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# Federal Register

Tuesday
August 20, 1985

## Selected Subjects

**Administrative Practice and Procedure**
Commodity Futures Trading Commission

**Air Pollution Control**
Environmental Protection Agency

**Airports**
Land Management Bureau

**Animal Diseases**
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**Antibiotics**
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

[Docket No. 85-357]

### Africanized Honey Bee

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This document amends the "Domestic Quarantine Notices" by adding "Africanized Honey Bee" regulations. These regulations quarantine a portion of Kern County in California because of the Africanized honey bee, and restrict the interstate movement of bees of the genus *Apis* (in any life stage) and certain other articles from the quarantined portion of Kern County. This document is necessary on an emergency basis to prevent the artificial spread of the Africanized honey bee into noninfested areas of the United States.

**DATES:** Effective date of this interim rule is August 15, 1985. Written comments concerning this interim rule must be received on or before October 21, 1985.

**ADDRESS:** Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in response to Docket Number 85-357. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** B. Glen Lee, Assistant Director of the National Program Planning Staff in charge of the Survey and Emergency Response Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 611 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

**SUPPLEMENTARY INFORMATION:**

#### Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication of this interim rule without prior opportunity for a public comment period. Due to the possibility that the Africanized honey bee could be spread artificially to noninfested areas of the United States, a situation exists requiring immediate action to help control the spread of this pest.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon signature. Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

#### Background

This document amends the "Domestic Quarantine Notices" in 7 CFR Part 301 by adding "Africanized Honey Bee" regulations. These regulations quarantine a portion of Kern County in California because of the Africanized honey bee, and restrict the interstate movement of bees of the genus *Apis* (in any life stage) and certain other articles from the quarantined portion of Kern County.

The Africanized honey bee, *Apis mellifera scutellata*, is a dangerous agricultural pest. The Africanized honey bee includes bees with characteristics identifiable with subspecies *Apis mellifera scutellata* regardless of the purity of the strains of the bees. An infestation of Africanized honey bees in an area will mix with other bees in that area and produce changes in their genetic characteristics and thereby cause them to become Africanized. This process is known as "Africanization." Africanized honey bees are very difficult to manage. Due to their nervousness, aggressiveness, and defensiveness, they are a danger to humans and animals. They also have a much greater tendency to swarm than other bees and often abscond without leaving any bees in the colony. The difficulty in managing Africanized honey bees and their tendency to abscond result in severe decreases in pollination services. This can severely damage important agricultural commodities that depend upon pollination by bees for production. These agricultural commodities include forage crops, fruits, vegetables, oil crops, and fiber crops.

An infestation of the Africanized honey bee was recently found in Kern County, California. The Africanized honey bee is not known to occur anywhere else in the United States.

Officials of the United States Department of Agriculture (USDA) and State and county agencies in California have begun an intensive Africanized honey bee survey and eradication program in the infested area in California. Also, as explained below, California has taken action to impose restrictions on the intrastate movement of certain articles from the quarantined area in order to prevent the artificial spread of the Africanized honey bee within California. However, it is also necessary to impose restrictions on the interstate movement of certain articles from the quarantined area in order to prevent the artificial spread of the Africanized honey bee to noninfested areas in other States. Accordingly, it is necessary as an emergency measure to establish Federal regulations for the purpose of preventing the artificial spread of the Africanized honey bee. These regulations are described below by section.

*Section 301.94*

Section 301.94 prohibits any common carrier or other person from moving any regulated article interstate from any quarantined area except in accordance with conditions prescribed in the new regulations. A footnote has been added for informational purposes. This footnote (footnote 1) references the authority of an inspector to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to,

destroy, or otherwise dispose of regulated articles as provided in sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

*Definitions (Section 301.94–1)*

Section 301.94–1 contains, for informational purposes, definitions of the following terms: "Africanized honey bee," "Certificate," "Compliance agreement," "Deputy Administrator," "Infestation," "Inspector," "Interstate," "Moved," "Movement or move," "Person," "Plant Protection and Quarantine," "Quarantined area," "Regulated article," and "State." These terms are defined in accordance with definitions and authority set forth in the Federal Plant Pest Act (7 U.S.C. 150dd, 150ee).

*Regulated Articles (Section 301.94–2)*

The regulations impose conditions on the interstate movement of articles which present a significant risk of spreading the Africanized honey bee if moved without restrictions from quarantined areas into or through noninfested areas. These conditions are necessary to prevent the artificial spread interstate of the Africanized honey bee by the movement of these articles. Such articles are designated as regulated articles and are prohibited from moving interstate from quarantined areas, except in accordance with conditions specified in §§ 301.94–4 through 301.94–9.

Section 301.94–2 designates the following articles as regulated articles:

(a) Bees of the genus *Apis*, in any life stage;

(b) Fresh or frozen bee sperm;

(c) Equipment, and shipping and storage containers that have been used at an apiary;

(d) Unprocessed comb;

(e) Vehicles that have been used to carry regulated articles other than fresh or frozen bee sperm; and

(f) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) through (e) of this section, when it is determined by an inspector that it presents a risk of spread of the Africanized honey bee and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

Based on research and experience, the articles listed in § 301.94–2(a) through (e) as regulated articles are articles that are likely to cause the artificial spread of the Africanized honey bee. In addition, since other products, articles, or means of conveyance could, under certain circumstances, be found to present a risk of spreading the Africanized honey bee, these articles are regulated by paragraph (f). These articles would have to be determined by an inspector to present a risk on a case-by-case basis since it cannot be anticipated specifically which other products, articles, or means of conveyance, if any, would present such a risk. There is authority in sections 105 and 106 of the Federal Plant Pest Act to regulate on an emergency basis nonlisted products, articles, or means of conveyance as set forth in § 301.94–2(f). If it appears that these additional products, articles, or means of conveyance generally present a risk of spreading Africanized honey bee, an amendment to this rule to include such items in the list of regulated articles will be considered.

*Quarantined Areas (Section 301.94–3)*

It is necessary to designate as quarantined areas, areas in which the Africanized honey bee has been found, areas in which the Deputy Administrator has reason to believe the Africanized honey bee is present, and areas deemed necessary to regulate because of their proximity to the Africanized honey bee or their inseparability for quarantine enforcement purposes from localities where Africanized honey bees have been found.

In accordance with these criteria, it is necessary to designate as a quarantined area the following portion of Kern County in California:

That portion of the county beginning at a point where Garces Highway intersects Corcoran Road; then west along an imaginary line from said point to the northwest corner of sec. 14, T. 25 S., R. 19 E.; then south along an imaginary line from said corner to the southwest corner of sec. 35, T. 28 S., R. 19 E.; then east from said corner along an imaginary line to its intersection with Seventh Standard Road; then east along said road to the southeast corner of sec. 31, T. 28 S., R. 23 E., then north from said corner along an imaginary line to its intersection with Garces Highway; then west long said highway to the point of beginning.

*Section 301.94–4*

Section 301.94–4 allows regulated articles to be moved interstate from a quarantined area if accompanied by a certificate issued and attached as prescribed by §§ 301.94–5 through 301.94–9, and also allows regulated articles to be moved interstate from a quarantined area without a certificate under certain circumstances.

Section 301.94(b) allows a regulated article to be moved interstate from a quarantined area without a certificate, if:

(1) The article originated outside of any quarantined area and is moved directly through (without stopping except for brief refueling, or for normal traffic conditions, such as traffic lights or stop signs) the quarantined area;

(2) The article, if other than sperm or a vehicle, is in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area;

(3) The article, if a vehicle, has all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen sperm) enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(4) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

These requirements would be adequate to ensure that the regulated articles would not attract bees while moving through a quarantined area. These requirements would also be adequate to ensure that the identity of such articles is maintained while moving through a quarantined area.

Section 301.94–4(c) provides that a regulated article may be moved interstate from a quarantined area without a certificate, if:

(1) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(2) Moved pursuant to a permit issued by the Deputy Administrator;

(3) Moved in accordance with conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the dissemination of the Africanized honey bee, i.e., conditions of treatment, processing, shipment, disposal; and

(4) Moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

These requirements are in accord with the intent of the Federal Plant Pest Act to allow provisions for movement of articles pursuant to a permit. The conditions for movement are required to be specified on the permit in order to assure that they will be understood and followed.

In § 301.94–4, a footnote (footnote 2) is added to remind persons of other applicable domestic plant quarantine

and regulation requirements that need to be met during an interstate movement.

*Section 301.94–5*

Section 301.94–5 explains the conditions for issuing a certificate. Regulated articles accompanied by a certificate can be moved interstate to any destination.

Section 301.94–5(a) provides that a certificate shall be issued by an inspector for the interstate movement of a regulated article if the inspector:

(1)(i) Determines, if the article is a bee (usually the certificate would cover the movement of many bees), that it is not an Africanized honey bee, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin, and has further determined that the bee is to be moved in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth);

(ii) Determines, if the article is fresh or frozen sperm, that it is not sperm from Africanized honey bees, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin;

(iii) Determines, if the article is equipment, a container, or unprocessed comb, that the article does not contain any bees, based on a visual examination of the article, and further determines that the article is to be moved while in the quarantined area in a bee-proof container or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); or

(iv) Determines, if the article is a vehicle, that it does not contain any bees, based on a visual examination of the vehicle, and further determines that the vehicle is to be moved while in the quarantined area with all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen bee sperm) enclosed or covered by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); and

(2) Determines it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Africanized honey bee pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd);[3] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

These provisions, other than those concerning sperm, would be adequate to ensure that the articles are free of Africanized honey bees. The provisions concerning sperm would be adequate to ensure that the sperm had not come from Africanized honey bees.

As noted above, determinations concerning the eligibility of bees and sperm to move interstate pursuant to a certificate are to be made based on inspections of representative samples of bees. Based on departmental experience, it has been determined that the provisions concerning the inspection of bees within 1,000 meters (3,281 feet) of the colony of origin would be adequate to ensure that the sampling of the colony of origin would not miss any stray Africanized honey bees that could have come from surrounding areas.

The provisions concerning the movement of articles in enclosed vehicles, in bee-proof containers, or with certain coverings are necessary as a precautionary measure to ensure that regulated articles do not attract bees. It is not necessary to include such provisions for bee sperm since bees would not be attracted to bee sperm.

A footnote (footnote 3) is added which explains that USDA can, pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd), take emergency actions against any article moving into or through the United States or interstate, or which has moved into the United States or interstate, and which is believed to be infested or infected by plant pests.

Section 301.94–5(b) allows any person who has entered into and is operating under a compliance agreement to execute and issue a certificate for the interstate movement of a regulated article once an inspector has made an initial determination that such article is eligible for a certificate in accordance with § 301.94–5(a). These initial determinations concerning the eligibility of regulated articles for issuance of a certificate are limited to inspectors because of their nature and complexity.

Also, § 301.94–5(c) contains provisions for the withdrawal of a certificate by an inspector upon a determination that the holder thereof has not complied with conditions for the use of the document. This section also contains provisions for notifying the holder of the reasons for the withdrawal and for holding a hearing if there is any conflict concerning any material fact.

*Section 301.94–6*

Section 301.94–6 provides for the issuance and cancellation of compliance agreements. Specifically, compliance agreements can be entered into by any person engaged in the business of handling or moving regulated articles who agrees in writing to comply with the regulations and any conditions imposed pursuant thereto. Compliance agreements are provided for the convenience of persons who, because of their business, are involved in frequent shipments of regulated articles from quarantined areas and are designed to insure that persons issuing certificates are knowledgeable with respect to the requirements of the regulations and have agreed to comply with them.

Section 301.94–6 also provides that a compliance agreement may be cancelled by an inspector supervising its enforcement whenever the inspector finds that a person who has entered into such an agreement has failed to comply with any of the provisions of the regulations or any conditions imposed pursuant thereto. This section also contains provisions for notifying the holder of the compliance agreement of the reasons for cancellation and to provide such holder with an opportunity for a hearing to resolve a conflict as to any material fact. A footnote (footnote 4) is added to explain where compliance agreement forms can be obtained.

*Sections 301.94–7, 301.94–8, and 301.94–9*

Section 301.94–7 provides that any person who desires a certificate to move regulated articles should request inspection by an inspector as far in advance as possible (no less than 48 hours before the desired movement). A footnote (footnote 5) is added for informational purposes to indicate how to contact the inspectors for inspection and how to obtain additional information from offices of Plant Protection and Quarantine.

Section 301.94–8 requires the certificate issued for the movement of the regulated article to be attached to the regulated article, or to a container

[3] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such a manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest, or which has moved into the United States, or interstate, or which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement.

carrying the regulated article, or to the accompanying waybill or other shipping document during the interstate movement.

These provisions in §§ 301.94–7 and 301.94–8 are necessary for enforcement purposes and to ensure that persons desiring inspection services can arrange for them before the intended movement date.

Section 301.94–9 explains the Department's policy that services of an inspector needed in order for a person to comply with the provisions of the regulations are provided without cost during normal business hours, but that any other incidental costs or charges shall not be the responsibility of the Department.

**Executive Order 12291 and Regulatory Flexibility Act**

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

This amendment affects the interstate movement of regulated articles from a portion of Kern County in California. The regulated articles that would be affected by this interim rule represent significantly less than 1 percent of such articles in the United States.

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

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

**Paperwork Reduction Act**

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

**List of Subjects in 7 CFR Part 301**

Africanized Honey Bee, Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, 7 CFR Part 301 is amended by adding a new "Subpart-Africanized Honey Bee" to read as follows:

**Subpart—Africanized Honey Bee**

**Quarantine and Regulations**

Sec.

Sec. 301.94 Restrictions on interstate movement of regulated articles.
Sec. 301.94–1 Definitions.
Sec. 301.94–2 Regulated articles.
Sec. 301.94–3 Quarantined areas.
Sec. 301.94–4 Conditions governing the interstate movement of regulated articles from quarantined areas.
Sec. 301.94–5 Issuance and cancellation of certificates.
Sec. 301.94–6 Compliance agreement and cancellation thereof.
Sec. 301.94–7 Assembly and inspection of regulated articles.
Sec. 301.94–8 Attachment and disposition of certificates.
Sec. 301.94–9 Costs and charges.

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

* * * * *

### Subpart—Africanized Honey Bee

**§ 301.94 Restrictions on interstate movement of regulated articles.**[1]

No common carrier or other person shall move interstate from any quarantined area any regulated article except in accordance with the conditions prescribed in this subpart.

**§ 301.94–1 Definitions.**

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

*Africanized honey bee.* The insect known as *Apis mellifera scutellata* in any stage of development. This includes honey bees with characteristics identifiable with the subspecies *Apis mellifera scutellata* regardless of the purity of the genetic strains of the bees.

*Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement.

*Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of handling or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

*Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

*Infestation.* The presence of the Africanized honey bee or the existence of circumstances that make it reasonable to believe that the Africanized honey bee is present.

*Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of this subpart.

*Interstate.* From any State into or through any other State.

*Moved.* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means.

*Movement or move.* The act of shipping, offering for shipment to a common carrier, receiving for transportation or transporting by a common carrier, or carrying, transporting, moving, or allowing to be moved by any means.

*Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

*Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act, and related legislation, and quarantines and regulations promulgated thereunder.

*Quarantined area.* Any State, or any portion thereof, listed in § 301.94–3(c) or otherwise designated as a quarantined area in accordance with § 301.94–3(b).

[1] Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

*Regulated article.* Any article listed in § 301.94–2 or otherwise designated as a regulated article in accordance with § 301.94–2(f).

*State.* Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

**§ 301.94–2 Regulated articles.**

(a) Bees of the genus *Apis,* in any life stage;

(b) Fresh or frozen bee sperm;

(c) Equipment, and shipping and storage containers that have been used at an apiary;

(d) Unprocessed comb;

(e) Vehicles that have been used to carry regulated articles other than fresh or frozen bee sperm; and

(f) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraphs (a) through (e) of this section, when it is determined by an inspector that it presents a risk of spread of the Africanized honey bee and the person in possession thereof has actual notice that the product, article, or means of conveyance is subject to the restrictions of this subpart.

**§ 301.94–3 Quarantined areas.**

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion thereof, in which the Africanized honey bee has been found by an inspector, or in which the Deputy Administrator has reason to believe that the Africanized honey bee is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Africanized honey bee or its inseparability for quarantine enforcement purposes from localities in which the Africanized honey bee occurs. Less than an entire State will be designated as a quarantined area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of the Africanized honey bee.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The area described below is designated as a quarantined area:

**California**

*Kern County.* That portion of the county beginning at a point where Garces Highway intersects Corcoran Road; then west along an imaginary line from said point to the northwest corner of sec. 14, T. 25 S., R. 19 E., then south along an imaginary line from said corner to the southwest corner of sec. 35, T. 28 S., R. 19 E., then east from said corner along an imaginary line to its intersection with Seventh Standard Road; then east along said road to the southeast corner of sec. 31, T. 28 S., R. 23 E.; then north from said corner along an imaginary line to its intersection with Garces Highway; then west along said highway to the point of beginning.

**§ 301.94–4 Conditions governing the interstate movement of regulated articles from quarantined areas.[2]**

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate issued and attached in accordance with §§ 301.94–5 and 301.94–8;

(b) Without a certificate, if:

(1) The article originated outside of any quarantined area and is moved directly through (without stopping except for brief refueling, or for normal traffic conditions, such as traffic lights or stop signs) the quarantined area;

(2) The article, if other than sperm or a vehicle, is in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area;

(3) The article, if a vehicle, has all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen sperm) enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(4) The point of origin of the article is clearly indicated by shipping documents and its identity has been maintained.

(c) Without a Certificate, if:

(1) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(2) Moved pursuant to a permit issued for such article by the Deputy Administrator;

(3) Moved in accordance with conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the dissemination of the Africanized honey bee, i.e., conditions of treatment, processing, shipment, disposal; and

(4) Moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

**§ 301.94–5 Issuance and cancellation of certificates.**

(a) A certificate shall be issued by an inspector for the interstate movement of a regulated article if such inspector:

(1)(i) Determines, if the article is a bee (usually the certificate would cover the movement of many bees), that it is not an Africanized honey bee, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin, and has further determined that the bee is to be moved in a bee-proof container, or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth);

(ii) Determines, if the article is fresh or frozen sperm, that it is not sperm from Africanized honey bees, based on a microscopic inspection of a representative sample of the bees in the colony of origin and all other bees within 1,000 meters (3,281 feet) of the colony of origin;

(iii) Determines, if the article is equipment, a container, or unprocessed comb, that the article does not contain any bees, based on a visual examination of the article, and further determines that the article is to be moved while in the quarantined area in a bee-proof container or enclosed by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); or

[2] Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(iv) Determines, if the article is a vehicle, that it does not contain any bees, based on a visual examination of the vehicle, and further determines that the vehicle is to be moved while in the quarantined area with all portions of the vehicle that had been used for carrying regulated articles (other than fresh or frozen bee sperm) enclosed or covered by a covering adequate to prevent access by bees (such as canvas, plastic, or closely woven cloth); and

(2) Determines that it is to be moved in compliance with any additional emergency conditions necessary to prevent the spread of the Africanized honey bee pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C., 150dd);[3] and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such articles.

(b) Certificates for use for movement of regulated articles may be issued by an inspector or person engaged in the business of handling or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section.

(c) Any certificate which has been issued or authorized may be withdrawn by an inspector, orally or in writing, if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. If the cancellation is oral, the decision and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

**§ 301.94-6 Compliance agreement and cancellation thereof.**

(a) Any person engaged in the business of handling or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.[4] The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances allow. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

**§ 301.94-7 Assembly and inspection of regulated articles.**

(a) Any person [other than a person authorized to issue certificates under § 301.94-5], who desires to move interstate a regulated article accompained by a certificate shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector[5] to take necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

**§ 301.94-8 Attachment and disposition of certificates.**

(a) A certificate required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document: *Provided however,* that the requirements of this section may be met by attaching the certificate to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate or shipping document to identify such article.

(b) The certificate for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

**§ 301.94-9 Costs and charges.**

The service of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the regulations in this subpart, other than for the services of the inspector.

Done at Washington, D.C., this 15th day of August, 1985.

**Harvey L. Ford,**

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

[FR Doc. 85-19819 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-34-M

[3] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of, in such a manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest, or which has moved into the United States, or interstate and which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement.

[4] Compliance Agreement forms are available without charge from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

[5] Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782.

7 CFR Part 301

[Docket No. 85-358]

## Witchweed Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** This document affirms without change an interim rule published in the **Federal Register** on April 25, 1985, which amended the witchweed quarantine and regulations by adding areas in 7 counties in North Carolina to the list of suppressive areas, and by deleting 1 county and areas in 12 counties in North Carolina, and areas in 2 counties in South Carolina from the list of suppressive areas, and by making certain other nonsubstantive, editorial changes. This rule is necessary in order to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

**EFFECTIVE DATE:** August 20, 1985.

**FOR FURTHER INFORMATION CONTACT:** Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

**SUPPLEMENTARY INFORMATION:**

### Background

An interim rule published in the **Federal Register** on April 25, 1985, (50 FR 16209-16218) amended § 301.80-2a of the witchweed quarantine and regulations (7 CFR 301.80 *et seq.*). The interim rule amended the quarantine and regulations by adding areas in 7 counties in North Carolina to the list of suppressive areas, and by deleting 1 county and areas in 12 counties in North Carolina, and areas in 2 counties in South Carolina from the list of suppressive areas. In addition, the interim rule made certain other nonsubstantive, editorial changes. The interim rule became effective on the date of publication.

Comments were solicited for 60 days after publication of the interim rule. No comments were received in response to the interim rule. The factual situations which were set forth in the document of April 25, 1985, still provide a basis for the amendments made by the interim rule. Accordingly, it has been determined that the amendments should remain effective as published in the **Federal Register** on April 25, 1985.

### Executive Order 12291 and Regulatory Flexibility Act

This rule has been issued in conformance with Executive Order 12291 and has been determined to be not a "major rule". Based on information compiled by the Department, it has been determined that this rule will have an annual effect on the economy of approximately $300; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, it has been determined that there are approximately 290,000 small entities that move regulated articles interstate from North Carolina and South Carolina, and many hundreds of thousands of small entities that move such articles interstate from other State. However, it has been determined that only 20 entities in North Carolina and South Carolina move regulated articles interstate from the areas that will be affected by this action. Further, the overall economic impact from this action is estimated to be only about $300.

### Paperwork Reduction Act

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

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Quarantine, Transportation, Witchweed.

## PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, the interim rule published at 50 FR 16209-16218 on April 25, 1985, is adopted as a final rule.

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

Done at Washington, D.C., this 15th day of August 1985.

**William F. Helms,**

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

[FR Doc. 85-19871 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 51

[Docket No. 85-076]

## Animals Destroyed Because of Brucellosis

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** This document affirms the interim rule which amended the regulations governing the payment of indemnity for animals destroyed because of brucellosis by adding a bred association to the list of registered breed associations. This rule is necessary in order to include in the regulations all the registered breed associations that maintain records concerning the purebreeding of animals adequate to identify an animal as a registered animal of that breed association. The effect of this rule is to allow for proper payment of indemnities for cattle destroyed because of brucellosis, thereby encouraging the elimination of these cattle as a disease source.

**EFFECTIVE DATE:** August 20, 1985.

**FOR FURTHER INFORMATION CONTACT:** Dr. G.H. Frye, Cattle Diseases Staff, VS, APHIS, USDA, Room 813, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8711.

