforts are not precluded, but such efforts must build upon the organization-wide audit and not duplicate it. The provisions of Subparts 96.1, 96.2 and 96.3 do not authorize a covered entity, after having complied with those requirements, to constrain, in any manner, the Secretary from carrying out additional surveys, audits or examinations as deemed necessary.

Subpart 96.5 [Reserved]

Subpart 96.6 [Reserved]

Appendix A to Part 96—Office of Management and Budget Circular No. A–128—Uniform Audit Requirements for State and Local Governments

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A–128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98–502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A–102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A–102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent audifor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98–502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and

—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,

—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

—Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A-110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other

irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A-87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A-102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395-3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Attachment—Circular A-128

Definition of Major Program as Provided in Pub. L. 98-502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

Appendix B to Part 96—Attachment F to Office of Management and Budget Circular No. A-110—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

Attachment F.—Circular No. A-110; Standards for financial management systems

1. This attachment prescribes standards for financial management systems of recipients. Federal sponsoring agencies shall not impose additional standards on recipients unless specifically provided for in the applicable statutes (e.g., the Joint Funding Simplification Act, P.L. 93-510) or other attachments to this circular. However, Federal sponsoring agencies are encouraged to make suggestions and assist recipients in establishing or improving financial management systems when such assistance is needed or requested.

2. Recipients' financial management systems shall provide for:

a. Accurate, current and complete disclosure of the financial results of each federally sponsored project or program in accordance with the reporting requirements set forth in Attachment G to this circular. When a Federal sponsoring agency requires reporting on an accrual basis, the recipient shall not be required to establish an accrual accounting system but shall develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

b. Records that identify adequately the source and application of funds for federally sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

c. Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

d. Comparison of actual outlays with budget amounts for each grant or other agreement. Whenever appropriate or required by the Federal sponsoring agency, financial information should be related to performance and unit cost data.

e. Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by the Federal Government. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements.

f. Procedures for determining the reasonableness, allowability and allocability of costs in accordance with the provisions of the applicable Federal cost principles and the terms of the grant or other agreement.

g. Accounting records that are supported by source documentation.

h. Examinations in the form of audits or internal audits. Such audits shall be made by qualified individuals who are sufficiently independent of those who authorize the expenditure of Federal funds, to produce unbiased opinions, conclusions or judgments. They shall meet the independence criteria along the lines of Chapter 3, Part 3 of the U.S. General Accounting Office publication, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. These examinations are intended to ascertain the effectiveness of the financial management systems and internal procedures that have been established to meet the terms and conditions of the agreements. It is not intended that each agreement awarded to the recipient be examined. Generally, examinations should be conducted on an organization-wide basis to test the fiscal integrity of financial transactions, as well as compliance with the terms and conditions of the Federal grants and other agreements. Such tests would include an appropriate sampling of Federal agreements. Examinations will be conducted with reasonable frequency, on a continuing basis or at scheduled intervals, usually annually, but not less frequently than every two years. The frequency of these examinations shall depend upon the nature, size and the complexity of the activity. These examinations do not relieve Federal agencies of their audit responsibilities, but may affect the frequency and scope of such audits.

i. A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

3. Primary recipients shall require subrecipients (as defined in paragraph 5 of the basic circular) to adopt the standards in paragraph 2, above except for the requirement in subparagraph 2e, regarding the use of the letter-of-credit method and that part of subparagraph 2a, regarding reporting forms and frequencies prescribed in Attachment G to this circular.

Signed at Washington, D.C., this 24th day of July 1985.

William E. Brock,

Secretary of Labor.

[FR Doc. 85-18815 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-23-M

DEPARTMENT OF DEFENSE

32 CFR Part 97

[DoD Directive 5405.2]

Release of Official Information in Litigation and Testimony by Department of Defense Personnel as Witnesses

AGENCY: Office of the Secretary, DOD.

ACTION: Final rule.

SUMMARY: This final rule establishes policies, practices, responsibilities, and procedures for the release of official DoD information in litigation and for the appearance and testimony by DoD personnel as witnesses during litigation.

EFFECTIVE DATE: July 23, 1985.

ADDRESS: General Counsel, Department of Defense, Pentagon, Room 3E980, Washington, D.C. 20301-1600.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen A. Buck, Assistant General Counsel for Legal Counsel, Department of Defense, telephone (202) 697-2714.

SUPPLEMENTARY INFORMATION: This final rule was published as a proposed rule for public comment in 50 FR 10248 (March 14, 1985), as corrected in 50 FR 12337 (March 28, 1985). The final rule reflects the program as adopted by the Department of Defense following the public comment and internal coordination processes.

List of Subjects in 32 CFR Part 97.

Courts, Government employees, Law.

Accordingly, 32 CFR is Amended by adding a new Part 97 reading as follows:

PART 97—RELEASE OF OFFICIAL INFORMATION IN LITIGATION AND TESTIMONY BY DOD PERSONNEL AS WITNESSES

Sec.

Authority: 5 U.S.C. 301; 10 U.S.C. 133.

§ 97.1 Purpose.

This Directive establishes policy, assigns responsibilities, and prescribes procedures for the release of official DoD information in litigation and for testimony by DoD personnel as witnesses during litigation.

§ 97.2 Applicability and scope.

(a) This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components"), and to all personnel of such DoD Components.

(b) This Directive does not apply to the release of official information or testimony by DoD personnel in the following situations:

(1) Before courts-martial convened by the authority of the Military Departments or in administrative proceedings conducted by or on behalf of a DoD Component;

(2) Pursuant to administrative proceedings conducted by or on behalf of the Equal Employment Opportunity Commission (EEOC) or the Merit Systems Protection Board (MSPB), or pursuant to a negotiated grievance procedure under a collective bargaining agreement to which the Government is a party;

(3) In response to requests by Federal Government counsel in litigation conducted on behalf of the United States;

(4) As part of the assistance required pursuant to DoD Directive 5220.6, "Industrial Personnel Security Clearance Program," December 20 1976; or,

(5) Pursuant to disclosure of information to Federal, State, and local prosecuting and law enforcement authorities, in conjunction with an investigation conducted by a DoD criminal investigative organization.

(c) This Directive does not supersede or modify existing laws or DoD program governing the testimony of DoD personnel or the release of official DoD information during grand jury proceedings, the release of official information not involved in litigation, or the release of official information pursuant to the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a, nor does this Directive preclude treating any written request for agency records that is not in the nature of legal process as a request under the Freedom of Information or Privacy Acts.

(d) This Directive is not intended to infringe upon or displace the responsibilities committed to the Department of Justice in conducting litigation on behalf of the United States in appropriate cases.

(e) This Directive does not preclude official comment on matters in litigation in appropriate cases.

(f) This Directive is intended only to provide guidance for the internal operation of the Department of Defense and is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law against the United States or the Department of Defense.

§ 97.3 Definitions.

(a) *Demand.* Subpoena, order, or other demand of a court of competent jurisdiction, or other specific authority, for the production, disclosure, or release of official DoD information or for the appearance and testimony of DoD personnel as witnesses.

(b) *DoD Personnel.* Present and former U.S. military personnel; Service Academy cadets and midshipmen; and present and former civilian employees of any Component of the Department of Defense, including nonappropriated fund activity employees; non-U.S. nationals who perform services overseas, under the provisions of status of forces agreements, for the United States Armed Forces; and other specific individuals hired through contractual agreements by or on behalf of the Department of Defense.

(c) *Litigation.* All pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions, boards (including the Armed Services Board of Contract Appeals), or other tribunals, foreign and domestic. This term includes responses to discovery requests, depositions, and other pretrial proceedings, as well as responses to formal or informal requests by attorneys or others in situations involving litigation.

(d) *Official Information.* All information of any kind, however stored, that is in the custody and control of the Department of Defense, relates to information in the custody and control of the Department, or was acquired by DoD personnel as part of their official duties or because of their official status within the Department while such personnel were employed by or on behalf of the Department or on active duty with the United States Armed Forces.

§ 97.4 Policy.

It is DoD policy that official information should generally be made reasonably available for use in Federal and State courts and by other governmental bodies unless the information is classified, privileged, or otherwise protected from public disclosure.

§ 97.5 Responsibilities.

(a) The *General Counsel, Department of Defense,* shall provide general policy and procedural guidance by the issuance of supplemental instructions or specific orders concerning the release of official DoD information in litigation and the testimony of DoD personnel as witnesses during litigation.

(b) The *Heads of DoD Components* shall issue appropriate regulations to implement this Directive and to identify official information that is involved in litigation.

§ 97.6 Procedures.

(a) *Authority to Act.* (1) In response to a litigation request or demand for official DoD information or the testimony of DoD personnel as witnesses, the General Counsels of DoD, Navy, and the Defense Agencies; the Judge Advocates General of the Military Departments; and the Chief Legal Advisors to the JCS and the Unified and Specified Commands, with regard to their respective Components, are authorized—after consulting and coordinating with the appropriate Department of Justice litigation attorneys, as required—to determine whether official information may be released in litigation; whether DoD personnel assigned to or affiliated with the Component may be interviewed, contacted, or used as witnesses concerning official DoD information or as expert witnesses; and what, if any, conditions will be imposed upon such release, interview, contact, or testimony. Delegation of this authority, to include the authority to invoke appropriate

claims of privilege before any tribunal, is permitted.

(2) In the event that a DoD Component receives a litigation request or demand for official information originated by another Component, the receiving Component shall forward the appropriate portions of the request or demand to the originating Component for action in accordance with this Directive. The receiving Component shall also notify the requestor, court, or other authority of its transfer of the request or demand.

(3) Notwithstanding the provisions of § 97.6(a) (1) and (2), the General Counsel, DoD, in litigation involving terrorism, espionage, nuclear weapons, intelligence means or sources, or otherwise as deemed necessary, may notify Components that General Counsel, DoD, will assume primary responsibility for coordinating all litigation requests and demands for official DoD information or testimony of DoD personnel, or both; consulting with the Department of Justice, as required; and taking final action on such requests and demands.

(b) *Factors to Consider.* In deciding whether to authorize the release of official DoD information or the testimony of DoD personnel concerning official information (hereafter referred to as "the disclosure") pursuant to § 97.6(a), DoD officials should consider the following types of factors:

(1) Whether the request or demand is unduly burdensome or otherwise inappropriate under the applicable court rules;

(2) Whether the disclosure, including release *in camera*, is appropriate under the rules of procedure governing the case or matter in which the request or demand arose;

(3) Whether the disclosure would violate a statute, executive order, regulation, or directive;

(4) Whether the disclosure, including release *in camera*, is appropriate or necessary under the relevant substantive law concerning privilege;

(5) Whether the disclosure, except when *in camera* and necessary to assert a claim of privilege, would reveal information properly classified pursuant to DoD 5200.1–R, "Information Security Program Regulation," August 1982; unclassified technical data withheld from public release pursuant to DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984; or other matters exempt from unrestricted disclosure; and,

(6) Whether disclosure would interfere with ongoing enforcement proceedings, compromise constitutional rights, reveal the identity of an intelligence source or confidential informant, disclose trade secrets or similarly confidential commercial or financial information, or otherwise be inappropriate under the circumstances.

(c) *Decisions on Litigation Requests and Demands.* (1) Subject to § 97.6(c)(5), DoD personnel shall not, in response to a litigation request or demand, produce, disclose, release, comment upon, or testify concerning any official DoD information without the prior written approval of the appropriate DoD official designated in subsection 97.6(a). Oral approval may be granted, but a record of such approval will be made and retained in accordance with the applicable implementing regulations.

(2) If official DoD information is sought, through testimony or otherwise, by a litigation request or demand, the individual seeking such release or testimony must set forth, in writing and with as much specificity as possible, the nature and relevance of the official information sought. Subject to § 97.6(c)(5), DoD personnel may only produce, disclose, release, comment upon, or testify concerning those matters that were specified in writing and properly approved by the appropriate DoD official designated in § 97.6(a). *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(3) Whenever a litigation request or demand is made upon DoD personnel for official DoD information or for testimony concerning such information, the personnel upon whom the request or demand was made shall immediately notify the appropriate DoD official designated in § 97.6(a) for the Component to which the individual contacted is or, for former personnel, was last assigned. In appropriate cases, the responsible DoD official shall thereupon notify the Department of Justice of the request or demand. After due consultation and coordination with the Department of Justice, as required, the DoD official shall determine whether the individual is required to comply with the request or demand and shall notify the requestor or the court or other authority of the determination reached.

(4) If, after DoD personnel have received a litigation request or demand and have in turn notified the appropriate DoD official in accordance with § 97.6(c)(3), a response to the request or demand is required before instructions from the responsible official are received, the responsible official designated in § 97.6(a) shall furnish the requestor or the court or other authority with a copy of this Directive and applicable implementing regulations, inform the requestor or the court or other authority that the request or demand is being reviewed, and seek a stay of the request or demand pending a final determination by the Component concerned.

(5) If a court of competent jurisdiction or other appropriate authority declines to stay the effect of the request or demand in response to action taken pursuant to subsection 97.6(c)(4), or if such court or other authority orders that the request or demand must be complied with notwithstanding the final decision of the appropriate DoD official, the DoD personnel upon whom the request or demand was made shall notify the responsible DoD official of such ruling or order. If the DoD official determines that no further legal review of or challenge to the court's order or ruling will be sought, the affected DoD personnel shall comply with the request, demand, or order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

(d) *Fees.* Consistent with the guidelines in DoD Instruction 7230.7, "User Charges," January 29, 1985, the appropriate officials designated in § 97.6(a) are authorized to charge reasonable fees, as established by regulation and to the extent not prohibited by law, to parties seeking, by request or demand, official DoD information not otherwise available under DoD 5400.7–R, "DoD Freedom of Information Act Program," March 24, 1980. Such fees, in amounts calculated to reimburse the government for the expense of providing such information, may include the costs of time expended by DoD employees to process and respond to the request or demand; attorney time for reviewing the requst or demand and any information located in response thereto and for related legal work in connection with the request or damend; and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. *See Oppenheimer Fund, Inc.* v. *Sanders*, 437 U.S. 340 (1978).

(e) *Expert or Opinion Testimony.* DoD personnel shall not provide, with or without compensation, opinion or expert testimony concerning official DoD information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate

DoD official designated in § 97.6(a) may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such order. If the DoD official determines that no further legal review of or challenge to the court's order will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 5, 1985.

[FR Doc. 85-18785 Filed 8-7-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-85-19]

Special Local Regulations; Annual Labor Day Fireworks Display, Maumee River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Annual Labor Day Fireworks Display. This event will be held on the Maumee River on September 2, 1985 with an alternate date of 6 or 7 September 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on September 2, 1985 and terminate on September 7, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations and they are being made effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The application to hold this event was not received until July 26, 1985, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A.R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Annual Labor Day Fireworks Display will be conducted on the Maumee River on September 2, 1985. The alternate date for the event will be 6 or 7 September 1985. This event will have falling debris and ash and an unusually large concentration of spectator boats could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Toledo, OH).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

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

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46(c)(5) and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35-0919 to read as follows:

§ 100.35-0919 Maumee River, Ohio.

(a) *Regulated Area.* (1) The following area will be closed to vessel navigation or anchorage for vessels of 65 feet in length or greater from 9:00 p.m. (local time) until 11:00 p.m. on September 2, 1985: That portion of the Maumee River from the Cherry Street Bridge to the Anthony Wayne Bridge.

(2) The following portion of the Maumee River will be closed to all vessel traffic, from 9:00 p.m. (local time) until 11:00 p.m. on September 2, 1985: That portion of the Maumee River within a 500 foot radius of the fireworks barges.

(b) *Special Local Regulations.* (1) Vessels under 65 feet shall begin clearing the shipping channels at 10:30 p.m. local or when the fireworks display ends, whichever comes first.

(2) Two 60 foot fireworks barges will be moored at the City of Toledo Division of Streets, Harbor and Bridges Building Dock. Vessel masters shall pass with caution.

(3) If the weather on September 2, 1985 is inclement, the fireworks display and the river closure will be postponed until 9:00 p.m. to 11:00 p.m. on September 6, 1985. Should another postponement occur, the display and closure will be moved to the same time period on September 7, 1985. If postponed, notice will be given on September 2, 1985, and if required again on September 6, 1985, over the U.S. Coast Guard Radio Net.

(4) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer.

Vessels will be operated at a "no wake" speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(5) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

Dated: July 31, 1985.

B.K. Schaeffer

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85-18814 Filed 8-7-85; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-85-13]

Special Local Regulations; 1985 Cleveland National Air Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Cleveland National Air Show which is to be conducted over the eastern portion of Cleveland Harbor for the 31st of August through the 3rd of September, 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on August 31, and terminate on September 3, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: On 17 June 1985, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (50 FR 25091). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The 1985 Cleveland National Air Show will be conducted over the eastern portion of Cleveland Harbor from the 31st of August through the 3rd of September, 1985. This event will have low flying aircraft demonstrations, high performance aircraft aerobatics, parachutists, and other events which could pose hazards to navigation in the area. Vessels desiring to transit the area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Cleveland, Ohio).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; Febuary 26, 1979). The economic impact has been found 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 event. This should have a favorable impact on commercial facilities providing services to the spectators. 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).

Regulations

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

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 48 CFR 1.46(c)(5) and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0913 to read as follows:

§ 100.35–0913 Cleveland Harbor, Lake Erie.

The following area will be closed to vessel navigation or anchorage from 8:00 A.M. (local time) until 6:00 P.M. (local time) from 31 August through September 3, 1985.

(a) *Restricted Area.* That portion of Lake Erie and Cleveland Harbor enclosed by a line running from the northwest corner of Dock No. 34 northwest to 41 degrees 31 minutes North 81 degrees 42 minutes 16 seconds West; then northeast to a point at 41 degrees 32 minutes 15 seconds North 81 degrees 11 minutes 15 seconds West, then southeast to a point at Light "2" in position at 41 degrees 31 minutes 45 seconds North 81 degrees 39 minutes 46 seconds West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

(5) This section is effective from 8:00 A.M. (local time) until 6:00 P.M. (local time), from August 31 through September 3, 1985.

Dated: July 31, 1985.

E.K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85–18813 Filed 8–7–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 100

[CGD 09–85–14]

Special Local Regulations; Spirit of America Offshore Grand Prix, Lake Michigan

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special Local Regulations are being adopted for the Spirit of America Offshore Grand Prix which is to be conducted on Lake Michigan off of Grand Haven, MI, on the 10th of August, 1985. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective and terminate on August 10, 1985.

FOR FURTHER INFORMATION CONTACT: MSTC Cary H. Lindsay, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: On June 17, 1985, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (50 FR 25091). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are MSTC Cary H. Lindsay, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Spirit of America Offshore Grand Prix will be conducted on Lake Michigan off of Grand Haven, MI, on August 10, 1985. It is sponsored by the Grand Isle Marina and is well known to boaters and residents of this area. This event will have an estimated 50 plus power boats with an expected 7,000 spectator craft which could pose hazards to navigation in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement prior to and during this event within this section of Lake Michigan. A Coast Guard patrol vessel will be located at strategic locations

around the regulated area to stop vessel traffic.

Economic Assessment and Certification

This proposed 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 event. This should have a favorable impact on commercial facilities providing services to the spectators. 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).

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

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

Authority: 33 U.S.C. 1233; 49 CFR 1.46(c)(5) and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35–0914 to read as follows:

§ 100.35–0914 Lake Michigan off of Grand Haven, MI.

The following area will be closed to vessel navigation or anchorage, except for spectator areas to be designated by the Coast Guard Patrol Commander, from 10:00 A.M. (local time) until 3:00 P.M. (local time) on August 10, 1985.

(a) *Restricted Area.* That portion of Lake Michigan enclosed by the following points: 43 degrees 04.4 minutes North, 086 degrees 18.9 minutes West; 43 degrees 2.5 minutes North, 086 degrees 19.0 minutes West; 43 degrees 1.3 minutes North, 086 degrees 16.1 minutes West; 43 degrees 1.3 minutes North, 086 degrees 14.4 minutes West; 43 degrees 2.6 minutes North, 086 degrees 13.5 minutes West; 42 degrees 47.1 minutes North, 086 degrees 13.1 minutes West; 42 degrees 56.7 minutes North, 86 degrees 13.4 minutes West.

(b) *Special Local Regulations.* (1) Vessels desiring to transit the restricted area may do so only with the prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants, or vessels of the patrol in the performance of their assigned duties.

(2) No vessel shall anchor or drift in the area restricted to navigation.

(3) A succession of sharp, short, signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signalled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) All persons in charge of, or operating vessels in the area covered by the above Special Local Regulations are required to promptly obey the directions of the Patrol Commander and the men acting under his instructions in connection with the enforcement of these Special Local Regulations.

Dated: July 31, 1985.

B. K. Schaeffer,

Captain, U.S. Coast Guard, Chief of Staff, Ninth Coast Guard District.

[FR Doc. 85–18812 Filed 8–7–85; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 165

[COTP San Francisco Regulation 85–04]

Ports and Waterways Safety: San Francisco Bay, CA; Safety Zone

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a Safety Zone in San Francisco Bay. This will be a moving safety zone around the aircraft carrier USS *Enterprise* and a parade of ships consisting of one Coast Guard, five Navy and one liberty ship during their participation in the Fortieth Anniversary of Peace in the Pacific event on 14 August 1985 in San Francisco Bay, CA.

This event is expected to attract significant media and spectator attention and possibly a protest demonstration. The safety zone is needed to ensure the safe and unimpeded movement of vessels participating in this event through San Francisco Bay and protect the public from injury. Entry into this safety zone is prohibited unless authorized by the Captain of the Port, San Francisco Bay.

EFFECTIVE DATES: This regulation is effective on 13 and 14 August 1985 at approximately 11:00 a.m. It terminates when the USS *Enterprise* returns to Naval Air Station, Alameda, CA at approximately 5:30 p.m. PDT.

FOR FURTHER INFORMATION CONTACT: LTJG Steven J. Boyle, Marine Safety Office, San Francisco Bay (415) 437–3073.

SUPPLEMENTARY INFORMATION: A dress rehearsal of this event will take place on 13 August 1985 at which time this safety zone regulation will also be in effect. The USS *Enterprise* will sail from Naval Air Station, Alameda, CA to a point approximately 1000 yards north of Marina Green, San Francisco, CA where it will temporarily anchor during the Peace in the Pacific ceremonies. The parade of vessels will form up south of the San Francisco-Oakland Bay Bridge and sail north of Alcatraz Island, then west to Harding Rock, then turn east to sail north of the USS *Enterprise* anchored off the San Francisco Waterfront. The safety zone will include all waters between the USS *Enterprise* and the parade of vessels as they pass in review just north of the carrier. The safety zone around the parade of ships will terminate as each vessel sails southeast past Blossom Rock. The safety zone around the USS *Enterprise* will terminate when it returns to naval Air Station, Alameda, CA. The times for vessel movements are expected to be approximately the same for the rehearsal on 13 August 1985 as for the actual event on 14 August 1985.

In addition to the requirements of the Safety Zone, there will be a general cessation of activity for a period of approximately one hour and fifteen minutes beginning at 12:30 p.m. PDT, during the actual Peace in the Pacific ceremony on 14 August 1985, for all vessel traffic within a 5000 yard radius of Alcatraz Island. Vessels outside this area should not enter and vessels within the area should stop or slow to bare steerageway for the duration of the ceremony.

Discussion of Regulation

The event requiring this regulation is planned to occur on 14 August 1985 when the USS *Enterprise* and seven other U.S. vessels will participate in the Fortieth Anniversary of Peace in the Pacific ceremonies held in San Francisco, CA and on 13 August 1985 during a dress rehearsal of the event. It is expected that this event will attract significant public and media attention

and may be subject to a protest demonstration. A moving safety zone will provide the Captain of the Port, San Francisco Bay, with the authority necessary to help ensure that spectators and/or protesters do not put themselves in situations where they may come to harm or impede the safe movements of the vessels involved in this event. A period of general cessation of vessel movement in the vicinity of the ceremony is intended to minimize potential vessel traffic problems associated with the parade of vessels and help assure the solemnity of the occasion is preserved.

A notice of proposed rulemaking (NPRM) was not published for this regulation and it is being made effective in less than 30 days after **Federal Register** publication. The Navy's request for assistance was not received until 9 July 1985, and there was not sufficient time remaining to publish NPRM and delaying the safety zone's effective date would be contrary to the public interest since action is needed to safeguard vessels and their occupants on the scheduled date.

Drafting Information

The drafters of this regulation are LTJG Steven J. Boyle, project officer for the Captain of the Port, and CDR W. K. Bissell, project attorney, Twelfth Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 165

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

Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T1204 to read as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191, 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5.

§ 165.T1204 Safety zone: San Francisco Bay.

(a) *Location.* The following area is a safety zone: A moving safety zone is established on 14 August 1985 around the Navy aircraft carrier USS *Enterprise* and a parade of six other military vessels and a liberty ship during their participation in the Peace in the Pacific ceremonies in San Francisco Bay, CA and the dress rehearsal of this event on 13 August 1985. The Safety Zone extends 200 yards around the USS *Enterprise* and becomes effective when the vessel departs Naval Air Station, Alameda, CA, remains effective while it is anchored 1000 yards off Marina Green, San Francisco, CA and terminates when the USS *Enterprise* returns to Naval Air Station, Alameda, CA at approximately 5:30 p.m. PDT. A moving safety zone is also established around the parade of six military vessels and a liberty ship as they sail from the San Francisco-Oakland Bay Bridge to north of Alcatraz Island, past Harding Rock then east to pass in review north of the USS *Enterprise* anchored off the San Francisco Waterfront then southeast past Blossom Rock. The safety zone extends from 200 yards ahead and to each side of the lead vessel to 200 yards astern and to each side of the last vessel and all the waters between each vessel in the parade. During the time the parade of vessels passes abeam of the USS *Enterprise*, the safety zone will include all waters between the carrier and the parade. This safety zone becomes effective from the time the parade of ships passes under the San Francisco-Oakland Bay Bridge at approximately 12 noon PDT until they pass southeast of Blossom Rock at approximately 1:30 p.m. PDT. The times for the dress rehearsal on 13 August 1985 are expected to be approximately the same as for the actual event on 14 August 1985.

(b) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port. Section 165.23 also contains other general requirements.

Dated: July 30, 1985.

D. Zawadzki,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay.

[FR Doc. 85–18811 Filed 8–7–85; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Disaster Assistance; Project Administration; Audit Requirements for State and Local Governments

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

SUMMARY: The Federal Emergency Management Agency amends 44 CFR Part 205 Subpart H, the regulation on Public Assistance project administration and issues it for interim use. This interim rule amendment is necessitated as a result of the Single Audit Act of 1984, Public Law 98–502. This rule amendment removes the requirement for State audits on all categorical and flexible funding grants made under section 402 of Public Law 93–288, the Disaster Relief Act of 1974, and establishes new procedures to be followed in processing program applicant claims for reimbursement. This interim rule will remain in effect until a more comprehensive revision of Subpart H can be made. It is anticipated that this comprehensive revision will be issued as a proposed rule on or before October 1, 1985.

EFFECTIVE DATE: This rule is effective August 8, 1985, and applies to those Major Disasters or Emergencies which are declared in any State after the start of any State fiscal year beginning after December 31, 1984, i.e., after the effective date of the Single Audit Act of 1984.

ADDRESS: Federal Emergency Management Agency, Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Bruce Baughman, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street SW., Washington, D.C. 20472, Telephone (202) 646–3689.

SUPPLEMENTARY INFORMATION: In October 1984 the Ninety-eighth Congress enacted the Single Audit Act, Public Law 98–502. The intent of this Act is:

(1) To improve financial management of State and local governments with respect to Federal financial assistance programs;

(2) To establish uniform requirements for audits of Federal financial assistance provided to the State and local governments;

(3) To provide the efficient and effective use of audit resources, and

(4) To ensure that Federal departments and agencies, to the maximum extent practicable, rely upon and use audit work done pursuant to Chapter 75 of Title 31, United States Code.

The Act requires the Director, OMB, to prescribe policies, procedures and guidelines to implement the Act. OMB met this requirement by issuing Circular A–128 "Audits of State and Local Governments."

OMB published a draft of Circular A–128 for public comment in the **Federal Register** at 49 50134–50138, December 26, 1984. After considering comments received, OMB issued the Circular in final form as of April 12, 1985. That version of the Circular was published in the **Federal Register** at 50 FR 19114–

19119, May 6, 1985. It superseded Attachment P to OMB Circular A–102.

The Act also requires Federal agencies to issue whatever amendments are necessary to conform their regulations to the OMB implementation. These amendments to 44 CFR Part 205 carry out that statutory requirement.

The Single Audit Act and OMB Circular A–128 apply to recipient fiscal periods that begin on or after January 1, 1985. Under the Act, State, local, and Indian Tribal governments are divided into three categories, as follows:

1. Governments that receive $100,000 or more in total Federal financial assistance in one of its fiscal years must, for that year, comply with the audit requirements of the Act rather than any audit requirements of the particular programs from which their funds are derived.

2. Governments that receive $25,000 or more, but less than $100,000 in total Federal financial assistance in a fiscal year, may choose to have an audit made in accordance with either the Single Audit Act or the statute(s) and regulations governing the program(s) from which their funds are derived.

3. Governments which receive less than $25,000 in total Federal financial assistance in a fiscal year are exempt both from the Single Audit Act and from any audit requirements of the Federal programs from which their funds are derived.

Audits required by the Act shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits. Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987. A cognizant agency is the Federal agency which is assigned by the Director of the Office of Management and Budget the responsibility for implementing the requirements of the Act with respect to a particular State or local government.

Consequently, the Federal Emergency Management Agency (FEMA) can no longer require State audits for all categorical and flexible funding grants made under the provisions of Section 402 of Public Law 93–288, the Disaster Relief Act of 1974. Pursuant to the Single Audit Act the regulatory audit requirements identified in 44 CFR Part 205 Subpart H at § 205.118(b) are removed and new claims reimbursement procedures are promulgated in interim form as outlined below.

Section 205.112 is retitled "Implementation of OMB Circulars A–102 and A–128" and § 205.112(e) is revised to require compliance with OMB Circular A–128.

Section 205.115 entitled "Documentation" is revised to identify specific documents Public Assistance program applicants must maintain for accounting purposes and to support claims for reimbursement. Section 205.115 has also been revised to incorporate into § 205.115(c) the language formerly located at § 205.118(b)(2). Section 205.115(d) outlines procedures for the submission and distribution of audit reports required by OMB Circular A–128.

205.117 formerly entitled "Final inspections" has been retitled "Claims for reimbursement." This section has been revised to incorporate in part the procedures formerly delineated in § 205.118(a).

Inspections are now covered by § 205.118. This revised section entitled "Interim and Final Inspections" requires that final inspections be conducted on all projects in excess of $25,000 instead of $10,000 as formerly required at § 205.117(b)(2). This section also transfers the responsibility for scheduling and conducting final inspections from the Governor's Authorized Representative to the Regional Director. The procedures formerly carried at § 205.117(b)(2) have been incorporated into the revised § 205.117 and § 205.119.

Section 205.119 is a new section entitled "Review and approval of claims." This section revises the claims review and approval procedures formerly contained in § 205.118(d) (1) and (2) to delete the requirement for the Governor's Authorized Representative to submit an audit report with the final claim. This section is also revised to require the Governor's Authorized Representative to submit claims for reimbursement to the Regional Director within 60 days after receipt of an applicant's final inspection reports. Additionally, this section outlines the Regional Director's responsibility for reviewing and approving final claims.

Section 205.119 entitled "Federal Funding" is redesignated § 205.120. Section 205.120 entitled "Appeals" is redesignated § 205.121. Section 205.121 entitled "Direct Federal Assistance" is redesignated § 205.122. Section 205.122 entitled "Availability of Materials" is redesignated § 205.123.

Environmental Considerations

A Finding of No Significant Impact under section 102(2)(e) of the National Environmental Policy Act of 1969 has been made in accordance with "Procedures for Protection and Enhancement of Environmental Quality." Interested parties may obtain and inspect copies of this Finding of Inapplicability at the Office of the Rules Docket Clerk of the Federal Emergency Management Agency in Washington, D.C. 20472.

Executive Order 12291

The Agency has determined that this rule is not a major rule under Executive Order 12291. The major change is the deletion of detailed program audit requirements for grant recipients. Therefore, a reduction in impact is expected. In any event FEMA has no discretion in this action.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of 5 U.S.C. 605(b). Most public entities receiving grants have audits performed for their own purpose, therefore, the proposed regulatory changes are not likely to create a significant economic impact on small entities. Consequently, no regulatory analysis will be prepared.

Paperwork Reduction Act

The information collection requirement contained in this rule has 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 has been assigned OMB control number 3067–0149.

List of Subjects in 44 CFR Part 205

Disaster assistance, Grant Programs—housing and community development, Reporting and recordkeeping requirements.

For the reasons set out in the preamble 44 CFR Part 205 Subpart H is amended as follows:

PART 205—[AMENDED]

Subpart H—Project Administration

1. The authority citation for Part 205 Subpart H is revised to read as follows:

Authority: 42 U.S.C. 5201, Reorganization Plan No. 3 of 1978 Executive Order 12148.

2. Section 205.112 is retitled to read as follows:

§ 205.112 Implementation of OMB Circular A-102 and A-128.

3. Section 205.112(e) is revised to read as follows:

* * * * *

(e) Governmental recipients of assistance under Pub. Law 93-288 shall comply with OMB Circular A-128, including any amendments which are published in the **Federal Register** by OMB. A copy of OMB Circular A-128 is attached at Appendix A to Subpart H.

4. Section 205.115 is revised to read as follows:

§ 205.115 Documentation.

(a) All recipients of Federal grants must maintain acceptable disbursement and accounting records to document the work performed and cost incurred on each approved DSR. The documentation required to be maintained by the applicant shall include but not be limited to the following:

(1) Force Account Work—copies of invoices, payroll extracts (cross referenced to source documents), equipment schedules, foreman's daily logs, and issued checks.

(2) Contract Work—copies of requests for bids, bid documents, bid summaries, contracts, invoices, inspectors daily logs, and issued checks.

(b) If an audit is necessary, original or source documents must be made available to auditors at one central office of record. These accounting records and documentation must be kept by the applicant for three years from the date of the final settlement of the claim.

(c) FEMA auditors, State auditors, the Governor's Authorized Representative, the Regional Director, the Associate Director, and the Comptroller General of the United States or their duly authorized representatives shall for the purpose of audits and examination have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under these regulations.

(d) All copies of audit reports that are required under OMB Circular A-128 shall be submitted to the FEMA District Inspector General for Audit responsible for the FEMA region in which the applicant is located. The FEMA Office of Inspector General will distribute copies as appropriate within the agency.

(The information collection requirements contained in paragraph (b) of this section were approved by the Office of Management and Budget under OMB Control number 3067-0149.)

5. Section 205.117 is revised to read as follows:

§ 205.117 Claims for reimbursement.

(a) *Categorical and Flexible Funding Grants.* The applicant shall submit a claim to the Governor's Authorized Representative within 60 days after completion of approved work. This claim will list the cost and date of completion for each approved project. The applicant's authorized representative must certify that all work claimed has been completed and that all funds claimed have been paid.

(b) *Small Project Grants.* Final payment is made when a project application is approved. Therefore, no claim for reimbursement is required. The applicant must however submit a listing of completed projects within 30 days following work completion in accordance with 44 CFR 205.113(b)(3)(vi).

6. 205.118 is revised to read as follows:

§ 205.118 Interim and final inspections.

(a) *Governor's Authorized Representative.* Within 30 days of receipt of the applicant's claim for reimbursement, the Governor's Authorized Representative shall submit the applicant's completed project listing to the Regional Director for final inspection scheduling purposes.

(b) The Regional Director shall schedule and conduct those final inspections as required by this section and any additional interim and final inspections deemed necessary. The Regional Director shall ensure that the Governor's Authorized Representative receives copies of all completed final inspection reports.

(c) *Final inspection requirements.* The following requirements for final inspections are applicable to categorical and flexible funding grants.

(1) When the total claim for a completed project exceeds $25,000, a final inspection is required.

(2) When the total claim for a completed project is less than $25,000, the Regional Director may accept the applicant's certification that all work is complete.

7. Section 205.119 is redesignated as § 205.120. Section 205.120 is redesignated as § 205.121. Section 205.121 is redesignated as § 205.122. Section 205.122 is redesignated as § 205.123.

8. Subpart H is amended by adding a new § 205.119 to read as follows:

§ 205.119 Review and approval of claims.

(a) *Governor's Authorized Representative.* The Governor's Authorized Representative shall review all claims and recommend to the Regional Director an amount for approval. The Governor's Authorized Representative shall submit the applicant's final claim to the Regional Director within 60 days after receipt of the final inspection report and will certify that the funds were expended in accordance with the provisions of the FEMA-State Agreement.

(b) *Regional Director.* Following a review of the applicant's claim and the Governor's Authorized Representative's recommendation, the Regional Director will determine the final eligible amount. During the Regional review process the Regional Director may conduct a field review to gather additional information. If discrepancies in the applicant's claim cannot be resolved through a field review, a Federal audit may be requested. A Federal audit should be used as a last resort in the reconciliation of a claim. Requests for Federal audits must be in writing and must provide a detailed justification as to the need for audit. If the Regional Director does not argee with the findings of the Federal Audit and the claim cannot be resolved at the Regional level, the case will be forwarded to the Associate Director for resolution. The Regional Director or Associate Director may require additional Federal audits if necessary.

9. Appendix A to Subpart H is added to read as follows:

Appendix A to Subpart H—Office of Management and Budget Circular No. A-128—Uniform Audit Requirements for State and Local Governments

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

CIRCULAR NO. A-128

April 12, 1985

To the Heads of Executive Departments and Establishments.

Subject: Audits of State and Local Governments.

1. *Purpose.* This Circular is issued pursuant to the Single Audit Act of 1984, Pub. L. 98-502. It establishes audit requirements for State and local governments that receive Federal aid, and defines Federal responsibilities for implementing and monitoring those requirements.

2. *Supersession.* The Circular supersedes Attachment P, "Audit Requirements," of Circular A-102, "Uniform requirements for grants to State and local governments."

3. *Background.* The Single Audit Act builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. It specifies that the

Director shall designate "cognizant" Federal agencies, determine criteria for making appropriate charges to Federal programs for the cost of audits, and provide procedures to assure that small firms or firms owned and controlled by disadvantaged individuals have the opportunity to participate in contracts for single audits.

4. *Policy.* The Single Audit Act requires the following:

a. State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this Circular.

b. State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this Circular, or in accordance with Federal laws and regulations governing the programs they participate in.

c. State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

d. Nothing in this paragraph exempts State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law or in Circular A-102, "Uniform requirements for grants to State or local governments."

5. *Definitions.* For the purposes of this Circular the following definitions from the Single Audit Act apply:

a. "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in paragraph 11 of this Circular.

b. "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

c. "Federal agency" has the same meaning as the term "agency" in section 551(1) of Title 5, United States Code.

d. "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

e. "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated Febuary 27, 1981.

f. "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

g. "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use is consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

h. "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

i. "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

j. "Major Federal Assistance Program," as defined by Pub. L. 98-502, is described in the Attachment to this Circular.

k. "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

l. "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

m. "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

6. *Scope of audit.* The Single Audit Act provides that:

a. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

b. The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

c. Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this Circular. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of Circular A-110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations."

d. The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

7. *Frequency of audit.* Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

8. *Internal control and compliance reviews.* The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

a. *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

b. *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's

professional judgment considering such factors as the amount of expeditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(a) In making the test of transactions, the auditor shall determine whether:

—The amounts reported as expenditures were for allowable services, and
—The records show that those who received services or benefits were eligible to receive them.

(b) In addition to transaction testing, the auditor shall determine whether:

—Matching requirements, levels of effort and earmarking limitations were met,
—Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and
—Amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost principles for State and local governments," and Attachment F of Circular A–102, "Uniform requirements for grants to State and local governments."

(c) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

9. *Subrecipients.* State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

a. Determine whether State or local subrecipients have met the audit requirements of this Circular and whether subrecipients covered by Circular A–110, "Uniform requirements for grants to universities, hospitals, and other nonprofit organizations," have met that requirement;

b. Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this Circular, Circular A–110, or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

c. Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

d. Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and

e. Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Circular.

10. *Relation to other audit requirements.* The Single Audit Act provides that an audit made in accordance with this Circular shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides Federal agencies with information and assurances they need to carry out their overall responsibilities, they shall rely upon and use such information. However, a Federal agency shall make any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication.

a. The provisions of this Circular do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

b. The provisions of this Circular do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

c. A Federal agency that makes or contracts for audits in addition to the audits made by recipients pursuant to this Circular shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

11. *Cognizant agency responsibilities.* The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this Circular.

a. The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizant responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

b. A cognizant agency shall have the following responsibilities:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this Circular.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. They should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this Circular. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this Circular; so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

12. *Illegal acts or irregularities.* If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 13(a)(3) below for the auditor's reporting responsibilities.) The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

13. *Audit Reports.* Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

a. The audit report shall state that the audit was made in accordance with the provisions of this Circular. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance.* Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not

evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

—A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;
—Negative assurance on those items not tested;
—A summary of all instances of noncompliance; and
—An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

b. The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

c. All fraud abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 13f.

d. In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

e. The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

f. In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

g. Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

h. Recipients shall keep audit reports on file for three years from their issuance.

14. *Audit Resolution.* As provided in paragraph 11, the cognizant agency shall be responsible for monitoring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

15. *Audit workpapers and reports.* Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

16. *Audit Costs.* The cost of audits made in accordance with the provisions of this Circular are allowable charges to Federal assistance programs.

a. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provision of Circular A–87, "Cost principles for State and local governments."

b. Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

17. *Sanctions.* The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this Circular. In cases of continued inability or unwillingness to have a proper audit, Federal agencies must consider other appropriate sanctions including:

—Withholding a percentage of assistance payments until the audit is completed satisfactorily,
—Withholding or disallowing overhead costs, and
—Suspending the Federal assistance agreement until the audit is made.

18. *Auditor Selection.* In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A–102, "Uniform requirements for grants to State and local governments." The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

19. *Small and Minority Audit Firms.* Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this Circular. Recipients of Federal assistance shall take the following steps to further this goal:

a. Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

b. Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

c. Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

d. Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

e. Encourage contracting with consortiums of small audit firms as described in paragraph (a) above when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

f. Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

20. *Reporting.* Each Federal agency will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this Circular. The report must identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with the Circular.

21. *Regulations.* Each Federal agency shall include the provisions of this Circular in its regulations implementing the Single Audit Act.

22. *Effective date.* This Circular is effective upon publication and shall apply to fiscal years of State and local governments that begin after December 31, 1984. Earlier implementation is encouraged. However, until it is implemented, the audit provisions of Attachment P to Circular A–102 shall continue to be observed.

23. *Inquiries.* All questions or inquiries should be addressed to Financial Management Division, Office of Management and Budget, telephone number 202/395–3993.

24. *Sunset review date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

David A. Stockman,

Director.

Attachment—Circular A–128

Definition of Major Program as Provided in Pub. L. 98–502

"Major Federal Assistance Program," for State and local governments having Federal assistance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the

applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
More than	But less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

Dated: July 31, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-18735 Filed 8-7-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 552

[Docket No. 85-17]

Financial Reports of Vessel Operating Common Carriers by Water in the Domestic Offshore Trades

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its rules governing financial reports required of vessel operating common carriers in the domestic offshore waterborne commerce of the United States. This action is necessary to conform the reporting form (Form FMC-378) to the Uniform Financial Reporting Requirements (46 CFR Part 232) of the Maritime Administration, U.S. Department of Transportation. These requirements replaced the Uniform System of Accounts for Maritime Carriers (46 CFR Part 582) upon which the report form was previously based. Other minor reporting changes delete unnecessary information reporting requirements.

EFFECTIVE DATE: September 9, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (202) 523-5796.

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573 (202) 523-5766.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is required to evaluate the reasonableness of rates in the domestic offshore trades filed by vessel operating common carriers. To provide for the orderly acquisition of the data essential to this evaluation, the Commission promulgated what is now 46 CFR Part 552. Self-propelled vessel operators report the required financial and operating data on FMC Form 378, "Statements of Financial and Operating Data". It has been the policy of the Commission to base the statements on the chart of accounts prescribed by the Maritime Administration, U.S. Department of Transportation (MARAD). It is the intention of the Commission to continue this policy. Therefore, because MARAD has recently revised its chart of accounts through the publication of Uniform Financial Reporting Requirements (46 CFR Part 232), The Commission is amending 46 CFR Part 552 (49 FR 42934) to conform its reporting form to the revised chart of accounts.

A proposed rule was published in the **Federal Register** on June 3, 1985 (50 FR 23318) with comments due on July 3, 1985. No comments were received.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291, 46 CFR 12193, February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or Local government agencies; or geographic regions; or,

(3) Significant adverse effect on competition, employment, investment productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Collection of Information requirements contained in this regulation have been approved by the Office of Management and Budget under provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned control numbers 3072-0008, 3072-0029 and 3072-0030.

List of Subjects in 46 CFR Part 552

Cargo vessels; Freight; Maritime carriers; Rates and fares; Reporting and recordkeeping requirements.

PART 552—[AMENDED]

Accordingly, pursuant to 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845a and 847, Part 552 of Title 46, Code of Federal Regulations, is amended as follows:

1. The Authority Citation for Part 552 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 817(a), 820, 841a, 843, 844, 845, 845a and 847.

§ 552.4 [Amended]

2. Section 552.4(c) is removed.

3. Paragraphs (o) and (p) of § 552.5 are revised to read as follows:

§ 552.5 Definitions.

* * * * *

(o) *"Voyage Expense"* means:

(1) For carriers required to file Form FMC-378: the total of Vessel Operating, Vessel Port Call and Cargo Handling Expenses less Other Shipping Operations Revenue.

(2) For carriers required to file Form FMC-377: the total of Direct Vessel and Other Shipping Operations Expenses, less Other Revenue.

(p) *"Voyage Expense Relationship"* means the ratio of total Trade Voyage Expense to total Company Voyage Expense.

* * * * *

4. Section 552.6 is amended by revising paragraphs (a), introductory text of (b)(1), (b)(1)(ii), (b)(2)(i), (b)(4)(i), (b)(5), (b)(7), (b)(9) [Title only], (b)(10), (c)(2) and (c)(4) to read as follows:

§ 552.6 Forms.