**SUPPLEMENTARY INFORMATION:** .

### Background

The "Animals Destroyed Because of Brucellosis" regulations (contained in 9 CFR Part 51 and referred to below as the regulations) provide for the payment of indemnities for certain cattle, bison, and swine destroyed because of brucellosis. Under these regulations indemnity is paid for such animals slaughtered because of brucellosis to encourage cooperation in the timely removal of infected animals from the hear or, in the case of herd depopulation, to remove a foci of infection and thereby prevent transmission of brucellosis to nearby susceptible herds. Under § 51.3(a) of the regulations, the indemnity shall not exceed $250 for any registered cattle or nonregistered dairy cattle or, with certain exceptions, $50 for any other nonregistered cattle or bison.

To receive indemnity for registered cattle destroyed because of brucellosis, a claimant must provide registration papers for each animal, issued in the name of or transferred by the registered breed association to the name of the owner. A claimant is eligible to receive indemnity for cattle as registered animals if they are registered with a breed association listed in § 51.1(cc) of the regulations.

An interim rule published in the **Federal Register** (50 FR 19162–19163) on May 7, 1985, amended § 51.1(cc) by adding the National Beefmaster Association of registered breed associations. The interim rule was made effective upon publication. Comments were solicited for 60 days following publication of the interim rule. No comments were received. The factual situation which was set forth in the document of May 7, 1985, still provides a basis for the amendment.

**Executive Order 12291 and Regulatory Flexibility Act**

This rule is issued in conformance with Executive Order 12291 and has been determined to be not a major rule. Based on information complied by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause 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.

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

This change will affect less than one percent of the cattle annually destroyed because of brucellosis in the United States.

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

**List of Subjects in 9 CFR Part 51**

Animal diseases, Bison, Brucellosis, Cattle, Hogs, Indemnity payments.

## PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Accordingly, the interim rule published at 50 FR 19162–19163 on May 7, 1985, amending § 51.1(cc) is adopted as a final rule.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 14th day of August, 1985.

J.K. Atwell,

*Deputy Administrator, Veterinary Services.*

[FR Doc. 85–19820 Filed 8–19–85; 8:45 am]

BILLING CODE 3410–34–M

## FEDERAL TRADE COMMISSION

**16 CFR Part 305**

## Energy Costs and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Furnaces

**AGENCY:** Federal Trade Commission.

**ACTION:** Rule related notice.

**SUMMARY:** Under the Federal Trade Commission's Appliance Labeling Rule, each required label or fact sheet for a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. These ranges show the highest and lowest energy costs or efficiencies for the various size or capacity groupings of the appliances covered by the rule. The Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15 percent or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range is still applicable for the next year.

The ranges of efficiencies for furnaces have not changed by as much as 15 percent since the last publication. Therefore, the ranges published on March 25, 1980 and April 17, 1980 remain in effect until new ranges are published.

**EFFECTIVE DATE:** August 20, 1985.

**FOR FURTHER INFORMATION CONTACT:** James Mills or Lucerne D. Winfrey, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, (202) 376–8934.

**SUPPLEMENTARY INFORMATION:** Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA) [1] required the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances: (1) Refrigerators and refrigerator-freezers; (2) freezers; (3) dishwashers; (4) clothes dryers; (5) water heaters; (6) room air conditioners; (7) home heating equipment, not including furnaces; (8) television sets; (9) kitchen ranges and ovens; (10) clothes washers; (11) humidifiers and dehumidifiers; (12) central air conditioners; and (13) furnaces. Under the statute, the Department of Energy (DOE) is responsible for developing test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule [2] covering seven of the thirteen appliance categories: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.

The rule requires that energy efficiency ratings or energy costs and related information be disclosed on labels, fact sheets and in retail sales catalogs for all covered products manufactured on or after May 19, 1980. Certain point-of-sale promotional materials must disclose the availability of energy cost or energy efficiency rating information. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of the DOE test procedures.

Pursuant to § 305.8 of the rule, manufacturers submitted reports to the Commission by January 21, 1980. These reports contained the estimated annual cost or energy efficiency rating, derived from tests performed pursuant to the DOE test procedures, for all models of the seven categories of appliances. The reports also contained the model, the number of tests performed on each model, and the capacity of each model. From the information, the Commission compiled and published [3] ranges of comparability for each product, as required by § 305.10 of the rule.

Section 305.8(b) of the rule requires that manufacturers, after filing this initial report, shall report the same information annually by specified dates

[1] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (November 19, 1979).

[3] 45 FR 13998 (March 3, 1980), 45 FR 19520 (March 25, 1980), 45 FR 26036 (April 17, 1980), 46 FR 3829 (January 16, 1981).

for each product type.[4] If an analysis of the new data indicates that the upper or lower limits of any of the ranges have changed by more than 15%, the Commission must, under § 305.10 of the rule, publish a revised version of the new range or ranges. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for furnaces have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on March 25, 1980 and April 17, 1980.[5]

In consideration of the foregoing, the present ranges for furnaces will remain in effect for the next year.

**List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

**Emily H. Rock,**

*Secretary.*

[FR Doc. 85–19827 Filed 8–19–85; 8:45 am]

BILLING CODE 6750-01-M

## COMMODITY FUTURES TRADING COMMISSION

**17 CFR Parts 10 and 140**

### Appeals to the Commission; Settlements

**AGENCY:** Commodities Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to sections 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commodity Futures Trading Commission has adopted a rule authorizing the Chief of the Commission's Opinions Section to decide procedural or technical matters on the Commission's appellate enforcement docket. The new rule will be designated as 17 CFR 10.109. This rule, together the with delegation contained in the Commission's reparation rules,[1] supersedes the delegation found at 17 CFR 140.71 (1983) and that rule is accordingly repealed upon publication of this notice. The Commission's action relates solely to agency organization, procedure, and practice.

**EFFECTIVE DATE:** This rule shall be effective August 20, 1985 and shall apply to all cases then pending.

**FOR FURTHER INFORMATION CONTACT:** James T. Kelly, Assistant Chief, Opinions Section, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581; Telephone: (202) 254–7110.

**SUPPLEMENTARY INFORMATION:** The purpose of this rule, like those provisions in the reparation rules which delegate certain authority to the Chief of the Opinions Section, is to relieve the Commission from the time and paperwork inherent in five members considering procedural and/or technical matters on the agency's appellate enforcement docket. This step will facilitate and expedite consideration of those matters properly warranting formal Commission attention. As adopted, the rule specifies particular procedural and technical matters to be handled by the Chief of the Opinions Section or a person under his direction. In addition, the rule authorizes the Chief, in his discretion, to submit any matter otherwise falling within the terms of this rule to the Commission for its consideration, and like the reparation rules, provides a route whereby a party may seek reconsideration by the Commission of a ruling by the Chief.

The Commission had determined that this amendment to the Rules of Practice relates solely to agency organization, procedure, and practice. Therefore, the provisions of the Administration Procedure Act, 5 U.S.C. 553, generally requiring notice of proposed rulemaking and other opportunity for public participation, are not applicable. The Commission further finds that there is good cause to make this amendment effective upon publication in the **Federal Register.**

## PART 10—[AMENDED]

17 CFR 10.109 Delegation of Authority to Chief of the Opinions Section is added.

Pursuant to the authority granted under sections 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commodity Futures Trading Commission amends its Rules of Practice, Subpart H of Part 10 of Chapter I of Title 17 of the Code of Federal Regulations as specified below:

**§ 10.109 Delegation of Authority to Chief of the Opinions Section.**

The Commodity Futures Trading Commission hereby delegates, until such time as it orders otherwise, the following functions to the Chief of the Opinions Section, to be performed by him or by such person or persons under his direction as he may designate from time to time:

(a) With respect to proceedings conducted pursuant to the Commodity Exchange Act, as amended, 7 U.S.C. 1 *et seq.*, and subject to the Commission's Rules of Practice as set forth in Part 10 of this chapter, to:

(1) Consider and decide miscellaneous motions for procedural orders that may be directed to the Commission pursuant to Part 10 of these rules after the initial decision or other order disposing of the entire proceeding has been filed; such motions may be acted upon at anytime, without awaiting a response;

(2) Remand, with or without specific instructions, initial decisions or other orders disposing of the entire proceeding to the appropriate officer in the following situations:

(i) Where a default order has been made pursuant to § 10.93 of these rules and a motion to vacate the default or equivalent request has been directed to the Commission under § 10.94 without the benefit of a prior ruling by the Administrative Law Judge;

(ii) Where, in his judgment, clarification or supplementation of the initial decision or other order disposing of the entire proceeding prior to Commission review is appropriate; however, the Chief may not direct that the record be reopened;

(iii) Where, in his judgment, a ministerial act necessary to the proper conduct of the proceeding has not been performed;

(3) Deny applications for interlocutory Commission review of a ruling of the Administrative Law Judge in cases in which the Administrative Law Judge has not certified the ruling to the Commission in the manner prescribed by § 10.101(a) of the rules; and the ruling does not concern the disqualification of, or a motion to disqualify, an Administrative Law Judge; and the ruling does not concern the suspension of, or failure to suspend, an attorney

[4] Reports for clothes washers are due by March 1; reports for water heaters, room air conditioners and furnaces are due by May 1; reports for dishwashers are due by June 1; reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[5] 45 FR 19520 (March 25, 1980), 45 FR 26038 (April 17, 1980).

[1] *See* 17 CFR 12.408 (1984).

from participation in a particular proceeding, or the denial of intervention or limited participation;

(4) Deny any application for interlocutory review in a proceeding if it is not filed in accordance with § 10.101(b) of these rules;

(5) Dismiss any appeal from an initial decision or other disposition of the entire proceeding by an Administrative Law Judge, where such appeal is not filed and perfected in accordance with § 10.102 of these rules;

(6) Strike any filing that does not meet the requirements of, or is not perfected in accordance with, Part 10 of these rules;

(7) Stay, for a limited period of time not to exceed ten working days, any order of the Commission entered in a proceeding subject to these rules;

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the Chief of the Opinions Section believes it appropriate, he may submit the matter to the Commission for its consideration;

(c) Within seven (7) days after service of a ruling issued pursuant to paragraph (a) of this § 10.109, a party may file with the Hearing Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration shall not operate to stay the effective date of such ruling;

(d) This rule is applicable to all proceedings pending as of August 20, 1985.

**§ 140.71 [Removed]**

17 CFR 140.71 is removed.

By the Commission (Chairman PHILLIPS and Commissioners HINEMAN, WEST, SEALE, and DAVIS).

Dated: August 15, 1985.

**Jean A. Webb,**

*Secretary of the Commission, Commodity Futures Trading Commission.*

[FR Doc. 85-19848 Filed 8-19-85; 8:45 am]

BILLING CODE 6351-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 84C-0135]**

### Poly(Hydroxyethyl Methacrylate)-Dye Copolymers; Listing of Color Additive for Coloring Contact Lenses; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is republishing with editorial changes the document that confirmed the effective date of April 9, 1985, for a regulation that amended the color additive regulations to provide for the safe use in coloring contact lenses of the reaction product formed by chemically bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate). The document was published in the **Federal Register** of June 4, 1985 (50 FR 23406).

**DATE:** Effective date confirmed: April 9, 1985.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** In a final rule published in the **Federal Register** of March 8, 1985 (50 FR 9424), FDA amended the color additive regulations to provide for the safe use of the reaction product formed by bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) for coloring contact lenses. The final rule amended § 73.3121 (21 CFR 73.3121) by adding Reactive Blue No. 19 to the list of reactive dyes in paragraph (a).

In the final rule, FDA gave interested persons until April 8, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of March 8, 1985, for this color additive should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

### PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of March 8, 1985. Accordingly, the final rule amending § 73.3121 to provide for the safe use of the reaction product formed by chemically bonding Reactive Blue No. 19 to poly(hydroxyethyl methacrylate) in coloring contact lenses became effective April 9, 1985.

Dated: August 14, 1985.

**Mervin H. Shumate,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 85-19802 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-01-M

### 21 CFR Parts 436, 440, and 455

**[Docket No. 85N-0173]**

### Antibiotic Drugs; Sterile Ticarcillin Disodium and Clavulanate Potassium

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile ticarcillin disodium and clavulanate potassium. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

**DATES:** Effective August 20, 1985; comments, notice of participation, and request for hearing by September 19, 1985 data, information, and analyses to justify a hearing by October 21, 1985.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

**SUPPLEMENTARY INFORMATION:** FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile ticarcillin disodium and clavulanate potassium. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436, 440, and 455 (21 CFR Parts 436, 440, and 455) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively

have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**Submitting Comments and Filing Objections**

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The final rule, therefore, is effective August 20, 1985. However, interested persons may, on or before September 19, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before September 19, 1985, a written notice of participation and request for hearing, and (2) on or before October 21, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects**

*21 CFR Part 436*

Antibiotics.

*21 CFR Part 440*

Antibiotics, Penicillin.

*21 CFR Part 455*

Antibiotics, Certain other.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436, 440, and 455 are amended as follows:

## PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

**Authority:** Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. By adding new § 436.355 to read as follows:

**§ 436.355 High-performance liquid chromatographic assay for ticarcillin-clavulanic acid.**

(a) *Equipment.* A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being testing;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 10 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column, 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b) *Procedure.* Perform the assay and calculate the drug content using the temperature, instrumental conditions, and calculations specified in the monograph for the drug being tested with a flow rate not to exceed 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the equipment described in paragraph (a) of this section; and the reagents and working standard and sample solutions described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. The clavulanic acid peak is sharp and the chromatograms of standard and sample solutions show baseline separations between it and any neighboring peaks. The retention times for clavulanic acid and ticarcillin are approximately 3 minutes and 14 minutes, respectively. Record the peak responses and calculate the prescribed system suitability requirements described for the system suitability test in paragraph (c) of this section.

(c) *System suitability test.* Using the equipment and procedure described in this section, test the chromatographic system for assay as follows:

(1) *Tailing factors for the ticarcillin and clavulanic acid peaks.* Calculate the tailing factors ($T$), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:

$$T = \frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$ = Width of peak at 5 percent height; and
$f$ = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(2) *Efficiency of the column.* Calculate the number of theoretical plates ($n$) of the column as follows:

$$n = 5.545 \left[ \frac{t_R}{W_h} \right]^2$$

where:

$n$ = Efficiency, as number of theoretical plates for column;
$t_R$ = Retention time of ticarcillin or clavulanic acid peaks; and
$W_h$ = Corresponding peak width at half-height.

(3) *Resolution factor.* Calculate the resolution factor ($R$) as follows:

$$R = \frac{2(t_2 - t_1)}{W_1 + W_2}$$

where:

$t_1$ = Retention time of clavulanic acid peak;
$t_2$ = Retention time of ticarcillin peak; and
$W_1$ and $W_2$ = Widths of the bases of the corresponding peaks obtained by extrapolating the relatively straight sides of the peaks to the baseline.

When using the method to assay clavulanic acid alone, the resolution factor is not applicable.

(4) *Coefficient of variation (Relative standard deviation).* Calculate the coefficient of variation ($S_R$ in percent) as follows:

$$S_R = \frac{100}{X}\left[\frac{\sum_{i=1}^{N}(X_i - X)^2}{N-1}\right]^{1/2}$$

where:

$X$ is the mean of $N$ individual measurements of $X_i$.

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b) of this section, using the sample solution in lieu of the working standard solution.

## PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. The authority citation for 21 CFR Part 440 continues to read as follows:

**Authority:** Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

4. By redesignating § 440.290 as § 440.290a and by adding new §§ 440.290 and 440.290b to read as follows:

### § 440.290 Ticarcillin disodium injectable dosage forms.

### § 440.290a Sterile ticarcillin disodium.

* * * * *

### § 440.290b Sterile ticarcillin disodium and clavulanate potassium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Ticarcillin disodium and clavulanate potassium is a dry mixture of ticarcillin disodium and clavulanate potassium, in which the ratio of ticarcillin to clavulanic acid is 15:1 or 30:1. Its ticarcillin potency is not less than 755 micrograms of ticarcillin per milligram on an anhydrous basis if the ratio is 30:1 and 733 micrograms of ticarcillin per milligram on an anhydrous basis if the ratio is 15:1. Its ticarcillin disodium content is satisfactory if it contains not less than 90 percent and not more than 115 percent of the number of milligrams of ticarcillin that it is represented to contain. Its clavulanate potassium content is satisfactory if it contains not less than 85 percent and not more than 120 percent of the number of milligrams of clavulanic acid that it is represented to contain. It is sterile. It is nonpyrogenic. Its moisture content is not more than 4.2 percent. Its pH of an aqueous solution containing 100 milligrams per milliliter is not less than 5.5 and not more than 7.5. The ticarcillin disodium conforms to the standards prescribed by § 440.90a(a)(1) except that it contains not less than 840 micrograms of ticarcillin per milligram on an anhydrous basis. The clavulante potassium conforms to the standards prescribed by § 455.15a(a)(1) of this chapter.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The ticarcillin disodium used in making the batch for potency, sterility, pyrogens, moisture, pH, and identity.

(*b*) The clavulanate potassium used in making the batch for potency, sterility, pyrogens, moisture, pH, identity, and clavam-2-carboxylate content.

(*c*) The batch for ticarcillin potency, ticarcillin content, clavulanic acid content, sterility, pyrogens, moisture, and pH.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The ticarcillin disodium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*b*) The clavulanate potassium used in making the batch: 12 packages, each containing approximately 300 milligrams.

(*c*) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: A minimum of 20 immediate containers collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Ticarcillin and clavulanic acid contents.* Determine both micrograms of ticarcillin per milligram of sample and milligrams of both ticarcillin and clavulanic acid per container. Proceed as directed in § 436.355 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength between 220 and 230 nanometers, and a column packed with microparticulate (3 to 10 micrometers in diameter) reversed phase packing material such as octadecyl silane bonded silicas. Reagents, working standard and sample solutions, system suitability requirements, and calculations for ticarcillin or clavulanic acid content are as follows:

(i) *Reagents*—(*a*) *0.1M Monobasic sodium phosphate buffer solution, pH 4.3.* Transfer 13.8 grams of monobasic sodium phosphate monohydrate to a 1-liter volumetric flask and dissolve in 900 milliliters of distilled water. Adjust the pH to 4.3±0.1 with 18*N* phosphoric acid or 10*N* sodium hydroxide. Dilute to volume with distilled water. Mix well.

(*b*) *Mobile phase.* Mix acetonitrile: 0.1*M* monobasic sodium phosphate buffer solution, pH 4.3 (5:95 v/v) and mix for no less than two minutes. Degas by passing through a 0.5-micrometer filter with vacuum. The mobile phase may be sparged with the helium through a 2-micrometer metal filter for the duration of the analysis. Adjust the ratio of acetonitrile to aqueous buffer as necessary to obtain satisfactory separation of the peaks.

(*c*) *Diluent.* 0.05*M* monobasic sodium phosphate buffer solution, pH 6.4 Transfer 6.9 grams of monobasic sodium phosphate to a 1-liter volumetric flask and dissolve in 900 milliliters of water. Adjust the pH to 6.4 with sodium hydroxide (10*N*). Dilute to volume with distilled water. Mix well. Use this diluent to prepare the working standard and sample solutions described in paragraph (b)(1)(ii) of this section.

(ii) *Working standard and sample solutions*)(*a*) *Preparation of working standard solution.* Accurately weigh a quantity of the ticarcillin working standard containing the equivalent of approximately 90 milligrams of ticarcillin activity and transfer into a 100-milliliter volumetric flask. Prepare a solution of the clavulanic acid working standard containing the equivalent of 30 milligrams or 60 milligrams of clavulanic acid activity in a 100-milliliter volumetric flask. Dissolve and dilute to volume with diluent. Transfer 10 milliliters of this solution into the flask containing the ticarcillin standard. Dilute the combined standard solution to volume with diluent. Mix. Use within 8 hours after preparation.

(*b*) *Preparation of sample solutions*—(*1*) *Ticarcillin potency (micrograms of ticarcillin per milligram).* Accurately weigh the total contents of a container and dissolve with sufficient diluent to obtain a stock solution containing approximately 30 milligrams of ticarcillin per milliliter. Further dilute this solution with diluent to obtain a

final concentration of 0.9 milligrams of ticarcillin per milliliter (estimated).

(2) *Ticarcilin and clavulanic acid content (milligrams of ticarcillin and clavulanic acid per container).* Reconstitute the container with an appropriate volume of distilled water. Using a suitable hypodermic syringe, remove all of the withdrawable contents. Dilute with diluent to obtain a stock solution containing approximately 30 milligrams of ticarcillin per milliliter and 1 or 2 milligrams of clavulanic acid per milliliter. Further dilute this solution with the diluent to obtain a final concentration of 0.9 milligrams of ticarcillin per milliliter. The final solution will contain either 0.03 or 0.06 milligrams of clavulanic acid per milliliter (estimated) depending on the initial ticarcillin to clavulanic acid ratio.

(iii) *System suitability requirements*—(*a*) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 2.0.

(*b*) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 1,000 theoretical plates in a 25-centimeter column.

(*c*) *Resolution factor.* The resolution factor (*R*) between the clavulanic acid and ticarcillin peaks is satisfactory if it is not less than 5.0.

(*d*) *Coefficient of variation.* The coefficient of variation ($S_R$ in percent) is satisfactory if it is not more than 2.0 percent.

If the system suitability requirements have been met, then proceed as described in § 436.355(b) of this chapter.

(iv) *Calculations*—(*a*) Calculate the micrograms of ticarcillin per milligram as follows:

$$\text{Micrograms of ticarcillin per milligram} = \frac{A_u \times P_s}{A_s \times C_u}$$

where:

$A_u$ = Area of the ticarcillin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

$A_s$ = Area of the ticarcillin peak in the chromatogram of the ticarcillin working standard;

$P_s$ = Ticarcillin activity in the ticarcillin working standard solution in micrograms of anhydrous ticarcillin free acid per milliliter; and

$C_u$ = Milligrams of sample per millilter of sample solution.

(*b*) Calculate the ticarcillin or clavulanic acid anhydrous free acid content of the container as follows:

$$\text{Milligrams of anhydrous ticarcillin or clavulanic acid free acid per container} = \frac{A_u \times P_s \times d}{A_s \times 1{,}000}$$

where:

$A_u$ = Area of the ticarcillin or clavulanic acid peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

$A_s$ = Area of the ticarcillin or clavulanic acid peak in the chromatogram of the ticarcillin or clavulanic acid working standard;

$P_s$ = Anhydrous ticarcillian or clavulanic free acid activity in the ticarcillin-clavulanic acid working standard solution in micrograms per milliliter; and

$d$ = Dilution factor of the sample.

(*2*) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 100 milligrams of ticarcillin per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using a solution containing 100 milligrams per milliliter.

## PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

5. The authority citation for 21 CFR Part 455 continues to read as follows:

**Authority:** Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

6. By adding new § 455.15a to read as follows:

### § 455.15a Sterile clavulanate potassium.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Clavulanate potassium is the potassium salt of *Z*-(2*R*,5*R*)-3-(2-hydroxyethylidene)-7-oxo-4-oxa-1-azabicyclo[3.2.0]heptane-2-carboxylic acid. It is so purified and dried that:

(i) It is equivalent to not less than 755 micrograms and not more than 920 micrograms of clavulanic acid per milligram on an anhydrous basis.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 1.5 percent.

(v) Its pH of an aqueous solution containing 10 milligrams per milliliter is not less than 5.5 and not more than 8.0.

(vi) It gives a positive identity test.

(vii) Its [3*R*,5*S*]-7-oxo-4-oxa-1-azabicyclo[3.2.0]heptane-3-carboxylic acid (clavam-2-carboxylate) content is satisfactory if it is not greater than .01 percent.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, moisture, pH, identity, and clavam-2-carboxylate content.

(ii) Samples, if required by the Director, Center for Drugs and Biologics: 12 packages, each containing approximately 300 milligrams.

(b) *Tests and methods of assay*—(1) *Clavulanic acid content.* Proceed as directed in § 455.15(b)(1) of this chapter.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(b) of this chapter, using a solution containing 10 milligrams per milliliter of clavulanate potassium.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using a solution containing 10 milligrams per milliliter.

(6) *Identity.* Proceed as directed in § 436.211 of this chapter, using the sample preparation described in paragraph (b)(2) of that section.

(7) *Clavam-2-carboxylate content.* Proceed as directed in § 455.15(b)(5) of this chapter.

Dated: August 2, 1985.

**Daniel L. Michels,**

*Director, Office of Compliance, Center for Drugs and Biologics.*

[FR Doc. 85-19673 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-01-M

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[T.D. 8045]**

## Income Tax; Taxable Years Beginning After December 31, 1953; Below-Market Loans

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the Federal tax treatment of both the lender and the borrower in certain below-market interest rate loan transactions. Changes to the applicable law were made by the Tax Reform Act of 1984.

The regulations exempt taxpayers who are parties to certain below-market interest rate loan transactions from the new rules which generally apply to below-market interest rate loans. See the text of the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register for rules which would affect taxpayers who enter into certain below-market loans and provide them with guidance needed to comply with the law.

**DATES:** The regulations apply to below-market term loans made after June 6, 1984, and below-market demand loans outstanding after June 6, 1984, and are effective June 6, 1984.

**FOR FURTHER INFORMATION CONTACT:** Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T), 202-566-3828, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

## Background

This document contains temporary Income Tax Regulations (26 CFR Part 1) under section 7872 of the Internal Revenue Code of 1954.

## In General

Prior to the enactment of section 7872, some taxpayers used interest-free loans or loans with an interest rate below the current market rate (in each case, "below-market loans") which purported to circumvent well-established rules of taxation. Thus, in family or similar situations below-market loans have been used which purported to have the effect of avoiding taxation under the grantor trust rules and deflecting income to others. Corporations have made below-market loans to shareholders with the effect of avoiding taxation of income at the corporate level which is the economic equivalent of receiving a deduction for dividends paid to those shareholders. Employers have made below-market loans to employees with the effect of providing compensation which has not been subject to employment taxes. Interest-free loans have also been used to convert non-deductible expenses into the equivalent of deductible expenses.

Section 7872 addresses these and similar practices, generally, by treating certain below-market loans described in one of the categories specified in section 7872(c) as economically equivalent to loans bearing interest at the applicable Federal rate coupled with a payment by the lender to the borrower sufficient to fund the payment of interest by the borrower. Thus, the lender is treated as making: (i) A loan to the borrower in exchange for a note requiring the payment of interest at the applicable Federal rate, and (ii) a transfer of funds to the borrower in an amount generally equal to the amount of interest imputed under section 7872. In the case of term gift loans, however, the amount of money treated as transferred by the lender to the borrower which is subject to gift tax, and the amount of the imputed interest payment by the borrower to the lender are unequal because they are calculated differently under the statute.

## Exemption From Section 7872

These temporary regulations provide for the exemption of certain below-market loans from the rules of section 7872. Section 7872(g)(1)(C) provides regulatory authority for exempting from the application of section 7872 any class of transactions if the application of section 7872 would not have a significant effect on any Federal tax liability of the lender or the borrower. Accordingly, these temporary regulations provide that certain below-market loans which are not structured as such for tax avoidance purposes are exempted from the provisions of section 7872. If, however, such a loan is structured as one of the exempted loans for tax avoidance purposes, the Service may recharacterize the transaction according to its economic substance and apply section 7872 in accordance with its terms.

## Notice of Proposed Rulemaking

The notice of proposed rulemaking, which is published in the Proposed Rules section of this issue of the Federal Register, provides taxpayers who enter into certain below-market loans with the guidance needed to comply with section 7872. Accordingly, those proposals would provide rules for determining:

(1) The type of transactions characterized as loans;

(2) The types of below-market loans subject to section 7872;

(3) The timing and amount of transfers in connection with gift demand and term loans;

(4) The special application of section 7872 to loans made directly between natural persons;

(5) The rule of *de minimis* amount of loans; and

(6) Other special rules.

As a result, these temporary regulations reserve all sections of the regulations other than § 1.7872-5T until the proposed regulations are published as either temporary or final regulations.

## Inapplicability of Executive Order 12291

The Treasury Department has determined that these temporary regulations are not subject to review under Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

## Regulatory Flexibility Act

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

## Drafting Information

The principal author of these regulations is Howard A. Balikov 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 these regulations on matters of both substance and style.

## List of Subjects in 26 CFR 1.7872-1 to 1.7872-14

Income taxes, Gift taxes, Below-market loans.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

## Income Tax Regulations

## PART 1—[AMENDED]

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 1.7872-5T also issued under 26 U.S.C. 7872.

**Par. 2.** New §§ 1.7872-1 through 1.7872-4 are added and reserved in the appropriate place.

**Par. 3.** New §§ 1.7872-6 through 1.7872-14 are added and reserved in the appropriate place.

**Par. 4.** New § 1.7872-5T is added in the appropriate place. The new section reads as follows:

### § 1.7872-5T Exempted loans (temporary).

(a) *In general*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a

significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans.* If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872 (c)(1)(D).

(b) *List of exemptions.* Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) Loans which are made available by the lender to the general public on the same terms and conditions and which are consistent with the lender's customary business practice;

(2) Accounts or withdrawable shares with a bank (as defined in section 581), or an institution to which section 591 applies, or a credit union, made in the ordinary course of its business;

(3) Acquisitions of publicly traded debt obligations for an amount equal to the public trading price at the time of acquisition;

(4) Loans made by a life insurance company (as defined in section 816 (a)), in the ordinary course of its business, to an insured, under a loan right contained in a life insurance policy and in which the cash surrender values are used as collateral for the loans;

(5) Loans subsidized by the Federal, State (including the District of Columbia), or Municipal government (or any agency or instrumentality thereof), and which are made available under a program of general application to the public;

(6) Employee-relocation loans that meet the requirements of paragraph (c)(1) of this section;

(7) Obligations the interest on which is excluded from gross income under section 103;

(8) Obligations of the United States government;

(9) Loans to a charitable organization described in section 170(c), but only if at no time during the taxable year will the aggregate outstanding amount of loans by the lender to all such organizations exceed $10,000;

(10) Loans made to or from a foreign person that meet the requirements of paragraph (c)(2) of this section;

(11) Loans made by a private foundation or other organization described in section 170(c), the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B);

(12) Loans made prior to July 1, 1986, to the extent excepted from the application of section 482 for the 6- month (or longer) period referred to in § 1.482–2(a)(3);

(13) For periods prior to July 1, 1986, all money, securities, and property received by a futures commission merchant or by a clearing organization (i) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (ii) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, and all money accruing to account holders as the result of such futures and options contracts;

(14) Loans the interest arrangements of which the taxpayer is able to show have no significant effect on any Federal tax liability of the lender or the borrower, as described in paragraph (c)(3) of this section; and

(15) Loans, described in revenue rulings or revenue procedures issued under section 7872(g)(1)(C), if the Commissioner finds that the factors justifying an exemption for such loans are sufficiently similar to the factors justifying the exemptions contained in this section.

(c) *Special rules*—(1) *Employee-relocation loans*—(i) *Mortgage loans.* In the case of a compensation-related loan to an employee, where such loan is secured by a mortgage on the new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee, acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The loan is a demand loan or is a term loan the benefits of the interest arrangements of which are not transferable by the employee and are conditioned on the future performance of substantial services by the employee;

(B) The employee certifies to the employer that the employee reasonably expects to be entitled to and will itemize deductions for each year the loan is outstanding; and

(C) The loan agreement requires that the loan proceeds be used only to purchase the new principal residence of the employee.

(ii) *Bridge loans.* In the case of a compensation-related loan to an employee which is not described in paragraph (c)(1)(i) of this section, and which is used to purchase a new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The conditions contained in paragraphs (c)(1)(i) (A), (B), and (C) of this section;

(B) The loan agreement provides that the loan is payable in full within 15 days after the date of the sale of the employee's immediately former principal residence;

(C) The aggregate principal amount of all outstanding loans described in this paragraph (c)(1)(ii) to an employee is no greater than the employer's reasonable estimate of the amount of the equity of the employee and the employee's spouse in the employee's immediately former principal residence, and

(D) The employee's immediately former principal residence is not converted to business or investment use.

(2) *Below-market loans involving foreign persons*—(i) Section 7872 shall not apply to a below-market loan (other than a compensation-related loan or a corporation-shareholder loan where the borrower is a shareholder that is not a C corporation as defined in section 1361(a)(2)) if the lender is a foreign person and the borrower is a U.S. person unless the interest income imputed to the foreign lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(ii) Section 7872 shall not apply to a below-market loan where both the lender and the borrower are foreign persons unless the interest income imputed to the lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(iii) For purposes of this section, the term "foreign person" means any person that is not a U.S. person.

(3) *Loans without significant tax effect.* Whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all of the facts and circumstances. Among the factors to be considered are—

(i) Whether items of income and deduction generated by the loan offset each other;

(ii) the amount of such items;

(iii) the cost to the taxpayer of complying with the provisions of section 7872 if such section were applied; and

(iv) any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

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 section (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: August 12, 1985.

Ronald A. Pearlman,
*Assistant Secretary of the Treasury.*

[FR Doc. 85-19784 Filed 8-15-85; 12:11 pm]
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## 26 CFR Parts 1 and 35a

[T.D. 8046]

## Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form; and the Application of the Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains amendments to the temporary regulations issued under T.D. 7965 and T.D. 7967 and published in the Federal Register beginning at 49 FR 33228 and 49 FR 33239, respectively. These regulations relate to the definition of the term "registration-required obligation" with respect to certain obligations, the imposition of sanctions on issuers issuing registration-required obligations in bearer form, and the repeal of 30 percent withholding by the Tax Reform Act of 1984. The regulations affect issuers of obligations held by foreign persons, issuers of certain other obligations, and payers and recipients of interest with respect to all such obligations. They provide the public with guidance necessary to comply with the Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1984. The text of these temporary regulations also serve as the text for an amended notice of proposed rulemaking published in this issue of the Federal Register.

**DATES:** The temporary regulations under § 1.163-5T(d) (pass-through certificates) generally apply to obligations issued after December 31, 1982. The temporary regulations under § 1.163-5T(c)(2)(v)(vi) which amend the regulations issued by T.D. 7965 (issuer sanctions) are generally effective with respect to obligations originally issued after September 21, 1984. The temporary regulations under § 35a.9999-5 which amend the regulations issued by T.D. 7967 (repeal of 30 percent withholding) are generally effective for payments made after September 19, 1985 with respect to obligations issued after July 18, 1984.

**FOR FURTHER INFORMATION CONTACT:** P. Ann Fisher of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (202-566-3289, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

These temporary regulations amend existing temporary regulations issued previously relating to the definition of the term "registration-required obligation," the imposition of sanctions on issuers issuing registration-required obligations in bearer form and the repeal of 30 percent withholding.

### Need for Amendment

The temporary regulations which are being amended did not specifically address the application of the definition of the term "registration-required obligation" under section 163(f)(2)(A) to pass-through certificates, such as mortgage pass-through certificates, the application of the sanctions on issuers of "registration-required obligations" not in registered form to the issuers of such certificates and the underlying obligations, or the application of the partial repeal of 30 percent withholding to these certificates.

The effective date provision of the temporary regulations issued on August 22, 1984, defining what obligations are described under section 163(f)(2)(B) (the "temporary foreign-targeting regulations"), applied these regulations to any obligation issued after September 21, 1984, including an obligation issued after September 21, 1984 either pursuant to the exercise of a warrant that was issued on or before September 21, 1984 or on the conversion of a convertible debt obligation issued on or before such date. The amendments provide that the temporary foreign-targeting regulations generally effective after September 21, 1984 do not apply to obligations issued either pursuant to the exercise of a warrant or the conversion of a convertible debt obligation that complied with earlier temporary regulations in effect when the warrant or convertible debt obligation was issued.

The temporary foreign-targeting regulations which are being amended do not clearly define the scope of the rule which states that a transfer to an account in the United States is considered to be a payment inside the United States, and these amendments more precisely define this scope.

Finally, the temporary regulations issued in question and answer form on the subject of the repeal of 30 percent withholding do not explain completely how the certification requirements for repeal apply to foreign-targeted registered obligations held by clearing organizations and by foreign branches of United States financial institutions, and these amendments provide a more complete explanation.

### Explanation of Provisions

*Registration-Required Obligations*

This amendment provides that a pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) ("pass-through certificate") is considered to be "a registration-required obligation" if the pass-through certificate is described in section 163(f)(2)(A), without regard to whether any obligation held by the fund or trust to which it relates is described in section 163(f)(2)(A). Also, a pass-through certificate is considered to satisfy the requirements of section 163(f)(2)(B) if it satisfies the requirements of section 163(f)(2)(B) without regard to the status of the underlying obligations. Mortgage pass-through certificates are therefore obligations to which section 163(f)(2) (A) or (B) may apply.

This amendment does not affect the determination of whether bearer obligations that are issued or guaranteed by the United States Government or backed by United States Government securities comply with the

requirements of section 163(f)(2)(B) and the regulations thereunder.

The amendment is also contained in a cross-reference notice of proposed rulemaking and, in that regard, the Service is especially interested in receiving comments as to: (1) What should qualify as a similar pooled fund or pooled trust treated as a grantor trust for purposes of section 163(f)(2) (A) and (B) (see § 1.163–5T(d) (1)) and (2) when the Commissioner's authority to characterize certificates (or similar evidences of interest in a pooled fund or pooled trust treated as a grantor trust) and obligations in accordance with the substance of the arrangement and to impose penalties as appropriate should be exercised (see § 1.163–5T(d)(4)).

*Issuer Sanctions*

Under the temporary foreign-targeting regulations, an issuer of a bearer obligation that is otherwise a "registration-required obligation" is not subject to certain sanctions if the issuer complies with the requirements contained in the regulations, including the requirement that interest be paid outside the United States. The temporary regulations provide that interest paid by transfer into an account maintained by the payee in the United States is considered paid in the United States if it is paid on an obligation issued by a United States person, a controlled foreign corporation, or a foreign corporation if 50 percent or more of its gross income for the 3-year period preceding the original issuance of the obligation is effectively connected with the conduct of a trade or business within the United States. This rule does not apply to payments to persons described in section 165(j)(3)(A), (B), or (C) and the regulations thereunder. The purpose of this rule is to prevent United States persons (except those persons who are permitted to hold bearer obligations) form depositing interest on bearer obligations into their accounts maintained in the United States. The transfer of interest to a United States account of a financial institution should not be considered payment inside the United States if this transfer is merely a step in the clearance of funds and the interest is promptly credited to an account maintained outside the United States by the financial institution or by the person for which the financial institution has collected the interest. Therefore, this amemdment provides an exception to permit a financial institution to have interest credited to an account it maintains in the United States if the payment is a step in the clearance of funds and the interest is promptly credited to an account maintained outside the United States by the financial institution or by the person for which the financial institution collected the interest.

This amendment also changes the effective date of the temporary foreign-targeting regulations. The prior effective date provision applied these regulations to an obligation issued after September 21, 1984. The amended effective date provision does not apply the temporary regulations issued on August 22, 1984 to an obligation issued after September 21, 1984 either pursuant to the exercise of a warrant issued on or before September 21, 1984, or on the conversion of a convertible debt obligation issued on or before September 21, 1984. The amended effective date provision instead applies the rules provided in temporary regulation § 5f.163–1(c), as in effect prior to its removal, to the determination of whether such an obligation issued after September 21, 1984 is described in section 163(f)(2)(B) and is therefore not required to be registered. However, an issuer who has substantially complied with the former proposed regulations provided in § 1.163–5(c) (superseded on August 22, 1984 by the temporary foreign-targeting regulations issued on that date) will considered to satisfy the requirements of section 163(f)(2)(B) with respect to an obligation issued after September 21, 1984 either pursuant to the exercise of a warrant issued on or before September 21, 1984 or on the conversion of a convertible debt obligation issued on or before September 21, 1984.

*Repeal of 30 Percent Withholding*

This amendment provides specific guidance on the application of the partial repeal of the 30 percent withholding tax to pass-through certificates. The amendment provides that interest paid to a holder of a pass-through certificate will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) if it is described in A–1 or A–8 or § 35a.9999–5, without regard to whether any obligations held by the fund or trust to which the pass-through certificate relates are described in A–1 or A–8. However, for purposes of A–1 and A–8 of § 35a.9999–5 and section 127 of the 1984 Act, a pass-through certificate will be considered as issued after July 18, 1984 only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

This amendment also provides that a pass-through certificate is considered to be an obligation that would be a registration-required obligation but for the fact that it is described in section 163(f)(2)(B) if the pass-through certificate is not described in section 163(f)(2)(A) (i), (ii), or (iii) (without regard to whether any obligation held by the fund or trust to which it relates is so described) and if the pass-through certificate is described in section 163(f)(2)(B) (without regard to whether any obligation held by the fund or trust to which it relates is so described).

This amendment also provides additional guidance on the certification requirements applicable to foreign-targeted registered obligations and on the determination by a withholding agent that 30 percent withholding on a payment of interest on any registered obligation is not required because the payee is a United States person.

With respect to foreign-targeted registered obligations, this amendment clarifies that the certificate of non-United States beneficial ownership must always be given to the United States person who would otherwise be required to deduct and withhold tax. The certificate must generally relate to ownership of the obligation on interest payment dates during the preceding and forthcoming years. The amendment changes the frequency of filing the certificate from a filing within the period beginning 90 days prior to each interest payment date (and ending on that date) to a single annual filing during the period beginning on January 15 and ending on January 31 of each year for all foreign-targeted registered obligations that have been held at any time during the immediately past year and that will be acquired at any time during the forthcoming year by the person providing the certificate.

Withholding agents paying interest to beneficial owners that are neither financial institutions nor members of clearing organizations may accept a statement on a Form W–8 or substitute form that the beneficial owner is not a United States person. However, a withholding agent that is a foreign branch of a financial institution and a United States person need not receive a statement provided that the beneficial owner furnishes to the withholding agent documentary evidence, as defined in subdivision (iii) of Q & A–5 of § 35a.9999–4T, to such effect.

The amendment provides that, if a United States person becomes a beneficial owner on an interest payment date, the withholding agent must be so notified within 30 days after such date. In such case the withholding agent is not required to withhold from the next interest payment if the withholding agent receives a Form W–9 (or a substitute form that is substantially similar) or a statement that the person

who provides the notification of United States beneficial ownership is either a controlled foreign corporation or a corporation 50 percent or more of the gross income of which for the preceding 3 years was effectively connected with the conduct of a United States trade or business.

As noted, the amendment provides that the certificate provided to the withholding agent must relate only to ownership of the obligation on interest payment dates, not to any period between such dates. This is consistent with the provision under § 1.1441–4(h) of the regulations, which states that tax is not required to be withheld on accrued interest paid by the buyer in connection with the sale of bonds between interest payment dates, even though the interest is subject to tax under section 871 or 881. The Internal Revenue Service is, however, studying the desirability of this provision. Any change with respect to the application of 30 percent withholding and any resulting change related to the exemption from 30 percent witholding under sections 871(h) and 881(c), including applicable certification requirements, would be made in future regulations and would apply on a prospective basis only.

Although these amendments are generally effective for payments made after September 19, 1985, the certificate required to be filed with the withholding agent between January 15 and January 31, 1986, is not required to certify the foreign status of a beneficial owner of an obligation before the date of the certificate, and the certification requirements presently in effect will, with two exceptions, continue to apply to interest payments prior to the filing of the certificate between January 15 and January 31, 1986.

The first exception is that those provisions of the amendments relating to which persons are required to provide or receive certificates or statements will apply to interest payments beginning September 19, 1985. Thus, for example, the U.S. person who would otherwise be required to deduct and withhold tax on such interest payments must receive the certificate of non-United States beneficial ownership.

The second exception is that the provisions relating to the situation where the withholding agent pays interest directly to the beneficial owner will apply beginning on September 19, 1985.

### Regulatory Flexibility Act and Executive Order 12291

The Commissioner of Internal Revenue has determined that this temporary regulation is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The Internal Revenue Service has concluded that the regulations adopted hereby are interpretative and that the notice and public procedure requirements of 5 U.S.C. § 553 do not apply. Accordingly, these regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

### Need for Temporary Regulations

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision by reason of the continuous issuance of obligations to foreign persons and the repeal of 30% withholding on the interest of such obligations issued after July 18, 1984. For this reason, it is found impracticable to issue these temporary regulations 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.

The Q&As are not intended to address comprehensively the issues raised by the repeal of 30 percent withholding. Taxpayers may rely for guidance on these Q&As, which the Internal Revenue Service will follow in resolving issues expressly raised herein arising under section 127 of the Tax Reform Act of 1984 and the information reporting and backup withholding rules affected thereby. No inference, however, should be drawn regarding questions not expressly raised and answered.

### Drafting Information

The principal author of these temporary regulations is P. Ann Fisher 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 1.61–1 through 1.281–4*

Income taxes, Taxable income, Deductions, Exemptions.

*26 CFR 1.861–1 through 1.997–1*

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investment abroad.

*26 CFR Part 35a*

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

### Adoption of Amendments to the Regulations

The following amendments to 26 CFR Parts 1, and 35a are hereby adopted:

**Paragraph 1.** The authority for Part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.163–5T is amended by revising paragraph (c)(2) (v) and (vi) and adding paragraph (d). The revised and added paragraphs read as follows:

**§ 1.163–5T. Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.**

* * * * *

(c) *Obligations, issued to foreign persons after September 21, 1984.* * * *

(2) *Rules for the application of this paragraph.* * * *

(v) *Interest payable outside of the United States.* Interest will be considered to be payable only outside the United States and its possessions if payment of such interest can be made only upon presentation of a coupon, or upon making of any other demand for payment, outside of the United States and its possessions to the issuer or a paying agent. The fact that payment is made by a draft drawn on a United States bank account or by a wire or other electronic transfer from a United States account does not affect this result. Interest payments will not be considered to be made outside of the United States if the payments are made by a transfer of funds into an account maintained by the payee in the United States or mailed to an address in the United States, if—

(A) The interest is paid on an obligation issued by either a United States person, a controlled foreign corporation as defined in section 957(a), or a foreign corporation if 50 percent or more of the gross income of the foreign corporation from all sources of the 3-year period ending with the close of its taxable year preceding the original issuance of the obligation (or for such part of the period that the foreign corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States; and

(B) The interest is paid to a person other than—

(*1*) A person who may satisfy the requirements of section 165(j)(3) (A), (B), or (C) and the regulations thereunder; and

(*2*) A financial institution as a step in the clearance of funds and such interest is promptly credited to an account maintained outside the United States for

such financial institution or for persons for which the financial institution has collected such interest.

Interest is considered to be paid within the United States and its possessions if a coupon is presented, or a demand for payment is otherwise made, to the issuer or a paying agency (whether a United States or foreign person) in the United States and its possessions even if the funds paid are credited to an account maintained by the payee outside the United States and its possessions. Interest will be considered payable only outside the United States and its possessions notwithstanding that such interest may become payable at the office of the issuer or its United States paying agent under the following conditions: the issuer has appointed paying agents located outside the United States and its possessions with the reasonable expectation that such paying agents will be able to pay the interest in United States dollars, and the full amount of such payment at the offices of all such paying agents is illegal or effectively precluded because of the imposition of exchange controls or other similar restrictions on the full payment or receipt of interest in United States dollars. A lawsuit brought in the United States or its possessions for payment of the obligation or interest thereon as a result of a default shall not be considered to be a demand for payment. For purposes of this subdivision (v), interest includes original issue discount as defined in section 1273(a). For purposes of determining the amount of original issue discount on an obligation described in paragraph (c)T(2)(i) which is part of an issue that neither is registered with the Securities and Exchange Commission nor is part of a privately placed issue, section 1273(a) shall apply as if the obligation were registered with the Securities and Exchange Commission.