(a) *General.* (1) The submission required by this part shall be submitted in the prescribed format and shall include General Information regarding the carrier, as well as the following schedules as applicable:

Exhibit A—Rate Base and supporting schedules;
Exhibit B—Income Account and supporting schedules;
Exhibit C—Rate of Return and supporting schedules
Exhibit D—Application for Waiver; and
Exhibit E—Initial Tariff Filing Supporting Data.

(2) Statements containing the required exhibits and schedules, are described in paragraphs (b), (c), (d), (e) and (f) of this section and are available upon request from the Commission. The required General Information, schedules and exhibits are contained in forms FMC-377 and FMC-378. For carriers required to file form FMC-378, the statements are based on the *Uniform Financial Reporting Requirements* prescribed by the Maritime Administration, U.S. Department of Transportation. For carriers required to file Form FMC-377, the statements are based on the accounts prescribed by the Interstate Commerce Commission for Carriers by Inland and Coastal Waterways. The schedules contained in these statements

are distinguished from those contained in the Form FMC–378 statements by the suffix "A" (e.g., Schedule A–IV(A)).

(b) *Rate Base (Exhibits A and A(A)).*—(1) *Investment in Vessels (Schedules A–I and A–I(A)).*

Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service for which a statement is filed shall be listed by name, showing the original cost to the carrier or to any related company, *plus* the cost of improvements, conversions, and alterations, *less* the cost of any deductions. All additions and deductions made during the period shall be shown on a *pro rata* basis, reflecting the number of days they were applicable during the period. The result of these computations shall be called Adjusted Cost.

(i) * * *

(ii) The total of the adjusted cost of all vessels employed in the Service during the period which has not been allocated to Other Services, as required in § 552.6(b)(1)(i)(B), shall be allocated to the Trade in the cargo-cube mile relationship.

(2) *Accumulated Depreciation—Vessels (Schedules A–II and A–II(A)).* (i) Each cargo vessel (excluding vessels chartered under leases which are not capitalized in accordance with § 552.6(b)(10)) employed in the Service shall be listed separately. For vessels owned the entire year, accumulated depreciation as of the beginning and the end of the year shall be reported and the arithmetic average computed. This amount shall be allocated to the Service and to the Trade in the same proportions as the cost of the vessel was allocated on Schedule A–I or A–I(A). If the depreciable life of any equipment installed on a vessel differs from the depreciation life of the vessel, the cost and the depreciation bases shall be set forth separately.

* * * * *

(4) *Investment in Other Property and Equipment; Accumulated Depreciation Other Property and Equipment Schedules A–IV and A–IV(A) and A–V(A)).* (i) Actual investment, representing original cost to the carrier or to any related company, in other fixed assets employed in the Service shall be reported as of the beginning of the year. Accummulated depreciation for these assets shall be reported both as of the beginning and as of the end of the year. The arithmetic average of the two amounts shall also be shown and shall be the amount deducted from original cost in determining rate base. Additions and deductions during the period shall also be reported, and the carrier shall report as though all such changes took place at midyear, except for those involving substantial sums, which shall be prorated on a daily basis. Allocation to the Trade shall be based upon the actual use of the specific asset or group of assets within the Trade. For those assets employed in a general capacity, such as office furniture and fixtures, the voyage expense relationship shall be employed for allocation purposes. The basis of allocation to the Trade shall be set forth and fully explained.

(ii) * * *

(5) *Working Capital (Schedule A–V).* Working capital for vessel operators shall be determined as average voyage expense. Average voyage expense shall be calculated on the basis of the actual expenses of operating and maintaining the vessel(s) employed in the Service (excluding lay-up expenses) for a period represented by the average length of time of all voyages (excluding lay-up periods) during the period in which any cargo was carried in the Trade. Expenses for operating and maintaining the vessels employed in the Trade shall include: Vessel Operating Expense, Vessel Port Call Expense, Cargo Handling Expense, Administrative and General Expense and Interest Expense allocated to the Trade as provided in paragraphs (c)(2), (c)(4) and (c)(5) of this section. For this purpose, if the average voyage, as determined above, is of less than 90 days duration, the expense of hull and machinery insurance and protection and indemnity insurance shall be determined to be 90 days, provided that such allowance for insurance expense shall not, in the aggregate, exceed the total actual insurance expense for the period.

(6) * * *

(7) *Investment in Other Assets (Schedule A–VII(A)); Accumulated Depreciation—Other Assets (Schedule A–VIII(A)).*

For carriers required to file Form FMC–377, any other assets claimed by the carrier as components of its rate base shall be set forth separately in a schedule. The basis of allocation to the Trade and computations of percentages employed shall be set forth and fully explained. Where other assets are subject to depreciation, the amount of accumulated depreciation to be subtracted from the original cost in determining the component of rate base shall be the arithmetic average of both the beginning and the end of the year. Capital Construction Funds and other special funds are specifically excluded from rate base. For carriers required to file Form FMC–378, other assets, and the related accumulated depreciation, are to be included on Schedule A–IV.

(8) * * *

(9) *Capitalization of Interest During Construction (Schedules A–VII and A–IX(A)).*

* * * * *

(10) *Capitalization of Leases (Schedules A–VIII and A–X(A)).* Leased assets which are capitalized on the carrier's books and which meet the AICPA guidelines for capitalization may also be included in rate base. Schedule A–VIII or A–X(A), "Capitalization of Leases," shall be submitted setting forth pertinent information relating to the lease and the details of the capitalization calculation. Allocations to the Trade shall follow the requirements of paragraphs (b)(1) and (b)(4) of this section.

(c) *Income Account (Exhibits B and B(A)).*

(1) * * *

(2) *Voyage Expense (Schedule B–II).* A schedule of voyage expense shall be submitted for any period in which any cargo was carried in the Service. Allocations to the Trade shall be on the following basis:

(i) For all voyages in the Service, vessel expense shall be allocated to the Trade in the cargo-cube mile or cargo cube relationship, as appropriate. Should any of the elements of vessel expense be directly allocable to specific cargo, such direct allocations shall be made and explained.

(ii) Vessel port call and cargo handling expenses shall be assigned directly, to the extent possible, by ports at which incurred, to the Trade and Other Cargo, or otherwise allocated on the basis of cargo cube loaded and discharged at each port.

(iii) Other Shipping Operations Revenue shall be deducted from Vessel Operating Expense. Other Shipping Operations Revenue should be assigned directly, to the extent possible, or otherwise allocated on the basis of cargo cube loaded and discharged at each port. Any direct assignments shall be fully set forth and explained.

(3) * * *

(4) *Administrative and General Expense (Schedules B–III and B–III(A)).* Administrative and general expenses (A&G) shall be allocated to the Trade using the voyage expense relationship. Direct assignments should be made where practical, particulary with respect to advertising expense related to the operation of passenger and combination vessels. Any direct assignment shall be set forth and explained. Charitable contributions shall not be allocated to the Trade. In those instances where a

carrier is engaged in other business in addition to shipping, A&G should be allocated to each business in the ratio of total operating expenses for each business (*less* A&G and income taxes) to total company operating expenses (*less* A&G and income taxes).

* * * * *

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-18513 Filed 8-7-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 41155-4175]

Pacific Coast Groundfish Fishery; Inseason Adjustment

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

ACTION: Notice of inseason adjustment.

SUMMARY: NMFS issues a notice of reassessment of domestic annual processing and joint venture processing which together make up domestic annual harvest for Pacific whiting taken in the ocean off the Pacific coast and announces that the 35,000-mt reserve of that species will be released and added to the total allowable level of foreign fishing. This action will not affect the harvest by U.S. fishermen, but will allow the Department of State to allocate additional Pacific whiting to foreign countries if appropriate.

EFFECTIVE DATE: August 6, 1985.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten, Director, Northwest Region, NMFS, 206-526-6150.

SUPPLEMENTARY INFORMATION: A preliminary notice of reassessment and request for comments was published in the **Federal Register** on July 17, 1985 (50 FR 28960). This notice explained the need for a reserve and the preseason determinations of domestic annual processing (DAP), joint venture processing (JVP), domestic annual harvesting (DAH), and total allowable level of foreign fishing (TALFF). It also announced NMFS' intent to release the reserve of Pacific whiting to TALFF. No comments were received in response to this notice. The matter also was discussed at the meeting of the Pacific Fishery Management Council (Council) held on July 10-11, 1985. The Council concurred in the proposed reassessment of domestic whiting needs and release of the reserve to TALFF.

The inseason survey to determine any change in DAH for Pacific whiting confirmed that the 35,000 mt held in reserve was surplus to domestic needs and could appropriately be released to TALFF, increasing TALFF to 80,000 mt. Performance of the foreign fleet in taking the first half-year allocation of whiting will largely determine whether NMFS recommends that the Department of State allocate all or part of the added TALFF to foreign fishermen.

Classification

Release of the Pacific whiting reserve to TALFF is based on the most recent data available. The action is authorized by 50 CFR Parts 611 and 663, is in compliance with Executive Order 12291, and is covered by the regulatory flexibility analysis and environmental impact statement prepared for the authorizing regulations.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Fishing, Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 6, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-18909 Filed 8-6-85; 11:59 am]

BILLING CODE 3510-22-M

50 CFR Part 662

[Docket No. 50602-5102]

Northern Anchovy Fishery; Final Harvest Quotas

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

ACTION: Notice of final harvest quotas.

SUMMARY: NOAA issues this notice announcing the final determination of estimated spawning biomass and harvest quotas for the northern anchovy *(Engraulis mordax)* fishery in the fishery conservation zone for the 1985-1986 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and implementing regulations. This action is intended to notify users of the final harvest quotas and to promote orderly management of the fishery.

EFFECTIVE DATE: August 5, 1985.

ADDRESS: Copies of Administrative Report Number LJ-85-21, upon which the spawning biomass estimate for these determinations is based, is available from E.C. Fullerton, Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Craig (Fishery Biologist, NMFS), 213-548-2518.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and the Southwest Fisheries Center, NMFS, the Director, Southwest Region, NMFS (Regional Director), made preliminary determinations of the spawning biomass of the center subpopulation of northern anchovy and harvest quotas and special allocations for the 1985-1986 anchovy fishing season. These preliminary determinations were published in the **Federal Register** on July 3, 1985 (50 FR 27470). Regulations at § 662.20 require the announcement of final determinations of harvest quotas by notice in the **Federal Register** on or about August 1 of each year.

The preliminary determinations were discussed at public meetings of the Pacific Fishery Management Council (Council) on July 10, 1985, in Los Angeles, California. The Council concurred in the preliminary determinations. Public comment was invited in the notice of the preliminary determinations and at the Council meeting; no public comments were received. Therefore, the final determinations of harvest quotas are published unchanged from the preliminary determinations.

The Regional Director has made the following final determinations of harvest quotas for the 1985-1986 fishery season, based on an estimated spawning biomass of 521,000 metric tons (mt) and applying the formulas in the FMP and in § 662.20 to calculate the harvest quotas, special allocations, and expected processing levels.

1. The total U.S. harvest quota or optimum yield (OY) is 144,900 mt plus an unspecified amount for use as live bait.

2. The total U.S. harvest quota for reduction purposes is 140,000 mt.

a. Of the total reduction harvest quota, 9,072 mt is reserved for the reduction fishery in subarea A (north of Pt. Buchon). The maximum reduction fishery in subarea A is the total reduction quota minus the amount taken in subarea B.

b. The reduction quota for subarea B (south of Pt. Buchon) is 130,928 mt. The

reduction fishery in subarea B may be limited to less than this amount if more than 9,072 mt is taken in subarea A.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovies for use as dead bait and direct human consumption) is 4,900 mt. However, non-reduction fishing is not limited until the total catch in the reduction and non-reduction fisheries reaches the total harvest quota of 144,900 mt.

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing (DAP) capacity for the reduction and non-reduction industry is 49,000 mt.

6. The domestic annual harvest (DAH) capacity for the reduction fishery is 49,000 mt.

7. The amount available for joint venture processing is zero because there is no history of, nor are there applications for, joint ventures.

8. The total allowable level of foreign fishing (TALFF) is zero. The FMP states tha TALFF in the U.S. FCZ will be based upon the U.S. portion of the OY minus the DAH and minus that amount of expected harvest in the Mexican fishery zone which is in excess of that allocated by the FMP. Since DAH plus this excess harvest totals more than the U.S. OY, the TALFF is zero.

Other Matters

This action is taken under the authority of 50 CFR Part 662, and is taken in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 662

Fish, Fisheries, Fishing.

Dated: August 5, 1985.

Joseph W. Angelovia,

Deputy Assistant Administrator For Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-18827 Filed 8-5-85; 3:29 pm]

BILLING CODE 3510-22-M

---

50 CFR Part 672

[Docket No. 50711-5111]

Groundfish of the Gulf of Alaska

Correction

In FR Doc. 85-17376, beginning on page 29681 in the issue of Monday, July 22, 1985, make the following correction:

On pages 29687 and 29688, in § 672.20, Table 1 should have read as set forth below.

TABLE 1.—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), INITIAL RESERVE AND ADJUSTMENTS TO RESERVE BY THIS ACTION, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY = DAH + RESERVE + TALFF; DAH = DAP + JVP

Species/species code/area[1]	OY	DAH	DAP	JVP	Reserve	TALFF
Pollock 701:						
Western/Central	305,000	256,871	44,371	199,629	61,000	0
				+12,871	−37,871	+25,000
				now 212,500	now 23,129	now 25,000
Eastern	16,500	13,280	13,280	0	3,320	0
Total	321,500	270,151	57,651	212,500	now 26,449	25,000
Pacific cod 702:						
Western	16,560	5,748	2,539	3,209	3,312	7,500
					−100	+100
					now 3,212	now 7,600
Central	33,540	24,332	19,901	4,431	6,708	2,500
					−100	+100
					now 6,608	now 2,600
Eastern	9,900	7,920	7,920	0	1,980	0
Total	60,000	38,000	30,360	7,640	11,800	10,200
Flounders 129:						
Western	10,400	8,320	7,398	922	2,080	0
					−200	+200
					now 1,880	now 200
Central	14,700	11,760	8,292	3,468	2,940	0
					−250	+250
					now 2,690	now 250
Eastern	8,400	6,720	6,720	0	1,680	0
Total	33,500	26,800	22,410	4,390	now 6,250	now 450
Pacific ocean perch[2] 780:						
Western	1,302	1,302	1,302	0	0	0
Central	3,906	3,906	3,906	0	0	0
Eastern	875	875	875	0	0	0
Total	6,083	6,083	6,083	0	0	0
Sablefish[3] 703:						
Western	1,670	1,670	1,670	0	0	0
Central	3,060	3,060	3,060	0	0	0
West Yakutat	1,680	1,680	1,680	0	0	0
East Yakutat	850-1,135	850-1,135	850-1,135	0	0	0
Southeast Outside	470-1,435	470-1,435	470-1,435	0	0	0
Total	7,330-8,980	7,330-8,980	7,330-8,980	0	0	0
Atka Mackerel 297:						
Western	4,678	3,742	50	3,692	936	0
					−100	−100
					now 836	now 100
Central	500	380	350	30	100	20
Eastern	100	80	80	0	20	0
Total	5,278	4,202	480	3,722	now 956	now 120
Other rockfish[4] 849:						
Gulf-wide	5,000	4,000	4,000	0	0	0
		+733	+600	+133	−733	0
		now 4,733	now 4,600	now 133	now 267	0
Thornyhead rockfish 749:						
Gulf-wide	3,750	3,000	2,990	10	750	0
					−50	+50
					now 700	now 50

TABLE 1.—OPTIMUM YIELD (OY), DOMESTIC ANNUAL HARVEST (DAH), DOMESTIC ANNUAL PROCESSING (DAP), JOINT VENTURE PROCESSING (JVP), INITIAL RESERVE AND ADJUSTMENTS TO RESERVE BY THIS ACTION, AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF), ALL IN METRIC TONS. OY = DAH + RESERVE + TALFF; DAH = DAP + JVP—Continued

Species/species code/area[1]	OY	DAH	DAP	JVP	Reserve	TALFF
Squid 509:						
Gulf-wide	5,000	4,000	3,990	10	1,000	0
					−50	+50
					now 950	now 50
Other species[5] 499:						
Gulf-wide	22,460	17,944	16,544	1,400	4,516	0
					−325	+325
					now 4,191	325

[1] See figure 1 of § 672.20 for description of regulatory areas and districts.
[2] The category "Pacific ocean perch" includes *Sebastes* species *S. alutus* (Pacific ocean perch), *S. polyspinus* (northern rockfish), *S. aleutianus* (rougheye rockfish), *S. borealis* (shortraker rockfish), and *S. zacentrus* (sharpchin rockfish).
[3] Excludes values for the Southeast Inside District, which is not governed by these regulations.
[4] The category "Other rockfish" includes all fish of the genus *Sebastes* except the category "Pacific ocean perch" as defined in footnote 2 above and *Sebastolobus* (thornyhead rockfish).
[5] The category "Other species" includes sculpins, sharks, skates, eulachon smelts, capelin, and octopus. The OY for "Other species" is equal to 5% of the target species.

BILLING CODE 1505-01-M

Proposed Rules

Federal Register
Vol. 50, No. 153
Thursday, August 8, 1985

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 403

[Doc. No. 2328S]

Peach (Fresh) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Prescribe procedures for insuring peaches on an "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) specify the weather perils insured against and add as a cause of loss the unavoidable failure of irrigation water supply; (3) clarify the insured's share when the crop is sold; (4) change the method of computing indemnities when acreage, share, or practice is underreported; (5) change the insurance period, crop year, cancellation and termination dates, and filing dates; (6) provide prices for computing indemnities based on tree value; (7) specify acreage excluded from insurance when certain designated conditions exist; (8) allow inspection of unharvested acreage at the time of damage; (9) add provisions for reporting the practice and number of bearing trees; (10) provide production guarantee coverage; (11) eliminate the Amount of Insurance Table; (12) remove the middle coverage level limitation applicable to processing peaches; (13) add a provision to provide a coverage level if the insured does not select one; (14) include "misshapen fruit" as fruit eligible for quality adjustment; (15) change the method of computing indemnity payments; (16) add definitions for "Actual price per bushel," "Average yield," "Cyclone," "Freeze," "Frost," and "Loss ratio"; (17) amend the definition of "Harvest" and redefine the definition of "Unit" to restrict division; and (18) add sections concerning "Determinations" and "Notices". The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 9, 1985, to be sure of consideration.

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

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

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

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

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

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

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

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

Other than minor changes in language and format, the principal changes in the peach policy are:

1. Section 1.a.—Delete "adverse weather conditions" and specify the weather perils, in addition to, the failure of the irrigation water supply because of unavoidable cause after insurance attaches as insurable causes of loss. This change eliminates excessive moisture as a cause of loss and interrelated uninsurable losses because of insect and disease damage.

2. Section 2.c.—Add a clause to clarify the insured's share when the crop is sold after planting and before harvest.

3. Section 2.d.(1)—Add a provision to exclude acreage from insurance if the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established.

4. Section 2.d.(2)—Add a provisions to exclude acreage from insurance when the peaches are harvested by the public.

5. Section 2.d.(3)—Combines sections 2.d.(1) and (2) to allow insurance before the fourth growing season if the orchard has a recorded production of 100 bushels per acre or more. This change eliminates the "minimum production" requirement and the amount of insurance table.

6. Section 2.d.(4)—Add a provision to exlcude acreage from insurance when acreage is planted with a vine or tree crop other than peaches.

7. Section 2.d.(5)—Add a provision to provide FCIC the right to inspect and determine uninsurable acreage.

8. Section 2.e.—Add provisions for irrigated practices and the reporting of such practices.

9. Section 3.d.—Add a provision to report the number of bearing trees. This allows tracking any changes in tree

number and assures necessary adjustments to the APH yield.

10. Section 4.a.—Provide coverage in the form of production guarantees contained in the actuarial table in place of dollar amounts of insurance.

11. Section 4.b.—Delete the Amount of Insurance table from the policy and its related provisions. Add a provision to reduce the production guarantee if certain stand requirements are not met.

12. Section 4.c.—Delete the provision to hold processing peaches to the middle coverage level. Add a provision for a coverage level if the insured does not select one.

13. Section 4.d.—Provide prices for computing indemnities on the actuarial table for fresh and processing peaches. These prices will be based on an "on tree" value. The minimum price election concept will be continued (See: Section 9.c.(3)).

14. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they may retain a discount under the present schedule through the 1990 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

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

15. Section 7.—Change the insurance attachment date from January 10 to December 1. This provides insurance against damage which could occur in December.

16. Section 7.b.—Add a provision to end the insurance period if the peaches are fnot harvested timely. This limits our exposure to loss if a crop is not timely harvested.

17. Section 7.d.—Add a provision to end the insurance period at loss adjustment time.

18. Section 8.a.(2)—Add a new section to provide FCIC the right to inspect any unharvested damage peaches which the insured chooses to no longer care for. This inspection will give us the opportunity to appraise the peaches closer to the time of damage.

19. Section 9.c—Change to provide a more accurate indemnity payment.

20. Section 9.d—Change the method of computing the indemnity when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations. Coverage for the amount of guarantee available on reported acreas will be provided.

21. Section 9.e—Change to provide that the total production to be counted for a unit will include all appraised production plus any production harvested prior to appraisal. This change emphasizes the appraisal, which in actual practice is the primary method of determining the production to count.

22. Section 9.e.(1)—Add "misshappen fruit" as fruit eligible for quality adjustment and the requirement that all damaged fruit be inspected by us if quality adjustments are to be made. Also specify the methods for making these adjustments.

These changes are consistent with other crop policies operating under APH which state the specific methods of determining quality adjustment.

23. Section 9.e.(2)(b)—Include a provision for production destroyed without our consent. Also provide that any acreage not inspected by us prior to the completion of harvest will be considered appraised at the full guarantee.

Since production to count is determined from appraisals on the tree prior to harvest, this change will allow us to make our inspections before the beginning of or at least prior to completion of harvest.

24. Section 9.e.(2)(c)—Allow any "unharvested production" to acount as production to count. The production guarantee is based on "on tree" production therefore any unharvested production must be considered production to count.

25. Section 9.e.(3)—Change to count the appraisal on any acreage except when the "actual harvested production" exceeds the appraisal. Appraisals made prior to harvest when the fruit if still sizing can lead to understated production to count. This provision will allow FCIC to account for full production based on harvested records.

26. Section 15.c—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

27. Section 15.e—Change the cancellation and termination dates to November 30. This change is made to more closely conform to the insurance period and crop year which begins on December 1.

28. Section 16—Change the filing date for contract changes from September 30 to August 31. This change was made to coincide with the change in the cancellation and termination dates.

29. Section 17.—Add "Actual price per bushel" and "Average yield" definitions to clarity use of the terms in Sections 4.b. and 9.c.

Redefine "Harvest" definition to emphasize that production determinations will be based solely on "on tree" appraisals.

Add definitions for the terms "Cyclone," "Freeze," and "Frost" to clarify their use in Section 1.

Add a determination for the term "Loss ratio" to clarify its use in Section 5.

Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

30. Sections 19. and 20.—Add sections for "Determinations" and "Notices," respectively.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 403

Crop insurance, Peaches.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposed to revise and reissue the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), effective for the 1986 and succeeding crop years, to read as follows:

PART 403—PEACH (FRESH) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

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

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 403.1 Availability of peach crop insurance.

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

§ 403.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for peaches which will be included in the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 403.3 OMB control numbers.

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

§ 403.4 Creditors.

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

§ 403.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the peach insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 403.6 The contract.

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

§ 403.7 The application and policy.

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

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a peach insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Peach (Fresh) Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Peach—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Frost;
(2) Freeze;
(3) Hail;
(4) Tornado;
(5) Cyclone;
(6) Drought;
(7) Wind;
(8) Lightning;
(9) Flood;
(10) Fire;
(11) Earthquake;
(12) Volcanic eruption;
(13) An insufficient number of chilling hours to effectively break the dormant period for the crop year; or
(14) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

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

(1) Disease or insect infestation;
(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;
(3) The failure to follow recognized good peach farming practices;
(4) The impoundment of water by any governmental, public or private dam or reservoir project;
(5) Split pits regardless of cause; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be any of the types or varieties of peaches which are grown for the production of Fresh or Processing Peaches (except processing peaches in California) on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peaches grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlard, owner-operator, or tenant in the insured peaches at the time insurance attaches. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) From which the peaches are harvested by the public;

(3) On which the tress have not reached the fourth growing season after being set out unless such acreage has produced at least 100 bushels of peaches per acre;

(4) Planted with a vine or tree crop other than peaches;

(5) Which we inspect and consider not acceptable; or

(6) Of a type or variety of peaches not established as adapted to the area or excluded by the actuarial table.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches to carry out a good peach irrigation practice; and

(2) Any loss of production caused by failure to carry out a good peach irrigation practice, except failure of the water supply from an unavoidable cause occurring after insurance attaches, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congrss, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, practice, and number of bearing trees.

You must report on our form:

a. All the acreage of peaches in the county in which you have a share;

b. The practice;

c. Your share at the time insurance attaches; and

d. The number of bearing trees.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peaches grown in the county. This report must be submitted annually on or before January 10. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, practice, and number of bearing trees or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fourth growing season and older) is reduced more than 10 percent from the preceding calendar year, the production guarantee may be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable when insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share when insurance attaches.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the peach policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

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

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

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

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

Insurance attaches for each crop year on December 1 and ends at the earliest of:

a. Total destruction of the peaches;

b. The date harvest of the peaches (by variety) should have ended;

c. Harvest of the peaches;

d. Final adjustment of a loss; or

e. September 30 of the crop year.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice of:

(a) The date(s) of damage; and

(b) The cause(s) of damage.

(2) You must give us written notice if during the period before harvest, the peaches on any unit are damaged and you decide not to further care for or harvest any part of them.

(3) If you are going to claim an indemnity on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest;

(b) Immediately, if damage occurs within the 15 days prior to harvest or during harvest; or

(c) By September 30, if harvest will not begin by this date.

b. You must obtain written consent from us before you destroy any of the peaches which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peaches on the unit;

(2) Harvest of the unit; or

(3) September 30 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peaches on the unit at the time of harvest and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

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

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

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this result by the price election;

(3) Subtracting thereform the dollar amount obtained by multiplying the total production of peaches to be counted (see section 9e) by the larger of the price election or the actual price per bushel of peaches; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual permium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all appraised production plus any production harvested prior to appraisal.

(1) Mature peach production may be adjusted downward as a result of a loss in quality because of hail, wind and/or misshapen fruit. Any production which is disposed of without being inspected by us will be considered undamaged. The amount of reduction will be determined for:

(a) Peaches grown for fresh use by:

(i) Dividing the value per ¾-bushel carton of the damaged peaches by the price per ¾-bushel carton of U.S. Extra No. 1 two-inch peaches; and

(ii) Multiplying this result by the number of bushels of such peaches.

The applicable price per ¾-bushel carton of U.S. Extra No. 1 peaches (if not available, the next larger size for which a price is available) will be the applicable average F.O.B. shipping point price reported by the Market News Service of the United States Department of Agriculture for 7 consecutive days commencing with the day harvest of the variety begins.

(b) Peaches grown for processing by:

(i) Dividing the value per bushel of the damaged peaches by the price per bushel undamaged peaches; and

(ii) Multiplying this result by the number of bushels of such peaches.

The applicable price per bushel of undamaged peaches will be the average price for processor peaches determined for the 7 consecutive days commencing with the day harvest of the variety begins.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good peach farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, destroyed by you without our consent or not inspected by us prior to the completion of harvest; and

(c) Any unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is exceeded by the actual harvested production.

(4) We reserve the right to delay any appraisal of damage until the extent of the damage can be determined.

(5) If you elect to exclude hail and fire as insured causes of loss and the peaches are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

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

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

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

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

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

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all peaches produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish to us, on or before the cancellation date, satisfactory records of production for the most recent crop year. If, you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

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

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

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

e. The cancellation and termination dates are November 30.

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

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

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of peach crop insurance:

a. "Actual price per bushel" means the average price bushel of U.S. Extra No. 1 two-inch peaches (if not available, the next larger size for which a price is available) determined from prices reported by the Market News Service of the United States Department of Agriculture for 7 consecutive

days commencing with the day harvest of the variety begins.

b. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, uninsurable types or varieties, insurable and uninsurable acreage, and related information regarding peach insurance in the county.

c. "Average yield" means the yield established from your actual production records, which is approved by us and shown on our form.

d. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. "Crop year" means the period beginning with the date insurance attaches and extending through the normal harvest time and shall be designed by the calendar year in which the peaches are normally harvested.

f. "Cyclone" means severe weather consisting of high winds and/or rain with the intensity of storm or hurricane, so designated by the U.S. Weather Service, with one or more closed isobars.

g. "Freeze" means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees (Fahrenheit).

h. "Frost" means the condition that exists when the air temperature around the plant falls to 32 degrees (Fahrenheit) or below.

i. "Harvest" means the picking of mature peaches from the trees either by hand or machine.

j. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

k. "Insured" means the persons who submitted the application accepted by us.

l. "Loss ratio" means the ratio of indemnity(ies) to preminum(ies).

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

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

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

p. "Unit" means all insurable acreage of peaches in the county on the date insurance attaches for the crop year: (1) In which you have a 100 percent year; or (2) Which is owned by one entity and operated by another entity on a share basis.

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

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C., on May 10, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-18849 Filed 8-7-85; 8:45 am]

BILLING CODE 3410-08-M

---

7 CFR Part 411

[Doc. No. 2318S]

Grape Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Grape Crop Insurance Regulations (7 CFR Part 411), effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) adding explanation for calculating dollar amount of insurance and production on units with both varieties; (4) lengthening the time an insured has to give notice of loss from 48 hours to 72 hours; and (5) adding definitions of "Group A," "Group B," and "Loss ratio," clarifying the definition of "Contiguous land," and redefining "unit" to restrict division. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than September 9, 1985, to be sure of consideration.

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

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

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

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

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

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

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

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

Other than minor changes in language and format, the principal changes in the grape policy are:

1. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are being protected since they will retain any discount under the present schedule through the 1990 crop year, or until their loss experience causes them to lose the advantage, whichever is earlier.

2. Remove the provisions for the transfer of insurance experience and for premium computation when participation has been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. Section 8.—Lengthen from 48 hours to 72 hours the time the insured has to give notice of loss.

4. Section 9.c.—Change the method of calculating an indemnity.

5. Section 9.d.—Add a section to explain the method of calculating the dollar amount of insurance and dollar amount of production on units with both Group A and B varieties.

6. Section 9.3.—Change the method of computing the indemnity when acres are underreported. The production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations.

7. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

8. Section 17.—Redefine the meaning of "Contiguous land" and add definitions for "Loss ratio," "Group A," and "Group B."

9. Section 17.m.—Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register**. Written comments will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 411

Crop insurance, Grapes.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Grape Crop Insurance Regulations (7 CFR Part 411), effective for the 1986 and succeeding crop years, to read as follows:

PART 411—GRAPE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

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

Subpart—Regulations For the 1986 and Succeeding Crop Years

§ 411.1 Availability of grape crop insurance.

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

§ 411.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for grapes which will be included in the actuarial table in file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 411.3 OMB control numbers.

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

§ 411.4 Creditors.

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

§ 411.5 Good faith reliance on misrepresentation.

Nothwithstanding any other provision of the grape insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 411.6 The contract.

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

§ 411.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may

be made by an person to cover such person's share in the grape crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a grape contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Grape Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Grape—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

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

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

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Direct Mediterranean Fruit Fly damage; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(6). Direct Mediterranean Fruit Fly damage will be actual physical damage to the grapes on the unit which causes such grapes to be unmarketable and will not include unmarketability of such grapes as a direct result of a quarantine, boycott, or refusal to accept the grapes by any entity without regard to actual physical damage to such grapes.

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

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

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

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

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be any insurable variety of grapes which are grown for wine, juice, raisins, or canning, on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be grapes grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

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

d. We do not insure any acreage:

(1) On which the vines, after being set out, have not reached the number of growing seasons designated by the actuarial table;

(2) Which has not produced an average of 2 tons of grapes per acre; or

(3) With less than 90 percent of a stand of bearing vines based on the original planting, unless inspected by us and we agree, in writing, to insure such acreage (the actuarial table may provide exceptions to this clause).

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good grape irrigation practice; and

(2) Any loss of production caused by failure to carry out a good grape irrigation practice, except failure of the water supply from an unavoidable cause occurring after insurance attaches, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of grapes in the county in which you have a share;

b. The practice;

c. Your share at the time insurance attaches; and

d. The number of bearing vines (if less than 90 percent of a stand based on the original planting pattern).

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grapes grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

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

5. Annual premium.

a. The annual premium is earned and payable at the time insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

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

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the grape policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year;

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

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

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

(5) Participation must be continuous.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance attaches each crop year on:
(1) February 1 in California;
(2) November 21 in Washington; and
(3) December 11 in all other states.
b. Insurance ends at the earliest of:
(1) Total destruction of the grapes on the unit;
(2) The date harvest should have started on the unit on any acreage which is not harvested;
(3) Harvest;
(4) Final adjustment of a loss; or
(5) December 10 (November 10 in Washington and California) of the calendar year in which the grapes are normally harvested.
c. In Indiana, Michigan, Missouri, New York, Pennsylvania, and Ohio, if you purchase any insurable acreage on or before January 5 of any crop year and if we inspect, consider acceptable, and agree in writing, to insure such, acreage, insurance will be considered to have attached to such acreage on the preceding December 11. If you sell any acreage of grapes on or before January 5 of any crop year, insurance will not be considered to have attached to such acreage for that crop year.
8. Notice of damage or loss.
a. In case of damage or probable loss:
(1) You must give us written notice if during the period before harvest, the grapes on any unit are damaged and you decide not to further care for or harvest any part of them.
(2) You must give us notice:
(a) At least 15 days before the beginning of harvest if you anticipate a loss on any unit; or
(b) Immediately, if damage occurs within 15 days prior to harvest or during harvest.
(3) If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:
(a) After total destruction of the grapes on the unit;
(b) After discontinuance of harvest on the unit; or
(c) Before harvest would normally start if any acreage on the unit is not to be harvested.
(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 30 days after the earlier of:
(a) Harvest of the unit; or
(b) The calendar date for the end of the insurance period.
b. You must obtain written consent from us before you destroy any of the grapes which are not to be harvested.
c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.
9. Claim for indemnity.
a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:
(1) Total destruction of the grapes on the unit;
(2) Harvest of the unit; or
(3) The calendar date for the end of the insurance period.
b. We will not pay any indemnity unless you:
(1) Establish the total production of grapes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and
(2) Furnish all information we require concerning the loss.
c. The indemnity will be determined on each unit by:
(1) Multiplying the insured acreage by the production guarantee;
(2) Multiplying this product by the price election;
(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see section 9f) by the price election; and
(4) Multiplying this result by your share.
d. If a unit contains acreage to which both a Group A and Group B grape guarantee apply, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for each portion and then added together to determine the total amount for the unit.
e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.
f. The total production (tons) to be counted for a unit will include all harvested and appraised production:
(1) Grape production which, due to insurable causes, does not meet the minimum sugar solids and/or quality requirements of the receiving processor and has a value of less than 75 percent of the market price for grapes meeting the minimum requirements, or would not meet these requirements if properly handled, will be adjusted by:
(a) Dividing the value per ton of the applicable group of grapes by the highest price election available for such grapes; and
(b) Multiplying the result (not to exceed 1) by the number of tons of such grapes.
(2) Appraised production to be counted will include:
(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grape management practices;
(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and
(c) Any appraised production on unharvested acreage.
(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:
(a) Not harvested before the harvest of grapes becomes general in the county;
(b) Harvested; or
(c) Further damaged by an insured cause.
(4) If any grapes are harvested before normal maturity, the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes.
(5) The amount of production of any unharvested grapes may be determined on the basis of field appraisals conducted after discontinuance of harvest or the end of the insurance period.
(6) If you elect to exclude hail and fire as insured causes of loss and the grapes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."
(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.
g. You must not abandon any acreage to us.
h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.
i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.
j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.
k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:
(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or
(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.
10. Concealment or fraud.
We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contracts. Such voidance will

be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipping, sale, or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

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

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

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

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

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

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

e. The cancellation and termination dates are:

State and Cancellation and Termination dates

California—Janaury 31
Washington—November 20
All other states—December 10

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

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

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date for counties with a November 20 or December 10 cancellation date, and by October 31 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purpose of grape crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding grape insurance in the county.

b. "Contiguous land" means land of the same ownership or rented for cash or a fixed commodity payment which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local poducing area bordering on the county as shown by the actuarial table.

d. "Crop year" means the period beginning with the date insurance attaches and extending through normal harvest time and will be designated by the calendar year in which the grapes are normally harvested.

e. "Group A" means grapes of the following varieties: Buffalo, Clinton, Concord, Elvira, Fledonia, Missouri, Riesling, and Steuben which are used for juice.

f. "Croup B" means grapes of the following varieties: Catawba, Delaware, Diamond, Duchess, French Hybrids, Isabella, Ives and Niagara which are used for wine.

g. "Harvest" means picking the grapes from the vines.

h. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

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

j. "Loss ratio" means the ratio or indemnity(ies) to premium(s).

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

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

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

n. "Ton" means 2,000 pounds.

o. "Unit" means all insurable acreage of grapes in the county, located on contiguous land, on the date insurance attaches for the crop year:

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

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

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

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, D.C. on April 25, 1985.

Merritt W. Sprague,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-18848 Filed 8-7-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 981

Handling of Almonds Grown in California; Proposed Salable, Reserve, and Export Percentages for the 1985–86 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to establish salable, reserve, and export percentages of 80 percent, 20 percent, and 0 percent, respectively, for marketable California almonds delivered to handlers during the 1985–86 crop year, which began July 1, 1985. This action is taken under the marketing order for almonds grown in California and is designed to promote orderly marketing conditions in view of a projected record large almond supply for the 1985–86 crop year.

DATE: Comments must be received by August 23, 1985.

ADDRESS: Interested persons are invited to submit written comments concerning the proposed changes. 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 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This proposed rule 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 action will not have a significant economic impact on a substantial number of small entities.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on a unanimous recommendation of the Almond Board of California, hereinafter referred to as the "Board", which works with USDA in administering the order.

Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 80 percent, 20 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1985–86 crop year. The Board's 1985 marketable production estimate of 470 million kernel weight pounds is based on its 1985 crop estimate of 495 million pounds, minus an estimated weight loss of 25 million pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 400 million pounds—150 million pounds for domestic needs and 250 million pounds for export needs. An inventory adjustment is made to account for supplies of almonds carried in from the 1984–85 marketing year and for supplies deemed desirable to be carried out on June 30, 1986, for early season shipment during the 1986–87 crop year until the 1986 crop is available for market. After adjusting for inventory, the trade demand is calculated at 376 million pounds, the quantity of almonds from the estimated 1985 marketable production necessary for trade demand needs. The proposed salable percentage of 80 percent would meet those needs.

The remaining 20 percent (94 million pounds) of the 1985 crop marketable production would be withheld by handlers to meet their reserve obligations. Authorized outlets for reserve almonds include new uses and markets for almonds such as almond butter, the school lunch program, and almond paste made from unblanched almonds, sales of almond snack packs to airlines or hotels at reduced prices with the agreement that these organizations would give away the snack packs to their customers on a complimentary basis, and various fund raising promotions. Such market development is necessary in view of the current supply situation and anticipated large crops in future years. Reserve almonds also could be disposed of in other noncompetitive outlets as specified in § 981.66(c) of the order or as approved by the Board.

All or part of these almonds could be released to salable if it is found that the salable supply made available by the 80 percent salable percentage is insufficient to satisfy 1985–86 trade demand including desirable carryover requirements for use during the 1986–87 crop year.

The order permits the Board to include normal export requirements with domestic requirements in its estimate of trade demand when recommending the establishment of salable, reserve, and export percentages for any crop year. For the 1985–86 crop year, estimated exports are included in trade demand, thereby making export a salable outlet rather than a reserve outlet. Because of this action, no portion of the reserve would be eligible for export to normal export outlets. Thus, an export percentage of 0 is proposed.

A tabulation of the estimates and calculations used by the Board in arriving at its recommendation is as follows:

MARKETING POLICY ESTIMATES—1984 CROP

[Kernel weight basis]

	Million lbs.		Percent
Estimated Production			
1. 1985 Production	495.0		
2. Loss and Exempt—5.05 percent	25.0		
3. Marketable Production		470.0	
Estimated Trade Demand			
4. Domestic	150.0		
5. Export	250.0		
6. Total		400.0	
Inventory Adjustment			
7. Carryin July 1, 1985	228.0		
8. Desirable Carryover June 30, 1986	204.0		
9. Adjustment		(24.0)	
Salable/Reserve			
10. Adjusted Trade Demand (6+9)	376.0		
11. Reserve (3−10)	94.0		
12. Salable percent (10÷3×100)			80
13. Reserve percent (100 percent −12)			20

The objective of the order's volume regulation provisions is to establish and maintain orderly marketing conditions for all California almonds. This proposed action would help to stabilize supplies and prices as the industry faces its second largest crop in history on the heels of last year's record large crop of 587 million pounds. This year's total marketable supply (1985 crop marketable production plus salable carryin from the 1984 crop) is projected at a record 698 million pounds—6.6 percent above last year's previous record of 654.5 million pounds. World production also is expected to set a record, and sales of California almonds in export are expected to be difficult due to unfavorable exchange rates and large projected crops in Spain and Italy. Thus, California faces strong competition for export markets.

This proposed action would provide an estimated 604 million pounds of California almonds for unrestricted sales (1985 crop salable production plus carryin from the 1984 crop) to meet increasing domestic and world almond consumption. This amount exceeds the

actual 1984–85 record for delivered sales of California almonds by 52 percent.

List of Subjects in 7 CFR Part 981

Marketing Agreements and Orders, Almonds, California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

2. Section 981.234 is proposed to be revised as follows:

Subpart—Salable, Reserve, and Export Percentages

§ 981.234 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1985.

The salable, reserve, and export percentages during the crop year beginning July 1, 1985, shall be 80 percent, 20 percent, and 0 percent, respectively.

Dated: August 2, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–18797 Filed 8–7–85; 8:45 am]

BILLING CODE 3410-02-M

---

7 CFR Part 1079

Milk in the Iowa Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Iowa Fedral milk marketing order for the months of September through November 1985. The proposed suspension would increase the limits on the quantity of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. A cooperative association requested suspension in order to achieve added economies in disposing of reserve milk supplies.

DATE: Comments are due August 15, 1985.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Iowa marketing area is being considered for September through November 1985:

In § 1079.13(d)(2) and (3) the words "50 percent in the months of September through November and", and the words "in other months," as they appear in each subparagraph.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies to the Dairy Division, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1985 in the suspension period if this is found necessary.

The comments that are received will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Associated Milk Producers, Inc., (AMPI), an association of producers, operates plants regulated by the Iowa milk order. The cooperative has requested that the 50-percent diversion limitation be suspended for September, October and November 1985. The remaining diversion provisions in the order would permit a greater portion of a handler's producer milk receipts to be moved directly from farms to nonpool manufacturing plants and still be priced under the order.

The cooperative notes that milk production in this marketing area has substantially increased and, therefore, the 50-percent limit on diversions to nonpool plants is inadequate to permit efficient handling of milk that is not needed for fluid milk uses. A supply plant, for example, currently must ship at least 35 percent of its milk supply to pool distributing plants to qualify as a pool plant. However, with diversions limited to 50 percent, the other 15 percent must be received at the supply plant and then transferred to a nonpool plant. AMPI contends that the extra handling involved adversely affects milk quality (more pumping than if diverted), and is an uneconomic means of pooling reserve milk supplies. Suspending the 50-percent diversion limit would alleviate these concerns and allow improved efficiencies, thus increasing returns to producers, according to the cooperative.

Reserve milk supplies within a marketing order normally decline during the fall months. However, current marketing information indicates that this year the reserve milk supplies for the Iowa market are expected to exceed the quantity of milk that could be diverted to nonpool manufacturing plants under the present diversion limitations and still maintain producer status for all such milk. Under these marketing conditions, a suspension of the 50-percent limitation of the diversion provisions may be appropriate so that producer receipts that are not needed for fluid use may be moved directly from farms to manufacturing plants and still be priced under the order. An increase in the diversion limits for each of the months of September, October and November 1985 may tend to prevent the uneconomic handling and movement of reserve milk supplies merely for pooling purposes.

Pool plant handlers should be aware that the suspension of the 50-percent limitation would not mean that the diversion limit would then be 70 percent. The effective diversion limit, if a suspension is granted for September through November, would be the reciprocal of the pool plant performance standards. For example, a supply plant would still have to ship 35 percent of its receipts; thus, the effective diversion limit would be 65 percent rather than 70 percent.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1079 continues to read as follows:

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

Signed at Washington, D.C., on August 2, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-18835 Filed 8-7-85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1135

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, UDSA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Southwestern Idaho-Eastern Oregon Federal milk order for the months of September 1985 through February 1986. Provisions proposed to be suspended relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also proposed to be suspended is the requirement that one day's production of each producer be received at a pool plant in the months of September through February. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movement of milk.

DATE: Comments are due no later than August 15, 1985.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area is being considered for September 1985 through February 1986:

In § 1135.13, paragraphs (f)((2) and (f)(3).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1985 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Dairymen's Creamery Association, Inc., an association of producers that supplies most of the market fluid milk needs and handles most of the market's reserve milk supplies, requested the suspension. The suspension would remove for September 1985 through February 1986 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. The suspension also would remove for the same period the requirement that one day's production of each producer be received at a pool plant.

The order now provides that a cooperative association may divert up to 70 percent of its total member milk received at all pool plants or diverted therefrom during the months of September through February. Similarly, the operator of a pool plant may divert up to 70 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of September through February.

Milk is pooled by Dairymen's under the Southwestern Idaho-Eastern Oregon order through two distributing plants operated by one handler. During June 1985, one of the distributing plants failed to qualify as a pool plant because its percentage of fluid milk distribution fell below minimum pooling requirements. Dairymen's has continued producer status of its dairy farmer members by unnecessary and uneconomic movements of milk through its supply plant at Caldwell, Idaho. The cooperative has proposed amended order provisions and requested a hearing to explore those proposals, but states that, until the order can be amended, it will continue to experience problems in pooling the milk of its members without suspension of the requested provisions.

List of Subjects in 7 CFR Part 1135

Milk Marketing Orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1135 continues to read as follows:

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

Signed at Washington, D.C., on August 2, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-18836 Filed 8-7-85; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR parts 91, 161, and 162

[Docket No. 85-082]

Accreditation of Veterinarians and Origin Health Certificates; Reopening of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Reopening of comment period for proposed rule.