(vi) *Rules relating to obligations issued on or before September 21, 1984.* Whether an obligation originally issued on or before September 21, 1984, or an obligation originally issued after September 21, 1984, pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued on or before September 21, 1984, is described in section 163(f)(2)(B) shall be determined under the rules provided in § 5f.163–1(c) as in effect prior to its removal. Notwithstanding the preceding sentence, an issuer will be considered to satisfy the requirements of section 163(f)(2)(B) with respect to an obligation issued on or before September 21, 1984 or after September 21, 1984 pursuant to the exercise of a warrant or the conversion of a convertible obligation, which warrant or obligation (including conversion privilege) was issued on or before September 21, 1984, if the issuer substantially complied with the proposed regulations provided in § 1.163–5(c), which were published in the **Federal Register** on September 2, 1983 (48 FR 39953) and superseded by temporary regulations published in the **Federal Register** on August 22, 1984 (49 FR 33228).

(d) *Pass-through certificates.* (1) A pass-through or participation certificate evidencing an interest in a pool of mortgage loans which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner (or similar evidence of interest in a similar pooled fund or pooled trust treated as a grantor trust) ("pass-through certificate") is considered to be a "registration-required obligation" under section 163(f)(2)(A) and this section if the pass-through certificate is described in section 163(f)(2)(A) and this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(A) and this section. A pass-through certificate is considered to be described in section 163(f)(2)(B) and this section if the pass-through certificate is described in section 163(f)(2)(B) and this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(B) and this section.

(2) An obligation held by a fund or trust in which ownership interests are represented by pass-through certificates is considered to be in registered form under section 103(j) and the regulations thereunder or to be described in section 163(f)(2) (A) or (B) if the obligation held by the fund or trust is in registered form under section 103(j) and the regulations thereunder or is described in section 163(f)(2) (A) or (B), respectively, without regard to whether the pass-through certificate are so considered.

(3) For purposes of section 4701, a pass-through certificate is considered to be issued solely by the recipient of the proceeds from the issuance of the pass-through certificate (hereinafter the "sponsor"). The sponsor is therefore liable for any excise tax under section 4701 that may be imposed with reference to the principal amount of the pass-through certificate.

(4) In order to implement the purpose of section 163 and this section, the Commissioner may characterize a certificate or other evidence of interest in a fund or trust which under Subpart E of Subchapter J of the Code is treated as a trust of which the grantor is the owner and any obligation held by such fund or trust in accordance with the substance of the arrangement they represent and may impose the penalties provided under sections 163(f)(1) and 4701 in the appropriate amounts and on the appropriate persons. This provision may be applied, for example, where a corporation issues obligations purportedly in registered form, contributes them to a grantor trust as its only assets, and arranges for the sale to investors of bearer certificates of interest in the trust which do not meet the requirements of section 163(f)(2)(B). If this provision is applied, the obligations held by the fund or trust will not be considered to be issued in registered form or to meet the requirements of section 163(f)(2)(B). The corporation will not be allowed a deduction for the payment of interest on the obligations held by the trust, and the excise tax under section 4701, calculated with reference to the principal amount of the obligations held by the trust will be imposed on the corporation and may be collected from the corporation and its agents. This paragraph (d)(4) will not be applied so as to alter the tax consequences of transactions as to which rulings have been issued by the Internal Revenue Service prior to September 19, 1985.

(5) The rules set forth in this paragraph (d) apply solely for purposes of sections 4701, 163(f)(2)(A), 163(f)(2)(B), this section, and any other section that refers to this section for the definition of the term "registration-required obligation" (such as the regulations under sections 871(h) and 881(c)). The treatment of obligations described in this paragraph (d) for purposes of section 163(f)(2) (A) and (B) does not affect the determination of whether bearer obligations that are issued or guaranteed by the United States Government, a United States Government-owned agency, or a United States Government sponsored enterprise (within the meaning of § 1.163–5T(c)(1)) or that are backed (as described in the Treasury Department News Release R–2835 of September 10, 1984 and Treasury Department News Release R–2847 of September 14, 1984) by obligations issued by the United States Government, a United States Government-owned agency, or a United States Government sponsored enterprise comply with the requirements of section 163(f)(2)(B) and the regulations thereunder.

(6) *Example.* The provisions of this paragraph (d) may be illustrated by the following example:

Commercial Bank K forms a pool of 1000 residential mortgage loans, each made to a different individual homeowner, by assigning them to Commercial Bank L, an unrelated entity serving as trustee of the pool. Commercial Bank L immediately sells in a public offering certificates of interest in the trust of a maturity of 10 years in registered form. Commercial Bank L transfers the cash proceeds of the offering to Commercial Bank K. The certificates of interest in the trust are of a type offered to the public and are not described in section 163(f)(2)(B). Purruant to paragraph (d)(1), the certificates of interest in the pool are registration-required obligations without regard to the fact that the obligations held by the trust are not registration-required obligations.

## PART 35a—[AMENDED]

**Par. 3.** The authority for Part 35a continues to read in part:

**Authority:** 26 U.S.C. 871, 26 U.S.C. 881, 26 U.S.C. 1441, 26 U.S.C. 1442, and 26 U.S.C. 7805.

**Par. 4.** Section 35a.9999–5 is amended by—

1. Revising Q&As 10, 12, 14, and 15 of paragraph (b), and
2. Adding paragraph (d) consisting of Q&A 20. These revised and added provisions read as follows:

**§ 35a.9999–5. Questions and answers relating to the repeal of 30 percent withholding by section 127 of the Tax Reform Act of 1984 and to the application of information reporting and backup withholding in light of such repeal.**

* * * * *

(b) *Rules Concerning Obligations in Registered Form.* * * *

Q–10. In the absence of the receipt of a certificate described in A–9 (or a certificate described in A–14 in the circumstances described in A–12) or a Form W–9 (or a substitute form that is substantially similar and completed under penalties of perjury), what United States persons are required to deduct and withhold tax under section 1441(a) or 1442(a) from interest otherwise qualifying as portfolio interest within the meaning of section 871(h)(2)(B) or 881(c)(2)(B)?

A–10. In general, any United States person who is otherwise a withholding agent for purposes of section 1441(a) or 1442(a) is required to deduct and withhold unless the certificate described in A–9 (or a certificate described in A–14 in the circumstances described in A–12) or a Form W–9 (or a substitute form that is substantially similar and completed under penalties of perjury) is received. However, a United States person is not required to withhold under section 1441(a) and 1442(a) regardless of whether the certificate is received under the following circumstances:

(i) The interest is paid to or collected on behalf of an exempt recipient at an address within the United States (other than an exempt recipient who is not a United States person); or

(ii) The interest is paid to a person at an address within the United States, and backup withholding is required with respect to that interest in accordance with the provisions of section 3406 (e.g., because neither a Form W–8 nor a Form W–9 has been received). For purposes of this A–10, an exempt recipient is a person described in § 1.6049–4(c)(1)(ii).

* * * * *

Q–12. Is a United States person (including a foreign paying agent of an issuer who is a United States person) who is otherwise required to deduct and withhold tax in accordance with A–10 required to obtain the certificate described in A–9 with respect to interest on a registered obligation that has been targeted to foreign markets?

A–12. The certificate described in A–9 is not required with respect to interest paid on a registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) if the interest is paid by a United States person to a registered owner at an address outside the United States, provided that the registered owner is a financial institution described in section 871(h)(4)(B). In that case, the United States person otherwise required to deduct and withhold tax may treat the interest as portfolio interest if it does not have actual knowledge that the beneficial owner is a United States person and if it receives the certificate described in A–14 from a financial institution or member of a clearing organization, which member is the beneficial owner of the obligation, or the documentary evidence or statement described in A–14 from the beneficial owner, in accordance with the procedures described in A–15.

* * * * *

Q–14. What is the certificate or documentary evidence that may be provided in lieu of the Form W–8 (or substitute form) in the circumstances described in A–12?

A–14. No particular form is required for the certificate or documentary evidence in lieu thereof described in this A–14, but it must be described in either subdivision (i) or subdivision (ii). The certificate described in subdivision (i) is required if the United States person otherwise required to deduct and withhold tax (the "withholding agent") pays interest to a financial institution described in section 871(h)(4)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation. The documentary evidence or statement described in subdivision (ii) is required if a withholding agent pays interest to a beneficial owner that is neither a financial institution described in section 871(h)(4)(B) nor a member of a clearing organization.

(i)(A) If the withholding agent pays interest to a financial institution described in section 871(h)(4)(B) or to a member of a clearing organization, which member is the beneficial owner of the obligation, the withholding agent must receive a certificate which states that, beginning at the time the last preceding certificate under this subdivision (i) was provided and while the financial institution or clearing organization member has held the obligation, with respect to each registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) which has been held by the person providing the certificate at any time since the provision of such last preceding certificate, either—

(*1*) The beneficial owner of the obligation has not been a United States person on each interest payment date; or

(*2*) If the person providing the certificate is a financial institution which is holding or has held an obligation on behalf of the beneficial owner, the beneficial owner of the obligation has been a United States person on one or more interest payment dates (identifying such date or dates), and the person making the certification has forwarded or will forward the appropriate United States beneficial ownership notification to the withholding agent in accordance with the provisions of A–15.

The person providing the certificate need not state the foregoing where no previous certificate has been required to be provided by the payee to the withholding agent under this subdivision (i).

(B) Whether or not a previous certificate has been required to be provided under this subdivision (i), each certificate under this subdivision (i) must further state that, with respect to each registered obligation that is targeted to foreign markets (in accordance with the provisions of A–13) held and every other such obligation to be acquired and held by the person providing the certificate during the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided, the beneficial owner of the

obligation will not be a United States person on each interest payment date while the financial institution or clearing organization member holds the obligation and that, if the person providing the certificate is a financial institution which is holding or will be holding the obligation on behalf of a beneficial owner, such person will provide a United States beneficial ownership notification to the withholding agent (and a clearing organization that is not a withholding agent where a member organization is required by this A–14 to furnish the clearing organization with a statement) in accordance with A–15 of this section in the event such certificate (or statement in the case of a statement provided by a member organization to a clearing organization that is not a withholding agent) is or becomes untrue with respect to any obligation. A clearing organization is an entity which is in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(C) The certificate described in subdivision (i) (A) and (B) must identify the obligation or obligations with respect to which it is given, except where the certification is given with respect to an obligation that has not been acquired at the time the certification is made. An obligation is identified if it or the larger issuance of which it is a part is described on a list (*e.g.*, $5 million principal amount of 12% debentures of ABC Savings and Loan Association due February 25, 1995, $3 million principal amount of 10% U.S. Treasury notes due May 28, 1990) of all registered obligations targeted to foreign markets held by or on behalf of the person providing the certificate and the list is attached to, and incorporated by reference into, the certificate. The certificate must identify and provide the address of the person furnishing the certificate.

(D) If the withholding agent pays interest to a depository of a clearing obligation, then the clearing organization must provide the certificate to the withholding agent.

(E) Any certificate that is provided by a clearing organization must state that the clearing organization has received a statement from each member which complies with this subdivision (i) of A–14 and with A–15 (as if the clearing organization were the withholding agent and regardless of whether the member is a financial institution described in section 871(h)(4)(B)).

(F) Subject to the requirements set out in A–15, a certificate or statement in the form described in this subdivision (i) of A–14, in conjunction with the next annual certificate or statement, will serve as the certificate that may be provided in lieu of a Form W–8 with respect to interest on all foreign-targeted registered obligations held by the person making the certification or statement and which is paid to such person within the period beginning on the date of the certificate and ending on the date the next certificate is required to be provided.

(ii) If the withholding agent pays interest to the beneficial owner of an obligation that is neither a financial institution described in section 871(h)(4)(B) nor a member of a clearing organization, then such owner must provide the withholding agent a Form W–8 (or substantially similar form completed under penalties of perjury) as set forth in A–9 of this section. However, a withholding agent that is a foreign branch of a financial institution described in section 871(h)(4)(B) and a United States person need not receive any statement or certificate from such beneficial owner, provided that the beneficial owner furnishes the withholding agent with documentary evidence as described in subdivision (iii) of Q–5 of § 35a.9999–4T that the beneficial owner is not a United States person.

Q–15. What procedures apply with respect to the certificate described in A–14?

A–15. (i)(A) Where no previous certificate with respect to registered obligations that are targeted to foreign markets (in accordance with the provisions of A–13) has been provided to the withholding agent by the person providing the certificate under subdivision (i) of A–14, such certificate must be provided within the period beginning 90 days prior to the first interest payment date on which the person holds a foreign-targeted registered obligation. (The withholding agent may, in its descretion, withhold the tax under section 1441(a) or 1442(a) if the certificate is not received by the date 30 days prior to the interest payment.) Thereafter the certificate must be filed within the period beginning on January 15 and ending January 31 of each year. If a certificate provided pursuant to the first sentence of this subdivision (i)(A) is provided during the period beginning on January 15 and ending on January 31 of any year, then no other certificate need be provided during such period in such year.

(B) If on any interest payment date after the obligation was acquired by the person making the certification the beneficial owner of the obligation is a United States person, then the person to whom the withholding agent pays interest must furnish the withholding agent with a United States beneficial ownership notification within 30 days after such interest payment date. A United States beneficial ownership notification must include a statement that the beneficial owner of the obligation has been a United States person on an interest payment date (identifying such date), that such owner has provided to the person providing the notification a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), and that the person providing the notification has been and will be complying with the information reporting requirements of section 6049, if applicable.

(C) Where the person providing the notification described in subdivision (i)(B) of this A–15 is neither (*1*) a controlled foreign corporation within the meaning of section 957(a), nor (*2*) a foreign corporation 50 percent or more of the gross income of which from all sources for the three-year period ending with the close of the taxable year preceding the date of the statement was effectively connected with the conduct of trade or business in the United States, such person must attach to the notification a copy of the Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) provided by the beneficial owner. When a person that provides the United States beneficial ownership notification does not attach to it a copy of such Form W–9 (or substitute form that is substantially similar to Form W–9 and completed under penalties of perjury), such person must state that it is either a controlled foreign corporation within the meaning of section 957(a), or a foreign corporation 50 percent or more of the gross income of which from all sources for the three-year period ending with the close of its taxable year preceding the date of the statement was effectively connected with the conduct of a trade or business in the United States. A withholding agent that receives a Form W–9 (or a substitute form that is substantially similar to Form W–9 and completed under penalties of perjury) must send a copy of such form to the Internal Revenue Service Center, Cincinnati, OH. 45999, within 30 days

after receiving it and must attach a statement that the Form W-9 or substitute was provided pursuant to this A-15 with respect to a United States person that has owned a foreign-targeted registered obligation on one or more interest payment dates.

(D) If either a Form W-9 (or a substitute form that is substantially similar to a Form W-9 and completed under penalties of perjury) or the statement described in subdivision (C) of this A-15 is not attached to the United States beneficial ownership notification provided pursuant to subdivision (i)(B) of this A-15, the withholding agent is required to withhold tax under section 871 or 881 on a payment of interest made after the withholding agent has received the notification unless such form or statement (or a statement that the beneficial owner of the obligation is no longer a United States person) is received before the interest payment date from the person who provided the notification (or transferee). If, during the period beginning on the next January 15 and ending on the next January 31, such person certifies as set out in subdivision (i) (A) and (B) of A-14 (except that such person does not certify under subdivision (i)(A)(2) that it has forwarded all United States beneficial ownership notifications to the withholding agent in accordance with the provisions of A-15), then the withholding agent is not required to withhold tax during the year following such certification (unless such person again provides a United States beneficial ownership notification without attaching a Form W-9 or substitute form that is substantially similar to Form W-9 and completed under penalties of perjury or the statement described in subdivision (C) of this A-15).

(E) Within the period beginning 10 days before the end of the calendar quarter and ending on the last day of each calendar quarter, any clearing organization (including a clearing organization that is a withholding agent) relying on annual certificates or statements from its member organizations, as set forth in A-14 of this section, must send each member organization having submitted such certificate or statement a reminder that the member organization must give the clearing organization a United States beneficial ownership notification in the circumstances described in subdivision (i)(B) of this A-15.

(F) The certificate described in subdivision (i) of A-14 must be retained in the records of the withholding agent for four years from the end of the calendar year in which it was received. The statement described in subdivision (i) of A-14 that is received by a clearing organization from a member organization must be retained in the records of the clearing organization for four years from the end of the calendar year in which it was received. The withholding agent who receives the certificate described in subdivision (i) of A-14 is not required to file Form 1042S to report payments of interest that are made with respect to foreign-targeted registered obligations held by the person providing the certificate and are made within the period beginning with the certificate date and ending on the last date for filing the next certificate.

(ii)(A) The documentary evidence (or Form W-8 or substantially similar form completed under penalties of perjury) described in subdivision (ii) of A-14 must be provided to the withholding agent within the period beginning 90 days prior to and ending on the first interest payment date on which the withholding agent pays interest to the beneficial owner. The withholding agent may, in its discretion, withhold the tax under section 1441(a) or 1442(a) if the documentary evidence (or Form W-8 or substantially similar form completed under penalties of perjury) is not received by the date 30 days prior to the interest payment. The beneficial owner must confirm to the withholding agent the continuing validity of the documentary evidence within the period beginning 90 days prior to the first day of the third calendar year following the provision of such evidence and during the same period every three years thereafter while the owner still owns the obligation. The withholding agent who receives the documentary evidence described in subdivision (ii) of A-14 is not required to file Form 1042S for payments of interest that are made with respect to foreign-targeted registered obligations held by the person who provides the documentary evidence and are made within the period beginning with the date on which the documentary evidence is provided and ending on the last date for confirming the validity of the documentary evidence. Where a Form W-8 (or substantially similar form completed under penalties of perjury) has been provided, it must be prepared, renewed, and retained in accordance with the procedures prescribed in § 1.6049-5(b)(2)(iv) and must be attached to the Form 1042S required to be filed with respect to the payment.

(B) If, on any interest payment date after the obligation was acquired by the person providing the documentary evidence (or Form W-8 or substantially similar form completed under penalties of perjury) described in subdivision (ii) of A-14, the beneficial owner of the obligation is a United States person, then the beneficial owner must so inform the withholding agent within 30 days after such interest payment date and must provide a Form W-9 (or substitute form that is substantially similar completed under penalties of perjury) to the withholding agent. However, the beneficial owner is not required to provide another Form W-9 (or substitute form that is substantially similar and completed under penalties of perjury) if such person has already provided it to the withholding agent within the same calendar year.

(iii) In accordance with the provisions of section 871(h)(4), the Secretary may make a determination in appropriate cases that a certificate or statement by any person, or class of persons, does not satisfy the requirements of that section. Should that determination be made, all payments of interest that otherwise qualify as portfolio interest to that person would become subject to the 30 percent withholding tax.

(iv) Notwithstanding the foregoing requirements of A-14 and A-15 of this section,

(A) Any certificate that is required to be filed with the withholding agent during the period beginning on January 15 and ending on January 31, 1986 is not required to state that the beneficial owner of an obligation, prior to the date of the certificate, either was not a United States person or was a United States person if the obligation was acquired by the person providing the certificate on or before September 19, 1985; and

(B) All of the requirements of A-14 and A-15 of § 35a.9999-5, as in effect prior to the effective date of these amendments, shall remain effective with respect to each interest payment prior to the filing of the certificate described in subdivision (A), except that (*1*) the provisions of A-14 relating to which persons are required to receive certificates or statements and (*2*) subdivisions (ii) of A-14 and (ii) of A-15 shall become effective with respect to each interest payment after September 19, 1985.

* * * * *

(d) *Application of the Repeal of 30*

*Percent Withholding to Pass-through Certificates.*

Q-20. Will interest paid to a holder of a pass-through certificate as described in § 1.163-5T(d)(1) qualify as portfolio interest for purposes of the exemption from 30 percent withholding under section 871(h)(2) or section 881(c)(2)?

A-20. (i) Interest paid to a holder of a pass-through certificate will qualify as portfolio interest under section 871(h)(2) or section 881(c)(2) for purposes of the exemption from 30 percent withholding if the interest satisfies the conditions described in A-1 or A-8 of this section. For purposes of A-1 and A-8 of this section and sections 871(h) and 881(c), interest is considered to be paid on or with respect to the pass-through certificate and not on or with respect to any obligations held by the fund or trust to which the pass-through certificate relates. Thus, except as set forth in the last sentence of this subdivision (i), interest paid to the holder of a pass-through certificate is portfolio interest if the pass-through certificate is described in A-1 or A-8 of this section, without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in A-1 or A-8 of this section. For example, a mortgage pass-through certificate in bearer form must meet the requirements set forth in A-1 of this section, but the obligations held by the fund or trust to which the mortgage pass-through certificate relates need not meet the requirements set forth in A-1 or A-8 of this section. However, for purposes of A-1 and A-8 of this section and section 127 of the Tax Reform Act of 1984, a pass-through certificate will be considered as issued after July 18, 1984 only to the extent that the obligations held by the fund or trust to which the pass-through certificate relates are issued after July 18, 1984.

(ii) Solely for purposes of A-1 of this section, a pass-through certificate is considered to be an obligation that would be a registration-required obligation within the meaning of section 163(f)(2)(A) but for the fact that it is described in section 163(f)(2)(B) if the pass-through certificate is not described in section 163(f)(2)(A) (i), (ii), or (iii) (without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in any of those subsections) and if the pass-through certificate is described in section 163(f)(2)(B), without regard to whether any obligation held by the fund or trust to which the pass-through certificate relates is described in section 163(f)(2)(B).

**Roscoe L. Egger, Jr.,**

*Commissioner of Internal Revenue.*

Approved: August 13, 1985.

**Ronald A. Pearlman,**

*Assistant Secretary of the Treasury.*

[FR Doc. 85-19893 Filed 8-16-85; 10:29 am]

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## 26 CFR Parts 1 and 602

**[T.D. 8047]**

## Reporting and Recordkeeping Requirements; Returns Relating to Mortgage Interest Received in a Trade or Business From Individuals

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Temporary regulations.

**SUMMARY:** This document contains temporary regulations relating to the requirement of reporting mortgage interest received in a trade or business from individuals. Changes to the applicable law were made by the Tax Reform Act of 1984. The regulations affect any person who is engaged in a trade or business and who, in the course of such trade or business, receives $600 or more of interest from any individual on any mortgage in a calendar year. The regulations provide these persons with the guidance necessary to comply with the law. In addition, the text of the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the Proposed Rules section of this issue of the **Federal Register.**

**DATES:** The regulations apply with respect to mortgage interest received after December 31, 1984, and are effective after December 31, 1984.

**FOR FURTHER INFORMATION CONTACT:** Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3238 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide rules relating to the reporting of mortgage interest received in a trade or business from individuals under section 6050H of the Internal Revenue Code of 1954. The regulations reflect the addition of section 6050H to the Code by section 145 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 685). The temporary regulations will remain in effect until superseded by final regulations on this subject.

This document also amends 26 CFR Part 602 to provide for the display of the OMB control numbers under the Paperwork Reduction Act.

### Explanation of Provisions

Section 6050H provides that an information return must be made by any person who is engaged in a the trade or business and who, in the course of trade or business, receives from any individual $600 or more of interest on any mortgage in a calendar year. The term "mortgage" is defined separately for obligations in existence on December 31, 1984, and obligations incurred after December 31, 1984. Any person required to make an information return under section 6050H must also furnish a statement to the payor or, if applicable, payor of record on or before January 31 of the calendar year following the year in which the interest was received. The regulations under section 6050H provide that, in cases where there is more than one individual responsible for repayment of a mortgage, the mortgage interest recipient must report only with respect to the payor of record. A payor of record is defined in the regulations.

The regulations provide that amounts received from the Department of Housing and Urban Development on mortgages insured under section 235 of the National Housing Act (12 U.S.C. 1701-1715z (1982 & Supp. 1983)) should not be reported under section 6050H as received from the borrower. In addition, amounts received after December 31, 1986, from any governmental unit (or any agency or instrumentality thereof) under a mortgage subsidy program should not be reported under section 6050H as received from the borrower.

The regulations also require that interest paid by a seller on a purchaser's mortgage should not be reported under section 6050H as received from the purchaser. This rule will permit the Internal Revenue Service to effectively monitor proper treatment of such payments. For example, the Service would be assured that, if interest paid by the seller is properly deductible by the purchaser, the stated purchase price of the property would be reduced to reflect (and hence its basis would not include) the amount of the interest paid by the seller and deducted by the purchaser.

The Service has considered the use of Form 1098 (the form used to report under section 6050H) to report not only interest paid by a borrower, but also related

information about the amount (if any) of mortgage credit allowable to the borrower under section 25 of the Code. Section 25 permits a mortgage credit for certain borrowers in a state which has issued mortgage credit certificates. As issued in temporary form, these regulations do not require interest recipients to report the amount of the mortgage credit allowable under section 25. If the number of taxpayers claiming such credit or the level of noncompliance with the requirements of that section indicate that reporting to borrowers and the Service would be desirable, however, the Service may, by regulation, require reporting of this information for future years.

Due to the effective date of section 6050H, there is need for immediate guidance so that persons subject to the reporting requirement can make preparations to comply with these provisions. Therefore, these regulations have been drafted in question and answer format in order to facilitate their timely publication. No inference should be drawn, however, regarding issues not raised herein or from the inclusion of certain questions and not others in these regulations.

**Special Analyses**

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

No general notice of proposed relumaking is required by 5 U.S.C. 553(b) for temporary regulations. Accordingly, the Regulatory Flexibility Act does not apply a Regulatory Impact Analysis is not required for these regulations.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB. Control number 1545-0901

**Drafting Information**

The principal author of these regulations is Annette J. Guarisco 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 on matters of both substance and style.

**List of Subjects**

*26 CFR 1.6001-1—1.6109-2*

Income taxes, Administration and procedure, Filing requirements.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR Parts 1 and 602 are amended as follows:

**Income Tax Regulations**

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805 * * * section 1.6050H-1T also issued under 26 U.S.C. 6050H.

**Par. 2.** The following new section is added at the appropriate place.

**§ 1.6050H-1T Questions and answers concerning information returns relating to mortgage interest received in a trade or business from individuals. (Temporary).**

The following questions and answers relate to the requirement of reporting mortgage interest under section 6050H of the Internal Revenue Code of 1954, as added by section 145 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 685):

**Requirement of Reporting**

*In general*

Q-1: What does section 6050H provide with respect to the reporting of mortgage interest?

A-1: In general, section 6050H provides that an information return must be made by any person who is engaged in a trade or business and who, in the course of such trade or business, receives from any individual $600 or more of interest on any mortgage in a calender year. For purposes of this section—

(a) Any person who is engaged in a trade or business and who, in the course of such trade or business, receives interest on any mortgage is referred to as an "interest recipient"; and

(b) Any individual who pays interest on any mortgage is referred to as a "payor".

*Interest Subject To Reporting*

Q-2: Does the reporting requirement apply to all interest received by an interest recipient?

A-2: No. The reporting requirement applies only to interest received from a payor on a mortgage (as defined in A-4 and A-5 of this section). The reporting requirement does not apply to interest received from a trust, estate, partnership, association, company, or corporation.

Q-3: Does the reporting requirement apply to any amount of mortgage interest received from a payor?

A-3: No. The reporting requirement applies only if $600 or more of interest is received from a payor on any mortgage in a calendar year. The $600 threshold is determined on an obligation by obligation basis. Therefore, if the interest received from a payor on an obligation is less than $600, reporting with respect to that interest is not required even if the total interest received from the payor on all obligations held by the interest recipient exceeds $600 in a calendar year.

Q-4: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations in existence on December 31, 1984?

A-4: An obligation in existence on December 31, 1984, that is secured primarily by real property (regardless of whether the property is located inside or outside the United States) is a mortgage unless, at the time the obligation was incurred, the interest recipient reasonably classified such obligation as other than a mortgage, real property loan, real estate loan, or other similar type of obligation. (See A-12 of this section for rules relating to interest received by foreign persons.) For example, if an obligation incurred in 1980 was secured primarily by real property, but the interest recipient reasonably classified the obligation as a commercial loan because the proceeds were used to finance the payor's trade or business, the obligation is not considered a mortgage for purposes of this section and section 6050H. If, however, a majority of the obligations in a particular class are primarily secured by real property, it is not reasonable to classify such obligations as other than mortgages, real property loans, real estate loans, or other similar types of obligations; such obligations are, therefore, mortgages for purposes of section 6050H and this section. For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property.

Q-5: What is a mortgage, for purposes of this section and section 6050H, with respect to obligations incurred after December 31, 1984?

A–5: With respect to obligations incurred after December 31, 1984, a mortgage is any obligation that is secured primarily by real property, regardless of whether the property is located inside or outside the United States. (See A–12 of this section for rules relating to interest received by foreign persons.) For purposes of this definition, real property includes stock in a cooperative housing corporation. A mortgage does not include a credit card obligation that is secured primarily by real property or a line of credit that is secured primarily by real property. The determination of whether a particular obligation is a mortgage shall be made without regard to the interest recipient's classification of that obligation. For example, if an obligation is secured primarily by real property, but the interest recipient classifies the obligation as a commercial loan because the proceeds are to be used to finance the payor's trade or business, the obligation is nevertheless a mortgage for purposes of this section and section 6050H.

Q–6: If the amount of interest received on a mortgage in a calendar year is less than the amount of interest due on the mortgage, what amount of interest must be reported under this section?

A–6: The amount of interest received must be reported. For example, assume that $800 of interest is payable in a calendar year but only $600 of interest is received in the calendar year. The amount of interest received ($600) must be reported under this section. Similarly, assume that an interest recipient accrues $900 of interest on a mortgage in a calendar year but only $800 of interest is payable and is received in the calendar year (resulting in a $100 increase in the unpaid balance of the loan). The amount of interest received ($800) must be reported under this section.

Q–7: If a payor remits 13 payments of interest on any mortgage in a calendar year, but the interest recipient receives only 12 payments in the calendar year, what amount should the interest recipient report?

A–7: The interest recipient should report the interest actually received in the calendar year. For example, if a payor mails the 13th payment on December 31 or a calendar year, and the interest recipient does not receive it until the following calendar year, the interest recipient should report only the 12 payments received in the calendar year.

*Trade or Business Requirement*

Q–8: Must an interest recipient be engaged in the trade or business of lending money to be subject to the reporting requirement of this section?

A–8: No. An interest recipient (other than a governmental unit, or any agency or instrumentality thereof) is subject to this reporting requirement if the interest recipient is engaged in any trade or business and, in the course of such trade or business, receives from an individual $600 or more of interest on any mortgage in a calendar year. For example, if A, a real estate developer, provides financing to B, an individual, to enable B to purchase a house in a subdivision owner and developed by A, and that house is the primary security for the financing, A is subject to this reporting requirement. Alternatively, if C, a physician, who is not engaged in any other trade or business, lends money to D to enable D to purchase C's home, C is not subject to the reporting requirement of this section because C will not receive the interest in the course of his sole trade or business of being a physician.

Q–9: How does the trade or business requirement apply to a governmental unit?

A–9: A governmental unit (or any agency or instrumentality thereof) which receives from a payor $600 or more of interest on any mortgage in a calendar year is subject to the reporting requirement without regard to the requirement that the money be received in the course of a trade or business. A governmental unit (or any agency or instrumentality thereof) that is subject to the reporting requirement must designate an officer or employee to make the return. The designated officer or employee must make the return in the form and manner prescribed by this section.

*Treatment of Cooperative Housing Corporations*

Q–10: How does this reporting requirement apply in the case of cooperative housing corporation?

A–10: For purposes of section 6050H and this section, a cooperative housing corporation (as defined in section 216) is treated as a person who is engaged in a trade or business and who, in the course of such trade or business, receives interest from its tenant-stockholders on a mortgage. Therefore, a cooperative housing corporation is required to report under section 6050H and this section.

*Interest Received on Behalf of Another*

Q–11: If, in the course of a trade or business, a person receives (collects) interest on behalf of another, who is required to report?

A–11: The person first receiving (collecting) the interest is required to report. For example, a servicing bank that receives $600 or more of mortgage interest in a calendar year from a payor on behalf of a lender is required to report the interest received under this section. No reporting is required under this section upon the transfer of the interest from the servicing bank to the lender for whom the interest was received.

*Interest Received by Foreign Persons*

Q–12: Must an interest recipient that is a foreign person report under section 6050H and this section?

A–12: An interest recipient that is a foreign person must report with respect to mortgage interest that is received at a location within the United States. In the case of interest received at locations outside the United States, an interest recipient that is a foreign person must report—

(a) If the foreign person is a controlled foreign corporation within the meaning of section 957(a); or

(b) If the foreign person is a corporation any interest received from which would be considered to be from sources within the United States under section 861(a)(1)(C) (without regard to whether the interest is paid or credited by a domestic branch of a foreign corporation engaged in the commercial banking business).

*Multiple Borrowers*

Q–13: When there is more than one borrower on a mortgage, must the interest recipient report with respect to each borrower?

A–13: No. The interest recipient must report only with respect to the payor of record (as defined in A–14 of this section) on the mortgage. The amount of interest subject to reporting is the full amount received by the interest recipient with respect to the mortgage during the calendar year.

Q–14: Who is a payor of record?

A–14: For purposes of this section, the payor of record is the individual carried on the books and records of the interest recipient as the principal borrower or the individual designated by the interest recipient as the payor of record.

*Interest Paid by Third Parties*

Q–15: If an interest recipient receives interest on a mortgage from a person other than the borrower, must the interest recipient report this amount as received from the borrower?

A–15: In general, yes. Except as otherwise provided in this A–15 and A–15a of this section, an interest recipient must report all amounts received on a borrower's mortgage as received from the borrower under section 6050H and

this section. For example, assume that N is the borrower on a mortgage and that interest is received on the mortgage from N's mother. The interest that is received from N's mother on N's mortgage is reportable under section 6050H and this section as received from N. However, interest that is paid by a seller on a purchaser's mortgage shall not be reported under section 6050H and this section as received from the purchaser. For example, if a real estate developer deposits an amount in escrow with the interest recipient and advises the interest recipient to draw on the account to pay interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. Similarly, if a real estate developer pays a lump sum to the interest recipient for interest on a purchaser's mortgage, this interest is not reportable under section 6050H and this section. In addition, amounts received by the interest recipient as housing assistance payments from the Department of Housing and Urban Development ("HUD") on a borrower's mortgage that is insured under section 235 of the National Housing Act (12 U.S.C. 1701–1715z (1982 & Supp. 1983)) shall not be reported as interest received from the borrower. In such a case, therefore, only the amount of interest received on the mortgage that exceeds the amount of housing assistance payments received from HUD shall be reported.

Q–15a: If an interest recipient receives, with respect to a borrower's mortgage, an amount from a governmental unit, or any agency or instrumentality thereof (other than an amount received from HUD as described in A–15 of this section), should the interest recipient report the amount as received from the borrower?

A–15a: If the interest is received after December 31, 1986, it must be reported in the same manner as interest on mortgages with respect to which housing assistance payments are received from HUD, as described in A–15 of this section. If the interest is received before January 1, 1987, it may, but need not, be reported.

**Form and Manner of Return**

*Form of Return*

Q–16: What form must be used to make a return required by section 6050H and this section?

A–16: An interest recipient must make the return on Form 1098 (with Form 1096 as the transmittal form). The interest recipient may, however, prepare and use a form that contains provisions substantially similar to those of Forms 1096 and 1098 if that person complies with any revenue procedures relating to substitute Forms 1096 and 1098 in effect at that time. A separate return must be made for each mortgage with respect to which $600 or more of interest is received for a calendar year.

*Information Included on Return*

Q–17: What information must an interest recipient include on Form 1098?

A–17: An interest recipient must include the following information on the Form 1098:

(a) The name, address, and TIN (as defined in section 7701(a)) of the payor or payor of record;

(b) The name and address of the interest recipient;

(c) The amount of interest (not including points and other prepaid interest) received on the mortgage in the calendar year; and

(d) Any other information as may be required by Form 1098 or its instructions.

*Time for Filing*

Q–18: When must an interest recipient file the return or returns required by section 6050H and this section?

A–18: An interest recipient must file the return or returns on or before February 28 of the year following the calendar year in which the mortgage interest is received.

*Place for Filing*

Q–19: Where must the return or returns required under section 6050H and this section be filed?

A–19: The return or returns must be filed with the same Internal Revenue Service Center where other returns of the interest recipient are filed.

*Use of Magnetic Media*

Q–20: What rules apply with respect to the use of magnetic media?

A–20: Any return required under section 6050H and this section must be filed on magnetic media to the extent required by section 6011(e) and the regulations thereunder. Any person not required by section 6011(e) to file returns on magnetic media may request permission to do so. See § 1.9101 for rules relating to permission to submit information on magnetic tape or other media. If a person required to file returns on magnetic media fails to do so, the penalty under section 6652 (failure to file an information return) applies.

**Requirement of Furnishing Statements to Payors**

*In General*

Q–21: What statements are required to be furnished to payors under section 6050H and this section?

A–21: Any interest recipient required to make an information return under section 6050H must also furnish a statement to the payor or, if applicable, payor of record (see A–13 and A–14 of this section). For the date when the statement must be furnished, see A–26 of this section.

Q–22: Is the statement considered to be furnished to the payor or payor of record if it is mailed to him at his last known address?

A–22: Yes.

Q–23: If an interest recipient furnishes a statement required under a Federal mortgage program will the requirements of A–21 of this section be met?

A–23: Yes, if the statement furnished contains all the information required under A–24 of this section and is furnished to the payors or payors of record by the date required under A–26 of this section.

*Information Included on Statement*

Q–24: What information must be included on the statement required to be furnished to payors or payors of record under section 6050H and this section?

A–24: The statement must include the following information:

(a) The information required under A–17 of this section;

(b) A legend stating that the information is being reported to the Internal Revenue Service; and

(c) A legend stating that the amount reported on the statement is deductible by the payor for Federal income tax purposes only to the extent the payor actually paid the amount and was not reimbursed by another person.

*Copy of Form 1098 to Payors*

Q–25: Can an interest recipient meet the requirement to furnish a statement to a payor or payor of record by furnishing a copy of the Form 1098 filed with respect to that payor or payor of record?

A–25: Yes. The requirement of furnishing a statement may be met by furnishing to the payor or payor of record a copy of the Form 1098 containing the same information filed with the Service with respect to such payor, or a form that contains provisions substantially similar to those of Form 1098, provided that the form bears the legends described in A–24 of this section

*Time for Furnishing Statement*

Q–26: When is a statement required to be furnished by an interest recipient to the payor or payor of record?

A–26: A statement is required to be furnished by the interest recipient to the payor or payor of record on or before

January 31 of the year following the calendar year in which the mortgage interest is received.

Penalties

*In General*

Q-27: Are there any penalties for failing to comply with the requirements of section 6050H and this section?

A-27: Yes. The penalty for failing to make an information return with respect to a payor or payor of record is provided in section 6652. The penalty for failing to furnish a statement to a payor or payor of record is provided in section 6678.

Q-28: Are there any penalties for failing to furnish a TIN upon request?

A-28: Yes. Any payor or payor of record is subject to a $50 penalty by the Internal Revenue Service if such payor fails to furnish his TIN upon the request of an interest recipient. For rules relating to the requesting of TINs by interest recipients, see A-30 and A-31 of this section.

Q-29: Is an interest recipient subject to any penalties for failing to furnish the TIN of a payor or payor of record?

A-29: Yes. In general, the penalties provided under section 6676 will be assessed against interest recipients who fail to furnish to the Internal Revenue Service the TIN of a payor or payor of record. With respect to mortgages in existence on December 31, 1984, however, the interest recipient will not be subject to the section 6676 penalties if the interest recipient followed the rules of A-30 and A-31 of this section for requesting TINs and properly processed the responses.

*Requesting TINS*

Q-30: What rules apply with respect to the requesting of TINs by interest recipients?

A-30: With respect to obligations incurred after December 31, 1984, the interest recipient must take all reasonable steps to obtain the TIN of the payor or payor of record at the time the obligation is incurred. With respect to any mortgage for which the interest recipient does not have the TIN of the payor or payor of record in its accounting system, the interest recipient must request, at least once a year, the TIN of such payor.

The request for a TIN need not be in a separate mailing. The request may be included, for example, in the interest recipient's regular mailings of payment coupon booklets or annual statements. However, if the interest recipient makes no other mailings to the payor or payor of record during 1985 (or during the year in which the obligation is incurred for obligations incurred after 1985), then the interest recipient must request the TIN in a separate mailing.

Q-31: What form must the interest recipient use to request the TIN of a payor or a payor of record?

A-31: No particular form must be used to request the TIN. However, the request must be made on a separate piece of paper and the request must clearly notify the payor that the Internal Revenue Service requires the payor to furnish his TIN in order to verify any deduction for mortgage interest. The interest recipient must also notify such payor that he is subject to a $50 penalty, imposed by the Internal Revenue Service, if he fails to furnish his TIN.

Effective Date

Q-32: When are section 6050H and this section effective?

A-32: Section 6050H and this section are generally effective for amounts of mortgage interest received after December 31, 1984. However, Q/A-15a of this section is effective for amounts of mortgage interest received after December 31, 1986.

**PART 602—[AMENDED]**

**Reporting and Recordkeeping Requirements**

**Par. 3.** The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

**§ 602.101 [Amended]**

**Par. 4.** Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.6050H-1T . . . 1545-0901."

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: August 9, 1985.
Ronald A. Pearlman,
*Assistant Secretary of the Treasury.*

[FR Doc. 85-19891 Filed 8-16-85; 8:45 am]
BILLING CODE 4830-01-M

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**POSTAL SERVICE**

**39 CFR Part 111**

**Examination of Postage Meters Not Set During 6-Month Period**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule changes the postage meter regulations to establish new follow-up notification procedures for postmasters to take when customers do not submit their postage meters for required six-month examinations. The former system was ineffective because the method of notification was not specified and there were no follow-up procedures.

**EFFECTIVE DATE:** September 19, 1985.

**FOR FURTHER INFORMATION CONTACT:** F.E. Gardner (202) 245-5756.

**SUPPLEMENTARY INFORMATION:** A detailed explanation of the nature and background of the proposed rule, including the reasons for its proposed adoption and a discussion of the changes, accompanied its publication in the **Federal Register** on July 9, 1985 (50 FR 27992).

We received one letter of comment requesting relief for seasonal mailers who do not use postage meters during an off-season often lasting more than 6 months. The commenter suggested a 12, rather than a 6 month, examination cycle, based on actual usage of meters. We are not adopting this suggestion. It would be an unreasonable administrative burden to have to identify seasonal meter licensees who may not be using meters for more than 6 months out of a year and to deal with them on a special basis. In addition, we believe a 12 month examination cycle runs counter to a prudent and effective revenue protection program.

For the reasons given and after careful consideration, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service, Incorporation by reference.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621; 42 U.S.C. 1973cc-13, 1973cc-14.

PART 144—POSTAGE METERS AND METER STAMPS

2. Revise 144.62 to read as follows:

*144.62 Examination*

a. Review Forms 3610 quarterly. If no settings have been made during the previous six months, advise the local meter licensees in writing to bring in meters which have not

been set in this period for examination, as specified in 144.341. When the meter is set at another office, request the office which sets the meter to have it called in for examination. The office where the meter is set must then advise the office where Form 3610 is maintained of the results of the examination, so a suitable entry can be made on Form 3610.

b. Customers who do not bring in their meters after the initial written notification must be approached again within 15 days, preferably by personal contact. If no response is received within another 15 days, the postmaster must notify the meter license holder that the license is to be revoked, following the procedures for revocation in 144.23. A Form 1603, Meter Verification Card, or similar form must not be used as a method of verification and examination.

A transmittal letter making these changes in the Domestic Mail Manual will be published and will be transmitted to subscribers automatically. These changes will be published in the **Federal Register** as provided in 39 CFR 111.3.

**W. Allen Sanders,**

*Associate General Counsel, Office of General Law and Administration.*

[FR Doc. 85-19814 Filed 8-19-85; 8:45 am]

BILLING CODE 7710-12-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[TN-005; A-4-FRL-2877-8]**

### Approval and Promulgation of Implementation Plans; Tennessee: Chattanooga-Hamilton County Extension of Conditional Approval

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On March 22, 1983 (48 FR 11746), EPA conditionally approved the Part D plan for attainment of the Total Suspended Particulate (TSP) standard in Chattanooga, Tennessee. As a result of proposed changes in EPA's new source review regulations (August 29, 1983, 48 FR 38742), which may remove all obstacles to full approval, EPA extended the conditional approval until December 31, 1984 (49 FR 18826). Since the proposed regulations have not yet been finalized, EPA is again extending the conditional approval, this time until December 31, 1986.

**EFFECTIVE DATE:** This action will be effective on October 21, 1985 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the State submittals are available for review during normal business hours at the following locations:

Division of Air Pollution Control, Tennessee Department of Health and Environment, 150 Ninth Avenue North, Nashville, Tennessee 37203

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Chattanooga-Hamilton County Air Pollution Control Bureau, 3511 Rossville Boulevard, Chattanooga, Tennessee 37407

**FOR FURTHER INFORMATION CONTACT:** Raymond S. Gregory, EPA Region IV, Air Management Branch, at the above listed address, and phone 404/881-3286 or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** On March 22, 1983 (48 FR 11946), EPA gave conditional approval to the State Implementation Plan (SIP) revision submitted by the State of Tennessee for Chattanooga, Hamilton County, Tennessee, as required by Part D of Title I of the Clean Air Act as amended in 1977, except for the permitting of any source which qualifies as a reconstruction under EPA's definition (40 CFR 51.18(j)(1)(ix)).

EPA approval of the SIP revision was given on condition that the State submit a definition of the phrase "Federally enforceable", and that all limitations and conditions, including permit restrictions, established under the authority of the plan be made Federally enforceable by December 31, 1983. The Agency noted (at 48 FR 11947, bottom of col 1) that because of a commitment by EPA to propose regulatory amendments as a result of the settlement agreement among EPA and petitioners in the Chemical Manufacturers Association litigation, conforming amendments to the plan revision might not be necessary for full approval. The note further stated that the conditional approval could be extended if on December 31, 1983, EPA was still in the process of revising the new source review requirements, but had not finalized the changes.

On August 25, 1983 (48 FR 38742), EPA proposed regulatory amendments which, if promulgated, would make amendment of the Part D Chattanooga TSP SIP unnecessary. Since final action was not taken on the proposed amendments by December 31, 1983, the conditional approval of the Chattanooga plan was extended until December 31, 1984 (49 FR 18826), and since final action has still not been taken, the conditional approval is again extended until December 31, 1986.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** notice, unless, within 30 days, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on 60 days from today.

### Action

Based on the foregoing, EPA hereby extends the conditional approval of the Part D plan for TSP for Chattanooga, Tennessee.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

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

### List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter.

Dated: July 29, 1985.

**Lee M. Thomas,**

*Administrator.*

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

### Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401-7642.

2. Section 52.2231, is revised to read as follows:

**§ 52.2231 Control Strategy: Sulfur oxides and particulate matter.**

Part D Conditional Approval.