SUMMARY: A document published in the **Federal Register** on June 28, 1985 (50 FR 26780) proposed to make changes in 9 CFR Parts 161 and 162 relating to the accreditation of veterinarians and to make changes in 9 CFR Parts 91 and 161 relating to origin health certificates. This document reopens the comment period for this proposed rule for an additional 30 days. The reopening of the comment period is needed to allow interested persons adequate time in which to prepare comments.

DATE: Written comments must be received on or before September 9, 1985.

ADDRESS: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 84-081.

Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Robert E. Wagner, Interstate Inspection and Compliance Staff, VS, PHIS, USDA, Room 806, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8684.

SUPPLEMENTARY INFORMATION: On June 28, 1985, the Department published in the **Federal Register** (50 FR 26780–26782) a document which proposed to make changes in 9 CFR Parts 161 and 162 relating to the accreditation of veterinarians. These changes would require that a revocation remain in effect for at least two years; would require that a veterinarian whose accreditation had been suspended for six months or more or revoked must pass an examination administered by APHIS as a condition of reaccreditation; would clarify the regulations to provide that the Veterinarian in Charge shall designate the time and place for the holding of an informal conference in accordance with certain criteria. The document of June 28, 1985, also proposed to make changes in 9 CFR Parts 91 and 161 relating to origin health certificates. The proposed changes would allow an accredited veterinarian to sign an origin health certificate without including test results from a laboratory and would allow an authorized Veterinary Services veterinarian to include such test results on the origin health certificate, under certain circumstances.

The proposed rule provided for receipt of comments on or before July 29, 1985. A representative of the United States Animal Health Association (USAHA) has requested that the comment period be extended for an additional 30 days in order to give USAHA members a sufficient amount of time to review the proposal and offer comments. It has been determined that additional time is needed to provide USAHA members and other interested persons an adequate opportunity to provide meaningful comments. Therefore, the comment period is reopened for an additional 30 days. Accordingly, any additional written comments must be received on or before September 9, 1985.

Done at Washington, D.C., this 2nd day of August 1984.

G.J. Fichtner,

Acting Deputy Administrator Veterinary Services.

[FR Doc. 85–18725 Filed 8–7–85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19, 20, 21, 30, 39, 40, 51, 70, 71, and 150

Licenses and Radiation Safety Requirements for Well-Logging Operations

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 8, 1985 (50 FR 13797), the Nuclear Regulatory Commission published for public comment a proposed rule that would specify radiation safety requirements for the use of licensed material in well-logging operations. The proposed amendments would provide comprehensive and consistent regulations, uniform safety requirements, and safety requirements designed to reduce the risks of accidents. Several coal and mineral mining companies commented that they may be substantially affected by this rulemaking and have requested additional time to comment on the proposed rule. Although these companies are not NRC licensees, they hire NRC licensees to perform well-logging operations and, therefore, the proposed rule could affect their interests. In order for the NRC to fully evaluate the issues raised by these commenters, we are extending the original comment period, which expired on July 8, 1985, for 90 days to allow these companies, and other interested parties, to further consider the proposed rule and provide comments.

DATE: The extended comment period expires October 9, 1985. Comments received after the date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Submit written comments to the Secretary of the Commission, Washington, DC, 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen McGuire, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC, Telephone: 301–443–7636.

Dated at Washington, DC this 5th day of August 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–18833 Filed 8–7–85; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 140

Criteria for an Extraordinary Nuclear Occurrence

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 9, 1985 (50 FR 13978), the Nuclear Regulatory Commission published a proposed rule to amend its regulations defining an "extraordinary nuclear occurrence" (ENO). The proposed changes are designed to simplify the administrative criteria used by the Commission in making an ENO determination and to avoid the problems encountered by the Commission in applying the existing criteria to the accident at Three Mile Island. Several groups have expressed interest in an extension of the comment period in order to fully evaluate the issues raised and develop comments on the proposed rule. In particular, the Atomic Industrial Forum (AIF) requested an extension of the comment period in order for AIF's Insurance and Indemnity Committee to discuss the proposed rule at its scheduled August 20, 1985, meeting. In view of the significance of the proposed rule, in which three alternatives were given, and the desirability of developing a final rule as soon as practicable, the NRC has decided to extend the comment period for an additional 30 days. The original comment period for this proposed rule is due to expire on August 7, 1985.

DATE: The extended comment period expires September 6, 1985. Comments received after that date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Submit written comments to the Secretary of the Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined and copied for a Fee at the NRC Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: H.T. Peterson, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301–427–4353.

Dated at Washington, DC, this 5th day of August 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-18834 Filed 8-7-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 91, 121, and 125

Emergency Evacuation of Transport Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Public Technical Conference.

SUMMARY: This notice announces a public technical conference, which is being held by the Federal Aviation Administration (FAA) for the purpose of soliciting and reviewing information from the public on a variety of topics related to emergency evacuation of transport category airplanes. Interested parties are invited to make presentations or submit material for the record. Subjects will be considered relating to the design standards for and certification of transport airplanes, as well as their operation and maintenance in service, includng: (1) Emergency exits, their number, size, distribution, and marking; (2) Escape slides, their design standards, certification, testing, maintenance, and reliability; and (3) Conduct of evacuation tests, when they should be required, how they should be conducted, and their validity as a reflection of actual accident scenarios. A more complete list appears later in this notice under the heading "Topics for Discussion." Topics not listed will be considered if their is sufficient interest and time permits.

DATES: The conference is scheduled for September 3-6, 1985. Registration will begin at 9 a.m. on September 3, 1985, and the conference will begin at 1 p.m. Persons planning to attend the conference are encouraged to pre-register by contacting the person identified later in this notice as the contact for further information. If necessary to complete the agenda, the conference may be extended into Saturday, September 7, 1985.

ADDRESS: The conference will be held at the Seattle Sheraton Hotel, 1400 Sixth Avenue, Seattle, WA. 98101, telephone (206) 621-9000.

FOR FURTHER INFORMATION CONTACT: Patricia Siegrist, Transport Standards Staff, Aircraft Certification Division, FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2126.

SUPPLEMENTARY INFORMATION: .

Background

The FAA has initiated numerous regulatory changes to enhance the cabin safety of transport airplanes, particularly in the area of accident survivability. Completed rulemaking actions include: Flammability Requirements for Aircraft Seat Cushions, Amendment 25-59 (49 FR 43188; October 26, 1984); Floor Proximity Emergency Escape Path Marking, Amendments 25-58 and 121-183 (49 FR 43182; October 26, 1984); and Airplane Cabin Fire Protection, Amendment 121-185 (50 FR 12726, March 29, 1985). A proposed rule has been published for public comment: Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins, Notice 85-10 (50 FR 15038; April 16, 1985). Proposed rules in development include Improved Seat Safety Standards and Improved Flight/Cabin Crew Emergency Communication.

A key aspect of occupant safety in a survivable impact aircraft accident is the ability to quickly and safely evacuate the airplane. This is a matter of great concern to the FAA, the aviation industry, and the flying public. In view of the high degree of interest in this area, the FAA considers it timely to hold an open public technical conference to provide a forum for the agency to gather information and for interested parties to express views and exchange information. The FAA anticipates and welcomes the participation of a wide spectrum of interested parties in this conference.

Parties are invited to express views concerning the existing regulations and their application, and to make recommendations for either regulatory or non-regulatory changes. Recommendations should include technical justification, service history, and supporting data expressing costs and benefits.

Topics for Discussion

The following list is not intended to be all-inclusive, but includes those topics which the agency considers to be of the greatest public interest. Topics listed in the miscellaneous category are not of a lesser importance, but do not fall clearly under any of the first three categories. Requests to present material on topics not listed will be granted if there is sufficient interest, and time permits.

I. Emergency Exits

—Number and capacity of exits
—Distribution of exits
—Distance between exits
—Deactivation of exits
—Means for marking and locating exits

II. Full Scale Evacuation Demonstrations

—When should they be required
—When should approvals be done by analysis rather than by full scale evacuation
—What kind of analysis should be accepted
—How should full scale evacuations be conducted
—Do the demonstrations properly account for carry-on baggage
—Is the 90-second criteria valid
—Should smoke be present during evacuation demonstrations
—Is the passenger mix valid
—Should there be handicapped, obese, or blind participants
—How should the distribution of blocked exists be determined
—Do the emergency evacuation tests presently required by the regulations reasonably reflect the survivable accident scenario
—Should the requirements of Parts 25 and 121 be better integrated
—Are mini-evacs a valid testing method

III. Escape Slides

—Are TSO C-69A design standards adequate
—Do the regulations adequately account for in-service deterioration
—Are the standards appropriate with respect to inflation times, girt strength, and heat resistance
—Is the 6-foot still height appropriate
—Is the 25-knot wind criterion appropriate
—Do the regulations adequately account for an adverse airplane attitude
—Are testing requirements adequate
—Are changes needed to improve slide reliability
—Is failure reporting adequate
—Is maintenance adequate
—Are the criteria for dispatching with inoperative slides appropriate

IV. Miscellaneous

—Floor Proximity Escape Path Marking
—Flight Attendant Seats
—Crew Training
—Passenger Briefing

Requests To Be Heard

Persons planning to present data or comments at the conference are requested to provide the FAA an abstract of their presentation by Monday August 26, 1985. The abstract should include an estimate of the time

needed to make the presentation, and should be mailed to the person identified earlier in this notice as the contact for further information. Following each presentation, a discussion period will be allowed and all persons will be given the opportunity to open discussions on the presentation. Following receipt of the abstracts, the FAA will prepare a detailed agenda which will be available at the registration desk prior to the conference.

Technical Conference Procedures

Hotel room reservations should be made in advance. A block of rooms has been reserved at the Sheraton Hotel. Persons wishing to attend the conference are encouraged to make reservations by August 21, by contacting the Sheraton Hotel directly at (206) 621-9000. Be sure to identify yourself as an FAA conference attendee.

Persons who plan to attend the conference should be aware of the following procedures which are established to facilitate the workings of the conference:

1. Sessions will be open on a space available basis to all persons registered. If necessary to complete the agenda, sessions may be extended into Saturday, September 7, 1985. If practicable, the conference may be accelerated to enable adjournment in less than the time scheduled.

2. All sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be docketed. Additionally, the sessions may be tape recorded.

3. The FAA will consider all material presented at the conference by participants. Position papers or other handout material may be accepted at the discretion of the chairperson. Enough copies should be provided for distribution to all conference participants.

4. The FAA will have a panel of technical experts at the conference who will serve to facilitate discussions. Statements made by FAA participants at the conference should not be taken as expressing final FAA positions.

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

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

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-18831 Filed 8-7-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 440

Proposed Trade Regulation Rule for the Hearing Aid Industry

AGENCY: Federal Trade Commission.

ACTION: Request for comments.

SUMMARY: The Commission has placed on the rulemaking record the results of a survey, conducted under contract to the Bureau of Consumer Protection, that gathered data from recent purchasers of hearings aids. The survey provides information regarding the marketing practices of hearing aid sellers as well as the experiences of hearing aid purchasers. Two memoranda discussing the survey results and their implications have also been placed on the rulemaking record. The Commission is seeking public comment on the survey and its implications for the Commission's decision whether or not to promulgate the proposed rule.

Additionally, the Commission has placed a number of other documents on the rulemaking record. These include a reanalysis of the record and other memoranda prepared in 1982 and 1983 by staff of the Bureau of Consumer Protection and the Bureau of Economics concerning a revised proposal for a trade regulation rule.

DATE: Comments will be accepted through September 9, 1985.

ADDRESS: Send comments to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580. Submissions should be labeled "Hearing Aid Rule." Send requests for copies of the survey to: "A Description of the Experiences of Recent Hearing Aid Purchasers," Public Reference, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: John Nash, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580 (202) 523-3646.

SUPPLEMENTARY INFORMATION: The Commission invites public comment on a survey of recent purchasers of hearing aids. The survey was performed by Market Facts, Inc., pursuant to a contract with the FTC's Bureau of Consumer Protection. The data for the survey were collected during February and March of 1985. The survey offers recent data about hearing aid purchaser consultations with physicians, the availability of trial periods to hearing aid purchasers. A final report on the survey, entitled "A Description of the Experiences of Recent Hearing Aid Purchasers," was submitted to the Bureau of Consumer Protection in June 1985, and has now been placed on the record of the Commission's rulemaking proceeding. In addition, a memorandum from the Deputy Director of the Bureau of Consumer Protection, and a memorandum from the Bureau of Economics, summarizing the survey results and assessing their relevance for the Commission's determination, have also been placed on the rulemaking record.

The Commission seeks the public's views on the methodology of the hearing aid survey and on the possible implications of the survey results for its decision whether or not to promulgate a trade regulation rule for the hearing aid industry. Written comments concerning the survey will be accepted through September 9, 1985.

Following the close of the comment period, the Commission will determine whether or not to promulgate the rule.

List of Subjects in 16 CFR Part 440

Hearing aids, Trade practices.

Issued: August 6, 1985.

By direction of the Commission.

Phyllis A. Johnson,

Acting Secretary.

[FR Doc. 85-18977 Filed 8-7-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

[Docket No. 50448-5048]

Countervailing Duties; Extension of Comment Period

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed rule and request for comments; extension of comment period.

SUMMARY: The International Trade Administration announces that the deadline for receipt of comments on the proposed rule on countervailing duties (19 CFR Part 355) published June 10, 1985 (50 FR 24207) is extended for 30 days.

DATES: Written comments on the proposed rule must be received by September 9, 1985.

ADDRESS: Address written comments to Gilbert B. Kaplan, Acting Deputy Assistant Secretary for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania

Avenue and 14th Street, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Stephen J. Powell, Assistant General Counsel for Import Administration, Room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, D.C. 20230 (202) 377-1411.

SUPPLEMENTARY INFORMATION: On June 10, 1985, the Department of Commerce, International Trade Administration, published in the **Federal Register** (50 FR 24207) proposed revisions to its regulations relating to countervailing duties (19 CFR Part 355). This notice stated that the public comment period for that rulemaking closes on August 9, 1985.

The Department, which has received requests for additional time for comment, believes that the proposed rule is sufficiently complex to warrant a comment period longer than the normal 60 days.

Accordingly, this notice announces that the public comment period for that rulemaking is extended until September 9, 1985. Comments on the proposed rule must be submitted on or before that date.

Dated: August 6, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19015 Filed 8-7-85; 9:29 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 669

[FHWA Docket No. 85-8]

Certification of Enforcement of Heavy Vehicle Use Tax

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA is requesting comments on proposed procedures to be followed by each State for certifying that it is obtaining proof of payment of the heavy vehicle use tax in accordance with 23 U.S.C. 141(d) for vehicles subject to the use tax imposed by section 4481 of the Internal Revenue Code of 1954, as amended, before such vehicles are lawfully registered in the State. An annual certification of compliance is required. Because failure to meet the requirements of this regulation will result in a reduction of Interstate highway funds apportioned under 23 U.S.C. 104(b)(5), a procedure for such reduction is also proposed.

DATE: Comments on this docket must be received on or before September 23, 1985.

ADDRESS: Submit written comments, preferably in triplicate, to FHWA Docket No. 85-8, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas R. Weeks, Chief, Highway Users and Finance Branch, (202) 426-0160; or Mr. David C. Oliver, Office of the Chief Counsel, (202) 426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 143 of the Surface Transportation Assistance Act of 1982 (23 U.S.C. 141(d)) provides that a State's apportionment of funds under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent of the amount to be apportioned in any fiscal year beginning after September 30, 1984, during which heavy vehicles, subject to the use tax imposed by Section 4481 of the Internal Revenue Code of 1954, as amended, are lawfully registered without having presented proof of payment of the use tax. This notice of proposed rulemaking proposes procedures for determining State compliance with 23 U.S.C. 141(d). Final regulations were issued by the Internal Revenue Service (IRS) on May 23, 1985, at 50 FR 21243 relating to the imposition of the Federal heavy vehicle tax and the refunds of the tax imposed on the sale of diesel fuel. The final regulations also contain procedures relating to circumstances under which a State must require proof of payment of the Federal heavy vehicle use tax and the required manner in which such proof of payment is to be received by the State as a condition of registering vehicles subject to the tax.

In developing this proposed rule, the FHWA has carefully considered views of State Motor Vehicle Administrators obtained through an August 1983 workshop sponsored by the American Association of Motor Vehicle Administrators (AAMVA) under contract with the FHWA. These included a recommendation that AAMVA and its members be allowed maximum input into the development of rules and regulations. It is the objective and intent of the FHWA to ensure that the process for determining compliance with 23 U.S.C. 141(d) places the least possible reporting burden on the States. The FHWA believes the annual certification process is the most effective method of accommodating the statute with the least possible reporting burden imposed on the States. Although the language of the statute itself does not explicitly require a certification, FHWA believes that placement of this provision in 23 U.S.C 141, which provides for other certifications, implies a satisfaction with this procedure. The statute itself requires only that the States not register vehicles without requiring proof of payment. However, there is a responsibility for the Department to make a determination that States' policies and practices are consistent with this provision.

The certification in effect requires a shared responsibility at the State level to implement congressional intent and, at the same time, allows the Department to look behind each State's statement to ascertain the appropriateness of State actions. Without a certification process, States would be subject only to random and periodic inspections by the Inspector General or FHWA program operatives. Concomitant with the institution of a certification procedure, there is a necessary time lag of 1 fiscal year in the assessment of a penalty. This is an operational necessity which allows the Department sufficient time to assess States' efforts in complying with the law.

The FHWA specifically invites comments on the appropriateness of this 1-year delay in assessing a penalty and on the certification procedure in general.

The proposed regulation provides for the submittal of an annual certification and, as constituted, consists of four major parts. Section 669.7 establishes the certification requirement. Section 669.9 specifies the certification content. Section 669.15 established procedures for reduction of Federal-aid funds for failure to certify or to implement provisions for compliance with 23 U.S.C. 141(d). And finally, Section 669.17 identifies procedures for evaluating State compliance by the FHWA.

Certification Requirement

Title 23 U.S.C. 141(d), provides that a State's apportionment of Federal-aid funds apportioned under 23 U.S.C. 104(b)(5) after September 30, 1984, shall be reduced by an amount up to 25 percent if heavy vehicles subject to the heavy vehicle use tax are registered

without proof of payment. As a result of enactment of the Deficit Reduction Act of 1984 (Pub. L. 98-369, 98 Stat. 494), on July 18, 1984, however, both the rate and application of the heavy vehicle use tax were changed, and the due date for paying the tax for the July 1, 1984, to June 30, 1985, taxable period was extended by the IRS from August 31 to September 30, 1984. Concurrently, the IRS informed State governments that vehicles subject to the Federal use tax could be registered until January 1, 1985, without requiring proof of payment of the use tax. Following issuance of the November 6, 1984, notice of proposed rulemaking, the IRS conducted a public hearing on December 14, 1984, to obtain testimony on the proposed regulations pertaining to proof of payment of the heavy vehicle use tax. Based on the public hearing, as well as written comments to the docket, the IRS decided to delay the effective date for implementation of 23 U.S.C. 141(d) to allow State governments more time to comply with this requirement. By a December 27, 1984, IRS news release, State governments were informed that they will not be required to obtain proof of payment of the havey vehicle use tax as a condition of vehicle registration until October 1, 1985. Based on these events, the initial certification period will begin on October 1, 1985—the new effective date for States to implement programs requiring proof of payment of the use tax as a condition of registration.

Each State will be required to certify to the Federal Highway Administrator before July 1, 1986, and each year thereafter, that it is obtaining proof of payment of the Federal use tax as a condition of registration for vehicles subject to the tax under 26 CFR Part 41. The certification statement will be submitted by the Governor, or a State official designated by the Governor, to the FHWA Division Administrator and will specify the inclusive dates of the certification perid (i.e., October 1, 1985 through May 31, 1986, for the initial certification and June 1 through May 31 for subsequent certifications). The FHWA recognizes that registration periods for the States vary and that the initial certification may occur before the next annual registration period for some States. In such cases, the certification statement will cover any registrations which occurred during the initial certification period regardless of the term of the registration.

Certification Content

The certification statement will serve as the principal documentation for administering 23 U.S.C. 141(d) by the FHWA. In addition, the proposed regulation provides that a copy of applicable laws and/or administrative regulations accompany the certification statement to provide FHWA with a measure of steps taken to effect successful implementation.

Effect of Failure To Certify Compliance or To Verify Proof of Payment

Title 23 U.S.C. 141(d) provides that a State's apportionment of funds apportioned under 23 U.S.C. 104(b)(5) shall be reduced in an amount up to 25 percent in the event heavy vehicles, subject to the Federal use tax, are lawfully registered without having obtained proof of payment that such tax has been paid. This provision provides some administrative discretion on the part of the Secretary of Transportation in determining a suitable reduction of funds for noncompliance with the provisions of 23 U.S.C. 141(d). Apportionments uder 23 U.S.C. 104(b)(5) after June 1, 1986, will be subject to the reduction specified by 23 U.S.C. 141(d).

The statute provides for a reduction of up to 25 percent of funds apportioned to a State under 23 U.S.C. 104(b)(5); however, no criteria are provided to guide the Secretary in making a determination of the amount. For similar provisions, i.e., the National Maximum Speed Limit, the Department has relied upon a series of indices to measure State compliance efforts, including State legislative structures, internal fines and penalties, budgetary considerations, etc. The FHWA proposes to utilize a similar procedure here relying on materials which the State would consider germane, if such exist. We invite comments on the appropriateness of more formal requirements or criteria, or as to the factors the States would consider relevant in assisting the Department in making this determination.

Procedure for Reduction of Funds

If a State fails to submit a certification or if the FHWA determines that the State is not adequately obtaining evidence of payment of the Federal use tax before lawfully registering vehicles subject to the tax, the statute requires a reduction in funds apportioned under 23 U.S.C. 104(b)(5). Section 669.15 of the proposed regulation establishes procedures for ensuring that States are afforded due process prior to a final determination of noncompliance. This procedure has been modeled upon the speed limit and size and weight enforcement procedures which have proven effective in providing the States ample notice of Federal sanction proceedings and also opportunity to explain deficiencies and propose remedies which could be useful to the Secretary in determining the penalty, if any, to be imposed on a State.

Procedure for Evaluating State Compliance

The annual certification procedure recognizes that the States have long-standing experience in the collection and administration of taxes; therefore, FHWA's role in evaluating compliance is expected to consist of periodic reviews of the States' procedures for obtaining proof of payment.

Section 669.17 provides for retention of the receipted Schedule 1 by the States for a period of 1 year for purposes of providing FHWA with sufficient information for determining State compliance with 23 U.S.C. 141(d). In lieu of retention of Schedule 1, States are permitted to make an entry in an automated file or on registration documents retained by the State as evidence that proof of payment has been received before vehicles subject to the Federal heavy vehicle use tax are reigstered. The FHWA believes that the imposition of this recordkeeping requirement is reasonable and will provide the most effective means for determining State compliance with the statute. Comments are requested from the States, however, on other alternatives which will provide an equally suitable means for FHWA to meet its program responsibilities for determining State compliance.

The FHWA has determined that this document is neither a major proposed rule under Executive Order 12291 nor a significant proposed regulation under DOT regulatory policies and procedures. The procedures in this document are being proposed in order to implement a statutory mandate. A regulatory evaluation has not been prepared because of the ministerial nature of this action.

Since this proposal will primarily impact the States, under the criteria of the Regulatory Flexibility Act, it is certified that this action, if promulagated, will not have a significant economic impact on a substantial number of small entities.

The recordkeeping requirement contained in this proposed rule is being submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h).

In consideration of the foregoing, FHWA proposes to amend Chapter I of Title 23, Code of Federal Regulations, by adding a new Part 669 to read as set forth below:

List of Subjects in 23 CFR Part 669

Grant programs—transportation, Highways and roads, Taxes, Motor vehicles.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 6, 1985.

L.P. Lamm,

Deputy Administrator.

PART 669—ENFORCEMENT OF HEAVY VEHICLE USE TAX

Sec.

Authority: 23 U.S.C. 141(d) and 315; 49 CFR 1.48(b).

§ 669.1 Scope and purpose.

To prescribe requirements for certification by the States that evidence of proof of payment is obtained before vehicles subject to the Federal heavy vehicle use tax are lawful registered.

§ 669.3 Policy.

It is the policy of the FHWA that each State require registrants of heavy trucks as described in 26 CFR Part 41 to provide proof of payment of the vehicle use tax before lawfully registering such vehicles.

§ 669.5 Objective.

The objective of this regulation is to establish realistic and workable procedures for an annual certification process to provide suitable evidence that an effective program is being conducted by the States and to ensure that the States are not registering vehicles which have not been accounted for under the tax collection procedures instituted by the Internal Revenue Service (IRS).

§ 669.7 Certification requirement.

The Governor of each State, or his or her designee, shall certify to the Federal Highway Administration before July 1 of each year that it is obtaining proof of payment of the heavy vehicle use tax as a condition of registration in accordance with 23 U.S.C. 141(d). The certification shall cover the 12-month period (8 months for the initial certification period) ending May 31.

§ 669.9 Certification content.

The certification shall consist of the following elements:

(a) A statement by the Governor of the State or a State official designated by the Governor, that evidence of payment of the heavy vehicle use tax is being obtained as a condition of registration for all vehicles subject to such tax. The statement shall include the inclusive dates of the period during which payment of the heavy vehicle use tax was verified as a condition of registration.

(b) The certifying statement required by paragraph (a) of this section shall be worded as follows: I (name of certifying official), (position, title), of the State of ( ), do hereby certify that evidence of payment of the heavy vehicle use tax pursuant to Section 4481 of the Internal Revenue Code of 1954, as amended, is being obtained as a condition of registration for vehicles subject to such tax in accordance with 23 U.S.C. 141(d) and applicable IRS rules. This certification is for the period ( ) to ( ).

(c) For the initial certification, submit a copy of any State law or regulation pertaining to the implementation of 23 U.S.C. 141(d); for subsequent certifications, submit a copy of new laws and/or regulations pertaining to the implementation of 23 U.S.C. 141(d).

§ 669.11 Certification submittal.

(a) The Governor or an official designated by the Governor, shall each year submit the original and one copy of the certification, including the supporting material specified in § 669.9 to the FHWA Division Administrator prior to July 1.

(b) The divison office shall forward the original certification to the Office of the Chief Counsel and one copy to the Associate Administrator for Planning and Policy Development. Copies of supporting material shall accompany the transmittal.

§ 669.13 Effect of failure to certify or to adequately obtain proof of payment.

Beginning July 1, 1986, if a State fails to certify as required by this regulation or if the Secretary of Transportation determines that a State is not adequately obtaining proof of payment of the heavy vehicle use tax as a condition of registration notwithstanding the State's certification, Federal-aid highway funds apportioned to the State under 23 U.S.C. 104(b)(5) for the next fiscal year shall be reduced in an amount up to 25 percent as determined by the Secretary.

§ 669.15 Procedure for reduction of funds.

(a) If it appears to the Federal Highway Administrator that a State has not submitted a certification conforming to the requirements of this regulation or that the State is not adequately obtaining proof of payment of the heavy vehicle use tax under 23 U.S.C. 141(d), the Federal Highway Administrator shall make in writing a proposed determination of nonconformity, and shall notify the Governor of the State of the proposed determination by certified mail. The notice shall state the reasons for the proposed determination and inform the State that it may, within 30 days from the date of the notice, request a hearing to show cause why it should not be found in nonconformity. If the State informs the Administrator before the end of this 30-day period that it wishes to attempt to resolve the matter informally, the Administrator may extend the time for requesting a hearing. In the event of a request for informal resolution, the State and the Administrator (or designee) shall promptly schedule a meeting to resolve the matter.

(b) In all instances where the State proceeds on the basis of informal resolution, a transcript of the conference will be made and furnished to the State by FHWA.

(1) The State may offer any information which it considers helpful to a resolution of the matter, and the scope of review at the conference shall include, but not be limited to, State legislative actions (including those proposed to remedy deficiencies), budgetary considerations, judicial actions, and proposals for specific actions which will be implemented to bring the State into compliance.

(2) The information produced at the conference may constitute an explanation and offer of settlement and the Administrator shall make a determination on the basis of the certification, record of the conference, and other information submitted by the State. The Administrator's final decision, together with a copy of the transcript of the conference, will be furnished to the State.

(3) If the Administrator does not accept an offer of settlement made pursuant to paragraph (b)(2) of this section, the State may, within 30 days from receiving notice of the Administrator's decision, request a hearing on the record.

(c) If the State does not request a hearing in a timely fashion as provided

in paragraph (a) of this section, the Federal Highway Administration shall forward the proposed determination of nonconformity to the Secretary. Upon approval of the proposed determination by the Secretary, the final reduction specified by § 669.13 will be effected.

(d) If the State requests a hearing pursuant to paragraph (a) or (b)(3) of this section, the Secretary shall expeditiously convene a hearing on the record, which shall be conducted according to the provisions of the Administrative Procedure Act, 5 U.S.C. 556 and 557. Based on the record of the proceeding, the Secretary shall determine whether the State is in nonconformity with this regulation. If the Secretary determines that the State is in nonconformity, the fund reduction specified by § 669.13 shall be effected.

(e) The Secretary may reserve up to 25 percent of a State's apportionment of funds under 23 U.S.C. 104(b)(5) pending a final administrative determination under this regulation to prevent the apportionment to the State of funds which would be affected by a determination of nonconformity.

(f) Funds withheld pursuant to a final administrative determination under this regulation shall be reapportioned to all other eligible States one year from the date of this determination, unless before this time the Secretary determines, on the basis of information submitted by the State and the FHWA, that the State has come into conformity with this regulation. If the Secretary determines that the State has come into conformity, the withheld funds shall be released to the State subject to the availability of such funds under 23 U.S.C. 118(b).

(g) The reapportionment of funds under paragraph (e) of this section shall be stayed during the pendency of any judicial review of the Secretary's final administrative dtermination of nonconformity.

§ 669.17 Procedure for evaluating State compliance.

The FHWA shall periodically review the State's procedures for complying with 23 U.S.C. 141(d), including an inspection of supporting documentation and records. The States shall retain a copy of the receipted Schedule 1, or an acceptable substitute prescribed by 26 CFR Part 42, § 41.6001-2, for a period of 1 year for purposes of evaluating State compliance with 23 U.S.C. 141(d) by the FHWA. In lieu of retention of Schedule 1, States may make an appropriate entry in an automated file or on registration documents retained by the State as evidence that proof of payment has been received before vehicles subject to the Federal heavy vehicle use tax are registered.

[FR Doc. 85-18897 Filed 8-7-85; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-227-84]

Limitation on Investment Credit in the Case of Certain Regulated Companies; Synchronization of Interest; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the limitation on the investment credit in the case of certain regulated companies.

DATES: The public hearing will be held on Wednesday, August 28, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, August 20, 1985.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-227-84), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 or telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 46(f) of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Wednesday, June 26, 1985 (50 FR 26385).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, August 20, 1985, and outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Director, Legislation and Regulations Division.

[FR Doc. 85-18854 Filed 8-7-85; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

[ER 500-1-1]

Emergency Employment of Army and Other Resources, Natural Disaster Procedures

AGENCY: Army Corps of Engineer, DOD.

ACTION: Proposed rule.

SUMMARY: These proposed changes will amend the regulation dated December 21, 1983, and will provide revised procedures for the Corps of Engineers in conducting certain emergency activities pursuant to Public Law 84-99.

The Corps of Engineers proposes to establish new policy concerning the rehabilitation of flood control projects (normally levees) which are constructed and maintained by non-Federal interests. The proposed policy will make this regulation more consistent with policy and procedures established by other Federal agencies for disaster assistance. Additionally, state and local governments will assume a more active role in determining the most effective use of available Corps of Engineers resources for rehabilitation of flood control projects damaged by a flood event.

DATE: Written comments must be received on or before August 23, 1985.

ADDRESS: Comments should be addressed to: HQDA (DAEN-CWO-EO), Washington, D.C. 20314-1000.

FOR FURTHER INFORMATION CONTACT:
Mr. Edward J. Hecker, (202) 272-0251.

SUPPLEMENTARY INFORMATION:

Background

The Corps of Engineers has authority, under Public Law (Pub. L.) 84-99, to repair flood control projects which are damaged by flood. Projects constructed by non-Federal interests may be eligible for this disaster recovery assistance provided that certain eligibility criteria are met and required items of local cooperation are furnished. The eligibility criteria include the provision that a project constructed by non-Federal interests must meet standards set forth by the Corps of Engineers to establish structural integrity of these projects for flood control purposes.

In the past, there has been a wide variation in interpretations of Corps standards as they apply to structures not originally constructed by a Federal agency. The proposed changes will lead to improved uniformity between Corps district offices in establishing requirements for state and local participation associated with Corps rehabilitation assistance. The proposed Corps-wide eligibility guidelines for non-Federal projects will help ensure that project sponsors are asked to provide consistent items of local consumption regardless of project location.

The Corps has recently completed a comprehensive review of the levee rehabilitation program under Pub. L. 84-99 which focused on development of uniform eligibility guidelines and rquirements for public sponsorship and local cooperation, to include cost sharing.

The requirements for public sponsorship and cost sharing will establish closer uniformity with requirements for disaster assistance programs administered by other Federal agencies and help reduce public confusion over inconsistent local cooperation requirements between those Federal programs.

Proposed Changes

The proposed changes to the regulation prescribe a set of minimum guidelines for non-Federal flood control projects to be eligible for rehabilitation under the provisions of Pub. L. 84-99. These guidelines address both maintenance and engineering criteria. The proposed changes also include a requirement that all applications for rehabilitation of non-Federal projects have a public sponsor and provide for a change in the existing cost-sharing formula for these projects. Private individuals or groups who have received direct Corps rehabilitation assistance in the past will be given a two-year "grace" period before the public sponsorship requirement will become a binding condition on further Corps assistance in repairing their projects. The new cost-sharing requirements establish an 80% Federal—20% non-Federal distribution of the cost of the rehabilitation (minus engineering and design costs). This replaces the current formula which applies only to modifications of these projects.

Reasons for the Changes

These changes will promote cooperation and assistance by state and local emergency service organizations with the Corps in review of requests for levee rehabilitation assistance. This will help assure that requests fulfill state objectives for land use and flood plain management. As a result, Federal resources available for post-flood recovery under Pub. L. 84-99 will be applied to projects which will yield the greatest benefit to the general public. The proposed changes will also lead to improved Corps response in completing action on requests for levee rehabilitation.

These proposed changes will provide for greater participation in the Corps levee rehabilitation programs by concerned state and local agencies, ensure that project sponsors nationwide are all given the same program eligibility requirements, and provide for greater attention to important flood preparedness activities by encouraging improved levee design and maintenance, as well as sound flood plain management practices.

Note: The U.S. Army Corps of Engineers has determined that this proposed regulation is not a major rule under Executive Order 12291. It has been determined under the criteria of the Regulatory Flexibility Act that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 203

Disaster assistance, Flood assistance, drought assistance.

PART 203—[AMENDED]

Accordingly, 33 CFR Part 203 is proposed to be amended as shown:

1. The authority citation for Part 203 continues to read as follows:

Authority: Pub. L. 84-99, 69 Stat. 186; 33 U.S.C. 701n.

§ 203.13 [Amended]

2. By revising § 203.13(c) as follows:

* * * * *

(c) *Rehabilitation.* Prior to Corps rehabilitation of non-Federal projects, non-Federal interests must furnish formal written assurances of local cooperation. (The local cooperation requirements are detailed in Subpart G of this regulation.) Sponsorship by a public entity is required. Additional requirements of local participation include such items as cost-sharing and costs attributable to deficient or deferred maintenance.

* * * * *

§ 203.42 [Amended]

3. By revising § 203.42(c) as follows:

* * * * *

(c) *Maintenance and deterioration deficiencies.* Rehabilitation under Pub. L. 84-99 will not be applied to works which, as a result of poor maintenance or deterioration, require substantial reconstruction. All deficient or deferred maintenance existing when flood damage occurs will be accomplished by or at the expense of the responsible non-Federal interests, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the Corps corrects deferred maintenance, the estimated deferred maintenance cost will be included as contributed non-Federal funds. Failure of responsible non-Federal interests to correct significant deficiencies noted during regular inspections may result in suspension of any future rehabilitation assistance under Pub. L. 84-99.

* * * * *

§ 203.81 [Amended]

4. By revising § 203.81(a) as follows:

* * * * *

(a) *Requirements for cooperation and participation.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to a natural disaster, division or district commanders should negotiate a local cooperation agreement with local interests whenever assistance is furnished. Non-Federal interests or local interests may be public entities, organizations, groups or individuals. For assistance to other than a party entity, it is required that there be a public agency to sponsor the project and cosign the agreement. Project sponsors must be one of the following:

(1) Legal subdivision of a state or a state government.

(2) Local unit of government.

(3) Qualified Indian tribe or tribal organization.

(4) State chartered organization, such as a levee board.

Agreements do not require approval of HQUSACE unless they contain special or unusual conditions of local cooperation and participation.

* * * * *

§ 203.82 [Amended]

5. By revising § 203.82(d) as follows:

* * * * *

(d) *Cost sharing.* The Federal government may bear up to 80 percent of the construction costs for rehabilitation of non-Federal projects. Sponsors may provide their share of construction costs in the form of cash, in-kind services such as labor or equipment, etc., or a combination of cash and in-kind services. The sponsor's share is in addition to providing real estate interests needed for construction and inspection.

* * * * *

6. By adding a new Subpart H (§§ 203.91 through 203.95) to read as follows:

Subpart H—Non-Federal Levee Rehabilitation Eligibility Guidelines

Sec.
203.91. General.
203.92. Procedures.
203.93. Inspections.
203.94. Rating guide.
203.95. Rehabilitation investigation.

Subpart H—Non-Federal Levee Rehabilitation Eligibility Guidelines

§ 203.91 General.

(a) *Intent.* The intent of these guidelines is to facilitate the evaluation of non-Federal levee design, construction and maintenance to determine eligibility for repair under Pub. L. 84–99.

(b) *Level of detail.* The evaluation will be made through site inspections by experienced district technical staff. This inspection will assess the general functional and structural integrity of the levee for flood control purposes and will serve as a basis for determining Corps assistance. The guidelines are not intended to establish design standards for non-Federal levees, but to provide uniform procedures within the Corps for determining eligibility under Pub. L. 84–99.

§ 203.92. Procedures.

(a) *General.* Corps involvement with any non-Federal levee normally begins the first time an owner/sponsor requests repairs under Pub. L. 84–99. To evaluate these levees, it is imperative that the initial eligibility investigation assess the integrity and reliability of the flood protection works. In addition, other key information required to determine the Federal interest in repairing the levee will be obtained. Any levee repaired by the Corps will be inspected periodically to assure that the conditions of local cooperation are fulfilled by the sponsor. Those inspections will also review the eligibility of the levee for possible future Corps assistance under Pub. L. 84–99. In this manner the project sponsor may be advised of any work required to keep the project eligible for the Corps' levee rehabilitation program. The guidelines established here may also be used where an owner/sponsor who has not previously received levee rehabilitation assistance from the Corps, submits a request for inspection to determine whether his levee meets established eligibility criteria.

(b) *Inspection procedure.* A Rating Guide will be used to establish performance levels for non-Federal levees to be included in the Corps rehabilitation program. This guide will be provided to all non-Federal levee sponsors for their use in maintaining or upgrading their projects as required to remain eligible for the Corps rehabilitation program. (A copy of the proposed Rating Guide is available from the Corps of Engineers by writing to the above address.) The inspection will identify all areas where work is required to upgrade the levee to an acceptable performance level, and specify an appropriate time period to sponsors in which to accomplish the work. If a levee sponsor fails to comply with identified requirements, he will be notified that his project is not eligible for consideration for rehabilitation under Pub. L. 84–99 until he advises the Corps that the work is completed. No further inspections of a project in an ineligible status will be performed until reactivated by the sponsor's letter indicating that noted deficiencies have been corrected.

(c) *Technical evaluation.* Technical evaluation procedures are intended to establish the general ability of a non-Federal levee to provide reliable flood protection.

§ 203.93. Inspections.

(a) *General.* The initial inspection of any non-Federal levee using these guidelines will establish the estimated level of protection and reliability of the existing levee. Subsequent inspections will detect changed project conditions which have an impact on the integrity of the flood protection works.

(b) *Hydrologic/hydraulic analyses.* The level of protection provided by a non-Federal levee will be expressed in terms of years (e.g., a 5-year level of protection, 10-year level of protection, etc.) for the screening purposes of these inspections. Also included are flood probability estimates, water surface profiles and errosion control features.

(c) *Geotechnical analyses.* The geotechnical evaluation will be based primarily on a detailed visual inspection. The initial inspection should identify critical sections where levee stability appears weakest and should document the location, reach, and cross-section at these points.

(d) *Maintenance.* The Rating Guide serves several purposes. It is intended for use in evaluation of maintenance performance and deficiencies in order to determine compliance with local cooperation agreements. The procedures for this compliance process are contained in 33 CFR 208.10. The maintenance compliance inspection will be performed concurrently with the inspection to review levee eligibility for rehabilitation under Pub. L. 84–99. The guide is also applicable to levees where no local cooperation agreement exists (i.e., not previously repaired under Pub. L. 84–99), but an eligibility review is requested by the owner/sponsor of the project. The Rating Guide is self-explanatory as to the level of maintenance required for a levee to remain eligible for the Corps levee rehabilitation program under Pub. L. 84–99.

§ 203.94. Rating guide.

After the technical evaluation has assessed the integrity of the flood control levee, the current levee conditions will be evaluated using the Rating Guide as a basis. The following table provides general quidance on appropriate inspection recommendations based on the Rating Guide parameters:

Condition	Recommendation
A—Acceptable	No work required.
B—Minimally acceptable.	A deficient condition exists which should be improved by the levee owners. The inspector's evaluation should address the impacts of design and/or operating deficiencies noted for this condition.
U—Unacceptable	Items which fall within this category may render the levee ineligible for rehabilitation under PL 84–99 unless immediate corrective action is taken by the sponsor/owner. The inspector's evaluation should establish specific time periods within which the unacceptable performance items must be upgraded to at least Condition B.

If the owner does not comply with recommendation for Condition "U" items, no further inspections will be made until the owner notifies the district that such work has been completed.

§ 203.95 Rehabilitation investigation.

The inspection program outlined in this subpart is intended to facilitate the completion of rehabilitation investigations when levees in the program are damaged by flood. The most recent inspection report should provide most of the general information required to support a request to rehabilitate a levee under Pub. L. 84–99.

Dated: July 24, 1985.

Michael Volpe,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 85–18020 Filed 8–7–85; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS–84017; FRL–2878–5]

Submission of Lists and Copies of Health and Safety Studies on Vinyl Acetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule proposes to add the chemical substance vinyl acetate, Chemical Abstracts Service Registry number 108–05–4, to the list of chemical substances and mixtures in the Health and Safety Data Reporting Rule, 40 CFR Part 716. Once EPA lists vinyl acetate in the Health and Safety Data Reporting Rule, past, current, and prospective manufacturers, importers, and processors of vinyl acetate would be required to provide EPA with lists and copies of unpublished health and safety studies on this substance. The Agency would use this information to support a detailed assessment of the health and environmental risks of this substance.

DATE: Written comments on this proposed rule should be submitted by September 9, 1985.

ADDRESS: Comments should bear the docket control number OPTS–84017 and should be submitted to: TSCA Public Information Officer (TS–793), Office of Toxic Substances, Environmental Protection Agency, Rm. E–108, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800–424–9065), In Washington, D.C.: (554–1404), Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2070–0004.

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with very useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, and 8.

Detailed guidance for reporting unpublished health and safety data is provided in 40 CFR Part 716. Also found in Part 716 are the reporting exemptions. Listed below are the general reporting requirements of the section 8(d) model rule.

1. A person who, in the 10 years preceding the date a substance is listed, either had proposed to manufacture, import, or process; or had manufactured, imported, or processed; the listed substance must submit:

A copy of each health and safety study which is in their possession at the time the substance is listed.

2. A person who, at the time the substance is listed, proposes to manufacture, import, or process; or is manufacturing, importing, or processing the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time the substance is listed.

b. A list of health and safety studies known to them but not in their possession at the time the substance is listed.

c. A list of health and safety studies that are ongoing at the time the substance is listed and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the date the substance is listed and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

3. A person who, after the time the substance is listed, proposes to manufacture, import, or process the listed substance must submit the following to EPA:

a. A copy of each health and safety study which is in their possession at the time they propose to manufacture, import, or process the listed substance.

b. A list of health and safety studies known to them but not in their possession at the time they propose to manufacture, import, or process the listed substance.

c. A list of health and safety studies that are ongoing at the time they propose to manufacture, import, or process the listed substance, and are being conducted by or for them.

d. A list of each health and safety study that is initiated after the time they propose to manufacture, import, or process the listed substance, and is conducted by or for them.

e. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated and is now complete—regardless of completion date.

II. Summary of This Rule

This proposed rule would add the substance vinyl acetate, Chemical Abstracts Service Registry number 108–05–4, to the list of substances in 40 CFR 716.17. By listing vinyl acetate in the section 8(d) model rule, EPA would trigger the reporting requirements for past, current, and prospective manufacturers, importers, and processors of vinyl acetate.

III. Agency Objectives

Vinyl acetate is a major industrial chemical. It is prepared from petrochemicals and then polymerized and copolymerized with other monomers to produce a wide variety of plastics and resins. EPA estimates current annual production of vinyl acetate at 1.9 billion pounds and annual importation of vinyl acetate at 15 million pounds. The significant end use of vinyl acetate is as an intermediate in the production of vinyl acetate polymers (i.e., polyvinyl acetate, polyvinyl alcohol, vinyl chloride copolymer and ethylene-vinyl copolymers). These polymers will usually contain some unreacted vinyl acetate and are used to produce a variety of consumer products.

For instance, most of the vinyl acetate is used to produce polyvinyl acetate which is then used in: Packaging and wood glue adhesives, interior latex paints, paper and paperboard coatings, and in the base for chewing gum. Polyvinyl alcohols are used in textile sizing and adhesives; and vinyl chloride—vinyl acetate copolymers are used in flooring, phonograph records, and rigid PVC pipe.