(a) The Chattanooga primary TSP plan's provisions for review of new sources and modifications in the nonattainment area are approved on

condition that the State submit by December 31, 1986, a definition of the term "Federally enforceable" and provision for making Federally enforceable all limitations, conditions, and offsets, including permit restrictions, relied upon under the plan, and in the interim, implement these provisions in a manner consistent with EPA requirements.

[FR Doc. 85-18883 Filed 8-19-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL-2864-7]

## Approval And Promulgation of Implementation Plans; Michigan

**AGENCY:** U.S. Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** Today's action announces USEPA's final rulemaking for the State of Michigan's revised Rule 336.1371, existing rule 336.1372, and new rule 336.1373 related to the control of fugitive dust emissions.

This Notice of Final Rulemaking incorporates into the Michigan State Implementation Plan (SIP) revised Rules 336.1371, 336.1372 and newly promulgated Rule 336.1373, because they provide a framework for the development of fugitive dust control programs. In addition, this notice disapproves Michigan's Total Suspended Particulate (TSP) SIP because it does not meet the Reasonable Available Control Technology (RACT) requirements of section 172(b)(3) of Part D of the Clean Air Act for fugitive dust sources located in nonattainment areas. New source restrictions, pursuant to section 110(a)(2)(I) of the Clean Air Act in the Michigan primary TSP nonattainment areas are effective 30 days from the date of publication of this notice.

**EFFECTIVE DATE:** September 19, 1985.

**ADDRESSES:** Copies of this revision to the Michigan SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Ms. Toni Lesser, at (312) 886-6037, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60601

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Toni Lesser, (312) 886-6037.

**SUPPLEMENTARY INFORMATION:**

### Background

USEPA conditionally approved Michigan's TSP SIP for nonattainment areas required by Part D of the CAA on May 6, 1980, (45 FR 29790) and May 22, 1981, (46 FR 27923). One of the conditions for final approval was that the State adopt and submit regulations requiring the application of Reasonably Available Control Technology (RACT) for the control of all traditional sources of fugitive particulate emissions for at least the Wayne County primary TSP nonattainment area. On March 6, 1981, Michigan submitted existing Rules 336.1371 and 336.1372 to satisfy this condition. In addition, the Michigan Department of Natural Resources (MDNR) subsequently submitted three separate letters to USEPA containing clarification and commitments as to how Rules 336.1371 and 336.1372 would be implemented to obtain control programs from sources of fugitive emissions in the primary TSP nonattainment area.

On November 15, 1982 (47 FR 51389), USEPA approved Rules 336.1371 and 336.1372, based on and including the additional commitments contained in the three letters, as revisions to the Michigan SIP. Rule 336.1371 established a discretionary procedure by which the Michigan Air Pollution Commission (Commission) was authorized, but not required, to request sources in attainment or non-attainment areas to develop and submit fugitive dust control programs to be incorporated into enforceable permits or administrtive orders. The required elements of such programs were set forth in Rule 336.1372. These rules were approved as representing RACT, as mandated by Section 172(b)(3) of the Clean Air Act.

### Court Actions

USEPA's approval was challenged by the Natural Resources Defense Council (NRDC) in January 1983; *NRDC* v. *USEPA*, No. 83-3027 (6th Circuit). USEPA was granted a voluntary remand to reconsider its approval, and USEPA re-evaluated its approval of Rules 336.1371 and 336.1372 in light of issues raised by NRDC in its petition for review.

On December 2, 1983, (48 FR 54377), USEPA proposed to withdraw its approval of, and also disapprove, Rules 336.1371 and 336.1372. Defects in the rules' enforceability and the failure of the State of Michigan to cure these defects by obtaining enforceable RACT-based programs for the appropriate tugitive dust sources in the primary nonattainment area were the primary reasons for this proposed disapproval.

On October 1, 1984, the U.S. Court of Appeals for the Sixth Circuit directed Michigan to submit final fugitive dust rules by April 30, 1985. The State's submittal of April 25, 1985, was intended to satisfy this requirement. The Court also directed USEPA to propose action on the new rules and to take final action on that proposal, as well as the December 1983 proposal, by August 1, 1985.

### State Action

The State of Michigan, on April 25, 1985, formally submitted its rules for the control or industrial fugitive particulate emissions from sources located in TSP attainment and nonattainment areas. Michigan's newly proposed industrial fugitive dust SIP consists of three rules: Revised Rule 336.1371, existing Rule 336.1372, and new Rule 336.1373. As revised and resubmitted, R336.1371 and R336.1372 apply only in TSP attainment areas. New Rule 336.1373 applies only in TSP nonattainment areas.

Michigan's Proposed Rule 336.1371 addresses the procedures and requirements for the development of fugitive dust control programs for facilities located in attainment areas. Rule 336.1372 remains unchanged from the State's original submittal which was approved by USEPA on November 15, 1982 (47 FR 51398). However, pursuant to revised Rule 336.1371, both rules are now limited in applicability to attainment areas.

Michigan's new Rule 336.1373 establishes fugitive dust control requirements for sources located in TSP nonattainment areas. These areas are listed in Table 36 of Rule 336.1371. The provisions of Rule 336.1373 apply to virtually all fugitive emission sources/operations, except for operations involving grain handling and drying (USEPA's Technical Support Document dated April 25, 1985, contains a detailed analysis of the rules).

### USEPA's Action

On May 30, 1985 (50 FR 23028), USEPA published a notice of proposed

rulemaking which proposed the following actions:

- USEPA reaffirmed its proposal to withdraw its approval and disapprove Michigan's existing Rules 336.1371 and 336.1372 for Part D purposes, [i.e., insofar as they apply to TSP nonattainment areas as discussed in the December 2, 1983, rulemaking (48 FR 543771)].
- USEPA proposed to incorporate into the Michigan SIP the amended R336.1371 to replace the existing R336.1371 provisions, since amended R336.1371 provides a framework for the development of fugitive dust control programs in attainment areas.
- USEPA stated that existing R336.1372 would remain incorporated within the State's TSP SIP insofar as it applies to TSP attainment areas.
- USEPA proposed to incorporate into the Michigan SIP new Rule 336.1373. The new Rule 336.1373 provides a framework for the development of fugitive dust control programs in nonattainment areas.
- USEPA proposed to disapprove the overall Michigan Part D TSP SIP as not being adequate to meet the requirements of Part D of section 172(b) of the CAA.
- USEPA stated that, if final action is taken to withdraw approval and disapprove of the current federally approve fugitive dust rules, and USEPA finally disapproves the newly submitted fugitive dust Rule 336.1373 because it fails to satisfy the Part D requirements, then the new source restriction of section 110(a)(2)(I) of the CAA would apply in Michigan's primary TSP nonattainment areas.

USEPA's proposed rulemaking dated May 30, 1985 (50 FR 23028), provided a 30-day comment period. USEPA received 17 public comments. A detailed analysis of all the comments is contained in USEPA's Technical Support Document (TSD) dated July 23, 1985. In addition, USEPA received six comments on its proposal to withdraw approval of Michigan's Rules 336.1371 and 336.1372 (December 2, 1983; 48 FR 54377).

Below is a summary of all the comments received related to USEPA's December 2, 1983, and May 30, 1985, rulemaking actions and USEPA's responses to those comments.

*Comments on USEPA's Proposal To Withdraw Approval of Rules 336.1371 and 336.1372 (December 2, 1983; 48 FR 54377)*

A. *Comment:* USEPA cited several provisions of former Rule 336.1371 which it claims give the Michigan Air Pollution Control Commission too much discretion in controlling significant sources of fugitive dust as required by section 172(b)(3) of the Clean Air Act. USEPA misunderstands how these provisions operate or are intended to operate:

(1) USEPA cited as a deficiency that the requirement in Rule 336.1371 to submit a fugitive dust control program applies only to persons notified by the Commission, but Rule 336.1371 does not obligate the Commission to notify anyone. The "upon notification" language of Rule 336.1371(1) was a matter of form and was not intended to imply that the Commission had the legal option not to notify subject sources.

(2) USEPA cited as a deficiency that a person who challenges the Commission's notification under Rule 336.1371(4) seems to have an indefinite time in which to submit a program. There is no validity to this claim, since a program must be submitted within 6 months, and only an affirmative action by the Commission on a petition could remove this requirement.

(3) USEPA cited as a deficiency that, if a person submits no program or an inadequate program, the Commission "may", but need not, establish an approvable program, under Rule 336.1371 (5) and (6). While it is true that the Commission is not obligated to establish a program if an acceptable one is lacking, it is also true that none of the Commission's rules contain such a requirement. Clearly the Commission intends to establish programs if they are necessary.

(4) USEPA cited as a deficiency that under Rule 336.1371(7), a person need implement a program only after it has been approved by the Commission, but the Commission is not required to approve or disapprove any program within a specified time period. Given that the Commission is charged with protecting the public health and welfare, it does not legally have the options of taking no action on an inadequate program or of approving it. Such abuses of discretion would be subject to judicial review.

*Response:* USEPA's responses paragraph by paragraph are as follows:

(1) USEPA must evaluate rules as written rather than how they might have been intended to be written. There is no requirement of the Commission in Rules 336.1371 and 336.1372 to issue a notification to anyone. In fact, it was only in response to indirect pressure from USEPA that the Commission took its first action in November 1983, to notify source owner/operators in the Wayne County primary TSP nonattainment area. That action came 2½ years after Rules 336.1371 and 336.1372 became effective at the State level.

(2) USEPA sees little basis in Rule 336.1371 for the commentor's position. The Agency continues to believe that Rule 336.1371 is, at best, unclear in this regard, and, at worst, provides an indefinite time period to submit a program for a source whose owner/operator has challenged the Commission's notification to submit.

(3) See Response to Comment A.1.

(4) Section 172(b)(2) of the Clean Air Act requires, for nonattainment areas, "implementation of all reasonably available control measures as expeditiously as practicable." In light of this requirement, USEPA believes that it should not approve a rule which depends on discretionary Commission action for effective implementation.

When the effective implementation of a rule may depend heavily on State judicial review to correct abuses of discretion, it cannot be considered to be "as expeditious as practicable."

B. *Comment:* Discretion cannot and should not be eliminated in the development and application of rules. Discretion is appropriate when it provides the regulatory flexibility necessary for sound program administration.

*Response:* USEPA fails to see how correction of the rule deficiencies which it cited would result in elimination of all discretion or unsound program administration. The deficiencies cited by USEPA grant excessive discretion to the Commission which conflicts with the requirements of Part D of the CAA, such as the discretion not to apply the rules to any fugitive dust sources. This point is underscored by the fact that the rules, which were clearly intended to result in RACT fugitive dust control in TSP nonattainment areas as expeditiously as practicable, have failed to directly produce any significant fugitive dust control programs or any control of major fugitive dust sources in Wayne County since their promulgation in 1981.

C. *Comment:* The commentor disagrees with the argument of the Natural Resources Defense Council (NRDC) that USEPA could not approve Rules 336.1371 and 336.1372 as meeting the requirement for RACT because Michigan failed to submit a technical or economic analysis showing that the measures required by Rule 336.1372 constitute RACT. The commentor states that this argument is contrary to law and fact, because the Courts have said that the USEPA may supply such analysis where it is missing, and USEPA claims to have done so.

*Response:* USEPA agrees with the commentor that the Courts have said that the USEPA may supply technical or

economic analysis, vis-a-vis RACT, where it is missing (U.S. Court of Appeals for the Sixth Circuit, *National Steel* vs *Gorsuch*, 1983). USEPA also agrees that, when it approves Rule 336.1371 and 336.1372 on November 15, 1982 (47 FR 51398), it did so "in part on the basis of EPA studies of fugitive dust control techniques generally" (48 FR 54378).

However, in reconsidering its approval of Rule 336.1371 and 336.1372, USEPA evaluated technical information acquired to date on fugitive dust control technologies. USEPA submits that, with its present knowledge, it would not propose to approve Rules 336.1371 and 336.1372 as meeting the RACT requirement. The primary reason for this failure is that the rules would allow the Commission to approve control measures of less-than-RACT control effectiveness. For example, a program could be approved which required an unpaved road to be controlled with water applied once per day. Emission control effectiveness might be less than 50 percent in this case. The Agency's operative definition of RACT [memorandum from Roger L. Strelow, December 9, 1976; published in 7 Environment Reporter, Current Developments (BNA) 1210 (1976) and referenced at 45 FR 59198 (September 8, 1980)] requires the "lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." A control program which calls for water to be applied once per day cannot be considered RACT (even if the road is lightly travelled). A rule that would allow such a result, or allow approval of programs with widely different emission reduction potentials for the same source category cannot be considered to ensure the implementation of RACT. In its comments on the subject rulemaking (i.e., proposal to withdraw approval) the Natural Resources Defense Council (NRDC) made essentially this point.

D. *Comment:* Industry stated that there should be no lower limit on the cost associated with RACT so long as the control objective is achieved.

*Response:* USEPA agrees; however, the control objective is the "lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility." As long as more money will buy better technology and more emission control, the cost that is required by RACT is determined by "economic feasibility."

*Comments on USEPA's Proposal Concerning New and Revised Rules 336.1371, 336.1372, and 336.1373 (May 30, 1985; 50 FR 23028)*

E. *Comment:* USEPA must approve Rule 336.1373 for the purposes of Part D because it is enforceable and requires RACT. In particular:

(1) The applicability and enforceability defects of the former rules (i.e., deficiencies in former Rules 336.1371–336.1372 as cited by USEPA at 48 FR 54378) have been remedied.

(2) Rule 336.1373 is consistent with USEPA's criteria for RACT as contained in Region V's letter to Michigan DNR, dated July 9, 1984.

(3) USEPA cannot justifiably use the results of the Illinois fugitive dust rule to judge the acceptability of Michigan's Rule 336.1373. Michigan improved substantially on the Illinois model in an effort to ensure RACT.

*Response:* USEPA's responds to this three-part comment as follows:

(1) USEPA agrees that the four deficiencies cited by the Agency at 48 FR 54378 with regard to the existing Rules 336.1371–336.1372 have been remedied by the new proposed Rule 336.1373. Because USEPA determined that Rule 336.1373 provided an enforceable framework for obtaining control programs, it proposed to approve it, pursuant to Section 110 of the Clean Air Act, for application in nonattainment areas. However, USEPA does not agree that Rule 336.1373 represents RACT for sources of fugitive dust emissions as required by Part D. The primary problem is that the rule allows the Commission too much discretion in approving source-specific control programs.

The rule, like the existing Rules 336.1371, 336.1372, only describes in general terms what control measures are acceptable for inclusion into control programs, but does not provide any criteria for determining whether (and therefore does not assume that) a given control technology will achieve RACT-level control. For example, field test data on the effectiveness of different fugitive dust control techniques clearly indicates that the frequency and conditions of application of a dust suppressant have a direct impact on the control efficiencies achieved. Rule 336.1371 provides that suppressant be applied "on a regular basis, as needed, in accordance with the operating program" submitted by the source and approved by the Commission. The State has made no determination as to what range of application frequencies would ensure emission reductions equal to RACT.

Paragraph (2)(a)(vi) of Rule 336.1373 requires operating programs submitted by sources to include "estimated frequency of application of dust suppressant" and establishes the following standard by which the Commission shall determine the approvability of an operating program:

> Such operating program shall be designed to significantly reduce fugitive dust and shall reduce the fugitive emissions to a level that a particular source is capable of achieving by the application of control technology that is reasonably available, considering technological and economic feasibility.

This approach does not satisfy the CAA's requirement that Part D Plans ensure application of at least RACT in nonattainment areas. RACT is defined by USEPA as the "lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available considering technology and economic feasibility" (emphasis added). The standard in the rule would allow Commission approval of less of the control efficiency achieved by the technology. Rule 336.1373 contains no emission limit or range of acceptable emission limits but merely creates a regulatory framework for establishing emissions limits through Commission approval of control programs.

(2) USEPA does not agree with this comment. In the July 9, 1984, letter, Region V indicated to Michigan that the best guide to determining RACT was the definition of RACT itself. The definition cited is the Agency's operative definition of RACT as set forth in the memorandum from Roger Strelow, dated December 9, 1976 (referenced at 45 FR 59198; September 8, 1980).

The July 9, 1984, letter did not state that a procedural rule like that submitted by Michigan would satisfy the RACT requirement.

(3) It is true that Rule 336.1373 is not identical to Illinois Rule 203(f) Working with Rule 203(f) as a model, Michigan revised it in several respects that generally had a clarifying and tightening effect. (This is not the case with regard to the property-line opacity limit which is zero percent in the Illinois rule, but five percent in Rule 336.1373. However, USEPA continues to view this property-line limit in both cases as essentially uneforceable.) Despite these revisions, USEPA continues to believe that Rule 336.1373, as submitted, will not ensure that RACT will be required as necessary for Part D purposes. USEPA's reasoning has already been presented above. In addition, USEPA continues to believe that the failure of the Illinois rule to obtain RACT-level permits and control

plans, as discussed in USEPA's technical support document of April 25, 1985, is relevant to Michigan's Rule 336.1373, since the latter rule continues to allow wide discretion by the Commission in determining acceptable control program content. In fact, 336.1373(2)(a)(vi)(A)–(G) which specify the items to be included in an operating program "at a minimum", were not revised from the Illinois rule model. Programs approved under the Illinois rule were characterized by vague and unenforceable requirements such as road sweeping, or dust suppressant application "as necessary."

F. *Comment:* Disapproval would be contrary to the Clean Air Act mandate (and case law) which gives the State the primary responsibility for determining and enforcing RACT. Lacking more detailed guidance from USEPA as to RACT, and recognizing the importance of source-specific factors, Michigan's rule is entirely reasonable and appropriate.

*Response:* USEPA agrees that the burden of determining RACT falls first upon the State. The Federal role is one of review and concurrence through the SIP process. Michigan cannot be said to have made a determination(s) of RACT for the fugitive dust sources in TSP non-attainment areas, by adopting basically a regulatory framework for the submittal and review of control programs, and a test not ensuring RACT (as discussed above) for the determination of RACT approvability of those programs. The Clean Air Act places the duty on the State to establish enforceable RACT-based emission limitations as part of the approved SIP.

USEPA agrees that source-specific factors are important in the determination of RACT. In fact, the Agency's definition of RACT emphasizes the case-by-case nature of this determination by the words, "that a particular source is capable of meeting . . ." (emphasis added). Nevertheless, USEPA cannot approve as RACT only a rule/plan to get control programs unless the required content of those programs is sufficiently well specified so as to insure RACT on each source.

G. *Comment:* Disapproval would be arbitrary and capricious because it would be a complete reversal, without adequate rationale, of USEPA's position in approving and defending the Illinois rule.

*Response:* USEPA addressed this comment in its testimony before the Commission on January 15, 1985. As stated above, USEPA does not believe that the revisions made to the Illinois rule model in the development of Rule 336.1373 are sufficient to ensure that the type of vague and less-than-RACT control programs that resulted in Illinois will not result in Michigan.

H. *Comment:* USEPA's disapproval would be arbitrary and capricious because insufficient technical data exist to develop a source-category-specific rule that sets forth detailed but generic RACT requirements.

*Response:* USEPA does not agree with this comment. While the Agency agrees that data on the effectiveness of control techniques for non-process fugitive dust sources is not abundant, it believes the existing data to be adequate to determine RACT. USEPA notes that the bibliography attached to MDNR's comment letter which the letter says (p. 2) was the result of "a literature search of all available documents and studies performed on fugitive dust control" conspicuously lacks a number of published reports that a comprehensive literature search would have included, such as the following:

*Iron and Steel Plant Open Source Fugitive Emission Control Evaluation and Report.* Midwest Research Institutes for U.S. Environmental Protection Agency, August 31, 1983.

*Extended Evaluation of Unpaved Road Dust Suppressants in the Iron and Steel Industry.* Final Report. Midwest Research institute for USEPA, October 7, 1983.

*Cost Estimates for Selected Fugitive Dust Controls Applied to Unpaved and Paved Roads in Iron and Steel Plants,* Final Report Midwest Research Institutes for USEPA, April 26, 1984.

*Determination of the Decay in Control Efficiency of Chemical Dust Suppressants on Unpaved Roads.* Cusino, Muleski, Cowherd. Paper given at Symposium on Iron and Steel Pollution Abatement Technology, Pittsburgh, PA. November 1982.

I. *Comment:* USEPA's requirement that all individual fugitive dust control programs be submitted as source-specific SIP revisions is redundant and demeaning of the State's errors.

*Response:* Given USEPA's responsibilities under the Clean Air Act and its determination, as stated previously, that Rule 336.1373 does not ensure RACT, the Agency has no choice but to disapprove the rule for not meeting the requirements of Part D. USEPA is not prescribing any particular approach for the State to meet Part D requirements. The State may want to submit all the individual control programs for sources in nonattainment areas as source-specific SIP revisions.

Alternatively, the State may want to develop a new regulation that does not call for the development of individual programs.

USEPA's review cannot be considered redundant since, as already pointed out, the "test" of acceptability in the State rule is not the same test that USEPA would use for review. USEPA would use its definition of RACT (Strelow memo).

J. *Comment:* According to MDNR, certain exemptions and other provisions of Rule 336.1371 about which USEPA expressed concern (in its TSD of April 25, 1985) are not problems of any substance:

(1) USEPA expressed concern that the requirements for a facility which submits an unacceptable program, or a program which is disapproved by the Commission, are not defined. This concern is unfounded because the owner/operator is required by 336.1373 (2)(a)(vi) to submit within 90 days a program which contains all the necessary elements to fully comply with the rule. If he fails to do so, the source is in noncompliance and can be subject to enforcement action.

(2) USEPA's concern about the grain handling and grain drying exemption is unfounded because there is only one grain handling/drying source in the primary nonattainment area, and its operations which might generate fugitive dust emissions are fully enclosed.

(3) USEPA's concern about the exemption provided by 336.1373(2)(a)(ii) relating to storage piles is unfounded because, based on modeling results, MDNR believes that all storage piles in the primary nonattainment area have ambient impacts. For this reason, the exemption could not be utilized.

(4) USEPA's concern that the property-line opacity limit is unenforceable is irrelevant, because all fugitive dust sources subject to this limit will be subject to the specific requirements of a source control plan. The opacity limit is not a critical element in obtaining RACT level control.

(5) USEPA's concern about the 50 tpy applicability cut-off for storage piles is not appropriate because USEPA has already approved a less restrictive exemption in Illinois.

(6) USEPA's concern about certain language of the rule such as "on a regular basis" and "as needed" is unfounded because 336.1373(2)(a)(vi) requires the kind of specific information on dust suppressant application, etc., to be submitted as a part of the program submittal.

*Response:* USEPA's responses are as follows:

(1) USEPA continues to believe that the Rule 336.1373 is unclear in this respect. It is not clear if an owner/operator whose program is disapproved

by the Commission has an additional 90 days for submittal of a revised program, or has only the remainder of the first 90-day period.

(2) The information supplied by the commentor, MDNR, alleviates USEPA's concern but does not eliminate it, since legally enforceable requirements to ensure maintenance of this source-specific RACT-level control would still be missing.

(3) USEPA accepts MDNR's judgment regarding the ambient impact of fugitive emissions from storage piles and notes that it reinforces the justification for RACT control. Given MDNR's position on this exemption, USEPA questions why the exemption should be retained at all. USEPA continues to believe that, because the criteria necessary to determine its valid application in a specific case are lacking, the exemption is open to abuse.

(4) USEPA continues to believe that the property-line opacity limit is unenforceable for the reasons cited in the TSD of April 25, 1985. The commentor (MDNR) appears to be saying that the property-line opacity limit is not a feature of the rule that can be depended upon to obtain any control beyond that agreed to in the source-specific control program. USEPA would agree with this evaluation.

(5) In the Illinois case, the State made a demonstration that very few storage piles, when aggregated by material type, have potential emissions less than 50 tpy. USEPA realizes now that it erred in approving this exemption in the Illinois rule, because the analysis artifically aggregated piles that were, in fact, separate. Therefore, the analysis did not accurately reflect the real impact of the exemption.

The exemption in Rule 336.1373 is more restrictive due to the added language: and "where such piles are located within a facility with kpotential particulate emissions from all sources exceeding 100 tons per year . . .". USEPA continues to believe, however, that technical support justifying it should be provided.

(6) USEPA's determination that Rule 336.1373 would not necessarily ensure the implementation of RACT through the control (i.e., operating) programs it requires has been explained previously in this document.

L. *Comment:* Commentors claimed that the proposed action was inconsistent with Appendix B to 40 CFR Part 50.

*Response:* This is incorrect. Appendix B is simply a list of some available control techniques:

2.2 . . . Reasonable precautions can be taken to prevent particulate matter from becoming airborne. Some of these reasonable precautions include . . .

Appendix B does not show that the Michigan rules meet the RACT requirement in Section 172(b)(3).

L. *Comment:* Commentors argued that it would be unlawful for the Administrator to find that the Michigan rules do not constitute RACT, when he had found that similar rules in Illinois and Wisconsin did constitute RACT.

*Response:* This is incorrect. The Administrator should make this decision on its merits. The Administrator is not bound to follow the same approach he used in an earlier decision, if he finds that approach was inappropriate. "The Administrator is expected to treat experience not as a jailor, but as a teacher." *Shawmut Association* v. *SEC*, 146 F.2d 791, 796–97 (1st Cir. 1945). *See NRLB* v. *J. Weingarten, Inc.*, 420 U.S. 251, 264–66 (1975).

The Administrator is not singling out Michigan for special harsh treatment, as the commenters imply. He is currently applying his view of the law uniformly. On October 11, 1984, USEPA proposed to disapprove Indiana's industrial fugitive dust regulation, 325 IAC 6–5, because the regulation does not meet Part D requirements (see 49 FR 39869).

Similarly, in 1983 USEPA advised Ohio that its rule OAC 3745–17–08 could not be approved as meeting Part D requirements with respect to industrial fugitive dust sources without commitments to extensive changes in the implementation of the rule (letter to Ohio EPA from USEPA dated October 28, 1983.) Consequently, Ohio has proposed revisions to the rule aimed at satisfying the requirements of Part D.

M. *Comment:* Commentors objected that it would be unreasonable, or even impossible, for Michigan to adopt rules establishing RACT for broad categories of sources, and that the Administrator, therefore, must approve the Michigan rules.

*Response:* This is incorrect. The Administrator did not state that any Michigan rules establishing RACT must do so by categories, broad or otherwise. The Administrator simply proposed that the current rules cannot be said to constitute RACT.

N. *Comment:* Commentors objected that the Administrator improperly proposed to require Michigan to submit future control programs for sources in attainment areas as plan revisions.

*Response:* This is incorrect. The Administrator did not propose to require Michigan to submit such programs. He simply noted that such programs would not be part of the federally-approved plan unless Michigan submitted them, and the Administrator approved them as such. (50 FR 23030, col. 1).

O. *Comment:* Commentors objected that the Administrator's proposed action would be inconsistent with *Citizens for a Better Environment* v. *USEPA*, 649 F.2d 522 (7th Cir. 1983) ("*CBE*").

*Response:* This is incorrect. *CBE* did not consider whether rules like Michigan's meet the RACT requirement. Rather, it considered whether the Illinois rules were enforceable, and required control as expeditiously as practicable.

P. *Comment:* Commenters objected that the new source restrictions in section 110(a)(2)(I) of the Act should not be in effect immediately upon the Administrator's final action.

*Response:* This is incorrect. Section 110(a)(2)(I) provides that every plan must include certain restrictions on new sources "unless . . . such plan meets the requirements of Part D of this subchapter (relating to nonattainment)". This requirement is implemented by 40 CFR 52.24(a), a regulation inserted into the plans of all States, including Michigan. If USEPA has determined that the Michigan plan does not meet the Part D requirement for RACT in nonattainment areas, the new source restrictions of Section 110(a)(2)(I) will, therefore, apply as a matter of law.

Agency policy is not to the contrary. The commentors refer to the Agency's policy for States that do have plans meeting Part D (48 FR 50686, 50690 col. 3—50691 col. 1; November 2, 1983. ("Failure to Attain by December 31, 1982"); 50 FR 13130, 13134–13135; April 2, 1985.) Some such areas will receive notices of deficiency and will be required to revise their plans. But none of this affects the application of section 110(a)(2)(I) to plans that do not meet Part D.

Q. *Comment:* Commentors objected that the Administrator's proposed action would be inconsistent with *Bethlehem Steel Corporation* v. *Gorsuch*, 742 F.2d 1028 (7th cir. 1984).

*Response:* This is incorrect. The Administrator proposed to approve the Michigan rules in their entirety. The Administrator also proposed that inclusion of the rules in the plan will be insufficient to meet the RACT requirement. Section 110 does not forbid the Administrator to approve a State's revision of its plan simply because further revision is still needed. Bethlehem does not suggest otherwise.

R. *Comment:* Commentors objected that the Administrator had not complied with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

*Response.* This is incorrect. The Act requires that the Administrator analyze certain issues. 5 U.S.C. 603(b), (c), 604(a). Section 605(a) provides that "any Federal Agency may perform the analyses required by Sections . . . 603 and 604 of this title in conjunction with or as a part of any other . . . analysis required by any other law. . . ." All of the analysis required by the Act was performed as part of the rulemaking and contained in either the rulemaking notices or the docket. It should be noted that the Administrator's proposed actions are limited to approving the Michigan rules, and finding that the plan does not meet the RACT requirement. Since these actions are limited, and are required by law, the analysis required by the Act is quite limited. For example, the Administrator proposes to impose no compliance requirements under section 603(b)(4); he is merely approving State requirements (See 46 FR 8709; (January 27, 1981). No alternatives under section 603(c) and 604(a)(3) are legally available.

*S. Comment:* Commenters objected that the Administrator was required to prepare and consider a regulatory impact analysis under Executive Order 12291, 46 FR 13493 (February 19, 1981).

*Response:* This is incorrect. Section 3 of that Order requires such an analysis only for major rules. This action is not a major rule. (See 50 FR 23030, col. 3). Commenters provided no evidence for their argument that the impacts of the action are so great as to make it a major rule. It should also be noted that to the extent the Administrator's action is required as a matter of law, any regulatory impact analysis would have no bearing on the outcome.

USEPA has reviewed all comments related to the Michigan fugitive dust regulations with respect to its December 2, 1983, and May 30, 1985, rulemaking actions. USEPA has concluded that the Michigan particulate regulations submitted on April 25, 1985, are inadequate to ensure that enforceable RACT-based fugitive emissions control requirements will be imposed on sources of fugitive emissions in Michigan's TSP nonattainment areas.

### Today's Action

USEPA is today disapproving the Michigan TSP SIP because it lacks control requirements reflecting RACT Part D for TSP fugitive emissions sources in nonattainment areas, in violation of the requirements of section 172(b) of the Clean Air Act. The SIP is, therefore, deficient, pursuant to section 110(a)(2)(H) of the Clean Air Act. Today's action causes the new source restrictions in section 110(a)(2)(I) of the Clean Air Act to apply in the Michigan primary TSP nonattainment areas (see 40 CFR 52.24a.)

This action also withdraws USEPA's November 15, 1982, approval (47 FR 51398) and disapproves Michigan's Rules 336.1371–336.1372 as a revision to its TSP SIP, insofar as they apply to nonattainment areas.

This action incorporates into the Michigan SIP, the amended R336.1371 submitted by Michigan on April 25, 1985, to replace the existing R336.1371, on the basis that amended R336.1371 provides a framework for the development of fugitive dust control programs in attainment areas. Michigan's existing Rule 336.1372 remains incorporated into the State's TSP SIP, insofar as it applies to sources in TSP attainment areas.

USEPA incorporates into the Michigan SIP, new Rule 336.1373 because it provides a framework for the development of fugitive dust control programs in nonattainment areas that lacks control requirements, reflecting RACT for the TSP fugitive dust sources in nonattainment areas in violation or the requirements of section 172(b) of Part D of the CAA.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Clean-Air Act, petitions for judicial review of this action must be filed in the United States Court or Appeals for the appropriate circuit by 60 days from the date this notice appears in the **Federal Register**. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2)].

### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur dioxide, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

**Note.**—Incorporation by reference of the State Implementation Plan of Michigan was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 1, 1985.

**Lee M. Thomas,**

*Administrator.*

## PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

### Subpart X—Michigan

The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7642.

1. Section 52.1170, is amended by adding paragraph (c)(79) to read as follows:

**§ 52.1170 Identification of plan.**

* * * * *

(c) * * *

(79) On December 2, 1983, USEPA proposed to withdraw its approval of Michigan's fugitive dust regulations. On April 25, 1985, the State of Michigan submitted revised Rule 336.1371, existing Rule 336.1372, and new Rule 336.1373. However, they did not meet the requirements of Part D of section 172(b); and USEPA, therefore, withdrew its approval of these submittals, disapproved these submittals, and instituted new source restrictions for major sources in the Michigan primary Total Suspended Particulate (TSP) nonattainment areas on [insert date of publication]. USEPA incorporates revised Rule 336.1371 and newly submitted Rule 336.1373 into the Michigan State Implementation Plan because they provide a framework for the development of fugitive dust control programs at the State level in Michigan. USEPA retains Rule 336.1372, which is already incorporated into the Michigan SIP, insofar as it applies to sources in TSP attainment areas. This paragraph supercedes Paragraph (C)(61) of this section.

(i) Incorporation by reference.

(A) Michigan Department of Natural Resources Rules 336.1371 and 336.1373 (Fugitive Dust Regulations), as adopted on April 23, 1985.

2. Section 52.1173 is amended by revising paragraph (a) to read as follows:

**§ 52.1173 Control strategy: Particulates.**

(a) *Part D—Disapproval.* The following specific revisions to the Michigan Plan are disapproved:

(1) Rule 336.1331, Table 31, Item C: Emission limits for Open Hearth Furnaces, Basic Oxygen Furnaces, Electric Arc Furnaces, Sintering Plants, Blast Furnaces, Heating and Reheating Furnaces.

(2) Rules 336.1371 (Fugitive dust control programs other than areas listed in table 36.), 336.1372 (Fugitive dust control programs; required activities; typical control methods.) and 336.1373 (Fugitive dust control programs; areas listed in table 36.) for control of industrial fugitive particulate emissions sources.

[FR Doc. 85-19742 Filed 8-19-85 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 261 and 266

[SWH-FRL-2883-8]

## Hazardous Waste Management System; Definition of Solid Waste; Technical Corrections

AGENCY: Environmental Protection Agency.

ACTION: Technical Corrections to the Definition of Solid Waste Final Rulemaking.

SUMMARY: On January 4, 1985, EPA promulgated a final rule which dealt with the question of which materials being recycled (or held for recycling) are solid and hazardous wastes. This rule also provided general and specific standards for various types of hazardous waste recycling activities. EPA issued technical corrections to this rule on April 11, 1985. Since that time, EPA has identified several other provisions that require technical correction or clarification. This notice makes these changes and modifies the previous publication accordingly.

EFFECTIVE DATE: These corrections become effective on August 20, 1985.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information contact Matthew A. Straus, Office of Solid Waste [WH-562B], U.S. Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

### I. Technical Corrections to Rule

*A. Interim Exemption for Hazardous Waste-Derived Fuels Produced From Wastes From Petroleum Refining, Production, or Transportation*

On January 4, 1985, EPA amended its existing definition of solid waste. 50 FR 614. This rulemaking defined which materials being recycled (or held for recycling) are solid wastes. EPA promulgated certain technical amendments to these rules on April 11, 1985. 50 FR 14216. One of these corrections concerned the regulatory status of hazardous waste-derived fuels produced from oil-bearing hazardous wastes from petroleum refining, production, and transportation. The technical amendment clarified that such fuels are presently exempt from regulation, pending a substantive decision as to whether regulation is necessary to protect human health and the environment. See 50 FR 14218; see also 50 FR 26389, June 26, 1985, likewise stating that such fuels are presently exempt from regulation.

There is a drafting error in the April 11 technical rule, however, in that the interim exemption was placed in § 266.30 of the regulations. This provision applies to hazardous waste fuels burned in boilers or industrial furnaces; thus, the interim exemption would appear to apply only when the hazardous waste-derived fuel from petroleum refining is to be burned in these types of devices. But fuels can be burned in other devices—in certain space heaters or engines not of integral design, for example—and the Agency intended that these hazardous waste-derived fuels be exempt without regard for the type of unit in which they are burned. We consequently are placing the interim exemption in § 261.6(a)(3), which provision exempts recyclable materials from regulation. These particular hazardous waste fuels thus are presently exempt from regulation without regard for the nature of the device in which they are burned.

This exemption is also applicable to oil reclaimed from petroleum refining hazardous wastes prior to insertion or reinsertion into the petroleum refining process (and, as already stated in the preceding paragraph, to fuels resulting from refining of the reclaimed oil). Such reclaimed oil, *i.e.*, oil reclaimed from petroleum refining hazardous waste, is not presently subject to regulation. This leaves in place the regulatory scheme of the May 19, 1980 rules, whereby such reclaimed oils are exempt from regulation. See 50 FR 647/3. The Agency is determining if and how to regulate such reclaimed oil as part of the rulemaking on hazardous waste fuels proposed on January 11, 1985. See 50 FR 1684.

There are two further points of clarification. As drafted in the April 11 notice, the interim exemption applied to all fuels exempt from the labeling requirements of RCRA section 3004(r). Section 3004(r) applies to hazardous waste-derived fuels produced from, or otherwise containing, oil-bearing hazardous wastes from petroleum refining, production, and transportation that are reintroduced into particular parts of the petroleum refining process. Questions have been raised about the precise scope of some of the terms in section 3004(r). On reflection, EPA does not believe it necessary to refer to section 3004(r) to express its intent to provide an interim exemption. Consequently, we are revising the interim exemption to refer to fuels from petroleum refining that include as ingredients (i.e., that are produced from or otherwise contain) oil-bearing hazardous wastes from normal petroleum refining, production, or transportation practices. We note that these hazardous wastes can be generated off-site, and the resulting fuels are covered by the interim exemption. (Cf. section 3004(r)(3) which also is not limited to wastes generated on-site.) We also note, as we did on April 11 (50 FR at 14218/2), that these wastes must be indigenous to the petroleum refining, production, or transportation process, and so would not include such wastes as spent pesticides.

Second, certain persons have raised the question of whether there is any regulatory distinction between fuels "produced from" hazardous waste and those "containing" hazardous waste, as these terms are used in amended 40 CFR 261.2(c)(2) (B) and (C). The Agency intends no such distinction. Nor did the Congress. See RCRA amended section 3004(q), noting that hazardous waste fuels are those produced from hazardous waste, or that "*otherwise* contai(n)" hazardous waste (emphasis added). Fuels produced from hazardous waste thus are a subset of the class of fuels containing hazardous waste. EPA's amended definition of secondary materials that are wastes when burned for energy recovery is coextensive with this statutory provision. 50 FR 630 (January 4, 1985). The Agency also stated repeatedly in the preamble to the amended definition of solid waste that it claimed authority over all hazardous waste-derived fuels, without regard for how they are generated. Thus, EPA indicated that any fuels that "include hazardous wastes as ingredients" are themselves wastes; that any fuels "derived from these [hazardous] wastes [are] defined as solid wastes"; and that when hazardous wastes are "incorporated into fuels . . . fuels containing these wastes . . . remain solid wastes." 50 FR at 625 n.12, 629/2, and 636/1. Consequently, when a person uses a hazardous waste as a component in the fuel process, the output of the process is defined as a waste (assuming listed wastes are involved, or that the waste-derived fuel exhibits a hazardous waste characteristic). (The question of if and how to regulate such wastes remains for future rulemakings.)

The Agency also notes that these same principles apply with respect to waste-derived products that are used in a manner constituting disposal—they are wastes when a hazardous waste is used as a component of the process that produces them. See, e.g., 50 FR 627–628 (rejecting a standard based on simple mixing) and amended § 266.20(b) (EPA has jurisdiction over hazardous waste-derived products even where incorporated wastes have been

chemically reacted and are not separable by physical means).

In order to eliminate any possible uncertainty on this point, however, the Agency has decided to revise the language of § 261.2(c)(1) (use constituting disposal) and (c)(2) (burning for energy recovery) to recite the language from the Hazardous and Solid Waste Amendments of 1984 (HSWA). Thus, (a) hazardous secondary materials used to produce a fuel or used to produce a material that is applied to the land are defined as wastes; and (b) hazardous secondary materials otherwise contained in such waste-derived products are defined as wastes. In both cases, the waste-derived product is defined as a waste (assuming it too is hazardous as provided in § 261.3) and is potentially subject to regulation under Subtitle C of RCRA.

*B. Interim Exemption for Hazardous Waste-Derived Fuels From Iron and Steel Production*

On April 11, 1985, EPA also clarified that hazardous waste-derived coke from the iron and steel industry is not subject to regulation when the only hazardous wastes used in the coke-making process and from iron and steel production. This interim exemption was also placed in § 266.30(b) and so is limited by the type of unit in which the waste-derived coke is burned. To avoid any unintended limitation on the scope of this interim exemption, we are now placing it in § 261.6(a)(3).

*C. Regulation of the Process of Recycling*

EPA stated in the preamble to the final rule that EPA does not presently regulate the actual process of recycling (with the exception of certain uses constituting disposal), only the storage, transport, and generation that precedes it. 50 FR 642/1. The Agency included this thought in §§ 261.6(c)(2) and 266.35 of the regulations, but forgot to include it in § 261.6(c)(1). We consequently are amending § 261.6(c)(1) to state that the enumerated requirements only apply to recyclable materials stored before they are recycled.

*D. Correction to Subpart G of Part 266*

Subpart G of Part 266 contains rules for spent lead-acid batteries being reclaimed. Due to a typographical error, this provision was misnumbered as "§ 266.30". The correct numbering is § 266.80. Today's notice corrects this error.

*E. Clarification of Part A Permit Requirements*

In the April 11, 1985 notice, EPA indicated that facilities located in States which do not have finally authorized or interim authorized permit programs need to submit new or amended Part A permit applications to EPA by July 5, 1985. 50 FR 14217/3. Although accurate for States without any EPA authorization, this statement was not correct with respect to Phase I interim authorized States. If a State has any form of authorization, its universe of wastes (as approved by EPA) defines the universe of RCRA regulated entities within the State. Program Implementation Guidance 82-1, November 20, 1981. Thus, a person managing a waste that is not yet part of such an authorized State's universe of hazardous waste is not presently required to submit a Part A application. The new or amended application would have to be submitted when the State's universe of wastes has been amended to reflect changes to Part 261 and has been authorized by EPA.

## II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice simply makes typographical and technical corrections and does not change the previously approved final rule, this rule is not a major rule, and, therefore no Regulatory Impact Analysis was conducted.

**List of Subjects in 40 CFR Parts 261 and 266**

Hazardous wastes, Recycling.

Dated: August 12, 1985.

**Allyn M. Davis,**

*Acting Assistant Administrator for Solid Waste and Emergency Response.*

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority section for Part 261 continues to read as follows:

**Authority:** Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6902, 6912(a), 6921, and 6922).

2. In § 261.2(c)(1)(i), paragraph (B) is revised to read as follows:

**§ 261.2 Definition of solid waste.**

* * * * *

(c) * * *

(1) * * *

(i) * * *

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste).

* * * * *

3. In § 261.2(c)(2)(i), paragraph (C) is removed and paragraph (B) is revised to read as follows:

**§ 261.2 Definition of solid waste.**

* * * * *

(c) * * *

(2) * * *

(i) * * *

(B) Used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste).

* * * * *

4. In § 261.6(a)(3), paragraphs (v), (vi), and (vii) are added to read as follows:

**§ 261.6 Requirements for recyclable materials.**

* * * * *

(a) * * *

(3) * * *

(v) Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(vi) Oil reclaimed from hazardous waste resulting from normal pertoleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; or

(vii) Coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

* * * * *

5. In § 261.6(c) paragraph (1) is amended to read as follows:

**§ 261.6 Requirements for recyclable materials.**

* * * * *

(c)(1) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of Subparts A through L of Parts 264 and 265 and Parts 270 and 124 of this Chapter and the notification requirement under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation.)

* * * * *

## PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

6. The authority citation for Part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

7. Section 266.30(b) is amended by deleting paragraphs (b)(3) and (b)(4).

8. FR Doc. 85–3 published in the Federal Register of January 4, 1985 (50 FR 614), is corrected by changing the section number "266.30" under Subpart G to "266.80" on page 667.

[FR Doc. 85–19708 Filed 8–19–85; 8:45 am]

BILLING CODE 6560–50–M

## 40 CFR Part 799

[OPTS–42012B; TSH–FRL 2815–5b]

## Identification of Specific Chemical Substance and Mixture Testing Requirement; Diethylenetriamine

*Correction*

In FR Doc. 85–12422, beginning on page 21398, as Part III, in the issue of Thursday, May 23, 1985, make the following correction:

On page 21412, second column, § 799.1575(c)(2)(i)(C), the fifth line should have read: "section or in the *in vivo* cytogenetics test conducted pursuant to paragraph (c)(2)(i)(B) of this section produces a positive result."

BILLING CODE 1505–01–M

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 2 and 97

## Modification of Footnote US275 to the Table of Frequency Allocations

**AGENCY:** Federal Communications Commission.

**ACTION:** Order.

**SUMMARY:** The Federal Communications Commission amends Parts 2 and 97 of its Rules to prohibit secondary amateur operations in the 902–928 MHz band in the White Sands Missile Range. This action will provide protection to essential primary radiolocation and control operations at White Sands Missile Range.

**EFFECTIVE DATE:** September 29, 1985.

**ADDRESS:** Federal Communications Commission, 2035 M Street NW., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Thomas, Office of Science and Technology, 1919 M Street NW., Washington, D.C. 20554, (202) 653–8162.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects**

*47 CFR Part 2*

Frequency allocations.

*47 CFR Part 97*

Amateur radio.

**Order**

In the matter of amendment of parts 2 and 97 of the Commission's rules to prohibit amateur use of the 902–928 MHz band at White Sands Missile Range in southern New Mexico.

Adopted: August 5, 1985.

Released: August 15, 1985.

By the Commission.

1. This action restricts amateur operations in the 902–928 MHz band in the vicinity of White Sands Missile Range. In the Second Report and Order of General Docket 80–739, Implementation of the Final Acts of the 1979 WARC, the Commission allocated the 902–928 MHz band to the amateur service on a secondary basis; it allocated the band on a primary basis for Government radiolocation and for industrial, scientific and medical applications.[1] This band has recently been added by the Report and Order in PR Docket 84–960 to the frequencies listed in Part 97 as being available for amateur use.[2] However, the Department of the Army has informed the Commission that several critical radiolocation operations, including tracking and control operations of unmanned aircraft, require the use of frequencies in the 902–928 MHz band at the White Sands Missile Range in New Mexico and that amateur operations in this area could impair or seriously disrupt these operations. Therefore, the Army has requested that the Commission place restrictions on amateur operations in the 902–928 MHz band around the White Sands area.