Persons may be exposed to vinyl acetate during its manufacture, importation, or processing as well as from the use of consumer products made of vinyl acetate polymers. In 1978, the National Institute for Occupational Safety and Health (NIOSH) estimated that 70,000 U.S. workers were potentially exposed to vinyl acetate. After NIOSH reviewed the available health and safety data on vinyl acetate and the current work practices, NIOSH developed a recommended standard for occupational exposure to vinyl acetate. The recommended standard includes personal protective clothing and equipment, a limit for workplace air concentrations, employee information, and labeling requirements. The Occupational Safety and Health Administration has not adopted these standards.

Only limited information is available on the extent of consumer exposure to unreacted vinyl acetate in products containing vinyl acetate polymers (i.e., cements, glues, paints, and chewing gum), and from food products packaged in containers made of vinyl acetate polymers. The lack of information on the presence of vinyl acetate in packaged foods has prompted the Society of Plastics Industries, Inc. to conduct extensive toxicity studies of vinyl acetate.

EPA has conducted a preliminary evaluation of the health and environmental risks posed by vinyl acetate as part of its ongoing chemical assessment activities, and has determined that more health and safety information on vinyl acetate is needed in order to adequately assess the degree of risk posed by this chemical. In particular, EPA is interested in all unpublished health and safety studies relating to: The carcinogenic potential, developmental toxicity, metabolism, and pharmacokinetics of vinyl acetate; and the migration of unreacted vinyl acetate from packaging to food products. EPA therefore has determined that the current lack of health and safety data and the unknown potential for consumer exposure is sufficient justification for this information-gathering rule. EPA wishes to use this rule to supplement its limited data on vinyl acetate, before undertaking any additional, detailed assessments of this substance or regulatory activities. There may exist health and safety studies, currently unknown to the Agency, which could provide valuable information about the health or environmental effects of vinyl acetate.

IV. Economic Impact

Based on historical data, EPA estimates that the total reporting cost to industry would be less than $12,700. The estimated cost is broken down as follows:

Cost of file search:	
Initial review	$7,752
Site Identification	684
File search at site	1,323
Listing ongoing studies	57
Copying studies	286
Managerial review	2,128
Ongoing reporting	456
Total	$12,688

Based on the total industry cost estimate and the estimated number of submitters, EPA calculates the cost per company for an initial submission of health and safety data at $1,797.

V. Public Record

The following documents constitute the public record for this rule (docket control number OPTS-84017). All documents, including the index to this public record, are available to the public in the OTS Reading Room from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OTS Reading Room is located at EPA Headquarters, Room E-107, 401 M St., SW., Washington, D.C. The public record includes the following information considered by the Agency in developing this rule:

1. The Chemical Hazard Information Profile for vinyl acetate.
2. Economic analysis.
3. Criteria for a Recommended Standard to vinyl acetate (NIOSH 1978).

VI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a regulatory impact analysis. The Agency has determined that this rule is not "major" because it does not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, cost, or prices.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in sales. EPA does not expect these proposed amendments to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070-0004. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked Attention: Desk Office for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 716

Chemicals, Health and safety, Environmental protection, Hazardous substances, Recordkeeping and reporting requirements.

Dated: July 31, 1985.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Part 716 be amended as follows:

PART 716—[AMENDED]

1. The authority for Part 716 continues to read as follows:

Authority: 15 U.S.C. 2607.

2. In § 716.17 by adding paragraph (a)(15) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a) * * *

(15) As of September 23, 1985, the following chemical substance is added to this subpart.

CAS Number and Name

108-05-04—vinyl acetate

(Approved by the Office of Management and Budget under Control Number 2070-0004.)

[FR Doc. 85-18732 Filed 8-7-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550 and 580

[Docket No. 85-19]

Tariff Publication of Free Time and Detention Charges Applicable to Carrier Equipment Interchanged With Shippers or Their Agents

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend its domestic offshore and foreign tariff filing rules to specifically require common carriers to publish in their tariffs the terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers or their agents. Under the proposed rule, if the terms and conditions are fully set forth in an interchange agreement with shippers or their agents, the carrier must publish a specimen copy of the agreement in its tariff. Further, the proposed rule requires that the terms and conditions be contained in service contracts and essential terms publications.

DATES: Comments due on or before September 23, 1985.

ADDRESS: Comments (Original and fifteen (15) copies) to: Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

John Robert Ewers, Director, Office of Regulatory Overview, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5866.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1985 American President Lines, Ltd. (APL) petitioned the Commission to issue a rule clarifying that ocean common carriers in the U.S. domestic offshore and foreign commerce are required to include in their tariffs, and to adhere to, the terms and conditions on which carrier-provided shipping containers and related equipment are made available to shippers, consignees, or persons tendering or receiving ocean (including intermodal) cargo on their behalf. APL also seeks to clarify that such terms and conditions constitute "essential terms" of service contracts for purposes of the filing rules governing service contracts.

Notice of the Petition was published in the **Federal Register** on March 12, 1985 (50 FR 9904), and the Commission later granted an enlargement of time to May 13, 1985, for interested parties to submit replies to the Petition.

Replies to the Petition were received from: (1) Crowley Maritime Corporation (Crowley); (2) The Philippines North American Conference (PNAC); (3) Steamship Operators Intermodal Committee (SOIC); and (4) Sea-Land Service, Inc. (Sea-Land).

II. APL's Petition

APL requests that the Commission amend its tariff filing regulations to require "ocean" common carriers to publish the *actual* terms and conditions on which carrier-provided equipment is interchanged with shippers.

APL claims that a clarification of existing regulations is necessary because, in the vast majority of cases, ocean carriers apply free time and detention charges which differ from the provisions published in their tariffs. APL notes that while tariffs generally contain container free time and detention provisions, these provisions normally contain exceptions that result in the ocean carrier applying individually negotiated free time and detention agreements. APL states that the common practice is to vary or waive the terms of unfiled interchange agreements on an *ad hoc* basis. As a result, other carriers and other shippers allegedly have no way of ascertaining how much time is actually being allowed or what scale of detention charges is actually being applied in transactions involving their competitors. APL notes that an extension of free time for carrier-provided containers or a waiver of detention charges can constitute a significant economic benefit to shippers and consignees. Therefore, APL claims that there is widespread potential for preferences and prejudices through selective, private, and *ad hoc* variation of equipment interchange terms by ocean carriers.

APL believes that the present practice of carriers applying free time and detention charges that are not generally published in their tariffs is inconsistent with the terms of the Shipping Act of 1984 (1984 Act) (46 U.S.C. app. 1707 and 1709), section 2 of the Intercoastal Shipping Act, 1933 (1933 Act) (46 U.S.C. 844), and the Commission's existing regulations at 46 CFR 580.2(u); 580.5(c)(10); 580.5(d)(2); and 580.9(a). APL, therefore, suggests that the Commission amend the tariff filing requirements in order to remove all uncertainty that carriers must publish and adhere to the actual terms and conditions of carrier-provided interchange arrangements.

APL notes that section 8(a)(1)(D) of the 1984 Act (46 U.S.C. app. 1707) requires that the carrier tariff "state separately each * * * privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part or the aggregate of the rates or charges." Further, APL relies on section 10(b)(3) of the 1984 Act which states that no common carrier may directly or indirectly "extend or deny to any person any privilege, concession, equipment or facility except in accordance with its tariff or service contract." APL submits that the express addition of the word "equipment" to this section in the 1984 Act removes any possible prior doubt concerning the need for tariff publication of container free time and detention rules.

APL also contends that publication of the terms and conditions of carrier-provided equipment is mandated in domestic as well as foreign tariffs, citing section 2 of the 1933 Act which requires domestic carriers to file schedules with the Commission showing "* * * each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates, fares or charges, or the value of the service rendered * * * and * * * include the terms and conditions of any passenger ticket, bill or lading, contract of affreightment, or any other document evidencing the transportation agreement."

APL further maintains that the publication of free time and detention rules actually applied by ocean common carriers in the foreign and domestic offshore commerce is necessary to protect the fundamental anti-discrimination and anti-rebating policies underlying the tariff filing requirements.

Additionally, APL cites the following Commission regulations as supporting the proposition that rules governing the supply of carrier containers and related equipment should be published in the carrier's tariff:

(1) 46 CFR 580.5(d)(2), which requires that tariffs contain a "clear statement of all the services provided to the shipper and included in the transportation rates set forth therein";

(2) 46 CFR 580.2(u), which defines "tariff" as a publication containing the "actual rates, charges, classifications,

rules, regulations and practices" of a carrier or conference;

(3) 46 CFR 580.9(a), which requires that tariffs "state separately all terminal or other charges, privileges or facilities under the control of the common carrier or conference which are granted or allowed to shippers"; and

(4) 46 CFR 580.5(c)(10), which requires that tariffs state the "(r)ules and regulations which in any way affect the application of the tariff."

III. Responses to the APL Petition

PNAC and Crowley support the APL Petition. Crowley notes that a rulemaking would eliminate any opportunity for discriminatory practices carried out through the guise of an equipment interchange agreement and that tariff rules, when uniformly enforced, should enable carriers to better control their equipment resulting in economies of operation which would accrue to the public benefit.

PNAC, like APL, believes that the terms and conditions of equipment interchange have a clear competitive impact and should be spelled out in tariffs and service contract essential terms publications.

Sea-Land requests that the APL Petition be dismissed or limited to the domestic offshore commerce of the United States. Sea-Land believes that the Commission should not institute a rulemaking proceeding before SOIC submits its comments on the merits of the proposal. Sea-Land claims that premature implementation of procedures for controlling the use of containers in the foreign commerce would place an unfair burden on some carriers and would not be practically manageable for others. Sea-Land suggests that any rulemaking in this area should initially be limited to the domestic offshore commerce for a test period before considering extending such regulation in the far more complex foreign commerce environment.

SOIC, which had earlier requested an enlargement of time to respond to the APL Petition, subsequently advised that it will not comment on the Petition at this time.

IV. Discussion

One of the propositions underlying APL's request for rulemaking is that although tariffs generally contain container free time and detention provisions, such provisions normally contain exceptions that result in the ocean carrier applying individual negotiated free time and detention rules in the vast majority of cases.

While the Commission is not aware of the extent that ocean carriers apply individual negotiated free time and detention charges rather than those published in their tariffs, it is apparent that there is an opportunity for discrimination or preference in the shipper use of carrier-provided containers and equipment. A review of conference tariff free time and detention rules presently on file with the Commission indicates that 13 conference tariffs contain exceptions. The majority of these exceptions provide that the free time and detention charges applicable at U.S. origin or destination ports/points do not apply while the carrier's equipment is under an interchange agreement with an inland carrier. One of these exceptions applies at foreign destination ports. Two additional conference tariffs provide that the shipper or consignee must execute a "standard" interchange agreement with the ocean carrier. Neither of these two conference tariffs contain specimen copies of the standard interchange agreement.

The Commission agrees with APL that varying factors may warrant allowance of different amounts of free time in different situations. We believe, however, that whatever *actual* free time and detention allowances which are being offered by common carriers in those situations must be published in the carriers' tariffs.

As mentioned earlier section 8(a)(1) of the Shipping Act of 1984 (46 U.S.C. app. 1707) requires each common carrier and conference to file with the Commission tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.[1]

A "tariff" as defined at 46 CFR 580.2(u) as, "A publication containing the *actual* rates, charges classifications, rules, regulations, and *practices* of a common carrier * * * (emphasis added). "Practices" is, in turn, defined as "* * * those usages, customs or modes of operation which in any way affect, determine or change the transportation rates, charges or *services* provided by a common carrier * * * (emphasis added).

Accordingly, existing law and regulations would appear to at least implicitly require the publication of free time and detention terms and conditions. To avoid any future uncertainty, however, the Commission will clarify the tariff filing rules to expressly require that such terms and conditions must be published in tariffs. Without the publication of the *actual* terms and conditions being used by the carrier there may be a strong competitive temptation for carriers to acquiesce selectively in requests for extensions of free time or waiver of detention charges made by or on behalf of shippers and consignees. In order to remove the potential for preferences or discrimination through selective and *ad hoc* variations of equipment interchange terms by carriers, we therefore propose to revise 46 CFR Parts 550 and 580 to require specific tariff or service contract provisions which set forth the actual terms and conditions on which carrier-provided equipment is interchanged with shippers.

The proposed rule would apply to the use of carrier-provided equipment by shippers or by any person tendering or receiving cargo on behalf of a shipper. APL contends, and we agree, that when the interchange is between the ocean carrier and a drayman acting under instructions from the shipper or consignee that such a drayman should be considered to be the agent of the shipper/consignee. Under the circumstances, the drayman is neither a participant with an ocean carrier in a joint service nor an underlying carrier used by an ocean carrier providing a non-joint through service. Accordingly, the proposed rule applies to the use of carrier-provided equipment by shippers *or their agents*, which will cover those instances when a drayman tenders or receives cargo on behalf of a shipper.

The proposed rule would also apply to non-vessel-operating common carriers (NVOCCs) as well as vessel-operating common carriers (VOCCs). As a result, NVOCCs will be required to publish free time and detention terms and conditions for equipment interchanged with shippers.

It should also be noted that the proposed rule would apply to free time practices in foreign countries. As a result, the Commission would be interested in comments concerning the effectiveness or enforceability of such regulations at foreign ports.

Commenting parties are encouraged to submit, along with any comments, draft language for any changes in the proposed rule which, in their opinion, are required for effective regulation. Additionally, comments are invited on the issue of whether the proposed rule's application should be limited to the domestic offshore commerce of the United States for a test period, as suggested by Sea-Land.

The Commission has determined that this rule is not a "major rule" as defined in Executive Order 12291 dated

[1] A similar requirement is contained in section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844). See also 46 CFR 550.2(u).

February 27, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Commission finds that the proposed rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of that Act excepts from its coverage any "rule of particular applicability to rates or practices relating to such rates * * *" As the proposed rule relates to particular applications of rates and rate practices, the Regulatory Flexibility Act requirements are inapplicable.

The collection of information requirements contained in this rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 350(h)). Comments on the information collection aspects of this rule should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Maritime Commission.

List of Subjects in 46 CFR Parts 550 and 580

Maritime carriers, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553; secs. 8, 9, 10, and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1707, 1708, 1709, and 1716); secs. 18(a) and 43 of the Shipping Act, 1916 (46 U.S.C. app. 817(a) and 841(a)); and sec. 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 844), the Federal Maritime Commission proposes to amend Parts 550 and 580 of Title 46 of the Code of Federal Regulations as follows:

PART 550—[AMENDED]

1. The authority citation for Part 550 is revised to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 812, 814, 815, 817(a), 820, 833a, 841, 843, 844, 845, 845a and 847.

2. In § 550.5 add a new paragraph (b)(8)(xvii) as follows:

§ 550.5 Contents of tariffs.

* * * * *

(b) * * *

(8) * * *

(xvii) *Use of carrier equipment.* Tariffs shall state the terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers or their agents. If such terms and conditions are fully set forth in a standard form interchange agreement that the carrier requires be executed by such shippers or their agents, a specimen copy of such agreement shall be filed in accordance with paragraph (b)(8)(vii) of this section.

* * * * *

3. In § 550.5 change the reference in the first sentence of paragraph (b)(9) to number 18.

PART 580—[AMENDED]

4. The authority citation for Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1712, 1714–1716 and 1718.

5. In § 580.5 add a new paragraph (d)(21) to read as follows:

§ 580.5 Tariff contents.

* * * * *

(d) * * *

(21) *Use of carrier equipment.* Tariffs shall state the terms and conditions (including free time allowed and detention or similar charges assessed) governing the use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers or their agents. If such terms and conditions are fully set forth in a standard form interchange agreement that the carrier requires be executed by such shippers or their agents, a specimen copy of such agreement shall be filed in accordance with paragraph (d)(8) of this section.

* * * * *

6. In § 580.7 revising paragraph (g)(2)(iv) to read as follows:

§ 580.7 Filing of service contracts and availability of essential terms.

* * * * *

(g) * * *

(2) * * *

(iv) The contract rate, rates or rate schedule(s), including any additional or other charges (viz. surcharges, terminal handling charges, etc.) that apply; provisions specifying methods of retroactive rate adjustments based upon experienced costs; and any and all conditions and terms of service or operation or concessions which in any way affect such rates or charges, including the terms and conditions (including free time allowed and detention or similar charges assessed) governing use of carrier-provided equipment (including cargo containers, trailers, and chassis) by shippers or their agents.

* * * * *

By the Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-18802 Filed 8-7-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

Marine Mammals; Receipt of Petition To Undertake Rulemaking

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of a petition to undertake rulemaking.

SUMMARY: By letter dated May 7, 1985, the Safari Club International (SCI) petitioned the U.S. Fish and Wildlife Service (FWS) to amend its regulations implementing the Marine Mammal Protection Act (MMPA) in 50 CFR Part 18. In particular, SCI requests modifications to the marine mammal regulations to require periodic review on the status of marine mammal species and to determine whether the moratorium on the taking or importation of any of these species should be waived. Under the SCI petition, all waivers would be subject to an opportunity for a public hearing on the record and if not implemented within two years of publication of the proposed rulemaking, would be withdrawn not later than thirty days thereafter. The FWS, in accordance with 43 CFR Part 14, has published the following summary of the petition after determining that public comment may aid in its consideration.

DATE: Comments on the SCI petition should be submitted on or before September 9, 1985.

ADDRESS: Requests for copies of the petition and all comments should be addressed to the Chief, Division of Wildlife Management, Room 514 Matomic, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. LeRoy W. Sowl, Chief, Division of Wildlife Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Telephone 202/632-2202.

SUPPLEMENTARY INFORMATION: Section 101(a) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.*, imposed a moratorium on both the taking and importation of marine mammals and marine mammal products with certain limited exceptions. One of these exceptions involves the Secretary of the Interior's authority to waive the moratorium for a particular species in appropriate circumstances:

> The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this Act to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 102, 103, 104, and 111 of this title permitting and governing such taking and importing, in accordance with such determinations: *Provided, however,* That the Secretary, in making such determinations, must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this Act: *Provided further, however,* that no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this Act. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.
>
> MMPA, Section 101(a)(3)(A).

A proceeding to waive the moratorium must comply with the procedures of the MMPA and the implementing regulations in Subparts G and H of 50 CFR Part 18.

On May 7, 1985, the Safari Club International (SCI) petitioned the Secretary of the Interior under 5 U.S.C. 553(e) and 43 CFR Part 14 for rulemaking requiring the FWS to conduct a periodic review on the status of marine mammal species under its jurisdiction and to determine whether the moratorium on any of these species should be waived. Specifically, SCI requests the FWS:

(1) To add a new Subpart I to 50 CFR Part 18 requiring a review at least once every five years of the status of marine mammal species in order to determine whether the MMPA moratorium on the taking and importing of marine mammals and marine mammal products should be waived for a particular species. SCI proposes that the five-year review be conducted in accordance with the procedural requirements of section 103(d) of the MMPA.

(2) With respect to the five-year review or any other waiver proceeding, SCI requests that subpart G of Part 18 be amended by adding a new subsection to 50 CFR 18.74 that requires the Director of the FWS to publish the substance of any proposed waiver of five-year review in appropriate scientific journals.

(3) SCI requests that § 18.91(c) be amended by adding the requirement that final regulations waiving the moratorium with respect to any species of marine mammal, or part thereof, shall be published in the **Federal Register** not later than two years after the date of publication of the notice of proposed waiver; that if a final regulation is not adopted within such two-year period, the Director shall publish notice of such withdrawal in the **Federal Register** not later than 30 days after the end of such period; that the Director shall not prepare a regulation waiving the moratorium with respect to any species of marine mammals, or part thereof, for which a proposed regulation has been withdrawn unless he receives sufficient new information to warrant the proposal of a regulation, or unless three years have elapsed since the withdrawal of a prior proposed regulation to waive the moratorium; and that publication in the **Federal Register** of any final regulation waiving the moratorium shall include a summary of the data on which such regulation is based and shall show the relationship of such data to such regulations.

After the close of the public comment period, the FWS will consider the SCI petition in light of all available data, comments, and legal authorities. The final decision of the FWS on the merits of the SCI rulemaking petition will be published in the **Federal Register.**

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Exports, Imports, Alaska, Intergovernmental relations, Marine mammals, Transportation.

Dated: July 30, 1985.

Robert A. Jantzen,

Director, U.S. Fish and Wildlife Service.

FR Doc. 85-18754 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[Docket No. 50707-5107]

Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

Correction

In FR Doc. 85-18240, beginning on page 31200 in the issue of Thursday, August 1, 1985 make the following corrections:

On page 31200, in the first column in the **AGENCY** caption, "NOA" should read "NOAA", and in the second column in the **DATES** paragraph, the comment deadline "September 30, 1985" should read "August 30, 1985".

BILLING CODE 1501-01-M

Notices

Federal Register
Vol. 50, No. 153
Thursday, August 8, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Environmental Statements; Ramseur Reservoir Watershed, Randolph County, NC

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, give notice that an environmental impact statement is not being prepared for the Ramseur Reservoir Watershed, Randolph County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Coy A. Garrett, State Conservationist, Soil Conservation Service, 310 New Bern Avenue, Room 535, Federal Building, Raleigh, North Carolina 27601, telephone 919-856-4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 3,728 acres of cropland.

The Notice of A Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of E. O. 12372 which requires intergovernmental consultation with State and local officials)

Dated: August 1, 1985.

George C. Norris,

Deputy State Conservationist.

[FR Doc. 85-18841 Filed 8-7-85; 8:45 am]

BILLING CODE 3410-16

DEPARTMENT OF COMMERCE

International Trade Administration

[A-455-403]

Termination of Antidumping Duty Investigation; Carbon Steel Structural Shapes From Poland

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In a letter dated July 19, 1985, petitioner withdrew its antidumping duty petition, filed on December 20, 1984, on carbon steel structural shapes (structurals) from the People's Republic of Poland (Poland). Based on the withdrawal, we are terminating the investigation.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur Simonetti, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-4198.

SUPPLEMENTARY INFORMATION:

Case History

On December 20, 1984, we received a petition from Chaparral Steel Company, on behalf of the U.S. industry producing structurals.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the International Trade Commission (ITC) of our action and initiated an investigation on January 9, 1985 (50 FR 2317). On February 4, 1985, the ITC found that there was a reasonable indication that imports of structurals from Poland materially injure, or threaten material injury to, a United States industry. On May 28, 1985, we made a preliminary determination that structurals from Poland were being, or were likely to be, sold in the United States at less than fair value and that "critical circumstances" did not exist with respect to imports of the merchandise under investigation (85 FR 13231).

Scope of Investigation

The product under investigation is carbon steel structural shapes, currently classifiable under 609.8005, 609.8015, 609.8035, 609.8041, 609.8045 of the *Tariff Schedules of the United States* (TSUS).

Withdrawal of Petition

In a letter dated July 19, 1985, from Chaparral Steel Company, petitioner notified us that it was withdrawing its December 20, 1984, petition, and requested that the investigation be terminated. A copy of petitioner's letter is appended to this notice. Under section 734(a) of the Tariff Act of 1930, as amended by section 604 of the Trade and Tariff Act of 1984 (the Act), upon withdrawal of a peitition, the administering authority may terminate an investigation after giving notice to all parties to the investigation and after assessing the public interest as required by statute. This withdrawal is based on a bilateral arrangement with the Government of Poland to limit the volume of imports of this product. We have taken into account the public interest factors set out in section 734(a) of the Act and consulted with potentially affected producers, workers, consuming industries, and with the ITC. On the basis of our assessment of the public interest factors and our consultations, we have detemined that termination would be in the public interest.

We have notified all parties to the investigation and the ITC of petitioner's withdrawal and our intention to terminate.

For these reasons, we are terminating our investigation.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 29, 1985.

[FR Doc. 85-18818 Filed 8-7-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Florida East Coast Railway Co. From an Objection by the Florida Department of Environmental Regulation

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal Dismissal.

SUMMARY: On November 8, 1984, Florida East Coast Railway Company (Appellant) appealed to the Secretary of Commerce (Secretary) from an objection by the Florida Department of Environmental Regulation (DER) to the consistency of Appellant's proposed industrial park access road with the Florida coastal zone management program. Appellant's project requires a permit from the Army Corps of Engineers to fill wetlands in the town of Medley, Dade County, Florida. The appeal was filed under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1456(c)(3)(A) and the implementing regulations at 15 CFR Part 930 Subpart H.

On December 2, 1984, at the Appellant's request and with the agreement of the Florida DER, the Secretary stayed consideration of the appeal pending the resolution of a related matter before the Florida Land and Water Adjudicatory Commission (Commission). On December 28, 1984, the Commission conditionally approved the Appellant's project, and the Florida DER withdrew its consistency objection.

Appellant, by motion of March 5, 1985, requested voluntary dismissal of its appeal on the grounds that the State's action made the appeal moot and Secretarial review was no longer necessary. The Florida DER did not oppose this motion. On June 25, 1985, the Secretary granted Appellant's motion, dismissing the appeal with prejudice pursuant to 15 CFR 930.128.

FOR FURTHER INFORMATION CONTACT: L. Pittman, Attorney Advisor, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, Room 270, Page 1 Building, 2001 Wisconsin Avenue, NW., Washington, DC 20235; (202) 254-7512.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Administration)

Dated: August 2, 1985.

Robert J. McManus,

General Counsel, National Oceanic and Atmospheric Administration.

[FR Doc. 85-18762 Filed 8-7-85; 8:45 am]

BILLING CODE 3510-08-M

Patent and Trademark Office

Public Advisory Committee for Trademark Affairs; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee meeting:

The Public Advisory Committee for Trademark Affairs will meet from 9:30 a.m. until 5:00 p.m. on September 11, 1985, at the U.S. Patent and Trademark Office in Room 11C24 of Building 3, Crystal Plaza, located at 2021 Jefferson Davis Highway, Arlington, Virginia.

The agenda for the meeting is as follows:

(1) Quality of Trademark Examination;

(2) Legislative changes to use requirements;

(3) Reporting format of the finances of the Trademark Operation;

(4) Activities of the Trademark Trail and Appeal Board; and

(5) Trademark Automated Systems—Practical enhancements to Public Services.

The meeting will be open to public observation; approximately twelve (12) seats will be available for the public on a first-come first-served basis.

If time permits, oral comments by the public of three (3) minutes on each topic within the above agenda will be allowed. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed.

Copies of the minutes will be available upon request.

For further information, contact Ellen J. Seeherman, Office of the Assistant Commissioner for Trademarks, Room CP3-11C17, Patent and Trademark Office, Washington, D.C. 20231. Telephone: 703-557-7464.

Dated: August 5, 1985.

Approved:

Donald J. Quigg,

Acting Assistant Secretary and Commissioner of Patents and Trademarks.

[FR Doc. 85-18830 Filed 8-7-85; 8:45 am]

BILLING CODE 3510-16-M

CONSUMER PRODUCT SAFETY COMMISSION

Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

AGENCY: Interagency Committee on Cigarette and Little Cigar Fire Safety.

ACTION: Notice of meeting.

SUMMARY: The Technical Study Group on Cigarette and Little Cigar Fire Safety will meet on September 5 and 6, 1985, in Washington, D.C. The purpose of this meeting is to review a draft status report to Congress and program plans of subgroups of the Technical Study Group.

DATE: The meeting will be from 9:30 a.m. to 5 p.m. on September 5, 1985. If necessary, the meeting will resume at 9:30 a.m. on September 6, 1985 and conclude by 5 p.m. the same day.

ADDRESS: The meeting will be in the first floor auditorium, Hubert Humphrey Building, 200 Independence Avenue S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Hylton, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6554.

SUPPLEMENTARY INFORMATION: The Cigarette Safety Act of 1984 (Pub. L. 98-567, 98 Stat. 2925, October 30, 1984) created the Technical Study Group on Cigarette and Little Cigar Fire Safety to prepare a final technical report to Congress within 30 months concerning the technical and commercial feasibility, economic impact, and other consequences of developing cigarettes and little cigars with minimum propensity to ignite upholstered furniture and mattresses.

The Technical Study Group will meet on September 5 and 6, 1985 to review a draft of a status report to Congress, and program plans developed by the subgroup on manufacturing feasibility, the subgroup on data analysis, and the subgroup on cost and benefits.

The meeting will be open to observation by members of the public, but only members of the Technical

Study Group may participate in the discussion.

Colin B. Church,

Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.

[FR Doc. 85-18860 Filed 8-7-85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) Ad Hoc Committee on Science and Technology announces a closed session meeting.

DATE: The meeting will be held at 8:30 a.m., Thursday, 22 August 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: David Slater, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices. The Ad Hoc Committee Meeting on Science and Technology will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II, section 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

August 2, 1985.

[FR Doc. 85-18787 Filed 8-7-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Aircraft Modernization Requirements Panel will meet on August 27 and 28 1985, at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:30 p.m. on August 27, and commence at 8:30 a.m. and terminate at 3:00 p.m. on August 28, 1985. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to examine the procedures used to develop program plans and cost estimates for modernizing aircraft in order to develop alternative approaches and recommend an implementation plan. The agenda will include technical briefings on the current procedures used to develop program plans and cost estimates for modernizing aircraft. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander T. C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217-5000 Telephone number (202) 696-4870.

Dated: August 5, 1985

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-18816 Filed 8-7-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement; Japan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "Subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the return of 20 kilograms of high enriched uranium of United States origin contained in irradiated research reactor fuel from the JMTR test reactor in Japan for reprocessing and storage in Department of Energy facilities.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security. The return of high enriched uranium to the U.S. is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: August 2, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-18809 Filed 8-7-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-682-000, et al.]

Columbia Gas Transmission Co. et al.; Natural Gas Certificate Filings

August 2, 1985.

Take notice that the following filings have been made with the Commission:

1. Columbia Gas Transmission Company

[Docket No. CP85-682-000]

Take notice that on July 9, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP85-682-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of U.S. Reduction Company (U.S. Reduction) under the certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 1.4 billion Btu equivalent of natural gas per day for U.S. Reduction through October 31, 1985. Columbia states that the gas to be transported would be purchased from Energy Buyers Service Corporation (EBSC) and would be used

as process gas in U.S. Reduction's Toledo, Ohio, plant, up to 800 million Btu per day, and Marietta, Pennsylvania, plant, up to 600 million Btu per day.

It is indicated that U.S. Reduction has made arrangements to purchase this gas from EBSC. Columbia states that it would receive the gas from EBSC and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving U.S. Reduction, near Toledo, Ohio, and UGI Corporation (UGI), the distribution company serving U.S. Reduction's Marietta, Pennsylvania, plant.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within COH's and UGI's total daily entitlements (TDE). However, Columbia Transmission states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of COH's and UGI's TDE. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

2. Northwest Central Pipeline Corporation

[Docket No. CP85-669-000]

Take notice that on July 1, 1985, Northwest Central Pipeline Corporation (Northwest), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-669-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon in place and by reclaim certain pipeline and appurtenant facilities and the transportation of gas through these facilities and to relocate nine domestic taps under the authorization issued in Docket No. CP82-479-000 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.

Northwest proposes to abandon in place and by reclaim approximately 7.3 miles of 4-inch pipeline and appurtenant facilities beginning in the NW ¼ sec. 27, T. 4 S., R. 17 E., Brown County, Kansas, and ending in the SE ¼ sec. 26, T. 5 S., R. 16 E., Jackson County, Kansas, and to abandon the transportation of gas through these facilities. Northwest states that an existing parallel 6-inch line has sufficient capacity to handle the existing volumes as well as the expected growth on the system. Northwest also proposes to relocate nine domestic meter settings now located on the 4-inch line that would be abandoned and place them on the 6-inch line.

It is stated that the estimated cost to reclaim these facilities would be $63,920 with an estimated salvage value of $11,150. It is further stated that the estimated cost to construct the nine domestic taps on the 6-inch pipeline would be $6,760.

Northwest indicates that the pipeline it proposes to abandon is no longer required as a part of its transmission system. The pipeline was originally constructed in 1930 and was certificated in Docket No. G-298. Northwest further indicates that the 4-inch pipeline is obsolete, shallow and has a number of corrosion leaks eacy year.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Central Pipeline Corporation

[Docket No. CP85-712-000]

Take notice that on July 17, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP85-712-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for authorization to add an additional point of delivery of natural gas to The Gas Service Company (Gas Service) under the certificate issued in Docket No. CP82-479-000 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.

Northwest Central proposes to construct and operate a tap and other appurtenant facilities on its 16-inch pipeline in Sedgwick County, Kansas, for the purpose of establishing a new delivery point to serve Gas Service. Northwest Central states that Gas Service requested this additional delivery point. It is indicated that Gas Service, would use the proposed facilities to serve existing customers, near Wichita, Kansas, and to make sales of natural gas to a new cogeneration facility to be operated by Cargill, Inc., and a new box plant to be operated by Love Box Company. Northwest Central states that the estimated peak day and annual gas volume for these facilities in the fifth year of operation would be 2,976 Mcf and 880,429 Mcf, respectively. Northwest Central estimated that the cost to construct the proposed facilities would be $32,500.00.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

4. Texas Gas Transmission Corporation

[Docket No. CP85-650-000]

Take notice that on June 26, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-650-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Memphis Light, Gas and Water Division (Memphis), as agent for Velsicol Chemical Corporation (Velsicol), under the certificate issued in Docket No. CP82-407-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas proposes to transport from Webster Parish, Louisiana, beyond a primary term of 120 days until October 31, 1985, up to 1 billion Btu equivalent of natural gas per day on an interruptible basis for ultimate delivery to Velsicol at its Memphis, Tennessee, plant. It is explained that Velsicol estimates 225 billion Btu equivalent of gas would be transported on an annual basis.

Texas Gas proposes to charge for its service the rate provided in its Rate Schedule TSC 1 for Rate Schedule G sales customers which is currently 16.26 cents.

Texas Gas indicates that the proposed transportation would be rendered through the use of existing facilities. The gas would delivered to Memphis for further delivery to Velsicol.

Velsicol is said to have purchased its gas supplies from Transtate Pipeline Company for as boiler fuel for steam generation.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

5. Texas Gas Transmission Corporation

[Docket No. CP85-701-000]

Take notice that on July 12, 1985, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP85-701-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texas American Energy Corporation, through its unincorporated

division, Western Kentucky Gas Company (Western), as Agent for General Tire and Rubber Company (General Tire), under the certificate issued in Docket No. CP82-407-000 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.

Texas Gas requests authorization to transport beyond the primary term of 120 days to October 31, 1985, up to 4.5 billion Btu of low-priority natural gas per day, on an interruptible basis, for Western/General Tire for ultimate delivery to General Tire at its Mayfield, Kentucky, plant. Texas Gas states that it would receive the gas at the tailgate of the Champlin Petroleum Company plant in the Carthage field in Panola County, Texas, and would transport it for Western's account through its own facilities with redelivery to be made to Western at a Texas Gas—Western interconnection near Mayfield, Kentucky. Western would made ultimate redelivery to General Tire through its existing distribution facilities. General Tire estimates its average daily volume to be 3.8 billion Btu and estimates an annual volume of 1.4 trillion Btu.

Texas Gas proposes to charge for its service the rate provided in its Rate Schedule TSC-2 for Rate Schedule G sales customers on file with the Commission, which is currently 19.50 cents, and the legally effective GRI charge of 1.25 cents. It is explained that the proposed rate is consistent with the rate authorized to be charged by Texas Gas for similar services under its TSC program as approved September 18, 1984, in Docket No. CP-83-485-000.

Texas Gas indicates that the proposed transportation would be rendered through the use of existing facilities.

Texas Gas also indicates that the gas would be used for low-priority boiler gas at General Tire's Mayfield plant. It is explained that General Tire has purchased its gas supplies from TXG Gas Marketing Company, in a first sale, and such gas was not committed or dedicated on November 8, 1978.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corporation

[Docket No. CP85-696-000]

Take notice that on July 12, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-696-000, a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of New Jersey Zinc Company, Inc. (New Jersey Zinc) under the certificate issued in Docket No. CP82-426-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport up to 4.5 billion Btu of gas per day for use at New Jersey Zinc's Palmerton plant in Pennsylvania for a term expiring October 31, 1985. It is stated that the gas to be transported would be purchased from Transco Energy Marketing Company and would be used for boiler fuel and dryers for the production of zinc, zinc alloys, zinc oxide, zinc dust and zinc powder.

It is indicated that Transco would receive the gas at (1) the existing interconnection with GHR Transmission Corporation (GHR) at Agua Dulce, Nueces County, Texas, (2) the existing interconnection with Valero Transmission Company in LaSalle County, Texas, (3) the existing interconnection with GHR at Miranda Prospect (Driscoll), Duval County, Texas, and (4) the tailgate of the Katy Exxon Gas plant in Waller County, Texas, and would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) to existing points of delivery with Union Gas Company (Union). In turn, Union would redeliver such gas to the Palmerton plant.

Transco further states that it would charge New Jersey Zinc the currently applicable transportation rate in accordance with its Rate Schedule T-II, FERC Gas Tariff, Second Revised Volume No. 1, which is currently 45.6 cents per dekatherm.

Also, Transco would require that New Jersey Zinc periodically provide Transco with affidavits which state that the subject transportaiton is not displacing sales which Transco would otherwise make under any of its firm sales rate schedules.

Transco also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Transco will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

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 Proceduaral 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. 85-18821 Filed 8-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP79-256-005 et al.]

Columbia Gulf Transmission Co. et al., Natural Gas Certificate Filings

August 2, 1985.

Take notice that the following filings have been made with the Commission:

1. Columbia Gulf Transmission Co.

[Docket No. DP79-256-005]

Take notice that on July 3, 1985, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in Docket No. CP79-256-004 a petition to amend the order issued August 24, 1979, in Docket No. CP79-256-000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize an additional delivery point to Gulf Oil Corporation (Gulf), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

The order of August 24, 1979, as amended, authorized Columbia Gulf to transport for Gulf, on a best-efforts basis up to 100,000 Mcf of natural gas per day, plus such additional volumes as Columbia Gulf agrees to accept, less 1.8 percent for fuel and unaccounted-for volumes. It is explained that Columbia

Gulf receives the gas from Sea Robin Pipeline Company (Sea Robin), for the account of Gulf, at the existing interconnection of Sea Robin and Columbia Gulf near Erath, Vermilion Parish, Louisiana, and redelivers equivalent volumes less retainage to Texas Eastern Transmission Corporation (Texas Eastern), for the account of Gulf, at measuring station No. 495 which connects the facilities of Texas Eastern and Columbia Gulf near Venice, Plaquemines Parish, Louisiana.

It is stated that Columbia Gulf proposes to transport gas to an additional point of delivery at the discharge side of Gulf's processing plant located near Venice, Plaquemines Parish, Louisiana.

Comment date: August 23, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. ANR Pipeline Co.

[Docket No. CP84-94-003]

Take notice that on July 16, 1985, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP84-94-003 an amendment to its petition to amend filed in Docket No. CP84-94-002 pursuant to section 7(c) of the Natural Gas Act, so as to amend the Commission's order issued on July 25, 1984, in Docket No. CP84-94-000 by modifying ordering paragraph (c) thereof, all as more fully set forth in the amendment and petition to amend which are on file with the Commission and open to public inspection.

It is stated that the Commission, on July 25, 1984, in Docket No. CP85-94-000 authorized ANR to construct and operate an interconnection between its transmission system and the pipeline system of Consumers Power Company (Consumers) in Allegan County, Michigan. ANR states that it constructed about 3800 feet of 16-inch diameter interconnection pipeline and related facilities that cost an esitmated $1,000,000 and that such cost was reimbursed to ANR by Consumers.

It is explained that ordering paragraph (c) of the certificate provided:

> The facilities authorized by paragraph (A) above shall be used solely to alleviate emergency conditions to the ANR and Consumers systems, as defined in § 157.45, *et seq.* of the Commission Regulations. Before ANR or Consumers can use the proposed interconnection facilities for purposes other than emergency service, they shall be required to seek the necessary certificate authorization from the Commission.

ANR states that Consumers requested that ANR seek modification of the certificate and accordingly ANR has filed a petition to request deletion of ordering paragraph (c) to enable ANR and Consumers to utilize the faciltites for all lawful purposes. ANR's petition was filed on March 13, 1985, and the Commission issued a public notice of such petition on April 23, 1985.

ANR states that by the second amendment it proposes to narrow its request for the modification of ordering paragraph (c) so that ANR and Consumers may utilize the interconnection for transactions undertaken pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA). ANR further submits broadening the authorization for utilization of the ANR/Consumers interconnection facilities to allow NGPA section 311 type transactions.

Comment date: August 23, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

3. Northern Natural Gas Co., Division of InterNorth, Inc.

[Docket No. CP85-681-000]

Take notice that on July 9, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-681-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon and remove one 1030 horsepower compressor unit located in Roberts County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that due to the declining gathering pressure, the one 1030 horsepower compressor unit which comprises the Roberts County No. 1 gathering station is no longer needed. Northern also states that the present production can be gathered and compressed by the Spearman gathering station which is upstream of Roberts County No. 1 gathering station.

Northern proposes to utilize said compressor elsewhere on its systems or sell it to a potential buyer.

Comment date: August 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Co., a division of Tenneco Inc. v. Columbia Gas Transmission Corporation

[Docket No. CP85-711-000]

Take notice that on July 17, 1985, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a Complaint against Columbia Gas Transmission Corporation (Columbia). In its Complaint, Tennessee requests that the Federal Energy Regulatory Commission (Commission) issue an order directing Columbia to remit to Tennessee $9,064,477, plus interest and carrying costs, in payment for transportation services performed by Tennessee for Columbia pursuant to Tennessee's Rate Schedule IT.

Tennessee alleges that under a Gas Exchange and Transportation Agreement dated March 23, 1982 with Columbia and Columbia Gulf Transmission Company (Columbia Gulf), and under a Gas Exchange Agreement dated December 16, 1981 with Natural Gas Pipeline Company of America (Natural), Tennessee agreed to receive from Natural volumes of Columbia's gas at the eastern terminus of the Ozark Gas Pipeline System in White County, Arkansas, and to make equivalent volumes of gas available to Columbia by exchange to Columbia's affiliate, Columbia Gulf, at Egan, Acadia Parish, Louisiana. Tennessee states that by letter order issued September 24, 1982 in Docket No. ST82-203, the Office of Pipeline and Producer Regulation determined that the service Tennessee was performing for Columbia under the March 23, 1982 agreement was transportation rather than an exchange. Tennessee asserts that the September 24, 1982 letter order requires Tennessee to charge and to collect from Columbia the appropriate transportation charges under Tennessee's Rate Schedule IT, and that pursuant to this letter order Tennessee billed Columbia for the transportation service under its Rate Schedule IT. Columbia, however, has not paid Tennessee on this basis.

Comment date: August 23, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

5. Standard Pacific Gas Line Incorporated

[Docket No. CP85-684-000

Take notice that on July 16, 1985, Standard Pacific Gas Line Incorporated (STANPAC), P.O. Box 7442, San Francisco, California 94120 filed in Docket No. CP85-684-000 an application pursuant to section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction, the replacement, and operation of certain gas pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

STANPAC seek authorization to replace on its existing 118-mile STANPAC-2 pipeline during 1985 3.5 miles of 22-inch diameter pipeline with a

36-inch diameter pipeline extending north from Panoche Junction, California, at a total cost of $2,500,000. In 1986, STANPAC proposes to replace 13.9 miles of 26-inch diameter pipeline with 36-inch diameter pipeline between its Patterson meter station and the Vernalis delivery point in California.

The total cost of such replacement is estimated to be $10,629,320. It is explained that the costs would be financed by cash contributions from STANPAC's shareholders.

STANPAC states that it has undertaken a 10-year program to replace the remaining 54.8 miles of pipeline that was constructed in 1930. Presently, STANPAC indicates that it is experiencing corrosion problems on the 3.5 miles of pipeline that are proposed to be replaced in 1985 and that the increased transmission capability would provide additional flexibility to Pacific Gas and Electric Company by allowing transient storage peaking service along with the capability of relieving operational problems and inadequate supply unavailability.

Comment date: August 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. ANR Pipeline Company

[Docket No. CP85-715-000]

Take notice that on July 17, 1985, ANR Pipeline Company (Applicant), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP85-715-000 an application for a certificate of public convenience and necessity requesting authorization for a gas transportation service for Amoco Production Company (Amoco) and incident thereto the construction and operation of lateral pipeline facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant proposes to provide a transportation service for Amoco pursuant to a letter agreement between the parties dated July 9, 1985. Applicant states that it would receive from Amoco up to 10,000 Mcf of gas per day from Amoco's production Platform A located in Eugene Island Block (EI) 85 and redeliver on a best-efforts basis thermally equivalent volumes less one half percent of the volumes received for compressor fuel use at various specified points in onshore Louisiana. Applicant states that Amoco would recover natural gas as a by-product of Amoco's oil production in EI 85. Applicant proposes an initial term expiring five years from the date of initial delivery and that deliveries would continue year-to-year thereafter unless cancelled by either party by sixty-day written notice. Applicant proposes transportation charges of 10.8 cents per dt equivalent of gas redelivered in St. Mary Parish, Louisiana, and 14.3 cents per dt equivalent of gas redelivered in St. Landry, Acadia and Cameron Parishes, Louisiana.

Applicant proposes to construct and operate 3.2 miles of 6⅝-inch pipeline from the production platform in EI 85 to Applicant's existing system in EI 99. Applicant indicates that the proposed facilities would cost an estimated $1,674,810, which would be reimbursed by Amoco.

Comment date: August 23, 1985, in accordance with Standard Paragraph F at the end of this notice.

7. Columbia Gas Transmission Corporation and Carnegie Natural Gas Company

[Docket No. CP85-687-000]

Take notice that on July 10, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, and Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15336, filed in Docket No. CP85-687-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a certain natural gas exchange, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia and Carnegie request permission and approval to abandon a natural gas exchange service provided under an exchange agreement dated August 1, 1961, between Carnegie and The Manufacturers Light and Heat Company, a predecessor company of Columbia. It is stated that the exchange deliveries from Carnegie to Columbia have ceased due to the fact that Carnegie's wells located in Fayette County, Pennsylvania, and Wetzel County, West Virginia, are depleted to the point where it is no longer economically feasible to produce from the wells. Carnegie's exchange volumes to Columbia were terminated during March 1983, and balancing of exchange volumes between Carnegie and Columbia was finalized during the same month, it is explained. It is further stated that due to cessation of exchange deliveries, the August 1, 1961 exchange agreement should be cancelled and the exchange service provided therein should be abandoned.

Comment date: August 23, 1985, in accordance Standard Paragraph F at the end of this notice.

8. Colorado Interstate Gas Company

[Docket No. CP85-695-000]

Take notice that on July 12, 1985, Colorado Interstate Gas Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP85-695-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of taps and minor pipeline facilities and the transportation of natural gas incidental to making direct sales to Union Oil Company of California's (Union) Adena gasoline plant, located in Morgan County, Colorado, and to Helium Sales, Inc.'s (HSI), helium processing plant located in Morton County, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that Union has advised it that potentially severe damage may result from freezing in the Adena gasoline plant unless a backup fuel supply is obtained. It is stated that Applicant has agreed to make a direct sale of natural gas of up to 200 Mcf per day to the plant thereby fulfilling the plant's requirement for backup fuel. Applicant estimates that the facilities necessary to effectuate the direct sale would cost $2,700. Applicant states that Union has agreed to reimburse Applicant for these facility costs.

In addition, Applicant indicates that it currently makes a direct sale of up to 900 Mcf of gas per day to HSI for use as boiler and compressor fuel in HSI's helium processing plant. The gas for this sale, it is indicated, is derived from the Greenwood field in Morton County, Kansas, and is delivered from a non-jurisdictional gathering line. It is further indicated that the gas in this gathering line is unprocessed and at times is contaminated with liquid hydrocarbons and water which pose problems to HSI's plant operations. Applicant states that safety problems may arise for HSI when production from gas wells in the Greenwood field containing hydrogen sulphide commences in the latter part of 1985. Therefore, Applicant proposes to sell up to 900 Mcf per day of transmission quality gas to HSI. Applicant estimates that the facilities necessary to effectuate the direct sale with transmission quality gas would cost $3,300. Applicant also states that HSI has agreed to reimburse Applicant for these facility costs.

Comment date: August 23, 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. 85-18820 Filed 8-7-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP84-530-001 et al.]

Mountain Fuel Resources et al.; Natural Gas Certificate Filings

August 1, 1985.

Take notice that the following filings have been made with the Commission:

1. Mountain Fuel Resources

[Docket No. CP84-530-001]

Take notice that on July 5, 1985, Mountain Fuel Resources, Inc. (Petitioner), P.O. Box 11450, Salt Lake City, Utah 84147, filed in Docket No. CP84-530-001 a petition to amend the order issued October 29, 1984, in Docket No. CP84-530-000, pursuant to section 7(c) of the Natural Gas Act, so as to authorize Petitioner to serve its local distribution company affiliate, Mountain Fuel Supply Company (MFSC), at three additional existing delivery points under its FERC Rate Schedules CD-1 and X-33, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner explains that after the filing of its joint application with MFSC in Docket No. CP84-530-000 and subsequent to the transfer of all interstate transmission facilities from MFSC to Petitioner as authorized by the Commission in Opinion No. 221 (27 FERC ¶ 61,316), it was found that the subject delivery points to MFSC had been inadvertently excluded under FERC Rate Schedules CD-1 and X-33. Petitioner states that the subject delivery points involve facilities which were acquired by it pursuant to Opinion No. 221 but which were not described in the exhibits and testimony filed in the corporate reorganization proceedings in Docket No. CP80-274, *et al.*

Petitioner further explains that the subject delivery points, identified as the Tom Singer, Lester, and Isom taps located on its pipeline system in Unita County, Wyoming, are not included in its current service agreements with MFSC under existing sales Rate Schedule CD-1 (Wyoming/Colorado Zone) and Transportation Rate Schedule X-33. Petitioner requests that the above described delivery points be authorized by the Commission as CD-1 and X-33 delivery points and the order issued October 29, 1984, be amended accordingly. Petitioner asserts that the inclusion of the additional CD-1 and X-33 delivery points to MFSC would not cause it to exceed the maximum daily quantities authorized by Opinion No. 221.

Comment date: August 22, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. Northern Natural Gas Company, Division of InterNorth, Inc.

[Docket No. CP85-656-000]

Take notice that on June 27, 1985, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP85-656-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a compressor in Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon and remove a 1,034 horsepower two stage compressor unit in Lea County, New Mexico. It is stated that the compressor unit was installed in 1978 to take additional volumes of gas into Applicant's processing plant. It is claimed that low natural gas production and a reduction in gathering pressure has resulted in the inefficient operation of the compressor. Applicant asserts that the most economical and efficient means of producing the Lea County gas would be to deliver it Warren Petroleum Company for processing, eliminating the need for the 1,034 horsepower compressor. Applicant states the compressor would either be used elsewhere on its system or sold.

Comment date: August 22, 1985, in accordance with Standard Paragraph F at the end of this notice.

3. Consolidated Gas Transmission Corporation

[Docket No. CP85-693-000]

Take notice that on July 11, 1985, Consolidated Gas Transmission Corporation (Applicant), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-693-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities and for permission and approval to abandon certain facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate 0.55 mile of 24-inch transmission

pipeline to replace the existing 14-inch Line No. 44, located between the Finnefrock and Leidy compressor stations in Clinton County, Pennsylvania. Applicant states that the replacement pipeline would allow it to operate the Finnefrock compressor station more efficiently, resulting in reduced fuel costs and operating expenses. Applicant further states that the replacement would increase the reliability and flexibility of its sales and storage operations on this part of its system.

It is explained that the estimated cost of the construction would be $575,000 which would be financed from funds on hand or obtained from Applicant's parent company, Consolidated Natural Gas Company.

Comment date: August 22, 1985, in accordance with Standard Paragraph F at the end of this notice.

4. Consolidated Gas Transmission Corporation

[Docket No. CP85-651-000]

Take notice that on June 26, 1985, Consolidated Gas Transmission Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP85-651-000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate certain transmission facilities and for permission and approval to abandon other transmission facilities at Consolidated's McIlwain Junction in Armstrong County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The application reflects that Consolidated's McIlwain Junction is the site where Consolidated's Line No. 26 crosses Line Nos. 9 and 19, and that presently there is no direct connection between Line No. 26 and either Line No. 9 or 19 at the junction. Consolidated states that by interconnecting these pipelines at McIlwain Junction, it would be able to make more efficient use of its system and save approximately $995,800 annually in compression costs.

Consolidated also proposes to abandon (1) a 1,700-foot segment of Line No. 9; (2) Line No. 27, consisting of approximately 1,300 feet; and (3) the gate assembly at the junction of Line Nos. 9, 19, and 27. Additionally, Consolidated proposes to construct and operate (1) a 200-foot portion of Line No. 19 to bypass the old gate assembly; (2) a 50-foot connection between Line Nos. 26 and 19 (north from the junction); and (3) the replacement of 800 feet of 20-inch pipeline with 30-inch pipeline to tie Line Nos. 9 and 19 with Line No. 26 (east from the junction). Consolidated states that after completion of the projects the junction would have two separate functions: (1) Gas flowing into the junction from the west in Line No. 26 would leave the junction in a northerly direction through Line Nos. 9 and 19; and (2) gas flowing into the junction from the south in Line Nos. 9 and 19 would leave the junction in an easterly direction through Line Nos. 26 and TL-380.

The application states that the proposed construction activities would cost $375,000, exclusive of filing fees, and would be financed from funds on hand or to be obtained from Consolidated's parent company, Consolidated Natural Gas Company. The application states the proposed activities would take approximately four weeks to complete and would have no significant environmental impact, as they would be conducted on existing, already disturbed sites.

Comment date: August 22, 1985, in accordance with Standard Paragraph F at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket No. CP85-705-000]

Take notice that on July 15, 1985, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas, 77001 (Applicant), filed in Docket No. CP85-705-000 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 Gulf Oil Corporation (Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport on a best-efforts, interruptible basis up to 2,000 Mcf per day of Gulf's gas produced from South Timbalier Blocks 35 and 37, offshore Louisiana.

Applicant would transport such volumes of gas for Gulf from the interconnection of the facilities of Gulf and Applicant's jointly owned South Timbalier 37 pipeline near the outlet of the East Timbalier Island separation plant in Lafourche Parish, Louisiana, and would redeliver equivalent volumes to Gulf at the existing measuring station No. 495 connecting the facilities of Applicant and Gulf, located near Venice, Plaquemines Parish, Louisiana.

Applicant states that Gulf would pay Applicant a charge of 12.42 cents per Mcf of gas received for transportation at the point of receipt as prescribed in Docket No. RP84-74. It is stated that the transportation would continue for a period of five years from the date of initial delivery and monthly thereafter unless terminated by either party.

Applicant submits that the instant proposal is the most practical and economical way of making Gulf's gas available to Gulf at Venice, Louisiana.

Comment date: August 22, 1985, in accordance with Standard Paragraph F at the end of this notice.

6. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP85-699-000]

Take notice that on July 12, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85-699-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Verhoff Alfalfa Mills, Inc. (Verhoff), under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicants propose to transport up to 340 million Btu equivalent of natural gas per day on behalf of Verhoff through October 31, 1985. Columbia Gulf states that it would receive the quantities of gas at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to West Ohio Gas Company (West Ohio) for ultimate delivery to Verhoff.

Columbia Gulf stats that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rules Schedule TS–1 for its transportation service: Gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within West Ohio's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of West Ohio's TDEs. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

7. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP85–700–000]

Take notice that on July 12, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85–700–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of Thermal Resources of Baltimore, Inc. (Agent), and Baltimore Steam Company (Buyer) (Baltimore Steam Company) under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, 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.

Applicants propose to transport up to 15.4 billion Btu equivalent of natural gas per day on behalf of Baltimore Steam Company through October 31, 1985. Columbia Gulf would receive the quantities at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Baltimore Gas and Electric Company (BG&E) for ultimate delivery to Baltimore Steam Company.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cent per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rates Schedule TS–1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky, 21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within BG&E's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of BG&E's TDE. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Applicants also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants would file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

8. Columbia Gas Transmission Corporation Columbia Gulf Transmission Company

[Docket No. CP85–698–000]

Take notice that on July 12, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3850 West Alabama Avenue, Houston, Texas 77027, hereinafter referred to jointly as Applicants, filed in Docket No. CP85–698–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of United States Gypsum Company (U.S. Gypsum) under the certificates issued in Docket Nos. CP83–76–000 and CP83–496–000, respectively, 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.

Specifically, Applicants propose to transport up to 2.5 billion Btu equivalent of natural gas per day on behalf of U.S. Gypsum through October 31, 1985. Columbia Gulf would receive the gas at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Baltimore Gas and Electric Company (BG&E) for ultimate delivery to U.S. Gypsum.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T–2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Transmission states that it would charge one of the rates in its Rate Schedule TS–1 for its transportation service: Gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent and gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within BG&E's total daily entitlements (TDE). However, Columbia Transmission states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky; and 41.27 cents per dt

equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of BG&E's TDE's. Columbia Transmission further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Transmission states it would collect the General R&D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Applicants also request flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Applicants will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

9. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company

[Docket No. CP85-689-000]

Take notice that on July 10, 1985, Columbia Gas Transmission Corporation (Columbia Gas), 1700 MacCorkle Avenue SE., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, filed in Docket No. CP85-689-000 a joint request pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Owens-Illinois, Inc. (Owens-Illinois), under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, 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.

Columbia Gas and Columbia Gulf propose to transport up to 2.5 billion Btu of natural gas per day for Owens-Illinois until October 31, 1985. It is stated that Owens-Illinois would purchase the gas from The Resource Group. Columbia Gulf would receive the gas from United Gas Pipe Line Company at existing interconnections in Olla and/or Erath, Louisiana, and would transport and deliver the gas to Columbia Gas which would transport and deliver the gas to Columbia Gas of Ohio, Inc. (COH), it is stated. It is further stated that COH would transport and deliver the gas to Ownes-Illinois' Toledo, Ohio, plant where the gas would be used to melt glass.

Columbia Gulf states that it would charge one of the rates in its Rate Schedule T-2 for its transportation service: offshore to Kentucky—23.92 cents per dt equivalent of gas and retain 1.69 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas; lateral onshore to Kentucky—14.28 cents per dt equivalent of gas and retain 1.50 percent; Rayne, Louisiana, to Kentucky—12.76 cents per dt equivalent of gas and retain 1.50 percent; and Corinth, Mississippi, to Kentucky—6.38 cents per dt equivalent of gas and retain 0.75 percent.

Columbia Gas states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from Columbia Gulf at Leach, Kentucky—21.16 cents per dt equivalent of gas received from Columbia Gulf at receipt points other than Leach, Kentucky—29.93 cents per dt equivalent provided the volumes are within COH's total daily entitlements (TDE). However, Columbia Gas states it would charge 32.50 cents per dt equivalent for gas it receives from Columbia Gulf at Leach, Kentucky, and 41.27 cents per dt equivalent for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of COH's TDE's. Columbia Gas further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia Gas states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

10. Columbia Gas Transmission Corporation

[Docket No. CP85-691-000]

Take notice that on July 11, 1985, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP85-691-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of International Harvester Company (International Harvester) under the certificate issued in Docket No. CP83-76-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Columbia proposes to transport up to 1,580 million Btu equivalent of natural gas per day for International Harvester through October 31, 1985. Columbia states that the gas to be transported would be purchased from OMAC Oil & Gas Co. (OMAC) and would be used as boiler fuel in International Harvester's Springfield, Ohio, plant.

It is indicated that International Harvester has made arrangements to purchase this gas from OMAC. Columbia states that it would receive the gas from OMAC and redeliver the gas to Columbia Gas of Ohio, Inc. (COH), the distribution company serving International Harvester, near Springfield, Ohio.

Columbia states that it would charge one of the rates in its Rate Schedule TS-1 for its transportation service: gas received from receipt points other than Leach, Kentucky—29.93 cents per million Btu provided the volumes are within COH's total daily entitlements (TDE). However, Columbia states it would charge 41.27 cents per million Btu for gas received from receipt points other than Leach, Kentucky, if the volumes are in excess of COH's TDE. Columbia further states it would retain 2.43 percent of the total quantity of gas delivered into its system for company-use and unaccounted-for gas. In addition, Columbia states it would collect the General R & D Funding Unit of the Gas Research Institute for all quantities transported under the transportation arrangement.

Comment date: September 16, 1985, in accordance with Standard Paragraph G at the end of this notice.

11. Colorado Interstate Gas Company

[Docket No. CP85-633-000]

Take notice that on June 21, 1985, Colorado Interstate Gas Company (Applicant), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP 85-633-000 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 Cheyenee Light, Fuel and Power Company (Cheyenne), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement, dated May 22, 1985, between Applicant and Cheyenne,

Applicant would transport up to 8,000 Mcf of natural gas per day on an interruptible basis on behalf of Cheyenne. Applicant states that no new facilities would be required. Applicant states that it would receive the gas at existing interconnections from Williston Basin Interstate Pipeline Company (Williston Basin) at the Elk Basin point of delivery in Park County, Wyoming, and the Madden point of delivery in Fremont County, Wyoming, and from MIGC, Inc., at the Powder River Basin point of delivery in Converse County, Wyoming. Applicant states that the redelivery would be made at the existing interconnection at Norfolk-Terry meter station in Weld County, Colorado.

Applicant specifically requests authority to add and delete delivery points, which may require the construction and operation of additional facilities under Applicant's blanket certificate in Docket No. CP83-21-000 or specific application, as appropriate.

Applicant also requests authority to file annually, on or about January 31, tariff revisions, as necessary, to inform the Commission of delivery point additions or deletions.

Applicant further states that Cheyenne would pay a transportation charge of 57.54 cents per Mcf for redelivery of thermally equivalent volumes less any applicable fuel gas and unaccounted-for gas volumes.

Comment date: August 22, 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. 85-18822 Filed 8-7-85; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following items have been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, et seq.). Requests for information, including copies of the collections of information and supporting documentation, may be obtained from Bruce A. Dombrowski, Acting Secretary, Federal Maritime Commission, 1100 L Street, NW., Room 11101, Washington, D.C. 20573, telephone number (202) 523-5725. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 582—Certification of Company Policies and Efforts to Combat Rebating in the Foreign Commerce of the United States

FMC requests an extension of clearance for this rule which requires the Chief Executive Officer of every common carrier in the U.S. foreign commerce to file a written certification with the Commission attesting to the company's prohibition against receiving or paying rebates by May 15 of each year. The Commission estimates that approximately 1050 NVOCCs and 500 VOCCs will file annual anti-rebate certifications. Total estimated cost to the Federal Government is approximately $27,500.00; total estimated cost to respondents is $51,600.00.

46 CFR Part 560—Filing of Agreements by Common Carriers and Other Persons Subject to the Shipping Act, 1916

FMC requests an extension of clearance for this rule which implements section 15 of the Shipping Act, 1916 authority granted to the Commission to approve, disapprove, cancel or modify agreements or agreement modifications. Persons seeking antitrust protection provided by the Act must provide the Commission with agreements and modifications or cancellations of such agreements under the Act's requirements. The Commission estimates that approximately 10 agreements per year will be filed. Total estimated cost to the Federal Government is approximately $12,876; total estimated cost to respondents is $9,200.00.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-18803 Filed 8-7-85; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0153; DESI 11409 and 50230]

Certain Fixed-Combination Antibiotic/Antifungal Products; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of new drug applications for 14 oral antibiotic/antifungal products. The basis of the withdrawal is that there is a lack of substantial evidence that these fixed-combination drugs are effective.

EFFECTIVE DATE: September 9, 1985.

ADDRESS: Requests for an opinion on the applicability of this notice to a specific drug product should be directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, Rm. 216, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice (DESI 11409) published in the **Federal Register** of November 13, 1969 (34 FR 18161), the Commissioner of Food and Drugs announced that, as part of the Drug Efficacy Study Implementation (DESI) program, he was revoking regulations describing the conditions for certification of certain oral fixed-combination antibiotic/antifungal drug products containing either tetracycline, oxytetracycline, or demeclocycline, with nystatin. A similar notice (DESI 50230) published in the **Federal Register** of June 13, 1969 (34 FR 9336) revoked regulations for combinations containing either tetracycline or chlortetracycline with amphotericin B. The actions were based on a review of comments received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group.

In accordance with section 507 (f) and (h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 357 (f) and (h)), the manufacturers of drug products subject to the two notices above submitted objections and hearing requests contesting the revocations. The manufacturers later submitted data and other material to support their requests. Accordingly, in **Federal Register** notices published December 31, 1969 (34 FR 20427) and April 9, 1970 (35 FR 5811), the November 13, 1969 notice was stayed pending completion of the agency's review of the submitted data. The June 13, 1969 notice was also stayed, but this decision was not announced in the **Federal Register**.

Subsequently, in a notice published in the **Federal Register** of May 28, 1982 (47 FR 23564), the Commissioner announced a formal evidentiary hearing for oral combination drugs containing antibiotics and antifungal agents. The notice listed as parties in the hearing (in addition to FDA's Bureau of Drugs, now the Center for Drugs and Biologics) five sponsors of the drug products that are described in sections II and III below.

In response to the May 28, 1982 notice, three of the five sponsors filed a timely notice of their intent to participate as required by 21 CFR 12.85. The remaining two sponsors did not file a notice of participation. One of the three sponsors who filed a notice subsequently withdrew its hearing request. Therefore, only two of the five sponsors listed as parties actually participated in the hearing.

On April 26, 1984, the presiding officer in the hearing ruled in favor of the Center for Drugs and Biologics with respect to all the drug products involved, concluding that the efficacy of the drug products had not been shown to be supported by substantial evidence. Only one of the two sponsors who participated in the hearing appealed the decision to the Commissioner be filing exceptions. The Commissioner is now reviewing these exceptions. In this notice, the Commissioner is withdrawing approval of the products that are no longer involved in the proceeding.

II. Drugs for Which Approval is Being Withdrawn

A. The sponsors of the five products listed below failed to file a required notice of participation, and thereby waived their right to a hearing (21 CFR 12.45(c) and 12.85(d)). The products are no longer marketed. For reference, the corresponding antibiotic regulation sections are also identified.

1. NDA 60-425; Comycin Half-Strength Capsules and Comycin Capsules containing tetracycline phosphate complex and mystatin (§ 446.181b); formerly marketed by The Upjohn Co., 7171 Portage Rd., Kalamazoo, MI 49002.

2. NDA 60-541; Tetrex-F Capsules containing tetracycline phosphate complex and nystatin (§ 446.181b); formerly marketed by Bristol Laboratories, Division of Bristrol-Myers Co., P.O. Box 657, Syracuse, NY 13201.

3. NDA 60-753; Tetrex-F Oral Suspension containing tetracycline phosphate complex and nystatin (§ 446.180a); Bristol Laboratories.

4. NDA 60-674; Tetrex-F for Oral Suspension containing tetracycline and nystatin (§ 446.180b); Bristol Laboratories.

B. A notice of participation was filed for the five products described immediately below; however, the sponsor later voluntarily withdrew its hearing request and no longer markets the products.

1. NDA 50-034; Declostatin Tablets containing demeclocycline and nystatin (§ 446.116b); formerly manufactured by Lederle Laboratories, Division of American Cyanamid Co., West Middleton Rd., Pearl River, NY 10965.

2. NDA 50-258; Declostatin Oral Suspension containing demeclocycline and nystatin (§ 446.115c); Lederle Laboratories.

3. NDA 50-259; Declostatin capsules containing demeclocycline and nystatin (§ 446.116d); Lederel Laboratories.

4. NDA 50-283; Achrostatin V for Oral Suspension containing tetracycline and nystatin (§ 446.180b); Lederle Laboratories.

5. NDA 60-433; Achrostatin V Capsules containing tetracycline and nystatin (§ 446.181b); Lederle Laboratories.

C. A formal evidentiary public hearing was held pursuant to 21 CFR Part 12. The hearing included the sponsor of the four products listed immediately below. In his initial decision, the presiding officer concluded that the available data do not constitute substantial evidence of the effectiveness of the drugs in question. The sponsor of the drug products listed below did not file any exceptions to that decision. Unless a hearing participant files an exception to the presiding officer's finding, the initial decision, as it applies to that participant's products, becomes a final agency decision (21 CFR 12.120(e)).

1. NDA 60-283; Tetrastatin Capsules containing tetracycline hydrochloride and nystatin (§ 446.181b); manufactured by Pfizer Laboratories, 235 East 42d St., New York, NY 10017.

2. NDA 60-287; Tetrastatin for Oral Suspension containing tetracycline hydrochloride and nystatin (§ 446.180b); Pfizer.

3. NDA 60-597; Terrastatin Capsules containing oxytetracycline and nystatin (§ 446.165c); Pfizer.

4. NDA 60-598; Terrastatin for Oral Suspension containing oxytetracycline and nystatin (§ 446.165e); Pfizer.

All of the antibiotic drug products identified in this notice were originally certified or released under section 507 of the act (21 U.S.C. 357). However, in the **Federal Register** of September 7, 1982 (47 FR 39155), FDA amended the antibiotic regulations to exempt these drug products from certification requirements. The September 7, 1982 notice stated that, in accordance with section 507(e) of the act, antibiotic-containing drugs exempted from the requirements for batch certification which are the subject of approved Form

5 or Form 6 applications are subject to section 505 of the act and regulations applicable to new drugs. Therefore, the Commissioner has determined that the NDA's for the products listed above in section II of this notice should be withdrawn because (1) there is a lack of substantial evidence that these drug products have the effects they are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(e)(3)); (2) there is a lack of substantial evidence that each component of these antibiotic/antifungal combination drug products contributes to the total effects claimed (21 CFR 300.50); and (3) the drug sponsors either have failed to file a written notice stating an intent to participate in the hearing or have withdrawn a request for hearing, or they have not filed an objection to the initial decision pursuant to 21 CFR 12.120.

Although antibiotics are no longer subject to the certification requirements described by the applicable antibiotic regulations, the regulations remain codified under 21 CFR Part 446. The antibiotic regulations applicable to the products listed above in section II will be the subject of a future **Federal Register** notice.

III. Drugs Not Subject to This Notice

This notice does not apply to Mysteclin-V Capsules (NDA 50-206 (§ 446.181b)), Mysteclin "F" Capsules (NDA 50-230), Mysteclin "F"-125 Capsules (NDA 50-231), and Mysteclin "F" Syrup (NDA-231), all manufactured by E. R. Squibb & Sons, Inc., P.O. Box 4000, Princeton, NJ 08540. (Note: Antibiotic regulations applicable to the Mysteclin "F" products were inadvertently deleted from the Code of Federal Regulations.) Squibb has filed an appeal from the initial decision with respect to these drugs pursuant to 21 CFR 12.125. Pending a decision by the Commissioner on Squibb's appeal, the Squibb products listed in this section may continue to be marketed.

IV. Findings

On the basis of the foregoing discussion, the Commissioner finds that there is a lack of substantial evidence that the products listed above in section II will have the effect they are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), approval of the new drug applications listed above in section II, and all amendments and supplements thereto, is hereby withdrawn September 9, 1985.

Dated: August 1, 1985.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-18761 Filed 8-7-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-85-1545]

Notice of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Managment and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Managment and Budget, New Exective Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Develpment, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Submission of Proposed Information Collection to OMB

Proposal: Request for Payment of Subsidies for Operations
Office: Public and Indian Housing
Form Number: HUD-53087
Frequency of Submission: On Occasion
Affected Public: State or Local Governments
Estimated Burden Hours: 138
Status: Extension
Contact: Joanne Farmer, HUD, (202) 426-1872; Robert Fishman, OMB, (202) 395-6880

Proposal: Insurance of Adjustable Rate Mortgages
Office: Housing
Form Number: None
Frequency of Submission: On Occasion and Annually
Affected Public: Businesses or Other For-Profit and Small Businesses or Organizations
Estimated Burden Hours: 1,400
Status: Revision
Contact: Morris Carter, HUD, (202) 426-7212; Robert Fishman, OMB, (202) 395-6880

Proposal: Evaluation of the Housing Voucher Demonstration Program in Small PHAs/Rural Areas
Office: Policy Development and Research
Form Number: None
Frequency of Submission: On Occasion
Affected Public: Individuals or Households
Estimated Burden Hours: 18,627
Status: Revision
Contact: Garland Allen, HUD (202) 755-5574; Robert Fishman, OMB (202) 395-6880

Proposal: Monitoring and Technical Assistance Handbook for the Congregate Housing Services Program (CHSP)
Office: Housing
Form Number: Handbook 4640.1
Frequency of Submission: On Occasion, Monthly, Quarterly, and Annually
Affected Public: Individuals or Households, Non-Profit Institutions,

and Small Businesses or Organizations
Estimated Burden Hours: 1,426
Status: Extension
Contact: Jerold Nachison, HUD (202) 755-5866; Robert Fishman, OMB (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 15, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-18763 Filed 8-7-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Cedar City District Advisory Council, Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Cedar City District Advisory Council will be held September 5, 1985.

The meeting will begin at 9:30 a.m. at the BLM District Office in Cedar City. The agenda will include Wild Horse Capture Plans, Wilderness, Power Rights-of Ways in Washington and Iron Counties, Grasshoppers, Noxious Weeds, and a proposed Water Project on the Santa Clara River.

All Advisory Council meetings are open to the public. Interested persons may make oral statements at 9:45 a.m. or may submit written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, P.O. Box 724, Cedar City, Utah 84720, phone 801-586-2401, by September 3, 1985. Depending on the number of persons wishing to make a statement, a per person time limit may be established by the District Manager or Council Chairman.

Morgan S. Jensen,

District Manager.

July 29, 1985.

[FR Doc. 85-18788 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-DQ-M

[Designation Order CO-020-8501]

Colorado Off-Road Vehicle Designations; Gunison George Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Road Vehicle Designation Decisions.

Decision: Notice is hereby given relating to the use of off-road vehicles on public lands in accordance with the authority and regulations contained in 43 CFR Part 8340. The lands described below are administered by the Montrose District Office of the Bureau of Land Management and are hereby designated as closed, limited to designated roads and trails, open with caution, or open to off-road vehicle use.

The 64,000-acre area affected by the designation is known as the Gunnison Gorge Recreation Area, which includes portions of public lands in Montrose and Delta counties in Colorado. The designations are a result of decisions made in the 1985 Gunnison Gorge Recreation Area Management Plan. Comments received from public meetings in 1984 and 1985, coordination with other Federal, State, and county agencies, and comments received during a 30-day public comment period held following both the draft and preliminary final recreation management plan in 1984 and 1985, are reflected in this designation decision.

These designations become effective with the publication in the **Federal Register** and will remain in effect until rescinded or modified by the Authorized Officer. Under the provisions in 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals by any persons adversely affected by the designations. An environmental assessment describing the impact of these designations is available for inspection at the offices listed at the end of this designation order.

The designations described below are detailed on maps available for public distribution which are included within the Gunnison Gorge Recreation Area Management Plan. The management plan, along with the off-road vehicle designations and maps, are available at the locations listed at the end of this designation order. Implementation of the designations will be affected with brochures, maps, and an on-the-ground informational signing program.

A. Closed Designation

Closed—21,000 acres. Year-round closure to all motorized vehicles, including the landing of aircraft, use of motorized boats/rafts, and use of bicycles. Exceptions would include search and rescue work by aircraft and fish shocking activities by the Colorado Division of Wildlife, with prior approval by BLM.

B. Limited Designation

Limited to Designated Roads and Trails—22,000 acres. Year-round designation to all motorized vehicles including motorized boats/rafts and bicycles. Land routes will be identified on-the-ground with "arrow" markers. BLM will analyze the effect of motorized boats on the natural environment, and recreation opportunities and experiences on fishers and non-motorized boaters. BLM may place further limitations on the use of motorized rivercraft between the Gunnison Forks and the Smith Fork if it is deemed necessary by the Authorized Officer. Local news releases and notices would be used to notify the public.

C. Open Designation

1. Open with Caution—15,800 acres. Area is open year-round to off-road vehicles. Users will be warned that these "open" areas are adjacent to private land in holdings and/or "designated road and trail" areas.

2. Open—5,200 acres. Area is open year-round to off-road vehicles.

ADDRESS: For further information about these designations, contact either of the following Bureau of Land Management offices:

District Manager, Montrose District Office, 2465 South Townsend, Montrose, Colorado 81401
Area Manager, Uncompahgre Basin Resource Area, 2505 South Townsend, Montrose, Colorado 81401.

Dated: July 29, 1985.

Paul W. Arrasmith,

District Manager.

[FR Doc. 85-18790 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-JB-M

Colorado; Craig District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Craig District Grazing Advisory Board will be held October 17, 1985, at the Craig District Office of the Bureau of Land Management, 455 Emerson Street, Craig, Colorado. The meeting will convene at 10:00 a.m.

The agenda for the meeting will include:

(1) Projects proposed for construction in FY86.

(2) A report on FY85 projects completed.

(3) A discussion of the Little Snake Resource Management Plan and range program.

(4) A review of Kremmling Allotment Management Plans.

(5) The expenditure of advisory board funds for range improvements.

The meeting is open to the public. Interested persons may make oral statements to the board between 10:00 a.m. and 11:00 a.m., October 17, 1985, or file written statements for the board's consideration.

Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Dated: August 2, 1985

William J. Pulford,

District Manager.

[FR Doc. 85-18789 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-JB-M

Sale of Public Land in Grand County, UT; Postponement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The sale of public land (U-54698), described as T. 26S., R. 22E., SLM, Section 6, Lot 9, as announced in the Friday, June 21, 1985, **Federal Register** (Vol. 50, No. 120, p. 25791) is hereby postponed until further notice. The segregative effect of the June 21, 1985, notice will remain until such time as the tract may be sold in the future or until it expires under provisions of 43 CFR 2711.1-2(d). A subsequent notice announcing a new sale day will be published at the appropriate time.

Dated: July 30, 1985.

James J. Travis,

Acting District Manager.

[FR Doc. 85-18791 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-DQ-M

California Desert Plan; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the pre-planning analysis for the 1985 Amendments to the California Desert Plan and the Eastern San Diego County MFP is available for public review and comment.

Twenty-one proposed amendments have been accepted for consideration by the 1985 amendment review of these plans. The proposed amendments consist of a wide variety of actions, including designation of a new Area of Critical Environmental Concern (ACEC) and adjustment of boundaries of existing ACECs, changes in vehicle access, revision of guidelines for agricultural and waste disposal, and reclassification of public lands in southern Imperial County. The pre-plan describes the following topics:

1. Purpose and need for action;
2. Geographic setting;
3. Scope and level of analysis planned;
4. Significant resource values and issues;
5. Alternatives;
6. EIS preparation schedule; and
7. Public participation schedule.

Comments are being accepted from the public until 30 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Gerald E. Hillier, District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507.

Dated: August 1, 1985.

Bary A. Freet,

Acting District Manager.

[FR Doc. 85-18783 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-40-M

New Mexico; Proposed Plan Amendment and Land Exchange

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to do a Planning Amendment and Notice of Realty Action to do a Land Exchange.

SUMMARY: The Commissioner of Public Lands has offered certain State lands within and near to the White Sands Missile Range in exchange for selected public lands in Dona Ana County. The Commissioner has identified four areas of public land in priority order for selection. Priority area one, if appropriate for exchange, will provide sufficient lands to complete the proposed exchange. The exchange will be processed under authority of section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743). The priority area one lands are described as:

T. 22 S., R. 2 E., 2 NMPM:
Sec. 23, S½N½, S½;
Sec. 24, S½;
Secs. 25, 26, all;
Sec. 27, E½;
Sec. 34 E½;
Sec. 35, all.
T. 22 S., R. 3 E., NMPM:
Sec. 17, S½;
Secs. 18, 20, 29, 30, 31, 32, all.
T. 23., R. 2 E., NMPM:
Secs. 1, 3, all.
T. 03 S., R. 3 E., NMPM;
Secs. 5, 6, all.

Compromising approximately 10,061.91 acres located in Dona Ana County, New Mexico.

Priority area two contains roughly 15,200 acres of public land located along the mesa east of the Rio Grande River between Las Cruces and the southwest corner of the White Sands Missile Range. Priority area three contains roughly 19,200 acres of public land located on the west mesa around Crawford Airport. Priority area four contains roughly 36,000 acres of public land located between the south boundary of the White Sands Missile Range and the New Mexico-Texas State line. These areas will be considered in the planning effort for future actions. The actions may include State exchanges for State lands within the White Sands Missile Range or exchanges for State or private lands elsewhere in the area of the plan amendment. Other types of disposal will also be addressed. However, any specific exchange proposals within priority areas two, three or four will require separate publications of public notices subject to additional public comment.

The offered lands within the White Sands Missile Range are described as:

T. 6 S., R. 3 E., NMPM;
Secs. 32, 36, all.
T. 6 S., R. 4 E., NMPM;
Secs. 32, 36, all.
T. 7 S., R. 3 E., NMPM;
Sec. 2, all.
T. 7 S., R. 4 E., NMPM;
Secs. 2, 16, all.
T. 8 S., R. 4 E., NMPM;
Secs. 32, 36, all.
T. 8 S., R. 5 E., NMPM;
Secs. 32, 36, all.
T. 8 S., R. 6 E., NMPM;
Sec. 32, W½.
T. 8 S., R. 7 E., NMPM;
Secs. 16, 32, all.
T. 9 S., R. 2 E., NMPM;
Sec. 33, S½S½.
T. 9 S., R. 3 E., NMPM;
Secs. 34, 35, 36, all.
T. 9 S., R. 4 E., NMPM;
Sec. 2, S½;
Secs. 16, 32, 36, all.
T. 9 S., R. 5 E., NMPM;
Sec. 2, N½;
Secs. 32, 36, all.
T. 9 S., R. 6 E., NMPM;
Sec. 16, all;
Secs. 19, S½;
Secs. 30, 31, 32, 36, all.
T. 10 S., R. 3 E., NMPM;
Sec. 2, S½;
Secs. 16, 36, all.
T. 10 S., R. 4 E., NMPM;
Secs. 2, 16, 32, 36, all.
T. 10 S., R. 5 E., NMPM;
Secs. 2, 16, 32, 36, all.
T. 10 S., R. 6 E., NMPM;
Secs. 2, 6, all;
Sec. 7, N½;
Sec. 32, all.
T. 10 S., R. 7 E., NMPM;
Sec. 14, W½SW¼.
T. 11 S., R. 4 E., NMPM;
Sec. 2, all;
Secs. 6, Lot 5.

T. 11 S., R. 5 E., NMPM;
Secs. 2, 16, all.
T. 11 S., R. 6 E., NMPM;
Secs. 1, 2, 3, 16, 28, 32, 33, 34, 36, all.
T. 12 S., R. 4 E., NMPM;
Secs. 36, all.
T. 13 S., R. 4 E., NMPM;
Sec. 2 all.
T. 13 S., R. 6 E., NMPM;
Secs. 2, 32, 36, all.
T. 14 S., R. 4 E., NMPM;
Sec. 25, E½;
Sec. 36, E½, SW¼.
T. 14 S., R. 5 E., NMPM;
Sec. 16, all;
Sec. 21, SE¼, E½SW¼;
Sec. 22, N½S½;
Sec. 23, S½;
Sec. 24, S½;
Sec. 25, all;
Sec. 26, E½, E½W½;
Sec. 28, W½, W½E½, NE¼NE¼;
Sec. 29, all;
Secs. 30, 31, all;
Sec. 33, W½, NW¼NE¼, S½SE¼;
Sec. 34, S½SW¼;
Sec. 35, E½W½, E½, SW¼SW¼;
Sec. 36, all.
T. 14 S., R. 9 E., NMPM;
Sec. 32, N½NE¼, SW¼NE¼.
T. 15 S., R. 4 E., NMPM;
Sec. 1, N½SE¼;
Sec. 2, all;
Sec. 3, SE¼NE¼;
Sec. 16, all.
T. 15 S., R. 5 E., NMPM;
Sec. 1, N½N½;
Sec. 2, all;
Sec. 3, N½N½;
Sec. 4, N½, N½SW¼;
Sec. 5, N½NE¼, SE¼NE¼, NW¼, SW¼NE¼SE¼;
Sec. 6, all;
Sec. 7, all;
Sec. 8, W½;
Sec. 16, all;
Sec. 17, W½;
Sec. 18, all;
Sec. 19, lot 1, E½NW¼, NE¼SW¼, E½;
Sec. 20, W½;
Sec. 29, W½;
Sec. 30, all;
Sec. 31, lots 1, NE¼NW¼, N½NE¼;
Sec. 36, all.
T. 15 S., R. 6 E., NMPM;

T. 15 S., R. 6 E., NMPM;
Secs. 32, 36, all.
T. 15 S., R. 7 E., NMPM;
Secs. 16, 32, 36, all.
T. 15 S., R. 8 E., NMPM;
Sec. 32 all.
T. 16 S., R. 3 E., NMPM;
Sec. 2, 36, all.
T. 16 S., R. 4 E., NMPM;
Sec. 2, all;
Sec. 3, lots 1, 2, 3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 10, N½NE¼, NE¼NW¼;
Sec. 11, NW¼NW¼.
T. 16 S., R. 5 E., NMPM;
Secs. 2, 16, 32, 36, all.
T. 16 S., R. 6 E., NMPM;
Secs. 2, 16, 32, 36, all.
T. 16 S., R. 7 E., NMPM;
Secs. 16, 32, all.
T. 17 S., R. 3 E., NMPM;
Sec. 2, all.
T. 17 S., R. 4 E., NMPM;
Sec. 2, all.
T. 17 S., R. 8 E., NMPM;
Sec. 32, all.
T. 18 S., R. 7 E., NMPM;
Sec. 23, SE¼, SE¼NE¼.
T. 18 S., R. 8 E., NMPM;
Sec. 32, all.
T. 19 S., R. 4 E., NMPM;
Sec. 2, all; Sec. 16, E½; Sec. 36, all.
T. 19 S., R. 5 E., NMPM;
Sec. 32, all.
T. 19 S., R. 7 E., NMPM;
Sec. 32, 36, all.
T. 20 S., R. 6 E., NMPM;
Sec. 7, all.
T. 21 S., R. 5 E., NMPM;
Sec. 16, all.

Comprising approximately 73,559.20 acres located within the boundaries of the White Sands Missile Range in the Counties of Socorro, Lincoln, Sierra, Otero and Dona Ana, New Mexico.

Offered lands near to the White Sands Missile Range and within the Organ Mountains Recreation Area are described as:

T. 22 S., R. 3 E., NMPM;
Sec. 36, N½NE¼, SW¼NE¼, NW¼, SW¼, W½SE¼.
T. 23 S., R. 3 E., NMPM;
Sec. 2, all;
Sec. 13, SE¼SW¼, SW¼SE¼;
Sec. 24, N½NE¼, SE¼NE¼, E½SE¼;
Sec. 25, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 26, lots 7, 8, SE¼NE¼;
Sec. 36, all.
T. 24 S., R. 3 E., NMPM;
Sec. 2, all;
Sec. 12, N½S½;
Sec. 14, N½N½;
Sec. 34, NW¼SE¼; 36, all.
T. 25 S., R. 3 E., NMPM;
Sec. 2, all.

Comprising approximately 5,035.33 acres located in Dona Ana County, New Mexico.

Only the surface estate of the State lands within the White Sands Missile Range will be offered in exchange. The mineral estate will be retained in State ownership subject to the continuing mission of the White Sands Missile Range. The surface estate of the selected public lands will be conveyed to the State. The mineral estate of the selected public lands will be reserved to the United States.

This notice constitutes a Scoping Notice as required by regulations promulgated under the National Environmental Policy Act (40 CFR 1501.7) for a plan amendment to the Southern Rio Grande Management Framework Plan. In addition to consideration of the specific exchange proposal, the plan amendment will consider public land tenure adjustments on a Countywide basis. The lands identified for the plan amendment are public lands within Dona Ana County.

An interdisciplinary team will prepare the amendment. The disciplines to be represented include realty, soil and water, livestock grazing wildlife, threatened and endangered species, cultural, recreation and socio-economics. The anticipated issue will be land tenure adjustment in Dona Ana County. A packet containing planning criteria will be available and sent out by August 23, 1985 for public comment. Those wishing to be added to the mailing list should contact the Las Cruces District Office at the address given below. Several opportunities for public input to this project are now scheduled. The first such opportunity is a public meeting to receive input on issues and proposed planning criteria. This public meeting is scheduled for 1:30 p.m., September 12, 1985 at the Las Cruces District Office at 1800 Marquess Street in Las Cruces, NM. Written comments on the issues and proposed planning criteria must be received by September 23, 1985. A draft plan amendment/environmental impact statement will be printed and made available to the public for a 90 day review and comment period. It is anticipated that the draft will be released in April of 1986. The final document will be released for a 30 day review and protest period in August of 1986.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this notice will segregate the public lands described as priority area one from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. Persons wishing to comment on the specific exchange proposal and the segregation outlined in this notice may do so by writing to the Las Cruces District Manager at the address provided below. These comments must be received by September 26, 1985. This segregation shall terminate upon issuance of a conveyance document, upon publication of a notice of termination or upon expiration of 2 years from the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquiries should be addressed to the District Manager, Las Cruces, Bureau of Land Management, 1800 Marquess, Las Cruces, NM 88005, (505) 525-8228.

Dated: August 2, 1985.

Charles W. Luscher,

State Director.

[FR Doc. 85-18844 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-FB-M

[M-63930(ND) et al.]

Competitive Sale of Public Land; Adams Bowman and Grant Counties, ND

AGENCY: Bureau of Land Management, Dickinson District Office, Interior.

ACTION: Notice of realty action; competitive sales M-63930 (ND), M-63931 (ND), M-63932 (ND), M-63933 (ND) and M-65553 (ND).

SUMMARY: The following described lands have been examined and identified as suitable for sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) at no less than the appraised fair market value listed for each parcel:

Parcel No.	Case No.	Legal description	Acreage	Appraised value
1	M-63930 (ND)	Fifth Principal Meridian, ND T.134N., R.86W., Sec. 4, S1/2SW1/4	80	$8,400
2	M-63931 (ND)	Fifth Principal Meridian, ND T.134N., R.88W., Sec. 18, Lot 1	9.69	1,000
3	M-63932 (ND)	Fifth Principal Meridian, ND T.129N., R.91W., Sec. 5, NE1/4SE1/4	40	4,000
4	M-63933 (ND)	Fifth Principal Meridian, ND T.131N., R.93W., Sec. 24, SW1/4NW1/4	40	3,000
5	M-66663 (ND)	Fifth Principal Meridian, ND T.130N., R.101W., Sec. 35, SW1/4SE1/4	40	3,400

The lands described are hereby segregated from appropriation under public land laws, including mining laws, pending disposition of this action.

The general location of the tracts are as follows:

Parcel #1 is two air miles northeast of Carson, North Dakota.

Parcel #2 is two air miles northeast of Elgin, North Dakota.

Parcel #3 is six air miles northeast of Lemmon, South Dakota.

Parcel #4 is 12 air miles north-northwest of Lemmon, South Dakota.

Parcel #5 is 10 air miles southwest of Scranton, North Dakota.

There is legal and physical access to parcels #1, 2, 4, and 5. There is legal access to parcel #3; however there is not an established road on the legal access route. The lands are small, isolated tracts and are unusable by the general public. They do not contain significant resource values that would justify retention. They are difficult and uneconomical to manage as part of the public land system and not suitable for management by another federal agency.

The proposed sale is consistent with Southwest North Dakota Management Framework Plan. Since the lands have low resource value, the transfer of the tracts into private ownership will benefit the public interest and provide for more efficient land management.

Terms and Conditions:

1. Reservation of all minerals to the United States together with the right to explore, prospect for, mine and remove same under applicable law and regulations;

2. Reservation of right-of-way for ditches or canals to the United States pursuant to 43 U.S.C. 934;

3. All valid and existing rights and reservations of record.

Location, Date and Time: The lands, consisting of five parcels, will be offered for sale, one parcel at a time, by a combination of sealed and oral bidding. Sale date is September 27, 1985, at 10:00 a.m. in the Gate City Community Room, 204 Sims Street, Dickinson, North Dakota.

Any parcel not sold at this sale, will be offered for sale over the counter until sold or until the sale is cancelled.

Comment Period: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, 204 Sims Street, P.O. Box 1229, Dickinson, North Dakota 58602.

Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a decision for the Department of Interior. Parties adversely affected by the decision have the right to appeal to the Interior Board of Land Appeals. In the absence of any action by the State Director, this realty action will become a final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this sale, including planning documents, the environmental assessment and land report is available for review at the Dickinson District Office.

SUPPLEMENTARY INFORMATION: Bidder Qualifications: The bidder must be a United States citizen, or in the case of a corporation, subject to the laws of any state or the United States. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands or interests therein under the laws of the State of North Dakota.

Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised value listed for each parcel, as follows:

Parcel	Case No.	Appraised value
1	M-63930 (ND)	$8,400
2	M-63931 (ND)	1,000
3	M-63932 (ND)	4,000
4	M-63933 (ND)	3,000
5	M-65553 (ND)	3,400

Method of Bidding: The land will be sold by a combination of sealed and oral bids. Bids delivered or sent by mail will be considered only if received by the Bureau of Land Management, Dickinson District Office, Box 1229, 204 Sims Street, Dickinson, ND 58602 prior to 10:00 a.m. on September 27, 1985. Each sealed bid must be accompanied by a certified check, postal money order, bank draft, or cashiers check made payable to the Department of Interior, Bureau of Land Management for not less than one-fifth of the amount bid. The sealed bid envelope must be marked, with the sale date and proper parcel or case number of the tract being bid on, in the lower left-hand corner as follows:

Public land sale Parcel #1 M-63930 (ND) or Parcel #2 M-63931 (ND) or Parcel #3 M-63932 (ND) or Parcel #4 M-63933 (ND) or Parcel #5 M-65553 (ND).

Date: September 27, 1985.

A separate properly marked envelope must be submitted for each parcel being bid on.

If two or more envelopes containing valid bids of the same amount are received for a parcel and not subsequently raised by an oral bid, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the operating of the sealed bids if no oral bid is received to raise the tie bid. The highest qualifying bid shall then be publicly declared. A sealed bid of at least the fair market value must be submitted prior to the start of the sale in order to be considered eligible for oral bidding.

Final Details: Once a high bid is accepted for each parcel, the successful bidder shall submit the reminder of the full bid price prior to the expiration of 30 days from the date of the sale. Failure to submit the required amount within the allotted time will result in cancellation of the sale of the parcel, and the deposit will be forfeited.

All bids will either be returned, accepted or rejected within 60 days of the sale date.

Dated: August 2, 1985.

William F. Krech,

Acting District Manager.

[FR Doc. 85-18846 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-DN-M

Las Cruces District Advisory Council; Meeting

AGENCY: Bureau of Land Management, (BLM), Las Cruces District, New Mexico, Interior.

ACTION: Notice of meeting.

DATE: September 10, 1985, 9:30 a.m.

ADDRESS: Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: H. James Fox, District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005, (505) 525-8228.

SUPPLEMENTARY INFORMATION:

Agenda

1. Approval of Minutes.

2. Review Proposed Plan Amendment for State Exchange NM 61209 and other land tenure adjustment in Dona Ana County. State lands in the proposed exchange are within and near White Sands Missile Range and the public lands are in the Dona Ana County, New Mexico.

3. Public comment period.

4. Workshop to develop issues to be resolved and establish constraints and guidelines for subsequent planning actions.

The meeting will be open to the public and interested persons may make oral statements to the Board during an allotted time period, beginning at 10:00 a.m. and lasting for at leat one-half hour. The District Manager may establish a time for oral statements depending on the number of persons wishing to make statements. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1800 Marquess Street, Las Cruces, New Mexico 88005 by September 9, 1985.

Richard T. Watts,

Acting District Manager.

[FR Doc. 85-18845 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-FB-M

Wilderness Areas; Montana; Cancellation

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice; cancellation.

SUMMARY: This notice cancels the one of July 15, 1985, that appeared on page 30240 in the **Federal Register** of Wednesday, July 24, 1985, as Document 85-17593 regarding dropping the Sleeping Giant area from wilderness study status.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) will continue to manage the lands in the Sleeping Giant area under the Interim Management Policy and Guidelines for Lands Under Wilderness Review in compliance with seciton 603(c) of the Federal Land Policy and Management Act of 1976.

Details: Effective immediately, the notice of July 15, 1985, which removed the Sleeping Giant area (Inventory Number MT-075-111) from wilderness consideration and further study for wilderness is canceled.

FOR FURTHER INFORMATION CONTACT: Jack McIntosh, Butte district Manager, Bureau of Land Management, 106 N. Parkmont, P.O. Box 388 Butte, Montana 59701. Telephone: (406) 494-5059.

Eugene D. Russell,

Acting State Director.

July 31, 1985.

[FR Doc. 85-18843 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-DN-M

Fish and Wildlife Service

Application for Natural Gas Pipeline Within the Sutter National Wildlife Refuge, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 30-day public comment period on application.

SUMMARY: This Notice affords federal, state, and local government agencies, and the public, the opportunity to comment on a right-of-way application for a natural gas pipeline in the Sutter National Wildlife Refuge, Sutter County, California. Greenleaf Unit One Associates (Greenleaf Power Corporation), the applicant, proposes to construct, operate and maintain an eight-inch diameter, steel pipeline to provide natural gas to their cogeneration facility in Sutter County which would generate electricity and useful thermal energy. The temporary construction right-of-way requested is 100 feet wide; with a term easement requested for 15 feet in width. Pipeline length is approximately 0.8 miles long. The pipeline, as it passes through the Sutter By-Pass area of the Refuge, would be buried under at least 48 inches of cover as required by the U.S. Department of Transportation (49 CFR 192.327(e)]. Bottom contours would be restored to preconstruction condition with any excess materials removed to an upland disposal area outside the construction area as per U.S. Army Corps of Engineers' regulations [33 CFR 330.5(a)]. Construction is proposed within the right-of-way of an existing, authorized Sutter County roadway. Term of the grant would not exceed 30 years. The proposed pipeline is located in T. 14 N., R. 2 E., Sec. 9 S½, M.D.B.M. The Initial Study for this project is being prepared by Sutter County. The Study will supplement Fish and Wildlife Service environmental documents in preparation.

ADDRESSES: Detailed information and a map of the application area is available for public inspection at the following offices:

(1) Office of Acquisition—Region One, U.S. Fish and Wildlife Service, 500 Lloyd Building—Suite 1500, 500 NE. Multnomah Street, Portland, Oregon 97232

and

(2) U.S. Fish and Wildlife Service, Sacramento National Wildlife Refuge Complex, Sutter National Wildlife Refuge, Route 1, Box 311, Willows, California 95988.

Comment date: Comments must be submitted on or before September 9, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Manabe, Realty Specialist, U.S. Fish and Wildlife Service, 500 Lloyd Building—Suite 1500, 500 NE. Mulnomah Street, Portland, Oregon 97232 or telephone (503) 231-2154 (commercial) or 429-2154 (FTS).

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is required to solicit public comments from Federal, state, and local governments, and the public, for applications for natural gas pipelines under the regulations of 50 CFR 29.21-9(f). A 30-day public comment period is hereby proclaimed.

Dated: July 30, 1985.

Richard J. Myshak,

Regional Director.

[FR Doc. 85-18794 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination Document; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 4094 and 4844, Blocks 561 and 575, respectively, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on July 29, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: July 31, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-18842 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions for the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: 30 CFR Part 783 Surface Mining Permit Applications Minimum Requirements for Information on Environmental Resources.

Abstract: Sections 507 and 508 of Pub. L. 95-87 require the applicant to present adequate description of the existing pre-mining environmental resources within and around the proposed mine plan area. The information is used by the regulatory authority to determine whether the applicant can comply with the performance standards for Underground Mining.

Bureau Form Number: None

Frequency: On occasion

Description of respondents: Coal Mine Operators

Annual Responses: 15,900

Annual Burden Hours: 148,930

Bureau Clearance Officer: Darlene Grose Boyd 202-343-5447.

Dated: July 24, 1985.

J.P. Crumrine,

Acting, Assistance Director, Budget and Administration.

[FR Doc. 85-18839 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-05-M

Information Collection Submitted to the Ofice of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions for the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Departmet Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title : 30 CFR Part 784 Underground Mining Permit Applications Minimum Requirements for Reclamation and Operation Plan.

Abstract: Sections 507(b), 508(a), and 516(b) of Pub. L. 95-87 require applicants for underground mine permits to provide a description of each existing structure proposed to be used in the mining and reclamation operation and a compliance plan for structures proposed to be modified or constructed for use in the operation. This information used by the regulatory authority in determining if the applicant can comply with the applicable performance and environmental standards

Bureau Form Number: None

Frequency: On occasion

Description of respondents: Coal Mine Operators

Annual Responses: 46,693

Annual Burden House: 793,516

Bureau Clearance Officer: Darlene Grose Boyd 202-343-5447

Dated: July 25, 1985

Donald Hinderliter,

Acting Assistant Director, Budget and Administration.

[FR Doc. 85-18840 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-05-M

Bureau of Reclamation

Bedias Project, TX; Intent to Prepare an Environmental Statement and to Hold an Environmental Scoping Meeting

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an environmental statement (ES) and hold an environmental scoping meeting for the Bedias Project, Texas, here referred to "project." A draft environmental statement is scheduled to be filed with the Environmental Protection Agency and be available for review and comment by June 1986.

In June 1985, the Bureau of Reclamation awarded a contract to the private firm of Burns and McDonnell Engineering Company, Kansas City, Missouri, to complete the study, including the preparation of the Regional Director's Planning Report/Draft Environmental Statement.

The project purpose is to provide dependable municipal and industrial water supply for projected needs in the Lower Trinity River Basin and adjacent coastal regions. Other project purposes may include hydropower, flood control, recreation, and fish and wildlife. The project study will evaluate alternatives on Bedias Creek located in portions of Grimes, Madison, and Walker Counties and other alternatives for meeting the projected water supply needs.

The purposes of the environmental scoping meeting are: (1) To determine the scope of issues to be addressed in the ES, and (2) to identify the significant environmental issues related to the proposed action.

The meeting will be held in Madisonville, Texas, on September 5, 1985, in the Madisonville High School Auditorium, at 7:00 p.m.

Interested public entities and individuals may obtain information on the proposed project and provide information for the preparation of the ES by contacting Charles Gober, Study Manager, Bureau of Reclamation, 714 South Tyler, Suite 201, Amarillo, Texas 79101, telephone (806) 378-5475 or FTS 735-5475.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 85-18798 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-09-M

Fallon Indian Reservation Irrigation and Drainage System, Newlands Project; Intent to Prepare a Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act, as amended, the Department of the Interior proposes to prepare an Environmental Impact Statement (EIS) on the Fallon Indian Reservation Irrigation and Drainage System contained within the Newlands Project, Nevada. The EIS Will analyze the effects of constructing irrigation land drainage improvements on the Fallon Indian Reservation lands. The area consists of approximately 8,120 acres of land in Churchill County, Nevada, of which 5,440 acres have valid water rights. The EIS will analyze the effects of increased water use, drainage, and return flows.

Portions of the project area will affect Floodplain and Wetland areas. Accordingly, the objectives and requirements of Presidential Executive Orders 11988 and 11990, and the Reclamation Instructions, Chapter 376.5, will be considered throughout the planning and preparation of the EIS.

Workshops to solicit information from all interested entities and persons to assist in determining the scope of the EIS will be held on September 11, 1985, at 7:30 p.m. in the Fallon Community Convention Center, 100 Campus Way, Fallon, Nevada.

The contact person for this environmental impact statement is Joel Verner, Attention: MP-410, Telephone (916) 978-5039, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825.

Dated: August 2, 1985.

William C. Klostermeyer,

Acting Commissioner.

[FR Doc. 85-18799 Filed 8-7-85; 8:45 am]

BILLING CODE 4310-09-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Arenol Chemical Corp.; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 27, 1985, Arenol Chemical Corporation, 40-33 23rd Street, Long Island, New York 11101, made application to the Drug Enforcement Administration to be registered as an importer of Phenylacetone (8501), a basic class controlled substance in Schedule II.

As to the basic class of controlled substance listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on to objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 9, 1985.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745-43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c)(, (d), (e), and (f) are satisfied.

Dated: July 30, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-18826 Filed 8-7-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substance; Arenol Chemical Corp; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 24, 1985, Arenol Chemical Corporation, 40-33 23rd Street, Long Island City, New York 11101, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 9, 1985.

Dated: August 2, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-18823 Filed 8-7-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-27]

Oscar J. Jackson, M.D.; Denial of Application

On July 5, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Oscar J. Jackson, M.D., 1352 Haight Street, San Francisco, California 94117 (Respondent) proposing to deny his application for registration executed on September 29, 1983. The statutory predicate for the Order to Show Cause under 21 U.S.C. 824 (a)(2) was Respondent's felony conviction on December 7, 1981, in the United States District Court for the Northern District of California of illegal distribution of a controlled substance in violation of 21 U.S.C. 841(a)(1).

By letter dated July 15, 1984, Respondent requested a hearing on issues raised by the Order to Show Cause. The hearing in this matter was held in San Francisco, California on February 12, 1985. Administrative Law Judge Francis L. Young presided. On May 9, 1985, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision, in which he recommended that Respondent's application for DEA registration be denied. Respondent filed exceptions to the proposed ruling on June 12, 1985. On June 18, 1985 Judge Young transmitted the record of these proceedings to the then-Acting Administrator. The Administrator has considered the record in its entirety, including the exceptions filed by Respondent and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that in 1979, an inspector with the California State Board of Pharmacy conducted an inspection of a San Francisco pharmacy in which he found that the majority of the 3,000 Schedule II prescriptions for a one year period were written by the Respondent. This information led to an investigation by the Diversion Investigation Unit during which four individuals visited Respondent's office and purchased prescriptions for the Schedule II, III, and IV controlled substances methaqualone, Dexamyl, Empirin with Codeine #4 and Ionanmin. The Respondent conducted cursory or no medical examinations of the undercover operatives prior to issuing the prescriptions, an there was no showing of any legitimate medical need for any of the 31 prescriptions for controlled substances issued by Respondent to these individuals. Respondent wrote prescriptions for one of the male undercover officers for Empirin with codeine #4 and methaqualone and gave them to one of the female undercover operatives who said she has his girlfriend. The male undercover officer was not present at the time. Respondent was indicted by the grand jury of the United States District Court for the Northern District of California, sitting in San Francisco, on fourteen counts of unlawful distribution of Schedule II and III controlled substances, outside the usual course of his professional practice and not for a legitimate medical purpose in violation of 21 U.S.C. 841(a)(1). Respondent pled *nolo contendere* to one count of the indictment and thereafter, on December 7, 1981, was convicted. There is therefore, a statutory basis for the denial of Respondent application. 21 U.S.C. 823(f).

The Administrative Law Judge further found that in January 1982, the California Board of Medical Quality Assurance revoked Respondent's medical license, stayed the revocation, and placed him on five years probation subject to several conditions. One of the conditions was that Respondent not prescribe, administer, order or possess any controlled substances except for those substances in Schedules IV and V. The basis for this action was Respondent's prescribing of Empirin with Codeine #4, Dexamyl and methaqualone for persons not under treatment for any pathology or condition.

In supporting his application for a DEA Certificate of Registration Respondent cited certain findings of fact that were made by the California Board of Medical Quality Assurance in their January, 1982 order. These facts included his reputation for never turning away a patient, for treating many patients without charge, for providing free medical examinations for Boy Scouts and Black Muslims, and his reputation for being an excellent physician in the black ghetto area of San Francisco. In addition, the Board found that Dr. Jackson did not engage in his prescribing conduct with an evil intent, but simply had a low level of suspicion regarding his patients and was a sloppy recordkeeper.

Respondent testified on his own behalf at the hearing. Besides reiterating the findings of the California Board of Medical Quality Assurance, he said that the fact that he hadn't written any prescriptions for controlled substances in three years had not affected his practice that much. He also stated that he has participated in many education programs for physicians regarding controlled substances.

The Administrative Law Judge concluded that Respondent's conduct in writing prescriptions for controlled substances to undercover operatives clearly showed a willingness to write abusable drug prescriptions which he knew were being used for simple pleasure and enjoyment. Respondent knowingly and willfully violated the law and put controlled substances in the hands of youths who were likely to do grievous harm to themselves. Judge Young found that the Respondent totally abrogated his responsibility as a health care practitioner regarding controlled substances. He also found that Respondent has shown no reason why he should again be registered with the Drug Enforcement Administration to

handle controlled substances. The Respondent's conduct in handling controlled substances was egregious. There is no basis for reasonable assurance that Respondent's conduct will not be repeated.

The Administrator adopts the recommended ruling, findings of fact and conclusions of law of the Administrative Law Judge in their entirety.

Having concluded that there is a lawful basis for the denial of Respondent's application for a DEA Certificate of Registration, and having further concluded that under the facts and circumstances presented in this matter that the application for registration should be denied, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100, hereby orders that the application for a DEA Certificate of Registration executed on September 29, 1983 by Oscar J. Jackson, M.D. and any other applications executed by Respondent which may be outstanding, be, and are hereby denied.

Dated: August 2, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-18825 Filed 8-7-85; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substance; Wyeth Laboratories Inc.; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 3, 1985, Wyeth Laboratories, Inc., 611 East Nield Street, West Chester, Pennsylvania 19382, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
Pythidine (meperidine) (9230)	II
Pythidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine (9232).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than September 9, 1985.

Dated: August 2, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-18824 Filed 8-7-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-85-48-C]

B.S.B. Coal Co. Inc.; Petition for Modification of Application of Mandatory Safety Standard

B.S.B. Coal Company, Inc., Pathfork, Kentucky 40863 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its K.O.K. No. 3 Mine (I.D. No. 15-13741) located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Kellioka seam which ranges from 52 to 66 inches in height, with rolls and fluctuations.

3. Petitioner states that the use of a canopy on the mine's shuttle cars would result in a diminution of safety for the miners affected because the canopy could strike and dislodge roof supports and restrict and cramp the operator's seating position, increasing the chances of an accident.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18773 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-50-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Franklin No. 125 Mine (I.D. No. 33-00963), located in Harrison County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that barriers be established and maintained around oil and gas wells penetrating coal beds or any underground area of a coal mine.

2. The oil and gas wells in the Franklin Mine were drilled between 1890 and 1950 when no standards for drilling and plugging existed, and many wells were abandoned. Oil and gas sands are nearly deleted and no appreciable volume of gas comes from petroleum reservoirs.

3. As an alternate method, petitioner proposes to seal the Pittsburgh No. 8 Coal Seam from the surrounding strata at the affected wells using a technique specified in the petition developed by the U.S. Bureau of Mines and the Energy Research and Development Administration, as follows:

a. Prior to sealing the well, the well will be cleaned to its original total depth, no less than 200 feet below the Pittsuburgh No. 8 Coal Seam, or as far below the seam as practicable;

b. The well will be cleaned out to its original diameters and vertical profile;

c. The cleaning out procedure will include the removal of all casing. If casing cannot be pulled, the casing will be ripped, perforated, cut or otherwise interrupted at closely spaced intervals to ensure that plugging media will fill the annulus between all the remaining casing and the borehole walls;

d. A suite of logs of the borehole will, if physically possible, be run including as a minimum, a caloper survey and a directional deviation survey;

e. When the cleaning out process is completed, tubing will be run into the hole to a point approximately 20 feet from the bottom of the hole. The hole

will be filled to the surface with weighted gel of approximately 14.5 pounds per gallon by pumping the gel through the tubing; and

f. A 100-foot plug of expanding cement will be placed in the well beginning at approximately 200 feet below the coal seam and extending to approximately 100 feet below the coal seam. A string of casing with an outside diameter not less than four and one half inches will be run into the well to approximately 100 feet below the coal seam. Such string of casing will be circulated and cemented into the surface. The casing will be emptied of liquid from approximately 100 feet below the lowest workable coal seam to the surface and a vent will be installed on the top of the string of casing so that it will prevent liquids and solids from entering the well but permit ready access to the full internal diameter of the coal protection string of casing when required.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Date: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR. Doc. 18776 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-44-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Amonate Mine (I.D. No. 46-04421) located in McDowell County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return and in at least one entry of each intake and return air course in its entirety.

2. Petitioner states that the M-entry has deteriorated over the years, resulting in adverse roof conditions which make these entries and crosscuts hazardous to travel and examine. Rehabilitation of the affected areas would expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to construct mandoors in stoppings in the M-entry, where certified persons will take air and gas measurements when making weekly examinations of the affected return air course.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18772 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-49-C]

Emery Mining Corp.; Petition for Modification of Application of Mandatory Safety Standard

Emery Mining Corporation, P.O. Box 310, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler systems; arrangement of sprinklers) to its Deer Creek Mine (I.D. No. 42-00121); Wilberg Mine (I.D. No. 42-00080); Deseret Mine (I.D. No. 42-00988); Beehive Mine (I.D. No. 42-00082); Little Dove Mine (I.D. No. 42-01393), and Cottonwood Mine (I.D. No. 42-01944), all located in Emery County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that two or more branch lines, at least one of which is above the top belt and one between the top and bottom belt, be installed in each sprinkler system to provide a uniform discharge of water to the belt surface.

2. As a alternate method, petitioner proposes to use a single line of automatic water sprinklers for its fire protection system at main and secondary belt conveyor drives. Automatic sprinklers will be maintained at a distance of not more than ten feet apart and located so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit. During operation of the system, water pressure will be at least 10 p.s.i. A test to insure proper operation will be conducted during the installation of each new system and during the repair or replacement of any critical part.

3. Due to a reduced amount of piping that would be used in the proposed alternate method of installation, petitioner states that it would then be practical to enter antifreeze into the system during winter months when air temperatures can fall below freezing.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18770 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-66-C]

Newsome Coals, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Newsome Coals Inc., HC 77 Box 180, Harold, Kentucky 41631 has filed a petition to modify the application of 30

CFR 75.1100-1(a) (type and quality of firefighting equipment) to its No. 22 Mine (I.D. No. 15-14819), located in Floyd County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that waterlines be capable of delivering 50 gallons of water a minute at a nozzle pressure of 50 pounds per square inch.

2. As an alternate method, petitioner states that a flame-resistant belt conveyor with a switch to prevent slippage is used. The belt entry is damp to wet and there is a fire sensor system installed for the belt conveyor. A miner is assigned to the tail roller and belt drive and two-way communication exists from drive to tail.

3. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Date: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18780 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-55-C]

Penelee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Penelee Coal Company, General Delivery, Cranks, Kentucky 40820 has filed a petition to modify the application of 30 CFR 75.1303 (permissible blasting devices) to its No. 3 Mine (I.D. No. 15-12324), located in Harlan County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that permissible blasting devices be used, that all explosives and blasting devices be used in a permissible manner, and that permissible explosives be fired only with permissible shot firing units.

2. As an alternate method, petitioner proposes to use the nonpermissible FEMCO Ten-Shot Blasting Unit. The unit will be used by an authorized person and will be used with well-insulated blasting cable wires no smaller than No. 18 Brown and Sharp guage.

3. The unit will be used with not more than:

a. Ten detonators with copper leg wires not over 30 feet long;

b. Ten detonators with iron leg wires 6 and 7 feet long;

c. Nine detonators with iron leg wires 8 and 9 feet long;

d. Eight detonators with iron leg wires 10 feet long;

e. Seven detonators with iron leg wires 12 feet long;

f. Six detonators with iron leg wires 14 feet long; and

g. Five detonators with iron leg wires 16 feet long.

4. In addition, the FEMCO Ten-Shot Blasting Unit will be used only:

a. With short-delay electric detonators with designated delay periods of 25 to 500 milliseconds;

b. If the lamp, which provides an indication of readiness, lights immediately upon insertion of the firing key and extinguishes immediately upon release of the key. This will be verified prior to connecting the unit to the blasting cable; and

c. With a battery pack having an open circuit voltage of at least 120 volts when installed. The pack will be replaced at intervals not to exceed 6 months.

5. Petitioner will attach the manufacturer's label specifying conditions of use for the unit and will install the manufacturer's sealing device on the housing of the unit.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18775 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-62-C]

Permac, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Permac, Inc., P.O. Box 296, Oakwood, Virginia 24631 has filed a petition to modify the application of 30 CFR 77.214(a) (refuse piles; general) to its Refuse Disposal Area (I.D. No. 1211VA5-0064-06) located in Buchanan County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that refuse piles not be located over abandoned openings.

2. As an alternate method, petitioner proposes to cover the Kennedy openings with a large rock drain system which will convey ground water to the main underdrain system and to the toe-drain on the right side of the hollow. Filter cloth will be placed over the rock drain to prevent infiltration of fine sediment and clogging of the system. The final regraded area will be backfilled with refuse, covered with topsoil, and seeded in accordance with a plan approved by the Division of Mined Land Reclamation (DMLR).

3. Petitioner states that the proposed alternate method will eliminate an existing highwall and improve safety.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office of or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18774 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-34-C]

Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.303 (preshift examinations) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that the active workings of a coal mine be examined for hazardous conditions and tested for methane within 3 hours preceding the beginning of any shift, and before any miner in such shift enters.

2. As an alternate method, petitioner proposes to install and operate a remote methane monitoring system in production panels. In support of this request, petitioner states that:

a. One sensor will be located in the neutral area not more than 500 feet from the end of the panel, the other in the inby most crosscut at the end of the panel;

b. If sensors detect more than 0.25% methane, visual and audible alarms will be activated which will cause notification of appropriate personnel;

c. If the remote monitoring system ceases to function properly, or is deenergized for routine maintenance or power outages, the immediate area around the sensors will be inspected during preshift examinations until the monitoring system is restored to normal operation; and

d. Records of tests, calibrations and monitor readings will be kept on the surface and available for MSHA inspection.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Date: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18781 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-35-C]

Turris Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations) to its Elkhart Mine (I.D. No. 11-02664) located in Logan County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return and in at least one entry of each intake and return aircourse in its entirety.

2. As an alternate method, petitioner proposes to install and operate a remote methane monitoring system in production panels. In support of this request, petitioner states that:

a. One sensor will be located in the neutral area not more than 500 feet from the end of the panel, the other in the inby most crosscut at the end of the panel;

b. If sensors detect more than 0.25% methane, visual and audible alarms will be activated which will cause notification of appropriate personnel;

c. If the remote monitoring system ceases to function properly, or is deenergized for routine maintenance or power outages, the immediate area around the sensors will be inspected during preshift examinations until the monitoring system is restored to normal operation; and

d. Records of tests, calibrations and monitor readings will be kept on the surface and available for MSHA inspection.

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR. Doc. 18782 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-57-C]

Westmoreland Coal Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75-326 (aircourses and belt haulage entries) to its Arno No. 2 Mine (I.D. No. 44-06206) and Derby No. 6 Mine (I.D. No. 44-06207) both located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air coursed through belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use intake air which is coursed through belt haulage and/or track entries to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system with specific conditions as outlined in the petition in all belt entries used as intake air courses.

4. Petitioner states that use of the proposed alternate method would increase the differential pressure between its intake and return entries which would provide for more effective ventilation of each mine, including:

(a) An increased capability of the ventilation systems to dilute, render harmless and carry away methane, coal dust and other potentially dangerous or harmful gases and contaminates; and

(b) Better ventilation of the active workings in the mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18777 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-68-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A&B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Arno Mine (I.D. No. 44-04099), Arno No. 2 Mine (I.D. No. 44-06206), Bullitt Mine (I.D. No. 44-00304), Derby No. 4 (Parsons) Mine (I.D. No. 44-04110), Derby No. 5 (Parsons) Mine (I.D. No. 44-04109), Derby No. 6 Mine (I.D. No. 44-06207), Prescott No. 2 Mine (I.D. No. 44-01689), Wentz No. 1 Mine (I.D. No. 44-00302), and Wentz B Portal Mine (I.D. No. 44-05559) all located in Wise County, Virginia and its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to secure plugs to receptacles for mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use a metal locking device (harness or similar device) in lieu of padlocks to secure plugs to receptacles for mobile, battery-powered machines.

3. Petitioner states the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Date: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18778 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-58-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Arno No. 2 Mine (I.D. No. 44-06206) and Derby No. 6 Mine (I.D. No. 44-06207) both located in Wise County, Virginia. The petition is filed under section 101(c) of the Federal Mine safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight (each belt unit operated by a belt drive).

2. As an alternate method, petitioner proposes to use a fire sensor and warning device system that will be capable of identification of fire by activated sensors rather than identification of fire within each belt flight.

3. A low-level carbon monoxide detection system will be installed at specific locations outlined in the petition. It will be capable of giving warning of a fire for four hours after the power source to the belt is removed; provide visual and audible alarm signals; monitor electrical continuity and detect electrical malfunctions; initiate the fire alarm signals; and identifiy any activated sensor.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18779 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-85-59-C]

Westmoreland Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Westmoreland Coal Company, P.O. Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Arno No. 2 Mine (I.D. No. 44-06206) and Derby No. 6 Mine (I.D. No. 44-06207) both located in Wise County, Virginia. The petition is filed under Section 101(c) of the Federal Mine Saftey and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. As an alternate method, petitioner proposes to use the air currents which are used to ventilate dry-type transformers, permanent pumps containing no flammable liquid hydraulic oil (except for capacitors in transformers which may contain up to a total of three gallons of flammable liquid) and rectifiers to also ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. Carbon monoxide monitors will be used to monitor the air with specific conditions as outlined in the petition. The monitors will be installed at each belt drive and tailpiece at intervals not to exceed 2,000 feet along each conveyor belt entry.

4. Petitioner states that use of the proposed alternate method would increase the differential between its intake and return entries which would provide for more effective ventilation of each mine including:

(a) An increased capability of the ventilation systems to dilute, render harmless and carry away methane, coal

dust and other potentially dangerous or harmful gases and contaminants; and

(b) Better ventilation of the active workings in the mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 9, 1985. Copies of the petition are available for inspection at that address.

Dated: August 1, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-18771 Filed 8-7-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-52]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC) Informal Earth System Sciences Committee (ESSC).

DATE AND TIME: September 12-13, 1985, 8:30 a.m. to 5 p.m. each day.

ADDRESS: Goddard Space Flight Center, Greenbelt, Maryland 20771, Building 8 Conference Center.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1707.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council, Informal Earth System Sciences Committee was formed in October, 1983, to provide advice and counsel to NASA on the future role, responsibilities, and implementation strategies for the Earth Science and Applications program. This committee is chaired by Dr. Francis L. Bretherton and has a total of 17 members. The subject meeting is to review the draft final report in plenary and to finalize the course of action for its approval and subsequent publication.

Type of meeting: Open.

Agenda

September 12, 1985

8:30 a.m.—Review draft Earth System Sciences Report.

5 p.m.—Adjourn.

September 13, 1985

8:30 a.m.—Review draft Earth System Sciences Report.

5 p.m.—Adjourn.

Dated: July 31, 1985.

Richard L. Daniels

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 85-18766 Filed 8-7-85; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-364; ASLBP No. 85-511-01-ML]

Babcock and Wilcox; Appointment of Presiding Officer To Conduct Informal Proceeding

Pursuant to the Commission's Order dated July 24, 1985, a presiding officer is hereby appointed to conduct an informal proceeding to consider and decide, in accordance with the Commission's Order, all issues related to the application to amend a special nuclear materials license filed on October 31, 1984 by:

Babcock and Wilcox

Parks Township, Pennsylvania Volume Reduction Facility Special Nuclear Materials License No. SNM-414.

The name and address of the Presiding Officer is: Dr. Peter A. Morris, Administrative Judge, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 1st day of August, 1985.

B. Paul Cotter, Jr.

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 85-18858 Filed 8-7-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-22063; ASLBP No. 85-512-02-ML]

Precision Materials Corp.; Appointment of Presiding Officer To Conduct Informal Proceeding

Pursuant to the Commission's Order dated July 24, 1985, a presiding officer is hereby appointed to conduct an informal proceeding to consider and decide, in accordance with the Commission's Order, all issues related to the application for a byproduct materials license filed on November 5, 1984 by:

Precision Materials Corporation

Mine Hill, New Jersey Irradiator Facility.

The name and address of the Presiding Officer is: Dr. Jerry R. Kline, Administrative Judge, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 1st of August 1985.

B. Paul Cotter, Jr.

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-18857 Filed 8-7-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8027; ASLBP No. 85-513-03-ML]

Sequoyah Fuels Corp.; Appointment of Presiding Officer To Conduct Informal Proceeding

Pursuant to the Commission's Order dated July 24, 1985, a presiding officer is hereby appointed to conduct an informal proceeding to consider and decide, in accordance with the Commission's Order, all issues related to the application to amend a source material license filed on January 24, 1985 by:

Sequoyah Fuels Corporation

Sequoyah Facility, Source Material License No. SUB-1010.

The name and address of the Presiding Officer is: John H. Frye, III, Administrative Judge, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Issued at Bethesda, Maryland, this 1st day of August, 1985.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

FR Doc. 85-18858 Filed 8-7-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-352]

Environmental Assessment and Finding of No Significant Impact; Philadelphia

The U.S. Nuclear Regulatory Commission (the Commission) is considering the grant of an exemption from a portion of the requirements of Appendix E to the Philadelphia Electric Company (the licensee) for the Limerick Generating Station, Unit 1, located at the licensee's site in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The Exemption from 10 CFR Part 50, Appendix E, Section IV.F.1 would permit operation of Limerick Unit 1 at power levels about 5% of rated power without the licensee having to conduct a second full participation exercise. Section IV.F.1 of Appendix E requires that a full participation offsite exercise be conducted within one year before issuance of the first operating license at a site for full power and prior to operation above 5% of rated power. A full participation emergency preparedness exercise for Limerick was conducted on July 25, 1984. Also a supplemental exercise was conducted on November 20, 1984 and remedial exercises were conducted on March 7, April 10 and 22, 1985. All of these exercises were evaluated by the Federal Emergency Management Agency (FEMA) in reaching the conclusions stated in their May 21, 1985 findings that offsite radiological emergency planning and preparedness is now adequate to provide reasonable assurance that protective measures can be implemented to protect the public health and safety in the event of a radiological emergency at the Limerick Generating Station.

Need for Proposed Action: The proposed Exemption is required because 10 CFR Part 50, Appendix E, Section IV.F.1 requires that a full participation offsite emergency planning exercise be conducted within one year before issuance of the first operating license at the site for full power. A full participation exercise was conducted on July 25, 1984 but a full power license was not issued prior to July 25, 1985. In its Motion dated June 24, 1985, the licensee provided justification for authorization of operation above five percent of rated power without having to perform a second full participation pre-licensing exercise. The NRC staff has reviewed and accepted the licensee's request for exemption based upon the following factors:

(1) The conduct of a full participation emergency preparedness exercise on July 25, 1984 together with supplemental and remedial exercises through the period November 20, 1984 to April 22, 1985 leading to a favorable FEMA finding on offsite preparedness on May 21, 1985.

(2) The participation of the Commonwealth of Pennsylvania in a full participation exercise at Susquehanna in May 1985 and the scheduled participation at Three Mile Island in November 1985. The Commonwealth also partially participated at the Peach Bottom exercise in October 1984 and is scheduled to partially participate at the Beaver Valley exercise in September 1985.

(3) The participation of local response organizations in the full participation exercise for Limerick and subsequent supplemental and remedial exercises plus the involvement of these organizations, with the assistance of the licensee, in an ongoing training and development program.

(4) The conduct of an onsite emergency preparedness exercise in April 1985 and the scheduling of various drills testing elements of the Limerick emergency plan, some of which involve offsite response agencies.

Accordingly, the NRC staff agrees that an exemption from 10 CFR Part 50, Appendix E, Section IV.F.1 is appropriate.

Environmental Impacts of Proposed Action: The proposed Exemption would not affect the environmental impact of the facility because the level of emergency preparedness is not being degraded. The probability of an accident has not been increased and the post-accident radiological releases will not be greater than previously determined due to the proposed Exemption, nor does the proposed Exemption otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise the proposed Exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed Exemption.

Alternative to the Proposed Action: Because we have concluded that there is no measurable environmental impact associated with the proposed Exemption, any alternatives to the relief will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested Exemption. Such action would not reduce environmental impacts of Limerick Generating Station, Unit 1 operations and would result in an unwarranted burden to the licensee and the State and local governments.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of Limerick Generating Station, Units 1 and 2," dated April 1984.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request that supports the proposed Exemption. The NRC staff has also considered the Federal Emergency Management Agency's (FEMA) Findings on Offsite Planning and Preparedness at the Limerick Generating Station as set forth in the Memorandum of Richard W. Krimm, FEMA, to Edward L. Jordan, NRC, dated May 21, 1985.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed Exemption.

For further details with respect to this action, see the licensee's request for the Exemption dated June 24, 1985 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania.

Dated at Bethesda, Maryland, this 5th day of August 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-18859 Filed 8-7-85; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Schedules A, B, and C Placed or Revoked

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Tracy Spencer, (202) 632-6817.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on July 1, 1985 (50 FR 27076). Individual authorities established or revoked under Schedules A, B, or C between June 1, 1985 and June 30, 1985 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A exceptions were established or revoked during June.

Schedule B

The following exceptions are established:

Department of Transportation

One Regional Director for Railroad Safety with the Federal Railroad Administration in Fort Worth, Texas. Effective June 20, 1985.

National Endowment for the Humanities

One Director, Office of Planning and Budget. Effective June 21, 1985.

Schedule C

The following exceptions are established:

Department of Agriculture

One Confidential Assistant to the Administrator, Foreign Agricultural Service. Effective June 3, 1985.

One Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective June 10, 1985.

One Confidential Assistant to the Administrator, Federal Grain Inspection Service. Effective June 10, 1985.

One Office Assistant (Receptionist) to the Executive Assistant to the Secretary. Effective June 10, 1985.

One Confidential Assistant to the Secretary. Effective June 17, 1985.

One Office Assistant (Receptionist) to the Executive Assistant to the Secretary. Effective June 17, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective June 26, 1985.

One Secretary (Typing) to the Executive Assistant to the Secretary. Effective June 26, 1985.

Department of the Air Force

One Special Assistant to the Assistant Secretary of the Air Force (Financial Management). Effective June 17, 1985.

Department of Commerce

One Confidential Assistant to the Chief Economist, Office of the Under Secretary for Economic Affairs. Effective June 11, 1985.

One Confidential Assistant to the Deputy Assistant Secretary for Basic Industries, International Trade Administration. Effective June 18, 1985.

One Confidential Aide to the Special Assistant to the Secretary. Effective June 21, 1985.

One Confidential Assistant to the Special Assistant to the Secretary. Effective June 21, 1985.

One Private Secretary (Stenography) to the Assistant Secretary for Trade Development, International Trade Administration. Effective June 21, 1985.

One Special Assistant to the Assistant Secretary for the Economic Development Administration. Effective June 21, 1985.

Department of Defense

One Private Secretary to the Principal Deputy Assistant Secretary of Defense (Manpower, Installations and Logistics). Effective June 5, 1985.

One Special Assistant to the Assistant General Counsel (Legal Counsel). Effective June 18, 1985.

One Special Counsel and Director, Long-Range Planning to the Deputy Assistant Secretary of Defense (Negotiations Policy). Effective June 26, 1985.

Department of Education

Two Special Assistants to the Assistant Secretary for Educational Research and Improvement. Effective June 10, 1985.

Department of Energy

One Staff Assistant to the Director, Division of Public Liaison, Office of Communications, Office of the Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective June 3, 1985.

One Staff Assistant to the Under Secretary. Effective June 3, 1985.

One Chauffeur to the Secretary. Effective June 10, 1985.

One Secretary (Confidential Assistant) to the Deputy Secretary. Effective June 13, 1985.

One Staff Assistant to the Deputy Secretary. Effective June 21, 1985.

One Staff Assistant to the Director, Office of Communications, Office of the Assistant Secretary for Congressional, Intergovernmental, and Public Affairs Effective June 26, 1985

Department of Health and Human Services

One Associate Commissioner for Family and Youth Services Bureau to the Commissioner, Administration for Children, Youth and Families, Office of Human Development Services. Effective June 3, 1985.

One Special Assistant to the Assistant Secretary for Legislation. Effective June 3, 1985.

One Special Assistant to the Secretary. Effective June 3, 1985.

One Special Assistant to the Director, National Institutes of Health. Effective June 13, 1985.

Department of Housing and Urban Development

One Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective June 3, 1985.

One Executive Assistant to the Deputy Assistant Secretary for Policy, Financial Management, and Administration. Effective June 3, 1985.

One Special Assistant to the Deputy Assistant Secretary for Policy, Financial Management, and Administration. Effective June 3, 1985.

One Special Assistant to the Assistant Secretary for Community Planning and Development. Effective June 10, 1985.

One Special Assistant to the Director, Office of the Executive Secretariat. Effective June 10, 1985.

One Supervisory Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective June 10, 1985.

Department of Justice

One Confidential Assistant (Private Secretary) to the Assistant Attorney General, Antitrust Division. Effective June 3, 1985.

One Executive Secretary to the Assistant Attorney General, Office of Justice Programs. Effective June 3, 1985.

One Special Assistant to the Director of Public Affairs. Effective June 7, 1985.

One Confidential Assistant to the Associate Deputy Attorney General. Effective June 10, 1985.

One Staff Assistant (Stenography) to the Attorney General. Effective June 11, 1985.

One Confidential Assistant to the Associate Attorney General. Effective June 13, 1985.

One Confidential Assistant to the Counselor to the Attorney General. Effective June 17, 1985.

One Special Assistant to the Attorney General. Effective June 19, 1985.

One Confidential Assistant to the Administrator, Office of Juvenile Justice and Delinquency Prevention. Effective June 26, 1985.

Department of Labor

One Assistant to the Deputy Under Secretary for Congressional Affairs. Effective June 3, 1985.

One Confidential Assistant to the Chief of Staff. Effective June 3, 1985.

One Confidential Assistant to the Secretary. Effective June 3, 1985.

One Secretary to the Secretary of Labor. Effective June 3, 1985.

One Special Assistant to the Chief of Staff. Effective June 3, 1985.

Two Special Assistants to the Secretary. Effective June 3, 1985.

One Special Assistant to the Assistant Secretary for Policy. Effective June 5, 1985.

One Secretary to the Regional Representative, Boston, Massachusetts. Effective June 19, 1985.

One Special Assistant to the Assistant Secretary for Policy. Effective June 19, 1985.

Department of State

One Secretary (Stenography) to the Ambassador and U.S. Negotiator on Strategic Nuclear Arms. Effective June 11, 1985.

One Secretary (Stenography) to the Assistant Secretary for Consular Affairs. Effective June 11, 1985.

One Protocol Officer (Ceremonials) to the Chief of Protocol. Effective June 18, 1985.

One Protocol Officer (Visits) to the Chief of Protocol. Effective June 18, 1985.

One Secretary (Stenography) to the Assistant Secretary for International Narcotics Matters. Effective June 21, 1985.

One Special Assistant to the Under Secretary for Security Assistance, Science and Technology. Effective June 21, 1985.

Department of Transportation

One Special Assistant to the Administrator, National Highway Traffic Safety Administration. Effective June 3, 1985.

One Staff Assistant to the Assistant Secretary for Governmental Affairs. Effective June 10, 1985.

One Confidential Assistant to the Assistant Secretary for Governmental Affairs. Effective June 13, 1985.

One Confidential Assistant to the Administrator, Federal Railroad Administration. Effective June 21, 1985.

One Receptionist to the Chief of Staff. Effective June 21, 1985.

One Special Assistant to the Executive Secretary. Effective June 28, 1985.

Department of Treasury

One Special Assistant to the Deputy Assistant Secretary (International Monetary Affairs). Effective June 10, 1985.

ACTION

One Legislative Officer to the Assistant Director, Office of Legislative and Governmental Affairs. Effective June 19, 1985.

Environmental Protection Agency

One Congressional Relations Officer to the Director, Office of Congressional Liaison. Effective June 10, 1985.

One Deputy Director, Office of Congressional Liaison to the Director, Office of Congressional Liaison. Effective June 10, 1985.

Federal Labor Relations Authority

One Staff Assistant to a Member. Effective June 10, 1985.

Federal Maritime Commission

One Secretary (Typing) to the Vice Chairman, Office of the Members of the Commission. Effective June 10, 1985.

Federal Trade Commission

One Staff Assistant to a Commissioner. Effective June 10, 1985.

Office of Management and Budget

One Special Assistant to the Assistant Director for Legislative Affairs. Effective June 19, 1985.

Securities and Exchange Commission

One Secretary (Stenography) to the Director, Division of Enforcement. Effective June 3, 1985.

Small Business Administration

One Confidential Assistant to the Administrator. Effective June 3, 1985.

One Special Assistant to the Administrator. Effective June 3, 1985.

U.S. Government Printing Office

One Administrative Assistant to the Public Printer. Effective June 10, 1985.

Veterans Administration

One Confidential Assistant to the Associate Deputy Administrator for Logistics. Effective June 3, 1985.

One Confidential Assistant to the Director of Congressional Affairs, Office of the Associate Deputy Administrator for Congressional and Intergovernmental Affairs. Effective June 3, 1985.

One Confidential Assistant to the Director, Office of Intergovernmental Affairs. Effective June 3, 1985.

Office of Personnel Management.

Loretta Cornelius,

Acting Director.

[FR Doc. 85-18784 Filed 8-7-85; 8:45 am]

BILLING CODE 6325-01-M

SYNTHETIC FUELS CORPORATION

Amendment to Solicitation for Eastern Province or Eastern Region of the Interior Province Bituminous Coal Gasification Projects

AGENCY: Synthetic Fuels Corporation.

ACTION: Amendment to Solicitation for Eastern Province or Eastern Region of the Interior Province Bituminous Coal Gasification Projects.

SUMMARY: Notice is hereby given that on July 30, 1985, the United States Synthetic Fuels Corporation issued an amendment to the Solicitation for Eastern Province or Eastern Region of the Interior Province Bituminous Coal Gasification Projects issued on May 28, 1985 soliciting proposals for synthetic fuel projects to be assisted under Title I, Part B of the Energy Security Act of 1980 (Pub. L. 96-294). Such Solicitation is amended by changing the deadline for submitting preliminary qualification statements set forth in section 3.2 of the Solicitation to August 30, 1985 for all categories.

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Shanklin, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, DC 20568, (202) 822-6463.

For Copies of the Amendment Contact: Catherine McMillan, Director of Public Disclosure, United States Synthetic Fuels Corporation, 2121 K Street, NW., Washington, DC 20586, (202) 822-6460.

United States Synthetic Fuels Corporation.

March Coleman,

Assistant General Counsel—Corporate & Litigation.

August 5, 1985.

[FR Doc. 85-18801 Filed 8-7-85; 8:45 am]

BILLING CODE 6000-00-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings; Air Train, Inc.; Application for an All-Cargo Air Service Certificate

August 5, 1985.

In accordance with Part 291 (14 CFR Part 291) of the Department's Economic Regulations, notice is hereby given that the Department of Transportation has received an application, Docket 42951, from Air Train, Inc., 7137 Bret Harte Drive, San Jose, California 95120, for an all-cargo air service certificate to provide domestic cargo transportation. Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application within twenty-one (21) days after publication of this notice in the **Federal Register.** An executed original and six copies of such answer shall be addressed to the Documentary Services Division, Department of Transportation, Washington, D.C. 20590. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Department's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Paul L. Gretch,

Director, Office of Aviation Operations.

[FR Doc. 85-18855 Filed 8-7-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Highway Administration

Environmental Impact Statement; Brevard County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statesment (EIS) will be prepared for a proposed highway project in Brevard County, Florida.

FOR FURTHER INFORMATION CONTACT: D.B. Luhrs, District Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301, Telephone (904) 681-7239.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve the alignment of State Road 5 from the intersection of Apollo II Blvd. and State Road 5 in Palm Bay to the intersection of County Road 511 and State Road 5 in the City of Melbourne, a distance of approximately 6.7 miles. The proposed improvement would involve the construction of a multi-laned highway on an existing and new alignment with the construction of two major bridge structures over Crane Creek and the Eau Gallie River. Improvements to the corridor are considered necessary to provide for the existing and projected traffic demand.

Alternatives under considertion include: (1) Taking no action, (2) constructing multi-lane highway along existing alignment, (3) constructing multi-lane highway on new alignment, and (4) constructing multi-lane highway partially on new alignment and partially on existing alignment.

Federal, State, and local agencies have contributed early coordinated comments. Additionally, a project planning team developing this project will contact appropriate Federal, State, and local agencies, as well as interested private organizations and citizens, for their input. Public information meetings will be held during the development of this EIS. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be made available for public and agency review and comment prior to the public hearing. A formal scoping meeting is not planned for this project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above.

Issued: August 1, 1985.

P.E. Carpenter,

Division Administrator, Tallahassee, Florida.

[FR Doc. 85-18792 Filed 8-7-85; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Westchester County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for two proposed highway projects in Westchester County, New York.

FOR FURTHER INFORMATION CONTACT: Roger H. Edwards, Director, Facilities Design Division, New York State Department of Transportation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457-6452.

or

Victor E. Taylor, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472-3616.

SUPPLEMENTARY INFORMATION: The New York State Department of Transportation in cooperation with the Federal Highway Administration, will be preparing an Environmental Impact Statement on a proposal (Project Identification No. 8216.44 and 8216.45) to eliminate five (5) high accident signalized intersections along the Saw Mill River Parkway in the City of Yonkers and the Town of Greenberg, Westchester County. The study area for PIN 8216.44 begins at Odell Ave. and ends just north of Ravensdale Ave. The study area for PIN 8216.45 begins about 1,800 feet south of Ogden Ave. and ends about 2,300 feet north of Ogden Ave.

Alternatives under consideration include: (1) Taking no action, (2) Elimination of at grade intersections, closure of some access points, and construction of bridges across the Saw Mill River Parkway and interchange to provide access to and from the Parkway.

As part of the scoping process, letters describing the proposed action and soliciting comments will be sent to appropriate Federal and State agencies. In addition, local agencies, and private organizations and citizens who may have interest in this proposal will be contacted. A public hearing will be held. The public notice will give the time and place of the meetings and hearing. The draft will be available for public and agency review and comment. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Issued on: July 31, 1985.

V.F. Schimmoller,

Assistant Division Administrator, Federal Highway Administration, Albany, New York

[FR Doc. 85-18793 Filed 8-7-85; 8:45 am]

BILLING CODE 4910-22-M

Maritime Administration

Change of Name of Approved Trustee; Mellon Bank (East) National Association

Notice is hereby given that effective June 25, 1984, Girard Bank, Philadelphia, Pennsylvania, changed its name to Mellon Bank (East) National Association.

Dated: August 5, 1985.

By Order of the Maritime Administrator.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-18829 Filed 8-7-85; 8:45 am]

BILLING CODE 4910-81-M

Removal From Roster of Approved Trustees; Harris Trust and Savings Bank

Notice is hereby given pursuant to 46 CFR 221.27 that Harris Trust and Savings Bank, with offices at 111 West Monroe Street, Chicago, Illinois, as of September 4, 1984, ceased to be a citizen of the United States within the meaning of 46 U.S.C. 802, and has been removed from the Roster of Approved Trustees, pursuant to Pub. L. 89-346 and 46 CFR 221.21—221.30.

This notice shall become effective on the date of publication.

Dated: August 5, 1985.

By Order of the Maritime Administrator.

Georgia P. Stamas

Secretary.

[FR Doc. 85-18828 Filed 8-7-85; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

International Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on August 26 and 27, 1985. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Ave., NW., Washington, D.C. The meeting will begin at 9:00 A.M. on Monday, August 26 and 9:00 A.M. on Tuesday, August 27. The agenda will include the following topics:

Monday, August 26, 1985

IRS Organization—Overview
Proposal to Eliminate Bulk Distribution of Tax Forms to Tax Practitioners
Strategic Planning
1985 Filing Period

Tuesday, August 27, 1985

Budget Prospects for FY 86
Overview of Examination Function
Quality Initiatives—Examination
Automated Examination System (AES)

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people. If you would like to have the Committee consider a written statement, please call or write to Guerry Notte, Acting Assistant to the Deputy Commissioner, 1111 Constitution Ave., NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Guerry Notte, Acting Assistant to the Deputy Commissioner, (202) 566-4143 (not toll free).

Roscoe L. Egger, Jr.,

Commissioner.

[FR Doc. 85-18853 Filed 8-7-85; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 153
Thursday, August 8, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, August 12, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities:

Citizens First National Bank of New Jersey, Ridgewood, New Jersey, for consent to purchase certain assets of and assume the liability to pay deposits made in the Barnegat Branch, Forked River Branch, Manahawkin Branch, Ship Bottom Branch, Tuckerton Branch, and Crestwood Branch of Jersey Shore Savings and Loan Association, Toms River, New Jersey, a non-FDIC-insured institution.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re:

Loan Sales—Reports Due Under Delegated Authority.

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:

Bank of Verdigre and Trust Company, Verdigre, Nebraska, AP-416 (Memo dated July 12, 1985)

Summary Audit Report re:

Audit of Selected Liquidation Assets, Knoxville Subregional Office (Memo dated July 9, 1985)

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 5, 1985.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85-18873 Filed 8-6-85; 10:39 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, August 12, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Auburndale Co-operative Bank, an operating noninsured cooperative bank, located at 307 Auburn Street, Auburndale, Massachusetts.

Application for consent to merge and establish two branches:

Parsons Commercial Bank, Parsons, Kansas, as insured State nonmember bank, for consent to merge, under its charter and title, with The State Bank of Parsons, Parsons, Kansas, and to establish the two offices of The State Bank of Parsons as branches of the resultant bank.

Request for modification and rescission of conditions imposed in granting Federal deposit insurance:

Fidelity Management Trust Company, Boston, Massachusetts.

Request for rescission of conditions imposed in granting Federal deposit insurance:

Fidelity Bank & Trust Company, Salem, New Hampshire.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,288-SR
Citizens State Bank, Carrizo Springs, Texas

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: August 5, 1985.

Federal Deposit Insurance Corporation.

Margaret M. Olsen,

Deputy Executive Secretary.

[FR Doc. 85-18874 Filed 8-6-85; 10:39 am]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 13, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, August 15, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Routine administrative matters
Any matters continued from the meeting of August 8, 1985

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-8949 Filed 8-6-85; 2:10 p.m.]

BILLING CODE 6715-01-M

4

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:00 p.m., Thursday, August 8, 1985.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Selection of Regional Directors for Region 15 (New Orleans, Louisiana), Region 17 (Kansas City, Kansas), and Region 21 (Los Angeles, California).

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 254-9430.

Dated, Washington, D.C., August 6, 1985.
By Direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 85-18976 Filed 8-6-85; 3:19 pm]

BILLING CODE 7545-01-M

5

SYNTHETIC FUELS CORPORATION

Meeting of the Board of Directors

SUMMARY: Interested members of the public are advised that a meeting of the Board of Directors of the United States Synthetic Fuels Corporation will be held at the time, date and place specified below. This public announcement is made pursuant to the open meeting requirements of section 116(f)(1) of the Energy Security Act (94 Stat. 611, 637; 42 U.S.C. 8701, 8712(f)(1) and section 4 of the Corporation's Statement of Policy on Public Access to Board meetings. During the meeting, the Board of Directors will consider a resolution to close the meeting pursuant to Article II, section 4 of the Corporation's By-Laws, section 116(f) of the said Act and Sections 4 and 5 of the said policy.

Open Session

I. Call to Order—Chairman's Opening Remarks
II. Board Minutes
III. Consideration of Appendices to the Comprehensive Strategy Report
IV. Review of Pre-Qualification Proposals in Eastern Coal Solicitation
V. Negotiation Update on Letter of Intent Projects
VI. Consideration of Fourth General Solicitation Projects
VII. Resolution to Close Meeting

Closed Session

VIII. Consideration of Negotiation Strategies
IX. Personnel Evaluations

TIME AND DATE: 10:30 a.m., August 13, 1985.

PLACE: 2121 K Street, NW., Room 503, Washington, D.C. 20586.

PERSON TO CONTACT FOR MORE INFORMATION: If you have any questions regarding this meeting, please contact Ms. Karen Hutchison, Director-Media Relations, at (202) 822-6455.

United States Synthetic Fuels Corporation

March Coleman,

Assistant General Counsel—Corporate and Litigation.

August 6, 1985.

[FR Doc. 85-18936 Filed 8-6-85; 8:45 am]

BILLING CODE 6450-01-M

federal register

Thursday
August 8, 1985

Part II

Nuclear Regulatory Commission

10 CFR Part 50

Severe Reactor Accident Design; Policy Statement and Withdrawal of Proposed Rulemaking

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This statement describes the policy the Commission intends to use to resolve safety issues related to reactor accidents more severe than design basis accidents. Its main focus is on the criteria and procedures the Commission intends to use to certify new designs for nuclear power plants. This policy statement is a revision of the "Proposed Commission Policy Statement on Severe Accidents and Related Views on Nuclear Reactor Regulation" that was published for comment on April 13, 1983 (48 FR 16014). An advance notice of proposed rulemaking, "Severe Accident Design Criteria," published on October 2, 1980 (45 FR 65474) is being withdrawn by a notice published elsewhere in this issue.

FOR FURTHER INFORMATION CONTACT: Miller B. Spangler, Special Assistant for Policy Development, Division of Systems Integration, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington D.C. 20555, Telephone: (301) 492-7305.

SUPPLEMENTARY INFORMATION: This policy statement sets forth the Commission's intentions for rulemakings and other regulatory actions for resolving safety issues related to reactor accidents more severe than design basis accidents. The main focus of this statement is on decision procedures involving staff approval or, optionally, Commission certification of new standard designs for nuclear power plants. It also provides guidance on decision and analytical procedures for the resolution of severe accident issues for other classes of future plants and for existing plants (operating reactors and plants under construction for which an operating license has been applied). Severe nuclear accidents are those in which substantial damage is done to the reactor core whether or not there are serious offsite consequences. On October 2, 1980, the Commission issued an advance notice of proposed rulemaking, "Severe Accident Design Criteria," that invited public comment on long-term proposals for treating severe accident issues (45 FR 65474). By another notice published elsewhere in this issue the Commission is withdrawing this advance notice of proposed rulemaking.

This policy statement is a revision of the "Proposed Commission Policy Statement on Severe Accidents and Related Views on Nuclear Reactor Regulation" published for public comment on April 13, 1983 (48 FR 16014). Twenty-six letters of comment on the proposed policy statement were received. The nuclear industry generally supported the proposed policy statement and suggested several modifications. Much of the criticism of the proposed policy statement by environmental groups and other interested persons focused on a perception of over-reliance on probabilistic risk assessment, especially when coupled with the Commission's "Safety Goal Development Program" (48 FR 10772, March 14, 1983). The Policy Statement was revised as a result of these suggestions and criticisms as well as comments by the Advisory Committee on Reactor Safeguards.

Many changes have already been implemented in existing plants as a result of the TMI Action Plan (NUREG–0660 and NUREG–0737),[1] information resulting from NRC- and industry-sponsored research, and data arising from construction and operating experience. On the basis of currently available information, the Commission concludes that existing plants pose no undue risk to public health and safety and sees no present basis for immediate action on generic rulemaking or other regulatory changes for these plants because of severe accident risk. The Commission has ongoing nuclear safety programs that include: the resolution of new and several other Unresolved Safety Issues and Generic Safety Issues; the Severe Accident Source Term Program; the Severe Accident Research Program; operating experience and data evaluation regarding failure of certain Engineered Safety Features and safety-related equipment, human errors, and other sources of abnormal events; and scrutiny by the Office of Inspection and Enforcement to monitor the quality of plant construction, operation, and maintenance. Should significant new safety information become available, from whatever source, to question the conclusion of "no undue risk," then the technical issues thus identified would be resolved by the NRC under its backfit policy and other existing procedures, including the possibility of generic rulemaking where this is justifiable.

One important source of new information is the experience of NRC and the nuclear industry with plant-specific probabilistic risk assessments. Each of these analyses, which provide a detailed assessment of possible accident scenarios, has exposed relatively unique vulnerabilities to severe accidents. Generally, the undesirable risk from these unique features has been reduced to an acceptable level by low-cost changes in procedures or minor design modifications. Accordingly, when NRC and industry interactions on severe accident issues have progressed sufficiently to define the methods of analysis, the Commission plans to formulate an integrated systematic approach to an examination of each nuclear power plant now operating or under construction for possibly significant risk contributors that might be plant specific and might be missed absent a systematic search. Following the development of such an approach, an analysis will be made of any plant that has not yet undergone an appropriate examination and cost-effective changes will be made, if needed, to ensure that there is no undue risk to public health and safety. In implementing such a systematic approach, plants under construction that have not yet received an Operating License will be treated essentially the same as the manner by which operating reactors are dealt with. That is to say, a plant-specific review of severe accident vulnerabilities using this approach is not considered to be necessary to determine adequate safety or compliance with NRC safety regulations under the Atomic Energy Act, or to be a necessary or routine part of an Operating License review for this class of plants.

Regarding the decision process for certifying a new standard plant design—an approach the Commission strongly encourages for future plants—the Policy Statement affirms the Commission's belief that a new design for a nuclear power plant can be shown to be acceptable for severe accident concerns if it meets the following criteria and procedural requirements:

- Demonstration of compliance with the procedural requirements and criteria of the current Commission regulations, including the Three Mile Island requirements for new plants as reflected in the CP Rule [10 CFR 50.34(f); 47 FR 2286];
- Demonstration of technical resolution of all applicable Unresolved Safety Issues and the medium- and high-priority Generic Safety Issues, including a special focus on assuring the reliability of decay heat removal

[1] Documents referenced in this Policy Statement are available for inspection at the NRC's Public Document Room, 1717 H Street, NW, Washington, D.C.

systems and the reliability of both AC and DC electrical supply systems;

• Completion of a Probabilistic Risk Assessment (PRA) and consideration of the servere accident vulnerabilities the PRA exposes along with the insights that it may add to the assurance of no undue risk to public health and safety; and

• Completion of a staff review of the design with a conclusion of safety acceptability using an approach that stresses deterministic engineering analysis and judgment complemented by PRA.

Custom designs that are variations of the present generation of LWRs will be reviewed in future construction permit applications under the guidelines identified for approval or certification of standard plant designs.

Because this policy statement is just one part of a larger program, including the Severe Accident Research Program, for resolving severe accident issues, the NRC staff is publishing concurrently with this Policy Statement a report on "NRC Policy on Future Reactor Designs: Decisions on Severe Accident Issues in Nuclear Power Plant Regulation" (NUREG–1070). In this report the Policy Statement is reprinted along with other information and appendices that provide perspective on the development and implementation of this policy and how it relates to other features of the Severe Accident Program. A copy of NUREG–1070 will be available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of NUREG–1070 may be purchased by calling (202) 275–2060 or (202) 275–2171 or by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7082 or the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Policy Statement

A. Introduction

The focus on severe accident issues in this Policy Statement is prompted by the staff's judgment that accidents of this class, which are beyond the substantial coverage of design basis events, constitute the major risk to the public associated with radioactive releases from nuclear power plant accidents. A fundamental objective of the Commission's severe accident policy is that the Commission intends to take all reasonable steps to reduce the chances of occurrence of a severe accident involving substantial damage to the reactor core and to mitigate the consequences of such an accident should one occur.

On April 13, 1983, the U.S. Nuclear Regulatory Commission issued for public comment a "Proposed Commission Policy Statement on Severe Accidents and Related Views on Nuclear Reactor Regulation" (48 FR 16014). The public comments have been reviewed, and, on the basis of further study and consultation, the Commission is issuing the present Policy Statement as a guide to regulatory decision making on the treatment of severe accident issues for existing and future nuclear reactors [2] with special focus on procedures for staff approval or, optionally, Commission certification of new standard plant designs.[3]

In line with its legislative mandate to ensure that nuclear power plants should pose no undue risk to public health and safety, the Commission has examined an extensive range of technical issues relating to severe accident risk that have been identified since the accident at Three Mile Island. Following implementation of numerous modifications of plant design and regulatory procedures as developed through the TMI Action Plan (NUREG–0660 and NUREG–0737) and other Commission deliberations, the Commission concludes (based on current information and analyses) that existing plants do not pose an undue level of risk to the public. On this basis, the Commission feels there is no need for immediate action on generic rulemaking or other regulatory changes for these plants because of severe accident risk. However, the occurrence of a severe accident is more likely at some plants than at others. At each plant there will be systems, components or procedures that are the most significant contributors to severe accident risk. The intent of this policy statement is to provide utilities with basis for development of Commission guidance that will allow identification of these contributors and development of the appropriate course of action, as needed to assure acceptable margins of safety. In all cases, the commitment of utility management to the pursuit of excellence in risk management is of critical importance. The term "risk management" includes accident prevention, accident management to curtail or retard its progression, and consequence mitigation to further limit its effects on public health and safety. The Commission plans to formulate an approach for a systematic safety examination of existing plants to determine whether particular accident vulnerabilities are present and what cost-effective changes are desirable to ensure that there is no undue risk to public health and safety. In implementing such a systematic approach, plants under construction that have not yet received an Operating License will be treated essentially the same as the manner by which operating reactors are dealt with. That is to say, a plant-specific review of severe accident vulnerabilities using this approach is not considered to be necessary to determine adequate safety or compliance with NRC safety regulations under the Atomic Energy Act, or to be a necessary or routine part of an Operating License review for this class of plants.

The main purposes of this Policy Statement follow:

• To clarify the procedures and requirements for licensing a new nuclear plant;

• To re-examine the need for the generic rulemaking proceeding contemplated in the TMI Action Plan commitment (NUREG–0660, Task II.B.8) on degraded core accidents, currently referred to as severe nuclear reactor accidents;

• To avoid unnecessary delays of plants now under construction;

• To close out for now severe accident issues for existing plants (those in operation and under construction) without imposing further backfits unless this can be justified by new safety information; and,

• To achieve improved stability and predictability of reactor regulation in a manner that would merit improved public confidence in our regulatory decision making.

The policies presented in this statement will lead to amendment of NRC regulations, standard review plans for licensing actions, or other decision procedures and criteria as part of NRC's ongoing Severe Accident Program. This Policy Statement makes allowance for such changes as the result of the development of new safety information of significance for design and operating procedures.

---

[2] The term "nuclear reactor" is commonly used as a synonym for a nuclear power plant which, in addition to the Nuclear Steam Supply System, includes facilities and equipment denoted as Balance-of-Plant.

[3] For forward referenceability of a new standard design, the applicant is being afforded in this Policy Statement the flexibility of choosing between a Preliminary Design Approval (PDA), a Final Design Approval (FDA), or Design Certification (DC). The design approvals (i.e., a PDA or FDA) would be issued following the completion of the staff's review and would be subject to challenge in individual licensing hearings. The Design Certification would be issued by the Commission following a rulemaking proceeding and could not be challenged in individual hearings.

In accordance with the activities, views, and policy developments discussed in this policy Statement, the Commission believes that it is possible to complete its ongoing reviews of new plant designs with an expectation of fully resolving the severe accident questions in the course of the review. This belief is predicated on the availability of results from the ongoing NRC, Industry Degraded Core Rulemaking Program (IDCOR), and vendor research and insights from the Zion, Indian Point, Limerick, and other risk analyses. The review of standard designs for future CPs provides incentive to industry to address severe accident phenomena. Indeed, since July 1983, the staff has completed the reviews and has issued Final Design Approvals (FDAs) for two standard designs (General Electric Company's BWR/6 Nuclear Island Design, GESSAR II; and Combustion Engineering Incorporated's System 80 Design, CESSAR). A severe accident review by the NRC staff of the GESSAR II design for forward referenceability is nearly complete. The review included assessment of alternative design changes for severe accident risk reduction. In addition, the staff has been involved with pretendering review of an application for Westinghouse Electric Corporation's advanced pressurized water reactor design RESAR–SP/90. In January 1984, the NRC found the RESAR–SP/90 application for a Preliminary Design Approval acceptable for docketing and in May 1984 the application was docketed. Also, work has been continuing between NRC and the Electric Power Research Institute (EPRI) on their "LWR standardized Future Plant Design Evaluation Program."

It is assumed in this Policy Statement that, over the next 10 to 15 years, utility and commercial interest in the United States will focus on advanced light water reactors that involve improvements but are essentially based on the technology that was demonstrated in the design, construction, and operation of more than 100 of these plants in the United States. This policy should not be viewed as prejudicial to more extensive changes in reactor designs that might be demonstrated during or beyond that time period. Indeed, the Commission encourages the development and commercialization of any standard designs that might realize safety benefits, such as those achieved through greater simplicity; slower dynamic response to upset conditions involving accident precursor events; passive heat removal for loss-of-coolant accidents; and other characteristics that promote more efficient construction, operation, and maintenance procedures to enhance safety, reliability, and economy.

B. Policy for New Plant Applications

1. Introduction

No new commercial nuclear reactors have been ordered in the United States since December 1978. However, the Commission has received several applications for reference design approvals that are currently under review. A reference design is one of the options in the Commission's standardization policy. When approved by the NRC staff, a reference design could be incorporated by reference in a new CP application and, ultimately, in an Operating License (OL) application. During the corresponding CP and OL reviews, the NRC staff would not duplicate that portion of its review encompassed by its reference design approval. Therefore, even in the absence of new CP applications, in order to provide guidelines for the current reference design reviews, the Commission has recognized the need to promptly establish the criteria by which new designs can be shown to be acceptable in meeting severe accident concerns. The Commission now believes that there exists an adequate basis from which to establish an appropriate set of criteria. This belief is supported by current operating reactor experience, ongoing severe accident research, and insights from a variety of risk analyses. The resultant criteria and procedural requirements are listed below.

2. Criteria and Procedural Requirements

The Commission believes that a new design for a nuclear power plant (as well as a proposed custom plant) can be shown to be acceptable for severe accident concerns if it meets the following criteria and procedural requirements:

a. Demonstration of compliance with the procedural requirements and criteria of the current Commission regulations, including the Three Mile Island requirements for new plants as reflected in the CP Rule [10 CFR 50.34(f)];

b. Demonstration of technical resolution of all applicable Unresolved Safety Issues and the medium- and high-priority Generic Safety Issues, including a special focus on assuring the reliability of decay heat removal systems and the reliability of both AC and DC electrical supply systems;

c. Completion of a Probabilistic Risk Assessment (PRA) and consideration of the severe accident vulnerabilities the PRA exposes along with the insights that it may add to the assurance of no undue risk to public health and safety; and

d. Completion of a staff review of the design with a conclusion of safety acceptability using an approach that stresses deterministic engineering analysis and judgment complemented by PRA.

The fundamental criteria listed above apply to the staff's review of any new design. In addressing criteria (b) and (c), the applicant for approval or certification of a reference design shall consider a range of alternatives and combination of alternatives to address the unresolved and generic safety issues and to search for cost-effective reductions in the risk from severe accidents. No cost-benefit standard has currently been certified by the Commission, although one has been proposed for trial use (NUREG–0880, Rev. 1). Such a standard, if certified, could serve as a surrogate, not only for dollar costs and benefits of a decision option, but also for other adverse and beneficial effects (soft attributes) of social significance that cannot readily be quantified in commensurate units.

The following sections explain in more detail how these criteria are to be applied to the various types of reviews that the staff may encounter. It is intended that a new design would satisfy each of the fundamental criteria listed above before *final* approval or certification. It is recognized, however, that a new design can go through different stages or levels of approval before receiving this final approval or certification. For example, a reference design can obtain a Preliminary Design Approval (PDA) and then a Final Design Approval (FDA). The unique circumstances of each design review will, therefore, require flexibility in the application of the criteria listed above. In particular, the timing of the PRA requirement may differ considerably from one review to another. In addition, the licensee is required to ensure that the intent of the safety requirements is accomplished during procurement, construction and operation.

It is recognized that there are a diversity of PRA methods. These will continue to undergo evolutionary development as the results of research programs and reliability data from operating reactors become available and as innovative uses of PRA in safety decision contexts suggest better ways to achieve the benefits of these methods while guarding against their limitations or improper uses. While learning curves of these kinds will likely continue for a

decade or more, it would nevertheless be constructive to consolidate this experience at various stages of PRA development and utilization. At the present stage of development, a number of positive uses of PRAs have been demonstrated, especially in identifying: (1) Those contributors to servere accident risk that are clearly dominant and hence need to be examined for cost-effective risk reduction measures and (2) those accident sequences that are clearly insignificant risk contributors and can therefore be prudently dismissed. In-between cases are more problematic.

Accordingly, within 18 months of the publication of this severe accident statement, the staff will issue guidance on the form, purpose and role that PRAs are to play in severe accident analysis and decision making for both existing and future plant designs and what minimum criteria of adequacy PRAs should meet. From experience to date, it is evident that PRAs could serve as a highly useful tool in assessing the risk-reduction potential and cost-effectiveness of a number of imaginative design options for new plants in comparison with design features of existing plants. The PRA guidance will describe the appropriate combination of deterministic and probabilistic considerations as a basis for severe accident decisions.

The proposed Commission Policy Statement on Severe Accidents issued on April 13, 1983 recognizes the need for striking a balance between accident prevention and consequence mitigation. In exploring the need for additional design or operational features in the next generation of plants to mitigate the consequences of core-melt accidents, the commission will strike a balance between accident prevention and consequence mitigation encompassing actions that improve understanding of containment building failure characteristics and design features or emergency actions that decrease the likelihood of containment building failures. Although not specifically designed to accommodate all of the hostile environments resulting from the complete spectrum of severe accidents, they can contain a large fraction of the radiological inventory from a portion of the spectrum of such severe accidents. For example, large, dry containments may be sufficiently capable of mitigating the consequences of a wide spectrum of core-melt accidents; hence, further requirements may be unnecessary or, at most, upgrading current requirements to gain limited improvements of their existing capability may be necessary. The Commission expects that these matters will continue to be subjects for study (e.g., in the NRC research program and in further plant-specific studies such as the Zion and Indian Point probabilistic risk assessments).

Integrated systems analysis will be used to explore whether other containment types exhibit a functional containment capability equivalent to that of large, dry containments. Although containment strength is an important feature to be considered in such an analysis, credits should also be given to the inherent energy and radionuclide absorption capabilities of the various designs as well as other design features that limit or control combustible gases.

It is clear that core-melt accident evaluations and containment failure evaluations should continue to be performed for a representative sample of operating plants and plants under construction and for all future plant designs. These studies should improve our understanding of the containment loading and failure characteristics for the various classes of facilities. The analyses should be as realistic as possible and should include, where appropriate, dynamic and static loadings from combustion of hydrogen and other combustibles, static pressure and temperature loadings from steam and non-condensibles, basemat penetration by core-melt materials, and effects on aerosols on engineered safety features. A clarification of containment performance expectations will be made including a decision on whether to establish new performance criteria for containment systems and, if so, what these should be.

The Commission also recognizes the importance of such potential contributors to severe accident risk as human performance and sabotage. The issues of both insider and outsider sabotage threats will be carefully analyzed and, to the extent practicable, will be emphasized as special considerations in the design and in the operating procedures developed for new plants. Likewise, the effectiveness of human performance will be emphasized in design and operating procedure development. A balanced focus will be paid to the negative impact of human performance on severe accident risk as well as its potentially positive contribution to halting or limiting the consequences of severe accident progression. Design features should be emphasized that reduce the risk of early containment failure, thus providing more time for the positive contributions of operator performance in curtailing severe accident consequences. Also, design features should be given special attention that serve to decrease the role of human error in the sequence of events leading to the initiation or aggravation of core degradation. In particular, methods of analysis and associated data bases are under development by the Commission's ongoing severe accident programs that will aid the analyses and corrective actions of both negative and positive human performance contributions to severe accident risk or its alleviation.

It is noted that some of the severe accident scenarios result in insignificant probability of offsite consequences, because of containment effectiveness. In this situation, there may be no clear basis for regulatory action because there is no substantial effect on public health or safety. However, the implementation of requirements to control occupational exposure should be considered along with the relatively small effects on public health and safety for these types of severe accidents. The resolution of cost-benefit issues in severe accident decision making is part of the NRC's Safety Goal Evaluation Program.

Although in the licensing of existing plants the Commission has determined that these plants pose no undue risk to public health and safety, this should not be viewed as implying a Commission policy that safety improvements in new plant designs should not be actively sought. The Commission fully expects that vendors engaged in designing new standard (or custom) plants will achieve a higher standard of severe accident safety performance than their prior designs. This expectation is based on:

- The growing volume of information from industry and government-sponsored research and operating reactor experience has improved our knowledge of specific severe accident vulnerabilities and of low-cost methods for their mitigation. Futher learning on safety vulnerabilities and innovative methods is to be expected.
- The inherent flexibility of this Policy Statement (that permits risk-risk tradeoffs in systems and sub-systems design) encourages thereby innovative ways of achieving an improved overall systems reliability at a reasonable cost.
- Public acceptance, and hence investor acceptance, of nuclear technology is dependent on demonstrable progress in safety performance, including the reduction in frequency of accident precursor events as well as a diminished controversy among experts as to the adequacy of nuclear safety technology.

• Further progress in severe accident risk reduction is a hedge against the possibility that current risk estimates with their broad ranges of uncertainty might unwittingly have been optimistically biased.

• Although the severe accident risk of an individual plant may be acceptable in terms of its direct offsite regional consequences for public health and safety, the aggregate probability (say, over a 30-year period) that one severe accident will occur in a large population of reactors holds a separate and additive significance. Such an event would yield adverse spillover consequences for innocent parties in other regions (i.e., nuclear-oriented utilities and their customers), not to mention a changed political environment for nuclear regulation itself affecting resource costs and programmatic activities.

3. Application of Criteria for Different Types of OL and CP Applications

a. *Application of Certification of Reference Designs with No Previous FDA.* In accordance with the Commission's standardization regulations and policy, a new reference design can be submitted for approval, first as a preliminary design and then as final design. Correspondingly, the staff will issue a Preliminary Design Approval and a Final Design Approval. A PDA is not, however, a prerequisite for an FDA. An applicant has the option to submit FDA-level information initially and proceed directly with an FDA review. These options remain unchanged by this Policy Statement.

After a PDA application is docketed, the preliminary design can be referenced in a new CP application. The corresponding OL application would than reference the approved final design (FDA). Of course, an approved design could also be referenced in a new CP application.

The use of an approved standard design in new CP/OL applications has received considerable attention under the Commission's legislative initiatives on single-step licensing. It should be noted that a two-step review process for a standard design approval is not, in itself, inconsistent with single-step licensing. To be most effective, single-step licensing presumes the existence of a previously approved design—essentially an FDA. This design could still be approved in a two-step process as long as both steps were completed in advance of the single-step licensing application.

The use of PRA in a two-step review process also raises a number of questions. Of particular concern is the timing of the PRA requirement because the completion of a comprehensive and detailed PRA may not be achievable in the absence of essentially complete and final detailed design information. Therefore, to require a complete PRA at the PDA stage would not be realistic. The Commission's recent experience, however, indicates that a substantial amount of design detail that would permit meaningful, limited, quantitative risk analysis does exist at the PDA stage. Because the Commission believes that risk analysis of this type would be a useful design tool, the Commission expects that it would be completed as part of the PDA application process. A complete risk analysis would not be a prerequisite for issuance of a PDA. However, if this risk analysis is not performed in the PDA process, it will have to be provided as part of any CP application referencing the design.

If the scope of the FDA reference design application is limited to an extent that would preclude the completion of a meaningful, comprehensive PRA, the requirement for a complete PRA may be waived. However, the applicant should still perform and submit supplementary risk analysis, to the extent practical, to demonstrate the adequacy of the proposed design. If a comprehensive PRA is not submitted for an FDA, a CP/OL applicant referencing the approved design would be required to submit a plant-specific PRA. For standard design approvals of restricted scope, additional limitations beyond the PRA aspects may exist. Use of such a standard design by the license applicant may be limited by its very nature to a two-step licensing process, namely, a Construction Permit and an Operating License issued separately. This would negate some of the benefits envisioned for an approved or certified design wherein a previously approved site could be matched with it in a one-step, combined CP/OL process.

The reference design must satisfy each of the criteria stated in Section B.2 before an FDA can be issued. For forward referenceability of a new standard design, the applicant is being afforded in this Policy Statement the flexibility of choosing between a Preliminary Design Approval (PDA), a Final Design Approval (FDA), or a Design Certification (DC). The design approvals (i.e., a PDA or FDA) would be issued following the completion of the staff's review and would be subject to challenge in individual licensing hearings. The Design Certification would be issued by the Commission following a rulemaking proceeding and could not be challenged in individual hearings. CPs or OLs, based on a reference design that has not been approved through rulemaking, shall be subject to any design changes arising from the rulemaking proceeding in accordance with the Commission's backfit policy and regulations. The design certification would be issued for a longer duration than a design approval. The specific requirements and procedures for obtaining design certifications or approvals will be established in a forthcoming revision to the Commission's Standardization Policy Statement.

b. Approval or Certification of Reference Designs Previously Granted an FDA. In 1983, the NRC staff issued two Final Design Approvals for reference designs. These designs were permitted to be incorporated by reference in OL applications where the corresponding CP application had referenced the PDA. However, the designs were not approved for incorporation in new CP applications. The Commission now believes that these designs are suitable for use in new CP and OL applications under the conditions specified below. Any significant changes to these designs, other than those resulting from the severe accident review, will require the designs to be considered under the provisions of Section B.3.a, i.e., as new designs.

(1) Each of the two reference design applicants with existing FDAs must request that their FDAs be amended to permit their designs to be referenced in new CP and OL applications. The request must either (i) include the information needed to satisfy each of the criteria stated in Section B.2, or (ii) provide suitable interface requirements to ensure that CP and OL applications referencing the design will satisfy each of the criteria in Section B.2. Requests in either case need not include an evaluation of how the design conforms to the Standard Review Plan (10 CFR 50.34(g)).

In the first case, the staff will amend the existing FDA upon receipt of the request to permit the design to be referenced in new CP and OL applications until the severe accident review is completed. The severe accident review must be successfully completed prior to the issuance of any new CP or OL whose applications reference the design. Upon the successful completion of the severe accident review, the staff will further amend the FDA to permit the design to be referenced in new CP and OL applications for a fixed period of time, such as five years.

In the second case, the staff will amend the existing FDA upon receipt of

the request to permit the design to be referenced in new CP and OL applications for a fixed period of time, such as five years. The amended FDA will be conditioned as appropriate to ensure that new CP and OL applications referencing the design will satisfy each of the criteria in Section B.2. The severe accident review must be completed prior to the issuance of the new CP or OL.

(2) Criterion B.2.c requires the completion of a comprehensive PRA. If a comprehensive PRA cannot be completed owing the the limited scope of the design, the applicant shall perform supplementary risk analyses to the extent practical in support of the approval or rulemaking process. As noted above, the limited scope of plant design and PRA analysis would lead to a partial loss of benefits in that a two-step CP/OL licensing process would be required in lieu of a one-step process.

(3) With regard to completion of a comprehensive PRA for a reference design, the Commission recognizes that a PRA would be more meaningful if it were based on a substantial portion of the complete facility design. Therefore, if justified to the NRC staff, completion of the PRA by the FDA applicant may be waived. If a comprehensive PRA is not submitted by the FDA applicant for the FDA, a CP/OL applicant referencing the design would be required to submit a plant-specific PRA.

A reference design applicant previously granted an FDA can pursue the same options of design approval or design certification as described in the preceding section for reference designs with no previous FDA. The FDA would be issued following the completion of the staff's review and would be subject to challenge in individual licensing hearings. The Design Certification would be issued by the Commission following a rulemaking proceeding and could not be challenged in individual hearings. CPs or OLs, based on a reference design that has not been approved through rulemaking, shall be subject to any design changes arising from the rulemaking proceeding in accordance with the Commission's backfit policy and regulations. The design certification would be issued for a longer duration than a design approval. The specific requirements and procedures for obtaining design certifications or approvals will be established in a forthcoming revision to the Commission's Standardization Policy Statement.

c. A Reactivated Construction Permit Application. Because of the many complex factors involved, the criteria and procedures for regulatory treatment of reactivated Construction Permits will be a matter of separate consideration apart from this Severe Accident Policy Statement.

d. A New Custom Plant Construction Permit Application. It is the Commission's policy to encourage the use of reference designs in future CP applications. This does not, however, preclude the use of a custom design. Custom designs shall also be reviewed against the criteria identified in Section B.2. As a result of the circumstances and timing involved in the ongoing standard design review processes, the Commission expects that most, it not all, new CP applications incorporating a reference design would be based on essentially final design information. This will result in improved safety and regulatory practices, as well as reduced time to license and construct a nuclear power plant. To obtain as much of this benefit as practicable for a custom design application, the Commission will require a CP application for a custom design to include design information that is sufficiently final and complete to permit completion of an adequate plant-specific PRA. It is possible, however, that an applicant referencing an approved or certified design in lieu of a custom plant would have in prospect a significantly reduced licensing fee since staff effort would not be required—or much less would be required—for a rereview of the approved or certified design at the CP/OL stage save for those detailed changes to accommodate unique site features or other special circumstances (e.g., innovative equipment designs to meet new ASME or IEEE codes, etc.)

C. Policy for Existing Plants

1. Some General Principles of Policy Development

The Commission has licensed about 90 nuclear plants and expects to process applications to license approximately 30 additional plants. The Commission has considered at length the question of whether generic rulemaking should be undertaken or additional regulations should be issued at this time to require more capability in operating plants or plants under construction to improve severe accident prevention, consequence mitigation, or accident management that would halt or delay further core degradation.

The TMI accident led to a number of investigations of the adequacy of design features, operating procedures, and personnel of nuclear power plants to provide assurance of no undue risk regarding severe reactor accidents. The report "NRC Action Plan Developed as a Result of the TMI–2 Accident" (NUREG–0660, May 1980) describes a comprehensive and integrated plan involving many actions that serve to increase safety when implemented by operating plants and plants under construction. The Commission approved items for implementation and these are identified in a report, "Clarification of TMI Action Plan Requirements" (NUREG–0737, November 1980). The staff issued further criteria on emergency operational facilities (NUREG–0737, Rev. 1), auxiliary feedwater system improvements (derived from NUREG–0667), and instrumentation (Regulatory Guide 1.97, Revision 2).

The TMI Action Plan led to the requirements of over 6,400 separate action items for operating reactors and five Near-Term Operating Licenses. About 90 percent of the action items approved for operating reactors are now complete and the remainder are expected to be finished by the end of fiscal year 1985. There were 132 different types of action items approved in the Action Plan (an average of 90 actions per plant). Of this total, 39 involved equipment backfit items, 31 involved procedural changes, and 62 required analyses and reports. It is impractical to quantify all of the safety improvements obtained by these many changes. Nevertheless, the cumulative effect is undoubtedly a significant improvement in safety.

Other information from NRC- and industry-sponsored research along with failure data from construction and operating experience have led to changes in existing plants. Also, the NRC/AEC has sponsored 11 plant-specific PRAs and the industry has sponsored many more. The evaluation of severe accident risk by the interrelated deterministic and probabilistic methods has identified many refinements of current design and operating practice that are worthwhile, but has identified no need for fundamental (or major) changes in design.

On the basis of currently available information, the Commission concludes that existing plants pose no undue risk to public health and safety and sees no present basis for immediate action on generic rulemaking or other regulatory changes for these plants because of severe accident risk. Moreover, the Commission has ongoing programs (described in NUREG–1070 and issued concurrently with this Policy Statement) that include: the resolution of Unresolved Safety Issues and other Generic Safety Issues, including a special focus on assuring the reliability of decay heat removal systems and the

reliability of both AC and DC electrical supply systems; the Severe Accident Source Term Program; the Severe Accident Research Program; operating experience and data evaluation regarding equipment failure, human errors, and other sources of abnormal events; and scrutiny by the Office of Inspection and Enforcement to monitor the quality of plant construction, operation, and maintenance. The Commission will maintain its vigilance in these programs to offset the uncertainty of whether significant safety issues remain to be disclosed. Industry research and foreign reactor experience are also meaningful sources of information.

One important source of new information is the experience of NRC and the nuclear industry with plant-specific probabilistic risk assessments is that each of these analyses, which provide a more detailed assessment of possible accident scenarios, has exposed relatively unique vulnerabilities to severe accidents. Generally, the undesirable risk from these unique features has been reduced to an acceptable level by low-cost changes in procedures or minor design modifications. Accordingly, when NRC and industry interactions on severe accident issues have progressed sufficiently to define the methods of analysis, the Commission plans to formulate an integrated systematic approach to an examination of each nuclear power plant now operating or under construction for possible significant risk contributors (sometimes called "outliers") that might be plant specific and might be missed absent a systematic search. Following the development of such an approach, an analysis will be made of any plant that has not yet undergone an appropriate examination. The examination will include specific attention to containment performance in striking a balance between accident prevention and consequence mitigation. In implementing such a systematic approach, plans under construction that have not yet received an Operating License will be treated essentially the same as the manner by which operating reactors are dealt with. That is to say, a plant-specific review of severe accident vulnerabilities using this approach is not considered to be necessary to determine adequate safety or compliance with NRC safety regulations under the Atomic Energy Act, or to be a necessary or routine part of an Operating License review for this class of plants.

Should significant new safety information develop, from whatever source, which brings into question the Commission's conclusion that existing plants pose no undue risk, then at that time the specific technical issues suggesting undue vulnerability will undergo close examination and be handled by the NRC under existing procedures for issue resolution including the possibility of generic rulemaking where this is justifiable. However, NRC's experience suggests that safety issues discovered through operating experience programs, quality assurance programs or safety analyses often pertain to *unique* characteristics of a specific plant design and, therefore, are dealt with through plant-specific modifications of relatively modest cost rather than major *generic* design changes.

The Severe Accident Research Program as well as NRC's extensive severe accident studies of certain individual plants will aid in determining the extent to which carefully analyzed reference plants can appropriately serve as surrogates for a class of similar plants as the basis for any generic conclusions. These studies will also aid in identifying the desirable scope and approach for follow-up safety studies of individual plants. Any generic changes that are identified as necessary for public health and safety will be required through rulemaking and will be consistent with the Commission's backfit policy.

2. Policy for Operating Reactors

In light of the above principles and conclusions, the Commission's policy for operating reactors includes the following guidance:

- Operating nuclear power plants require no further regulatory action to deal with severe accident issues unless significant new safety information arises to question whether there is adequate assurance of no undue risk to public health and safety.
- In the latter event, a careful assessment shall be made of the severe accident vulnerability posed by the issue and whether this vulnerability is plant or site specific or of generic importance.
- The most cost-effective options for reducing this vulnerability shall be identified and a decision shall be reached consistent with the cost-effectiveness criteria of the Commission's backfit policy as to which option or set of options (if any) are justifiable and required to be implemented.
- In those instances where the technical issue goes beyond current regulatory requirements, generic rulemaking will be the preferred solution. In other cases, the issue should be disposed of through the conventional practice of issuing Bulletins and Orders or Generic Letters where modifications are justified through backfit policy, or through plant-specific decision making along the lines of the Integrated Safety Assessment Program (ISAP) conception.[4]
- Recognizing that plant-specific PRAs have yielded valuable insight to unique plant vulnerabilities to severe accidents leading to low-cost modifications, licensees of each operating reactor will be expected to perform a limited-scope, accident safety analysis designed to discover instances (i.e., outliers) of particular vulnerability to core melt or to unusually poor containment performance, given core-melt accidents. These plant-specific studies will serve to verify that conclusions developed from intensive severe accident safety analyses of reference or surrogate plants can be applied to each of the individual operating plants. During the next two years, the Commission will formulate a systematic approach, including the development of guidelines and procedural criteria, with an expectation that such an approach will be implemented by licensees of the remaining operating reactors not yet systematically analyzed in an equivalent or superior manner.

3. Policy for Operating License Applications for Plants Currently Under Construction

The same severe accident policy guidance applies to applications for operating licenses (OLs) as stated above for operating nuclear power plants along with the following additional item. (This item also applies to any hearing proceedings that might arise for an operating reactor.)

- Individual licensing proceedings are not appropriate forums for a broad examination of the Commission's regulatory policies relating to evaluation, control and mitigation of accidents more severe than the design basis (Class 9). The Commission has announced a policy regarding Class 9 environmental reviews and hearings in its Statement of Interim Policy on "Nuclear Power Plant Accident Considerations Under the National Environmental Policy Act of 1969" (45 FR 40101, June 13, 1980), and expects to continue this policy. The environmental issues deal essentially with the estimation and description of the risk of

[4] See "Integrated Safety Assessment Program (ISAP)," SECY 84-133, March 23, 1984.

severe accidents. The Commission believes that considerations which go beyond that to the possible need for safety measures to control or mitigate severe accidents in addition to those required for conformance with the Commission's safety regulations or conformance with the Clarification of TMI Action Plan Requirements,[5] should not be addressed in case-related safety hearings.

The Separate Remarks of Chairman Palladino and the Dissenting Views of Commissioner Asselstine are attached.

Dated at Washington, D.C., this 30th day of July 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

Separate Remarks by Chairman Palladino

I believe the Commission is on the right course with this decision. The severe accident policy statement presented here is based on the arguments contained within it, the additional support of more detailed analysis in its companion document NUREG–1070, the massive support of the many other related works of this agency and others in this field, and a logical consistency with other actions of the Commission.

In simple terms, this policy statement says that existing plants pose no undue risk to public health and safety, and that there is no present basis for regulatory changes for these plants due to severe accident risk. This conclusion on reactor safety does not lead us to dismantle our regulatory program; rather we are maintaining a vigorous program of surveillance, analysis, and evaluation to foresee possible causes of accidents and prevent them. In this perspective, the Commission has ongoing nuclear safety programs that include: unresolved safety issues; severe accident, source term and research programs; operating experience and data evaluation, and the scrutiny of plant construction, operation and maintenance. Should significant new safety information become available, from whatever source, to question the conclusion of no undue risk, then the technical issues thus identified would be resolved by the NRC under its backfit policy or other existing procedures.

The level of risk found to be acceptable is well documented in the basic works of the agency on these related subjects. The calculated frequency of severe core damage, whether mean or median value, is on the order of 1 chance in 10,000 per reactor year. For most plants, only a fraction of the calculated severe core damage sequences are likely to progress to large scale core melt. Until now, few analysts have even tried to take that fraction into separate consideration, preferring even to refer to the previously calculated value as the core melt frequency. Of the core melt sequences, typically only 1 in 10, or less, are expected to yield large releases of radioactive material. On virtually every reactor site in the United States conditions are such that, even with a large release, there is only 1 chance in 10 of any early fatality—and so on. Thus, the wealth of risk estimates before us indicate that the risk is quite low.

It is often said that one should beware of too much trust in the point estimates of probabilistic risk assessments, that one should consider the uncertainties. This we do. But some then go on to demand exact quantitative definitions of the uncertainty. This demand is a form of bottom line fallacy.

Precise statements of uncertainty come only with large amounts of data. At the very low levels of risk with which we are dealing, the occurrence of actual events is, thankfully, very rare indeed. Thus, we cannot have exact quantitative estimates of uncertainty. But we can and must, continually, explore the sensitivity of our estimates and our decisions to the gaps in our knowledge. We have been doing that and we will keep at it.

In summary, present reactors pose no undue risk to public health and safety. This policy statement acknowledges that and indicates a willingness to permit continued operation of existing reactors as well as to license new reactors. This policy statement has been studied intensively for over three years. It has been reviewed carefully and endorsed by the Advisory Committee on Reactor Safeguards. It has not been lightly considered nor lightly decided. I am confident that the Commission has enunciated a sound regulatory policy.

Dissenting Views of Commissioner Asselstine

Summary

The foremost risk to the public from the operation of nuclear reactors derives from core meltdown accidents which can, through the release of substantial quantities of radioactive materials, result in the injury and death of a catastrophic number of people. This policy statement, which establishes Commission policies on these severe accident risks, represents one of the most fundamental regulatory decisions ever made by this agency. This statement, together with three other related regulatory decisions, will chart the future course of this agency and the nuclear industry on nuclear safety issues for many years to come. The three other decisions are the Commission's decision on the acceptability of the severe accident risk at the two operating Indian Point plants, the development of a backfitting rule incorporating a substantial safety threshold for the imposition of new requirements together with heavy reliance on quantitative cost/benefit analyses, and the development of a provisional, and ultimately a final, safety goal with numerical standards for evaluating the acceptability of nuclear accident risk. Taken together, these four Commission actions will set the framework for deciding whether the NRC and the industry will pursue existing and future significant safety issues, whether further improvements in safety will be pursued for both existing and future plants, and how such decisions will be made.

Unfortunately, the first two of these decisions by the Commission lead me to conclude that we are on the wrong course. My views opposing the Commission's Indian Point decision were set forth in considerable detail in the Commission's written decision (see CLI–85–06), and I will not rehearse those views here. Suffice it to say that the Commission's unsubstantiated and overly optimistic assumptions on the long-term acceptability of the severe accident risk posed to the public by those plants have now been extended by this policy statement to cover all existing and future nuclear powerplants in this country. In my judgment, the Commission's action today fails to provide even the most rudimentary explanation of, or justification for, these sweeping conclusions. As a basis for rational decisionmaking, the Commission's severe accident policy statement is a complete failure.

Existing Plants

I see at least four fundamental flaws in the Commission's policy statement as it applies to existing plants. First, while the policy statement reaches a positive conclusion on the acceptability of the severe accident risk posed by existing plants, it fails to articulate what that risk is; it fails to identify the relevant technical issues evaluated in assessing the acceptability of that risk; it fails to explain how those technical issues were considered and resolved by the Commission in reaching its positive conclusion; and it fails to demonstrate

[5] See 10 CFR 2.764(f) and "Statement of Policy: Further Commission Guidance for Power Reactor Operating Licenses," 45 FR 85236, December 24, 1980.

the technical support for that conclusion based on scientifically accepted principles and methodology.

Absent a detailed discussion of the severe accident risk posed by existing plants and of the reasoning and scientific basis supporting the Commission's conclusion on the acceptability of that risk, that conclusion must be viewed as nothing more than an unsubstantiated assertion deserving of little weight.

Second, the Commission's policy statement fails to provide any explanation of the Commission's treatment of uncertainties in evaluating the risk of severe accidents. The absence of virtually any explanation of how uncertainties have been treated in this policy statement further undermines the validity of the Commission's broad conclusions on the acceptability of the risk posed by severe accidents.

Third, the Commission fails to address in a clear and consistent manner the need to prevent further severe reactor accidents. Although the Commission's policy statement pays lip service to this goal, it fails to include the means to fulfill that objective.

Fourth, the Commission's policy statement places undue reliance on probabilistic risk assessments (PRA's) as a means for resolving severe accident questions for existing plants. This reliance fails to recognize present weaknesses in these assessments due to the limited number of PRA's available thus far, the variations among the existing PRA's, the absence of accepted guidelines on how to conduct PRA's and to evaluate them in making severe accident risk judgments, and the uncertainties inherent in attempting to extrapolate plant-specific PRA results to other plants.

Future Plants

The Commission's policy statement is equally flawed in its treatment of severe accident risk for future plants. First, the policy statement promises that the Commission will make final decisions in the near term on the acceptability of new plant designs for severe accident purposes. At the same time, the policy statement acknowledges that key elements in evaluating the acceptability of severe accident risk—criteria for the preparation and evaluation of PRA's, containment performance criteria, and criteria for evaluating the risk contributions due to sabotage and human performance—will not be available for some time. Thus, the Commission's approach is to agree to make final decisions on severe accident risk for future plants before the technical basis for evaluating the nature and acceptability of that risk is available.

Second, the policy statement does not go far enough in insisting upon reductions in the severe accident risk of future plant designs. Such reductions are much more readily achievable in new designs for as-yet unbuilt plants than for existing plants. While the Commission's policy statement urges reactor designers to make safety improvements in the designs of future plants, it does nothing to require that improvements be made.

Third, the Commission's policy statement retains the option of authorizing the start of construction of future plants based upon only limited plant design information, including the limited design information which would be needed to support issuance of a preliminary design approval (PDA). Past experience with nuclear powerplant design, construction and regulation has taught us the many pitfalls of the old design-as-you-build approach. By continuing to allow the start of plant construction with only limited design work complete, the Commission seems committed to repeating the mistakes of the past—mistakes which have led to the deferral of significant design issues until the construction and pre-operation stages and the need to modify work already in progress or completed.

Taken together, these flaws in the Commission's severe accident policy statement cast doubt upon the adequacy of the Commission's overall approach to dealing with severe accident risk and undermine the validity of the Commission's sweeping judgments of the acceptability of that risk for existing and future plants.

Discussion

Before elaborating on the major infirmities of this policy statement, it is useful to explain what we know about the severe accident risks to the public.

Risks

Risks are commonly defined as the product of the probability that an event will occur and the consequences of the event happening. In regulating the nuclear industry, the Commission makes extensive use of a methodology called probabilistic risk assessment (PRA). In conducting a PRA the analyst calculates the core meltdown probability and, given a particular core meltdown scenario, the analyst then estimates the consequences to the public. The Commission uses the bottom line of these PRA's in deciding whether to improve reactor safety or to relax the safety standards even though such PRA's do not consider all contributors to core meltdown risks or quantify all of the uncertainties.

A typical result of a PRA which is used by NRC in reaching safety decisions is the estimated core meltdown probability of about one in ten thousand (or 10^{-4}) per reactor year. However this probability estimate is often based on what is called the "median" value. It is important to understand just what the meaning of this bottom line number really is. Because of major inadequacies in the data base, because of the vast complexity of nuclear plants, because a tremendous number of assumptions must be made in calculating core meltdown probabilities, and because large scale core meltdown phenomena are poorly understood, no *one* calculation will yield a remotely meaningful probability of catastrophic consequences. Therefore, the PRA analyst must perform thousands of individual estimates of the core meltdown probability while randomly varying within chosen distribution patterns which themselves are not precisely known individual component failure probabilities, human error rates, and theoretical models that are thought to describe most of the important physical processes or engineering behavior. Any one of these individual estimates is as likely to be valid as the estimate resulting from any one of the other thousands of calculations. There is a crucial, but untenable, underlying assumption that all core meltdown sequences have been accounted for in the estimates. The analyst then scans all of the estimates and picks the probability value at which half the estimates are above the half are below. This number is called the median. It is, according to the Commission, the "best estimate". When calculated in this way, however, one cannot say with any confidence that this median value is the true core meltdown probability. Nonetheless, the Commission airbitrarily chooses this median number to use in making its regulatory decisions.[1]

[1] The practice of using median estimates was strongly criticized by our Advisory Committee on Reactor Safeguards during its July 11, 1985 meeting with the Commission. The ACRS recommended that mean rather than median estimates be used, and noted that use of median rather than mean estimates can result in a substantial underestimate of the effects of uncertainties in making reactor accident risk estimates. As indicated above, the median is that point on a spectrum at which half of the values fall above and half fall below. The mean is the average value of the spectrum of risks and is also called the "expected value."

Continued

The spread in the estimated core meltdown probabilities for a typical plant range from approximately one chance in one thousand (10^{-3}) per year to one chance in one hundred thousand (10^{-5}) per year, with a median value of one chance in ten thousand (10^{-4}) per year, give or take a few. However, there is no proof that the median of the calculated values reflects the actual risk any more than do the estimates of 10^{-3} per year or 10^{-5} per year.

Another typical result of PRA's is the prediction that about 1 out of 10 core meltdowns likely will result in lethal radiation doses to about 1,000 people. Such consequences of core meltdown accidents are attributable to degraded performance of the containment, which can come about in a variety of ways that are not precisely quantifiable. Because of these uncertainties in quantification, the fraction of core meltdown accidents which would lead to catastrophic consequences is actually a range of values. The range could be two or three times greater than the above estimate; or it could be two or three times less. Picking the minimum factor of 2 and assuming there are 100 operating reactors, the approximate range of chances of a catastrphic accident between now and the year 2000 would be anywhere between 0.2 (2 chances in ten) and 0.001 (one chance in a thousand).

Therefore, the information before the Commission indicates that there could be anywhere between a 20 percent chance and a 0.1 percent chance of an accident at a nuclear reactor in the next 15 years that would result in lethal doses to about 1,000 people.The range of chances could be larger than this if one considers all contributors to the core meltdown probability and all uncertainties. Likewise, the number of deaths could be larger or smaller. Admittedly, there are many ways of going about estimating the range of risks. However, if there is validated quantitative information on core meltdown risks that is better, it has not yet been demonstrated. Thus, because of the many uncertainties involved in calculating both the probabilities and the consequences of core meltdowns, one number does not give a true picture of the actual risk. A range of possibilities is a more accurate representation of our understanding of the issue.

A serious consideration of the core meltdown risks would consider this full range of calculated risks and would address forthrightly the question of whether this risk is acceptable or unacceptable, both for the immediate future and over the long term. The Commission's consideration of severe accident risks instead focuses on a median number, ignoring the actual range of of values and the uncertainties inherent in using a median number for decisionmaking.

Since the foremost risk to the public from the commercial nuclear industry derives from severe accidents, adopting a policy that seeks to resolve severe accident issues in a definitive manner is the most basic duty which can be undertaken by the Commission in meeting its responsibility to decide what constitutes acceptable risk to the public. The Commission claims in this policy statement to have examined an extensive range of technical issues relating to severe accident risks in reaching its judgment "that existing plants do not pose an undue level of risk to the public." The Commission's policy statement does not, however, incorporate an explanation, or for that matter even a description, of the most significant issues that have been resolved and the manner in which they were resolved. Nor does it include a description of the methods of analyses used in resolving the issues or decision criteria that were used for reaching the ultimate judgment. It is, therefore, impossible to discern the bases for the Commission's decision.

Uncertainties

A paramount concern regarding the acceptability of the risks to the public that must be resolved is how to reach a judgment on this issue in the face of enormous uncertainties which are up to 100 times the median value used by the Commission. Depending on how such uncertainties are factored into the decision, judgments could range from requiring substantial efforts to reduce core meltdown risks to doing nothing about them. Scientifically accepted data and methodology are not available at this time to reduce substantially those uncertainties so that, as the technical staff of the NRC has repeatedly told the Commission, it is "mandatory" to consider them in any application of risk assessments.

After being informed of the uncertainties in the risk estimates, the Commission simply ignores them. The Commission fails to provide any basis for its decision to ignore these uncertainties. Absent some rational treatment of these uncertainties or a convincing justification for why they can be ignored, the public can have little confidence in the Commission's conclusion that the risks to the public from a severe accident at a nuclear powerplant are acceptable. The only available explanation of the NRC's approach to making decisions in the face of these significant uncertainties is given on pages 133 through 140 of NUREG–1070, "NRC Policy on Future Reactor Designs: Decisions on Severe Accident Issues in Nuclear Power Plant Regulation", October 1984. About half of the pages are blank and the remainder are not much better. This discussion of uncertainties is inadequate and fails to provide a sufficient basis to justify the Commission's sweeping conclusions on the acceptability of the severe accident risk.

Another fundamental issue requiring resolution is the level of risk to the public that reasonably should be found acceptable. Beyond making a sweeping conclusion that the severe accident risk at the existing plants does not pose an undue risk to the public, the Commission fails to address this fundamental question. In fact, the Commission's technical staff is just now embarking on a program of analysis that "will form part of the basis for a Commission judgment on the level of safety presently achieved by existing plants for severe accidents."[2] Since the Commission is just beginning this program, it cannot serve to justify the Commission's judgment on the acceptability of the severe accident risk.

In its Indian Point decision, the Commission adopted specific point estimates of core meltdown risks for the Indian Point reactors and found them to represent an acceptable level of risk. In the course of developing this policy statement the Commission expressed much interest in the bottom line results of *all* completed PRA's, whether the reported point estimates were the mean or median. The technical staff has repeatedly cautioned the Commission that such bottom line numbers are not credible. What then is the basis for the Commission's position that the level of severe accident risk posed by the existing plants is acceptable?

The Commission's decision-making process in developing this policy statement is simply to rely upon "point

Some PRA analysts base their estimates on the mean. However, the Commission has twice endorsed use of the median value. The first time was when the Commission endorsed WASH–1400 (Reactor Safety Study) in 1975 and the second time was when the Commission approved the provisional Safety Goal Policy Statement (NUREG–0880, Revision 1) in 1983.

[2] See, NUREG–1070, "NRC Policy on Future Reactor Designs: Decisions on Severe Accident Issues in Nuclear Power Plant Regulation," October 1984, p. 27.

estimates" of the core meltdown risks without any consideration of the effects of the uncertainties. This approach can lead to a decision to doing nothing to reduce core meltdown risks. Factoring into the decision the uncertainties in estimating the level of core meltdown risks would lead to a decision to search for ways to reduce the risks. However, given the current political climate, there is little sympathy for backfitting existing plants. Thus, the Commission chooses to rely on a faulty number which supports the outcome they prefer and to ignore the uncertainties, those that are known and quantified and those that are not quantifiable.

What level of confidence does the Commission have in its judgment that core meltdown accidents present no undue risks to the public? The Commission nowhere expresses the degree of confidence it seeks to ensure that catastrophic accidents do not happen. Yet, the Commission's chief safety officer recently wrote: "In view of the large uncertainties surrounding methods of assessing severe accident risk, the *level of assurance* (or confidence) of no undue risk to the public is regarded as no less important than the estimated *level of risk* itself (emphasis in the original)." Letter from H.R. Denton, NRR, to A.E. Scherer, Combustion Engineering, Inc., dated December 28, 1984, subject "SECY–84–370, Severe Accident Policy".

Another problem with the Commission's policy statement is that it clearly contradicts what the Commission is doing in other areas. For example, in this policy statement the Commission states: "A fundamental objective of the Commission's severe accident policy is that the Commission intends to take all reasonable steps to reduce the chances of occurrence of a severe accident involving substantial damage to the reactor core and to mitigate the consequences of such an accident should one occur." However, compare this statement with the Commission's proposed backfitting standard: "The Commission shall require the backfitting of a facility *only* when it determines, based on a systematic and documented analysis * * * that there is a substantial increase in the overall protection of the public health and safety * * * to be derived from the backfit *and* that the direct and indirect cost of implementation for that facility are justified in view of this increased protection." (emphasis added) The Commission has already defined a substantial increase in protection as meaning a backfit that would at least reduce the "point estimate" of the calculated core meltdown risks by half. Unless such a reduction can be "demonstrated", the Commission will not consider requiring the change. This is a much higher barrier to requiring improvement in reactor safety than the policy statement would have us believe is the Commission's policy.

Further, the Commission's provisional safety goal is not intended to regulate on the basis of preventing core damage accidents, as implied in the above purported fundamental objective. Rather, the safety goal assumes that the containment is an independent bulwark capable of limiting the external release of radioactivity to modest amounts for most core meltdown accidents. Thus, according to the Commission, there is no need to regulate on the basis of preventing core meltdowns. I am not as sanguine as the Commission on the acceptability of core meltdown accidents. Even if the containment happens to retain most of the radioactive fission products in the next severe accident, another accident equal to or more severe than that which occurred at Three Mile Island would be unacceptable to the public and the Congress and would be disastrous for the nuclear industry and the NRC.

But more importantly, the Commission's belief that the containment will retain all but modest amounts of radioactivity during most core meltdowns is not yet supportable based on scientifically accepted principles and methodology. There simply is no actuarial experience or direct experimental data on large scale core meltdown phenomena or containment performance characteristics given a core meltdown. In the past, estimates of the quantities of radioactive releases to the environment have been based on not much more than interpolations of extrapolations of approximations. It is for this reason the Commission has an ongoing program, which has cost a quarter of a billion dollars in the last few years, in an attempt to bring some science to estimating the core meltdown risks. However, even in this program the data being generated are from limited small scale tests.

Thus, a reading of this policy statement indicates that the Commission's claim that in developing this policy statement it has examined an extensive range of issues is incorrect. It shows rather that the Commission either examined the wrong issues or gave short shrift to the fundamental issues.

In failing to define accurately the level of severe accident risk at the existing plants and to address the need for additional changes to the plants to make this risk acceptable for the long term, the Commission is repeating past failures to deal effectively with the severe accident question. The concept of the reactor containment originally evolved as a vessel to contain a full core meltdown. But in the mid-1960's, the reactor designers began placing high powered cores into roughly the same kind of containment. The decay heat of those higher powered cores was so high that the containment vessel could no longer be considered as an effective independent barrier to the release of the fission products evolved during a core meltdown. At that time, the Atomic Energy Commission's Advisory Committee on Reactor Safeguards (ACRS) began urging the development and implementation, in about two years, of safety features to protect against a loss of coolant accident in which the emergency core cooling system did not work. The AEC and the industry believed that sufficient data were available to justify with a high degree of confidence the adequacy of the then-existing safety standards. Therefore, the AEC ignored the advice of the ACRS.

Over the years, the AEC and the NRC after it have reiterated these sweeping and optimistic statements on severe accident risk. At the same time, the numerous technical flaws in the Commission's judgments have become readily apparent as more information and data regarding the level of safety of the reactors has become available.[3]

When all of the available data are considered, I believe it fair to say that the estimated uncertainties in the risk calculations today are as large as they were at least ten years ago. Yet, the Commission is once again sweeping aside these uncertainties in order to make the same unsubstantiated and overly optimistic generalizations about the acceptability of the current level of severe accident risk which have been proven wrong in the past.

Needed Improvements

A disciplined approach to deciding whether to require core meltdown risk reduction measures should not only specify the Commission's expectations on addressing uncertainties but it should also describe the Commission's policy

[3] Dr. David Okrent (who has been a member of the ACRS since 1963) has compiled a detailed account of the judgments made by the AEC and the NRC on severe accident risk and the technical flaws in those judgments. See David Okrent, *Nuclear Reactor Safety-On The History of the Regulatory Process*, University of Wisconsin Press, 1981, pp. 163–178.

on acceptable ways to perform cost-benefit analyses.

Further, guidance from the Commission is needed on whether to emphasize core meltdown prevention measures or core meltdown mitigation measures. Of course, in order to develop a policy on the latter (whether for existing plants or future plants), one must first identify the root causes of core meltdown risks. One must also develop a policy on containment performance expectations.

Unfortunately, the Commission refuses forthrightly to address these issues. An effective guide to regulatory decision-making on the treatment of severe accident issues requires an understanding of what is expected by way of containment performance, of the root causes of core meltdown risks, and of the methods for performing sound cost-benefit analyses. Yet all of these elements are missing from the Commission's policy statement. The Commission's actual decision-making guidance in this policy statement is limited to the statement that a new requirement might be imposed if it involves "low-cost changes in procedures or minor design modifications."

The Commission claims that PRA's identify the plant specific vulnerabilities that dominate the core meltdown risks. It is true that PRA's can identify *some* of the vulnerabilities to catastrophic accidents. But the Commission's rationale for relying upon PRA's in assessing core meltdown risks begs the questions: what of the uncertainties in PRA's? What of oversights in the analyses? What of the multitude of assumptions and approximations in the PRA's? What of the residual risks once the specific vulnerability has been fixed? These questions are germane to resolving severe accident issues. Yet they are not addressed in the Commission's policy statement.

Operational experience gives additional insight into the level of safety. Actuarial experience with reactor accidents indicates that the average core meltdown frequency is not above the upper limit of the PRA results. Core meltdown accidents involve multiple failures and a progression of events that make close calls somewhat identifiable. If the industry average of the core meltdown frequency were as high as 10^{-3} per reactor year, one would expect more close calls on core meltdowns than appear to have occurred within the more than 800 reactor years of U.S. nuclear power experience. But such actuarial inferences must be made cautiously in part because the operating reactors continue to surprise us. What actuarial experience we have is severely limited by our lack of detailed understanding of the performance of the plants, their designs, their weak spots, and because of the wide variations in the designs and in utility capabilities. Further, the usefulness of actuarial experience in drawing broad conclusions about commercial nuclear reactors is highly controversial and fraught with uncertainties.

The Commission argues that credit can be taken for the improvements implemented to address specific close calls such as the TMI accident, the Browns Ferry fire and the Rancho Seco transient. Each of these were previously unrecognized (or at best inadequately appreciated) accident sequences. This is also true of, for example, the Susquehanna station blackout event from a single failure, the Indian Point vulnerability to a single failure of a battery, and the so-called interfacing system LOCA's for boiling water reactors. None of these latter events were identified or highlighted through PRA's nor were they expected to be, given the level of detail that typically goes into a PRA and given the subjective nature of PRA's. Whether these latter events should be called close calls is arguable but their occurrences certainly suggest a need to consider the root causes of significant operating events and the collective meaning of those events before passing judgment on the acceptability of the level of safety achieved at existing power reactors. Common sense also suggests completing such an analysis before developing guidelines for the design of future reactors. Yet all of these concerns are swept aside in the Commission's policy statement.

The TMI Action Plan called for a large number of modifications to the operating plants. In addition to those modifications, the Action Plan committed to a rulemaking to consider to what extent, if at all, existing nuclear power plants should be required to deal effectively with damaged core and core meltdown accidents. There was to be a demarcation between those plants already operating or under construction and the next generation of future plants. Because the Commission perceived in 1980 that there would be a long hiatus in new plant orders, ample time existed to reconsider the General Design Criteria, the design bases, and the other regulations in light of all that had been learned through the years of experience with large power reactors, including the TMI accident. From this in-depth assessment of the strengths and weaknesses of the large power reactor designs and the approach taken by utilities toward constructing the plants, NRC would then be in a position to articulate safety principles that it expected to be incorporated into designs for future applications. Thus, the Commission in 1980 signaled there would be a significant step forward in advancing the protection of the public. The Commission in this policy statement takes several steps backwards.

One backward step discussed above is the Commission's decision to accept the core meltdown risks as they exist in the current generation of plants without even addressing some of the most fundamental issues. Another backward step is abandonment of the expressed desire for a fresh look at light water reactor safety for future designs and the insistence on improvements in the level of severe accident risks for any future plants. A third backward step in this policy statement is the return to the philosophy of the 1960's and 1970's that construction permits can be issued based on only partial design information.

For any future reactor orders, nuclear utilities themselves have expressed a desire for plant designs that are simpler, safer, and more forgiving. Both the Electric Power Research Institute (EPRI) and Edison Electric Institute (EEI) have impressed on the Commission the need for a fresh look at light water reactor technology. These utility sponsored organizations have also indicated that plant construction for new plants should not begin until there exists an essentially complete design for the plant. Yet none of these forward thinking requirements are to be found in the Commission's policy statement. Instead, the Commission states that it will be satisfied with mere refinements in the old designs and that it is willing to continue to approve partial designs for issuance of Construction Permits.

I cannot leave this latter point without a sad commentary on the Commission's priorities. One issue in this policy that commanded great interest within the Commission was how to circumvent its regulation that requires a comparison of a design to the staff's Standard Review Plan. This effort was motivated by the objections of one reactor vendor. Indeed, the Commission's efforts to use this policy statement as a vehicle to permit the reactor vendor to circumvent the Commission's regulations took precedence over any Commission consideration of such fundamental issues as the actual level of severe accident risk to the public, the acceptability of that risk and potential measures to reduce that risk.

A Rational Approach to Severe Accident Decisionmaking

What the Commission should have done in its policy statement is to set forth precisely and in understandable terms what our present estimation of the risk of severe accidents is, whether the Commission believes that risk to be acceptable or not, what specific technical support can be offered in support of that judgment, and how the relevant uncertainties have been treated. The Commission should also have come to grips with a central question in our regulatory program: that is, given our present state of knowledge concerning severe accident risks, should we continue to pursue possible improvements in severe accident prevention and mitigation? If the Commission does not believe that the present level of severe accident risk is acceptable for the remaining 40-year life of some existing plants, then the Commission should outline its program for bringing this long-term risk within acceptable bounds. Only through such a process can the technical community, other public policy makers and the public understand and accept the Commission's judgment on the severe accident risk question. Unfortunately, such an analysis is nowhere to be found in the Commission's policy statement.

Based upon the preceding discussion, I would have reached the following conclusion. First, the risk to the public posed by severe accidents at the existing plants is not acceptable for the full remaining operating lives of those plants. Therefore, the Commission should continue to pursue cost-effective risk reduction measures for these plants. I would apply the as-low-as-reasonably-achievable (ALARA) principle to reducing severe accident risk, subject only to the qualification that changes which would only result in trivial safety improvements need not be pursued. I would have simply acknowledged the obvious: that the public and the Congress will not tolerate, and the industry and the NRC cannot allow, another severe accident as serious as the Three Mile Island accident or worse. My views in this regard are identical to those expressed by the Kemeny Commission nearly six years ago:

> Whether in this particular case we came close to a catastrophic accident or not, this accident was too serious. Accidents as serious as TMI should not be allowed to occur in the future.
>
> The accident got sufficiently out of hand so that those attempting to control it were operating somewhat in the dark. While today the causes are well understood, 6 months after the accident it is still difficult to know the precise state of the core and what the conditions are inside the reactor building. Once an accident reaches this stage, one that goes beyond well-understood principles, and puts those controlling the accident into an experimental mode (this happened during the first day), the uncertainty of whether an accident could result in major releases of radioactivity is too high. Adding to this the enormous damage to the plant, the expensive and potentially dangerous cleanup process that remains, and the great cost of the accident, we must conclude that—whatever worse could have happened—the accident had already gone too far to make it tolerable.
>
> While throughout this entire document we emphasize that fundamental changes are necessary to prevent accidents as serious as TMI, we must not assume that an accident of this or greater seriousness cannot happen again, even if the changes we recommend are made. Therefore, in addition to doing everything to prevent such accidents, we must be fully prepared to minimize the potential impact of such an accident on public health and safety, should one occur in the future.

Report of the President's Commission on The Accident at Three Mile Island, p. 15.

In order to reduce the severe accident risk over time to acceptable levels, I would have undertaken four specific initiatives. First, I would have required a detailed search for plant-specific equipment and design vulnerabilities at each existing plant to identify and correct those weaknesses which constitutes significant contributors to the risk of a severe accident.

Second, I would have initiated a concerted effort to improve operational performance at the existing plants, with special emphasis on areas of weakness throughout the industry (maintenance and surveillance testing stand out as good examples) and on specific utilities with a history of marginal performance. The June 9, 1985 operating event at the Davis Besse nuclear powerplant once again demonstrated the dangers inherent in the combination of a marginal plant design and a utility with marginal operating performance.

Third, I would have initiated a comprehensive assessment of the level of safety and the existing plants have achieved. The object of this effort would be to identify the root causes of severe accident risks. This effort would also identify possible measures which offer the promise of significantly reducing severe accident risk by overcoming the adverse effects of equipment breakdowns, human error, design deficiencies and areas of present uncertainty which are likely to persist despite our best efforts to address my first two initiatives. Indeed, as the Commission's chief safety officer noted in a June 27, 1985 memorandum to the Executive Director for Operations:

> I believe that the recent Davis-Besse event illustrates that, in the real world, system and component reliabilities can degrade below those we and the industry routinely assume in estimating core melt frequencies. Our regulatory process should require margins against such degradation and also to reflect the uncertainties in our PRA estimates.

Finally, for future plants, I would have explicitly required measures to improve the margin of safety against severe accidents in future plants and to address the mistakes of the past. Such measures could include requirements for greater simplicity in plant design, improved maintainability, and a requirement for essentially complete plant designs prior to the issuance of NRC approval for the start of plant construction.

I believe that these measures would be sufficient to bring the risk of severe accidents within acceptable bounds for the remaining operating lives of the existing plants and for the operating lives of any future plants. Moreover, such an approach would do much to restore public confidence in nuclear power and in the effectiveness of the NRC's regulatory process. It is unfortunate that the Commission has chosen another path. However, key decisions remain to be made by the Commission in adopting a final backfitting rule and a final safety goal. Those decisions represent a final opportunity to come to grips with many of the pivotal issues avoided in this policy statement. In that regard, it is encouraging that there appears to be an emerging consensus within the NRC senior technical staff and within the ACRS in favor of safety improvements to reduce severe accident risk both for existing and for future plants.

[FR Doc. 85-18533 Filed 8-7-85; 8:45 am]
BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Severe Accident Design Criteria; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing an advance notice of proposed rulemaking (ANPRM) entitled "Severe Accident Design Criteria," because the issues addressed in this ANPRM are being handled in a Policy Statement entitled "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants," published elsewhere in this issue.

DATE: This advance notice of proposed rulemaking is withdrawn effective August 8, 1985.

FOR FURTHER INFORMATION CONTACT: Miller B. Spangler, Special Assistant for Policy Development, Division of Systems Integration, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–492–7305.

SUPPLEMENTARY INFORMATION: On October 2, 1980, the NRC published an ANPRM entitled "Severe Accident Design Criteria" (45 FR 65474). It was subsequently decided to handle this issue in a Policy Statement. The Policy Statement, entitled "Proposed Commission Policy Statement on Severe Accidents and Related Views of Nuclear Reactor Regulations," was published for comment on April 13, 1983 (48 FR 16014). After consideration of the comments, the NRC has issued a final Policy Statement entitled "Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants" which appears elsewhere in this issue. Consequently, this serves notice of the withdrawal of this ANPRM.

Dated at Washington, DC this 5th day of August 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85–18832 Filed 8–7–85; 8:45 am]

BILLING CODE 7590-01-M

federal register

Thursday
August 8, 1985

Part III

Department of Commerce

International Trade Administration

Drycleaning Machinery From West Germany; Final Results of Administrative Review of Antidumping Finding; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Drycleaning Machinery From West Germany; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On March 11, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers the two known manufacturers and/or exporters of this merchandise to the United States, two consecutive periods from July 1, 1980, through October 31, 1982, and certain other U.S. sales deferred from the last administrative review.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received written comments from one firm. Based on our analysis of the comments received and the correction of clerical errors, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: August 8, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-1130/5255.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 9700) the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 8, 1972). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery, currently classifiable under item 670.4100 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of this merchandise to the United States, Boewe Maschinenfabrik GmbH and Seco Maschinenbau GmbH & Co., two consecutive periods from July 1, 1980, through October 31, 1982, and certain other U.S. sales deferred from the last administrative review.

Analysis of Comments Received

We invited interested parties to comment on our preliminary results. We received the following written comments from Boewe and its U.S. subsidiary, American Permac, Inc.

Comment 1: As in the last administrative review, Boewe argues that the Department erred in not allowing cash discounts on all home market sales, whether or not actually granted on every sale, because they are freely offered and generally granted.

Department's Position: As we stated in the final results of the previous administrative review (50 FR 1256, January 10, 1985), the Department only allows cash discounts that actually occurred.

Comment 2: Boewe argues that the Department must make a level of trade adjustment for comparisons with its U.S. sales to distributors. The company only sells to end-users in the home market. Boewe asserts that the Department's comparison of home market sales made by independent agents to end-users with U.S. sales made by Boewe's U.S. subsidiary, Permac, to distributors and the comparison of home market sales made by Boewe employees to end-users with U.S. sales made by Permac directly to end-users does not adequately adjust for level of trade differences. Boewe contends that it provided adequate quantification of all or most of the indirect expense categories and that the Department should make level of trade adjustments based on Boewe's sales to distributors in Austria, or any other method that makes a reasonable allowance for the indirect expenses which the company clearly quantified.

Department's Position: Our position remains unchanged from the last review. In terms of function in the marketplace, Permac's distributor customers and Boewe's agents are at a comparable level of trade. The Department has compared Permac's sales to distributors with Boewe's sales in West Germany through independent agents to end-users, in accordance with § 353.19 of the Commerce Regulations. When there were no contemporaneous home market sales through agents, we compared sales to distributors in the U.S. with direct sales to end-users in the home market, with no adjustment for level of trade differences because the differences still were not adequately quantified.

Comment 3: Boewe argues that on direct sales from Boewe to end-users the Department should accept the excess of Boewe's trade-in allowances over the market resale value to the traded in machines either as a discount off of home market price or as a direct selling expense.

Department's Position: Our position remains unchanged from the last review. We do not consider profits and losses on the sales of any machines to be selling expenses, direct or indirect. Nor do we consider the amount deducted from the price of a new machine for a trade-in to be a discount. It is still our policy that the amount of that credit is a measure to Boewe of the value of the used machine. Therefore, we have not made any adjustment.

Comment 4: Boewe argues that the Department should allow as direct selling expenses in calculating foreign market value miscellaneous expenses incurred by agents and absorbed by Boewe. The Department allowed such claims in the last review.

Department's Position: We agree. We have allowed all miscellaneous expenses because those expenses are selling expenses directly related to individual sales.

Comment 5: Boewe says that the Department allowed claimed credit expenses as direct selling expenses in the home market in the last review, but we failed to allow such expenses in this review.

Department's Position: As stated in our preliminary results notice and in our disclosure to Boewe, we did allow those expenses as direct selling expenses.

Comment 6: Boewe argues that, in contrast to the last review, the Department erred by not allowing technical service expenses as direct selling expenses.

Department's Position: We disallowed the technical service expenses in this review because we were unable to verify the amounts claimed as direct selling expenses. We do not consider salaries which would have otherwise been paid to be direct expenses. As for the rest of the claim, Boewe was unable to separate the amounts which could have been allowed from other amounts in the account.

Comment 7: Boewe notes that, in contrast to the last review, the preliminary results stated that the Department only made adjustments for "differences in commissions to unrelated parties". Boewe questions whether the Department allowed as direct selling expenses in the home market all commissions, no matter to whom paid, such as company employees or outside agents.

Department's Position: We made adjustments for all commissions to

unrelated parties on sales in both the U.S. and home markets. For certain sales in the home market, Boewe employees acted as salesmen and were paid commissions. In general, the Department does not permit circumstance-of-sale adjustments for commissions paid to related parties. The principle behind denying a circumstance-of-sale adjustment for payments to related parties is that such payments are merely intracompany transfers of funds.

However, in this case, although the salesmen were employees of the company, the commission payments to the salesmen were directly related to particular sales under review, in the form of percentages of the sales price of those sales. The percentages to be paid were detailed in contracts between the salesmen and the company. We have therefore allowed the claim.

Comment 8: Boewe argues that the Department should allow warranty expenses as direct selling expenses, as in the first review.

Department's Position: During verification, we found that the claimed warranty expenses were actually repair work performed on the machines after the guarantee periods had expired. As neither the customer nor Boewe anticipated or bargained for the work at the time of sale, they are not true warranty expenses but rather goodwill. We do not allow such expenses as circumstance-of-sale adjustments.

Comment 9: Boewe complains that the Department, in contrast to the last review, did not allow "servicing" as an indirect selling expense in this review.

Department's Position: As in the last review, Boewe, in its response, claimed the expense of maintaining the service department to be a direct selling expense. In this review, we again denied this claim as direct. However, since we consider the costs of maintaining the service department to be overhead and, therefore indirect expenses, we have included them in the calculation of the ESP offset.

Comment 10: Boewe contends that the Department, as it did in the last review, should allow product maintenance (product recall) as a direct selling expense.

Department's Position: We have disallowed product recall as a direct selling expense since the expense was not directly related to the sales used for comparison purposes. Such expenses were all unanticipated at the time of the sale. We did include them as an indirect selling expense to offset U.S. selling expenses in ESP calculations.

Comment 11: Boewe maintains that the portion of advertising which we disallowed as a direct selling expense in the home market should be allowed as an indirect selling expense, as in the last review.

Department's Position: We disagree. Our policy is to allow the full cost of the advertising as a direct selling expense where the advertising expense is directed specifically at promoting sales of a home market comparison model. If it is multi-model advertising we use reasonable allocation methods to determine the appropriate adjustments for comparison models included in the multi-model advertising. Where the advertising concerns only non-comparison models we do not consider the cost to be a selling expense. Since Boewe failed to identify its advertising with regard to comparison and non-comparison models we are rejecting all of the advertising claim.

Comment 12: Boewe again argues that the portion of home market warehouse expenses that relates to machines sold but not yet shipped should be allowed as a selling expense.

Department's Position: Boewe has not established that its warehousing expenses directly relate to the sales under consideration. Thus, the Department does not consider these warehousing expenses to be direct selling expenses. Further, the Department does not consider these specific warehousing expenses in Germany to be selling expenses at all and has not included them in its calculation of the ESP offset.

Comment 13: Boewe maintains that payments to retired independent sales agents should be allowed as a selling expense.

Department's Position: We agree. We have treated those payments to retired sales agents as an indirect selling expense. When the contract between Boewe and an independent sales agent comes to an end, Boewe is obligated by West German law and the terms of the contract to pay additional compensation based on total sales attributable to that agent.

Comment 14: Boewe states that sales office expenses are direct selling expenses and should be allowed as a circumstance-of-sale adjustment to home market price.

Department's Position: We verified that a small portion of Boewe's claimed sales office expenses in several German cities were actual travel expenses that were linked directly to specific sales and are therefore allowable as direct selling expenses in the home market. As mentioned in our position to Comment 11, we have disallowed all advertising expenses because they were not directly related to the merchandise used for comparison purposes. Consistent with the last review, we allowed the remaining portion of the claimed sales office expenses as indirect selling expenses.

Comment 15: Boewe complains that the preliminary results did not specify whether we allowed credit insurance and bad debt as home market indirect selling expenses, as we did in the last review. Boewe continues to maintain that those expenses should be treated as direct selling expenses.

Department's Position: Credit insurance premium expenses are not direct selling expenses because they do not directly relate to the sales under consideration. We included those expenses as part of the indirect selling expenses to offset U.S. selling expenses in ESP calculations. Similarly, we consider bad debt losses by their very nature to be indirect selling expenses and we allowed them as such.

Comment 16: Boewe restates its claim that research and development, general and administrative, "management" and traffic department expenses are valid selling expenses and should be allowed.

Department's Position: As in the last review we disallowed all of these claims as selling expenses because: (1) They were not properly allocated to home market sales; or (2) Boewe failed to specifically relate them to the sales function.

Comment 17: Permac states that we incorrectly treated the costs of its seminars and exhibitions as direct U.S. selling expenses. It contends that such expenses are indirect.

Department's Position: We did consider Permac's seminar expenses to be indirect selling expenses because those seminars are customer training sessions not directly attributable to any sales. Permac's exhibitions, on the other hand, are direct sales tools. Therefore we treated exhibition expenses as direct selling expenses.

Comment 18: Permac questions why we deducted start-up costs as part of our calculation of U.S. price.

Department's Position: Permac identified as a "start-up" cost one visit by a technician to an end-user to check that the equipment was properly installed and funtioning. We properly deducted that direct selling expense.

Comment 19: Permac questions our deduction from U.S. price of interest on sales from Boewe to Permac as an indirect selling expense.

Department's Position: The Department considers the interest expense between the time Boewe ships the merchandise to the United States and the time Permac sells it to an

unrelated U.S. customer as an indirect selling expense incurred during the marketing of drycleaning machines in the U.S. It is therefore proper to deduct this cost in calculating ESP, and we have imputed the appropriate deduction.

Comment 20: Boewe asks that we confirm that we found as part of the current review that certain "Dutch Girl" sales deferred from the previous review were free of dumping duty.

Department's Position: The sales were package sales of completely outfitted drycleaning establishments rather than separate sales of drycleaning machinery. Drycleaning machinery included in such package sales are within the scope of the dumping finding. We determined that the specific entries were sold at not less than foreign market value.

Final Results of the Review

As a result of the comments received and the correction of clerical errors, we have revised the margins for both companies and we determine that the following margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Boewe Maschinenfabrik Gmbh	7/1/79-6/30/80	[1] 0.00
	7/1/80-10/31/81	17.23
	11/1/81-10/31/82	0.45
Seco Maschinenbau GmbH & Co.	7/1/80-10/31/81	6.93
	11/1/81-10/31/82	4.44

[1] Certain "Dutch Girl" sales previously deferred.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the most recent of the above margins shall be required for those firms. Because the most recent margin for Boewe is less than 0.50 percent and, therefore, *de minimis* for cash deposit purposes, the Department shall waive the deposit requirement for that firm.

For any future entries from a new exporter not covered in this or prior reviews, whose first shipment occurred after October 31, 1982, and who is unrelated to any reviewed firm, a cash deposit of 4.44 percent shall be required. These deposit requirements and waiver are effective for all shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Dated: August 6, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19042 Filed 8-7-85; 10:12 am]

BILLING CODE 3510-DS-M

Reader Aids

Federal Register

Vol 50, No. 153

Thursday, August 8, 1985

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-2867
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws

Indexes	523-5282
Law numbers and dates	523-5282
	523-5266

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-4986
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, AUGUST

31151-31340.....1
31341-31584.....2
31585-31702.....5
31703-31834.....6
31835-32000.....7
32001-32156.....8

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Administrative Orders

Presidential Determinations:

No. 85-14 of July 1, 1985.....31835

Proclamations:

5359.....31151
5360.....31703

7 CFR

8.....31582
371.....31341
400.....32001
729.....31585
908.....31705
917.....31341
920.....31341
926.....31341
927.....31341
928.....31585
945.....31341
946.....31341
947.....31341
948.....31341
953.....31341
958.....31341
1050.....31705

Proposed Rules:

403.....32073
411.....32078
907.....31723
908.....31723
910.....31850
920.....31635
981.....32083
1076.....31605
1079.....32084
1135.....32085

9 CFR

Proposed Rules:

91.....32085
161.....32085
162.....32085

10 CFR

50.....32138

Proposed Rules:

7.....31191
9.....31192
19.....32086
20.....32086
21.....32086
30.....32086
39.....32086
40.....32086
50.....32151
51.....32086
70.....32086
71.....32086
145.....32086
150.....32086

12 CFR

7.....32003
500.....32004
545.....32005
563.....32005
572a.....31837

Proposed Rules:

5.....31605
12.....31605
330.....31380
615.....31607

14 CFR

39.....31153, 31342, 31586
71.....31154-31160, 31344, 31345, 31706, 31839
73.....31158-31160
75.....31160
91.....31587
95.....31161
97.....31345

Proposed Rules:

Ch. I.....31724
25.....31725, 32087
39.....31193, 31609
71.....31383, 31384, 31472
91.....32087
121.....32087
125.....32087

16 CFR

Proposed Rules:

Ch. II.....31391
2.....31610
3.....31385, 31610
13.....31387
440.....32088

17 CFR

1.....31839
274.....31839

Proposed Rules:

1.....31612, 31623
33.....31625
190.....31623

18 CFR

271.....31347

Proposed Rules:

271.....31391

19 CFR

177.....31707

Proposed Rules:

111.....31871
134.....31392
171.....31871
355.....32088

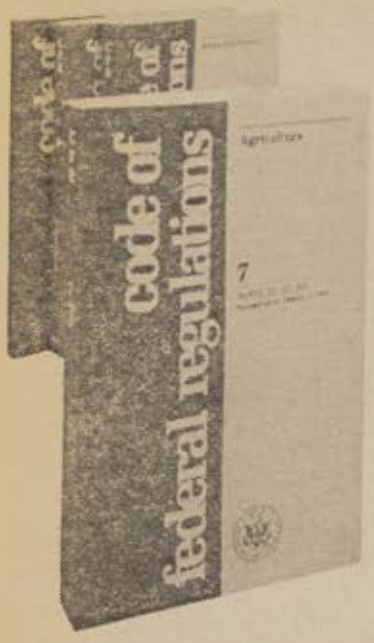
LIST OF PUBLIC LAWS

Last List August 7, 1985

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 2378/Pub. L. 99–80

To amend section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, with respect to awards of expenses of certain agency and court proceedings, and for other purposes. (Aug. 5, 1985; 99 Stat. 183) Price $1.00



Just Released

Code of Federal Regulations

Revised as of July 1, 1985

Quantity	Volume	Price	Amount
_____	Title 29—Labor (Parts 900–1899) (Stock No. 822-004-00093-8)	$7.00	$_____
_____	Title 32—National Defense		_____
_____	Parts 800–999 (Stock No. 822-004-00107-1)	7.50	_____
_____	Part 1000-End (Stock No. 822-004-00108-1)	5.50	_____
		Total Order	**$**_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐–☐

Order No._____

VISA* MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		