2. In order to protect these critical military operations we are modifying footnote US275 to the Table of Frequency Allocations, § 2.106 of the Commission's Rules, and modifying § 97.7 of the Commission's Rules to restrict amateur operations in this band. The restrictions are as follows: In the band 902–928 MHz the amateur service is prohibited in the area of Texas and New Mexico bounded by latitude 31°41′ N. on the south, longitude 104°11′ W. on the east, latitude 34°30′ N. on the north and longitude 107°30′ W. on the west; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range, New Mexico, the service is limited to a maximum peak envelope power output of 50 watts from the transmitter. The necessary amendments to Sections 2.106 and 97.7 of the Commission's Rules are contained in the Appendix.

3. In accordance with section 553 of the Administrative Procedures Act, which excludes matters involving military functions from the notice process (U.S.C. 553(a)(1)), no Notice of Proposed Rule Making will be issued in this matter.

4. Accordingly, it is ordered, that §§ 2.106 and 97.7 are amended as set forth in the Appendix. Authority for this action is contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended. These amendments become effective September 29, 1985.

5. Point of contact on this matter is Fred Thomas, (202) 653–8162.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

**Appendix**

Parts 2 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

The authority citations in Parts 2 and 97 continue to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended: 47 U.S.C. 154, 303.

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

Section 2.106 is amended by revising the text of footnote US275 as follows:

**§ 2.106 Table of frequency allocations.**

* * * * *

US275 The band 902–928 MHz is allocated on a secondary basis to the amateur service subject to not causing harmful interference to the operations of Government stations authorized in this band or to Automatic Vehicle Monitoring (AVM) systems. Stations in the amateur service must tolerate any interference from the operations of industrial, scientific and medical (ISM) devices, AVM systems and

[1] See Second Report and Order in General Docket No. 80–739 FCC 83–511, 49 FR 2357 (adopted November 8, 1983).

[2] See Report and Order in PR Docket No. 84–960 FCC 85–460 (adopted August 9, 1985).

the operations of Government stations authorized in this band. Further, the Amateur Service is prohibited in those portions of Texas and New Mexico bounded on the south by latitude 31° 41' North, on the east by longitude 104° 11' West, on the north by latitude 34° 30' North, and on the west by longitude 107° 30' West; in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range the service is restricted to a maximum transmitter peak envelope power output of 50 watts.

* * * * *

## PART 97—[AMENDED]

Section 97.7(a) is amended by adding limitation designator 13 to the 902–928 MHz band for the Technician, General, Advanced and Amateur Extra control operator license class, and paragraph (b) is amended by adding the text of (13).

**§ 97.7 Control operator frequency privileges.**

* * * * *

| Control operator license class | Meter band | Terrestrial location of the amateur radio station | | | Limitations (see para. (b)) |
|---|---|---|---|---|---|
| | | ITU Region 1 | ITU Region 2 | ITU Region 3 | |
| Technician | | | *Megahertz* | | |
| * * * | * | * | * | * | * |
| | 0.35 | | 902-928 | | 1, 3, 12, and 13. |
| * * * | * | * | * | * | * |
| General | | | *Megahertz* | | |
| * * * | * | * | * | * | * |
| | 0.35 | | 902-928 | | 1, 3, 12, and 13. |
| * * * | * | * | * | * | * |
| Advanced | | | Megahertz | | |
| * * * | * | * | * | * | * |
| | 0.35 | | 902-928 | | 1, 3, 12, and 13. |
| * * * | * | * | * | * | * |
| Amateur Extra | | | Megahertz | | |
| * * * | * | * | * | * | * |
| | 0.35 | | 902-928 | | 1, 3, 12, and 13. |
| * * * | * | * | * | * | * |

(b) * * *

(13) The band 902–928 MHz is prohibited in those portions of Texas and New Mexico bounded on the south by latitude 31° 41'North, on the east by longitude 104° 11' West, on the north by latitude 34° 30' North, and on the west by longitude 107° 30' West; and in addition, outside this area but within 150 miles of these boundaries of White Sands Missile Range operation is restricted to a maximum transmitter peak envelope power output of 50 watts.

* * * * *

[FR Doc. 85-19794 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 22**

**[Docket No. 80-57]**

## Revision and Update; Public Mobile Radio Service Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rules, correction.

**SUMMARY:** The Federal Communications Commission recently reconsidered its revision of the Public Mobile Service Rules 47 CFR Part 22. The Order on Reconsideration was subsequently published in the **Federal Register** on August 9, 1985 (50 FR 32196). This document corrects certain errors in the Order on Reconsideration.

**FOR FURTHER INFORMATION CONTACT:** Carmen A. C. Borkowski (202) 632-6450.

**SUPPLEMENTARY INFORMATION:**

### Erratum

In the matter of revision and update of Part 22 of the public mobile radio service rules; CC Docket No. 80-57.

Released: August 12, 1985.

The Commission's Order on Reconsideration, FCC 85-367, released July 31, 1985 (50 FR 32196), is corrected as follows:

## PART 22—[CORRECTED]

1. On page 32197, Paragraph 7 is corrected to read as follows:

"7. *Permissive Changes or Minor Modifications of Authorization, § 22.9(d).* In response to the comments we are clarifying § 22.9(d) adding other categories of minor modifications or permissive changes (those not requiring prior authorization) which were inadvertently omitted from the rule: addition of transmitters pursuant to § 22.117(b) and the filing of Form 489 to return the license to its original specifications when a partial assignment is not completed.5 We are also amending § 22.9 to modify a section that has created the potential for interference and making engineering studies more difficult. Section 22.9(d)(5) permitted licensees to perform engineering changes by notification that would either decrease their service contours or increase them by no more than one mile. The increase of a licensee's service contours by even one mile, however, can affect the engineering of other co-channel licensees and applicants. We conclude that, while minor, any small increase in service contours of a station in the Public Land Mobile Service should be the subject of an application rather than a notification; the grant of such an application will be placed on public notice to inform others of the engineering change.6 *See § 22.23(c)(2).* However, we are treating as permissive changes modifications to base station facilities provided there are no increases to the reliable service area contour. Licensees are required to notify us of any minor modifications or permissive changes on a Form 489 no later than the date they start providing service on the modified facilities."

2. On page 32197, footnote 5 is corrected by the addition of the following sentence at the beginning:

"We are also amending § 22.9(b)(1) by adding language to the effect that Form 489 shall also be used for requests for extensions of time to complete construction and for reinstatements of authorizations submitted within 30 days after the expiration of the authorization. Reinstatements are requested when the licensee fails to request an extension of time to complete construction and the license expires or the licensee fails to timely file a renewal application."

3. On page 32198, footnote 17 is corrected to read as follows:

"The additional transmitters are considered "satellites" of the main station. If there are any changes to the main station which would change the status of the "satellite" (for instance, deletion of the main station or change in technical parameters, or deletion of the transmitters) such changes require the filing of a Form 489 to notify us of the changes."

4. On page 32198, footnote 18 is corrected to read as follows:

"Fill-in transmitters in the 43 MHz band will be permitted only on a developmental basis, subject to the conditions set forth in our Public Notice, *Developmental Common Carrier Paging*

*Base Station Authorizations Assigned in the 43 MHz Spectrum*, Mimeo 4591, released May 16, 1985."

5. On page 32200, the following sentence is removed from paragraph 40:

"Other more substantive comments have been submitted.21"

6. On page 32200, at the end of paragraph 41 the following sentence and footnote 21 are added:

"We are also clarifying our decision concerning experimental market trials.21"

7. On page 32201, in paragraph 42 insert, "§ 22.23(c)(4) and (g)" after "§ 22.15(b)(1)(ii)."

8. On page 32201, in Appendix B, § 22.9 is corrected by adding the following language at the end of paragraph (b)(1):

"Form 489 shall also be used for requests for reinstatements of authorizations if filed within 30 days after expiration (§ 22.44(a)(2))."

9. On page 32201, in Appendix B, § 22.9 is corrected by removing (d)(7); and revising (d)(6) to read as follows:

"(d)(6) Modifications to base station facilities provided there is no increase to the reliable service area contour."

10. On page 32201, in Appendix B, § 22.9 is corrected by redesignating present (d)(8) and (d)(7) and revising redesignated (d)(7)(ii) to read as follows:

"(d)(7)(ii) A change to or addition of a cell site as long as the composite 39 dBu contours remain totally within the cellular geographic service area."

11. On page 32201, in Appendix B, § 22.13(e) the cite to "§ 1.134" is corrected to read "§ 1.1311."

12. On page 32202, in Appendix B, § 22.43(b)(1), the fourth sentence is corrected to read as follows:

"No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment."

13. On page 32202, in Appendix B, § 22.45(a) is corrected by changing the language of the first sentence to read as follows:

"Licenses will be granted for up to ten years."

14. On page 32203, in Appendix B, § 22.117(b)(1) is corrected by adding the following language at the end of the paragraph:

"Additional transmitters in the 43MHz band will be permitted only on a developmental basis, subject to the conditions set forth in Public Notice, *Developmental Common Carrier Paging Base Station Authorizations Assigned in the 43 MHz Spectrum*, Mimeo 4591, released May 16, 1985.

15. On page 32203, in Appendix B, § 22.117(b)(4), is corrected to read as follows:

"(4) Commission action would not be a "major action" as defined by rule § 1.1305. If it is a major action, then prior approval is required, and the requirements of § 1.1311 apply."

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 85-19519 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 84-688; RM-4718]**

## FM Broadcast Station in University, MS

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein allots Channel 221A to University, Mississippi, in response to a petition filed by the University of Mississippi. The allotment could provide a first local service to the community.

**EFFECTIVE DATE:** September 19, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Report and Order (Proceeding Terminated)**

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (University, Mississippi); MM Docket No. 84-688, RM-4718.

Adopted: August 1, 1985.
Released: August 13, 1985.
By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 49 FR 29419, published July 20, 1984, in response to a petition filed by the University of Mississippi ("petitioner"). The *Notice* proposed the allotment of FM Channel 221A to University, Mississippi, as that community's first local FM channel. Petitioner filed supporting comments and restated its intention to apply for the channel. Opposition comments were filed by the Mississippi Authority for Educational Television ("MAET"). Reply comments were filed by the University of Mississippi.

2. MAET requested that Channel 263A be assigned to University, Mississippi, instead of Channel 221A. MAET is the official state agency which controls and supervises the use and development of public radio and public television within the State of Mississippi. On April 6, 1981, they filed a statewide noncommercial educational FM Radio Frequency Plan with the F.C.C. in accordance with § 73.502 of the Commission's Rules. MAET's plan proposes the use of Channel 218 at Oxford, Mississippi, alleging that no other noncommercial educational FM channel is available for use at Oxford. Allotment of Channel 221A at University, Mississippi, would conflict with the use of noncommercial educational Channel 218 at Oxford.

3. Thereafter, MAET filed reply comments in which it withdrew its opposition and alternative allotment proposal. MAET affirms that it consulted with various parties interested in this proceeding, including the University of Mississippi, and it no longer objects to the allotment of FM Channel 221A at University, Mississippi. The University contemplates using an on-campus site for its planned broadcast facility, which would not have been possible if Channel 263A were allotted instead. MAET notes that since two other noncommercial entities are or will be providing public FM service to the Oxford, Mississippi, area their concern that all citizens of Mississippi have access to public FM service is satisfied.

4. A staff study indicates that Channel 221A can be allotted to University, Mississippi, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.[1]

5. In view of the above considerations, we believe the public interest would be served by a grant of the petitioner's request, since it could provide for the first local service to University.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1985, the FM Table of Allotments, § 73.202(b) of the Commission's Rules is amended

[1] However, this allotment would limit the 16 kilometer buffer zone of Station WYNU, Channel 222, Milan, Tennessee. Existing Class C stations operating with less than a 300 meter antenna height are now permitted the buffer zone. However, this requirement does not apply to petitions, such as this one, which were filed before March 1, 1984. See BC Docket 80-90, *recons.* 97 F.C.C. 2d 279 (1984). Nevertheless, applicants for Channel 221A at University should attempt to protect the buffer zone when selecting a transmitter site.

with respect to the community listed below.

| City | Channel No. |
|---|---|
| University, MS | 221A |

7. The window period for filing applications will open on September 20, 1985, and close on October 18, 1985.

8. It is further ordered, That this proceeding is terminated.

9. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 85–19790 Filed 8–19–85; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 83–950; RM–4479]**

## FM Broadcast Stations in Warren, VT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein allots FM Channel 241A to Warren, Vermont, in response to a petition filed by John L. Eddy as that community's first FM channel.

**EFFECTIVE DATE:** September 19, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Pat Rawlings, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4, 306, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.

### Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast stations (Warren, Vermont); MM Docket No. 83–950, RM–4479.

Adopted: August 1, 1985.
Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 48 FR 41464, published September 15, 1983, proposing the allotment of Channel 285A to Warren, Vermont as that community's first FM channel. The *Notice* was adopted in response to a petition filed by John L. Eddy ("petitioner"). Petitioner filed comments reaffirming his intention to apply for the channel.

2. In order to resolve a conflict raised in comments concerning Vergennes, Vermont in the *Further Notice of Proposed Rule Making*, in MM Docket No. 84–231, 50 FR 2835, published January 22, 1985, we find it necessary to consider an alternative channel to Warren. An engineering study reveals that Channel 241A can be allotted to Warren in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules. Since Warren is located within 320 kilometers (199 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been received.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1985, the Table of FM Allotments, § 73.202(b) of the Rules, is amended with respect to the following:

| City | Channel No. |
|---|---|
| Warren, VT | 241A |

4. The filing window for applications on this channel will open September 20, 1985 and close on October 18, 1985.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Pat Rawlings, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 85–19789 Filed 8–19–85; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 84–790; RM–4801]**

## Television Broadcast Station in Morehead City, NC

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns VHF TV Channel 8 to Morehead City, North Carolina, as that community's first local television service, at the request of Contemporary Communications, Inc.

**EFFECTIVE DATE:** September 19, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 47 CFR Part 73

Television broadcasting.

### Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Morehead City, North Carolina); MM Docket No. 84–790, RM–4801.

Adopted: August 1, 1985.
Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 33468, published August 23, 1984, proposing the assignment of VHF TV Channel 8 to Morehead City, North Carolina, as that community's first local service, at the request of Contemporary Communications, Inc. ("petitioner"). Comments in support were filed by the petitioner and jointly by Tommy J. Payne and Jesse Cowan. Comments in opposition were filed by WITN, Inc. ("WITN"), licensee of WITN–TV, Washington, North Carolina.

2. WITN opposes the assignment claiming that the use of Channel 8 at Morehead City would preclude assignments to more deserving communities. Specifically, he states that the Morehead City proposal conflicts with the Commission's proposal in Docket 80–499, the VHF drop-in proceeding, to assign Channel 8 to the much larger community of Norfolk, Virginia.[1]

3. Contrary to WITN's assertion, the Commission has no pending proposal to assign another television channel to Norfolk, Virginia. As to the claim that the use of Channel 8 at Morehead City would cause preclusion to other communities, neither WITN nor any other party filed an expression of interest in a television assignment at any conflicting location. Channel 8 can be assigned to Morehead City in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 miles southeast. This restriction will avoid a short-spacing to Stations WITN–

[1] *Notice of Proposed Rule Making*, 45 FR 72902, published November 3, 1980.

TV, Washington, North Carolina, and WNCT–TV, Greenville, North Carolina.

4. We believe the public interest would be served by assigning the channel, as it could provide Morehead City with its first local television service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1985, the Television Table of Assignments, § 73.606(b) of the Rules, is amended with respect to the community listed below, to read as follows:

| City | Channel No. |
|---|---|
| Morehead City, NC | 8 + |

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 85–19791 Filed 8–19–85; 8:45 am]

BILLING CODE 6712–01–M

## 47 CFR Part 73

## Oversight of the Radio, Television, and Cable Television Rules

*Correction*

In FR Doc. 85–18927 beginning on page 32414 in the issue of Monday, August 12, 1985, make the following corrections:

1. On page 32417, in the first column, in amendatory instruction number 24, in the sixth line, "(d)" should read "(c)".

**§ 73.558 [Corrected]**

2. On the same page, in the same column, in § 73.558, the paragraph designated as "(d)" should read "(c)".

BILLING CODE 1505–01–M

## GENERAL SERVICES ADMINISTRATION

## 48 CFR Part 552

**[APD 2800.12 CHGE 15]**

## Identification of Provisions and Clauses

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Final rule; correction.

**SUMMARY:** In FR Doc. 85–17222 on page 29403 in the issue of Friday, July 19, 1985, make the following correction:

**552.252–6 [Corrected]**

In the third column, paragraph (c) of this clause entitled "Authorized Deviation or Variations in Clauses" the word "provision" which appears in 3 places should read "clause".

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

Dated: August 12, 1985.

**Allan W. Beres,**

*Assistant Administrator for Acquisition Policy.*

[FR Doc. 85–19834 Filed 8–19–85; 8:45 am]

BILLING CODE 6820–61–M

# Proposed Rules

Federal Register
Vol 50, No. 161
Tuesday, August 20, 1985

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 301

### Overseas Limited Appointments

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed regulations.

**SUMMARY:** The Office of Personnel Management is issuing proposed regulations to revise a restriction on agency use of overseas limited appointments. The current regulations contain a general restriction on agency use of this appointment authority when "there is an adequate and appropriate register resulting from an examination held in the locality where the vacancy exists."

OPM is proposing to remove this restriction and allow agencies to use overseas limited appointments except in cases where specific restrictions have been imposed by OPM examining offices which service overseas areas.

**EFFECTIVE DATE:** Comments will be considered if received no later than November 18, 1985.

**ADDRESS:** Send or deliver comments to Donald L. Holum, Chief, Staffing Policy Analysis Division, Staffing Group, Office of Personnel Management, Room 6504, 1900 E Street, NW., Washington, D.C. 20415.

**FOR FURTHER INFORMATION CONTACT:** Donald L. Holum, (202) 632-6817.

**SUPPLEMENTARY INFORMATION:**

#### Background

OPM is authorized by Civil Service Rule VIII (5 CFR 8.1) to provide for recruitment and appointment of U.S. citizens to overseas positions in the competitive service without regard to competitive requirements. Under 5 CFR 301.201 agencies are authorized to make overseas limited appointments to U.S. citizens *recruited overseas* to fill overseas positions. However, these regulations prohibit the use of overseas limited appointments when there is an adequate and appropriate register resulting from an examination held in the location where the vacancy exists. This restriction was established to prevent the use of a noncompetitive hiring authority when there was a supply of competitors already available in an area.

In light of changes in examining practices since overseas limited appointments were first authorized in the 1950's, OPM is proposing to delete the general restriction in the regulation and instead provide for OPM examining offices to impose ad hoc restrictions as needed. For example, restrictions would be established in cases where OPM has set up competitive examining registers exclusively for a particular overseas agency or area. These proposed regulations would also clarify the definition of individuals eligible for overseas limited appointment to specifically include individuals who owe permanent allegiance to the United States (U.S. nationals). Native American Samoans are the only noncitizens, who, as a group, owe permanent allegiance to the United States.

#### E.O. 12291, Federal Regulation

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

#### Regulatory Flexibility Act

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

#### List of Subjects in 5 CFR Part 301

Government employees.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM proposes to amend Part 301 of Title 5, Code of Federal Regulations, to read as follows:

## PART 301—OVERSEAS EMPLOYMENT

1. The authority for Part 301 is revised to read as follows:

**Authority:** 5 U.S.C. 3301, 3302, E.O. 10577, E.O. 11935, 3 CFR 1954–1958 Comp., p. 218, as amended by E.O. 10641, 3 CFR, 1954–1958 Comp., p. 274.

2. Sections 301.201 and 301.202 are revised to read as follows:

### Subpart B—Overseas Limited Appointment

**§ 301.201 Appointment of individuals recruited overseas.**

An agency may give an overseas limited appointment without competitive examination to an individual recruited overseas who is a citizen of or owes permanent allegiance to the United States except when specifically restricted by an Office of Personnel Management examining office with jurisdiction in the overseas area.

**§ 301.202 Appointment of individuals recruited outside overseas areas.**

When an agency determines that unusual or emergency conditions make it infeasible to appoint from a register, it may give an overseas limited appointment to an individual, who is a citizen of or owes allegiance to the United States, recruited in an area where an overseas limited appointment is not authorized.

[FR Doc. 85-19829 Filed 8-19-85; 8:45 am]
BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 85

**[Docket No. 85-058]**

### Official Pseudorabies Tests

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the pseudorabies regulations by adding the Enzyme-Linked Immunosorbent Assay (ELISA) test to the list of official tests for pseudorabies. This action appears warranted in order to provide an additional official test for pseudorabies.

**DATE:** Written comments must be received on or before September 19, 1985.

**ADDRESS:** Written comments concerning this proposed rule should be submitted to Thomas. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Comments should state that they are in

response to Docket Number 85-058. Written comments received may be inspected at Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday except holidays

**FOR FURTHER INFORMATION CONTACT:** Dr. L. W. Schnurrenberger, Special Diseases Staff, VS APHIS, USDA, Room 622, Federal Building, 6505 Belcrest Road, Hyattsville, MD 29782, 301-436-8438.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pseudorabies, also known as Aujeszky's disease, mad itch, and infectious bulbar paralysis, is caused by a herpes virus and is primarily a disease of swine. The regulations in 9 CFR Part 85 (referred to below as the regulations) govern the interstate movement of swine and other livestock (cattle, sheep, goats) in order to help prevent the spead of pseudorabies.

The official pseudorabies tests are used under certain circumstances for determining the pseudorabies status of livestock. Also, the regulations provide for testing negative by an official pseudorabies test as a condition for allowing certain interstate movements of swine. Three tests—the Microtitration Serum-Virus Neutralization (SN) Test, the Virus Isolation and Identification (VI) Test, and the Fluorescent Antibody Tissue Section (FATS) Test—are currently listed in § 85.1(q) as official pseudorabies tests.

A new serologic test for pseudorabies, the Enzyme-Linked Immunosorbent Assay (ELISA) test, has been developed. This test, in field trials and other research, has been demonstrated to be at least as sensitive and specific a test for pseudorabies as the tests currently approved as official pseudorabies tests.[1] It is therefore proposed to amend the regulations by adding the ELISA test as an official pseudorabies test.

**Executive Order 12291 and Regulatory Flexibility Act**

This action has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this action would not have an effect on the economy of $100 million or more; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not have any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

If adopted, this proposed amendment to the regulations would only provide for the use of an additional official pseudorabies test as an option for use in determining whether an animal is infected with the disease. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 9 CFR Part 85**

Animal diseases, Livestock and livestock products, Pseudorabies, Quarantine, Transportation.

**PART 85—PSEUDORABIES**

Accordingly, it is proposed to amend 9 CFR Part 85 as follows:

1. The authority citation for Part 85 would continue to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 85.1, paragraph (q) would be amended by changing "Test.[2]" to "Test; and 4. Enzyme-Linked Immunosorbent Assay (ELISA) Test.[2]"

Done at Washington, D.C., this 15th day of August 1985.

J.K. Atwell,

*Deputy Administrator, Veterinary Services.*

[FR Doc. 85-19872 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-34-M

[1] Copies of the results of research and of the test protocol for the ELISA test are available upon request from Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20780.

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 85-NM-50-AD]**

**Airworthiness Directives; Boeing Model 757 and 767 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend an existing airworthiness directive (AD) which requires replacement of the Fuel Quantity Indicating System (FQIS) with specific part number processor units. This amendment would allow installation of later improved processor units as they are certificated.

**DATES:** Comments must be received on or before October 15, 1985.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-50-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stewart R. Miller, Propulsion Branch, ANM-140S; telephone (206) 431-2969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

**Comment Invited**

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

**Availability Of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-50-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

Amendment 39-4969 (48 FR 34731; August 1, 1983), Airworthiness Directive (AD) 83-15-05, was issued July 20, 1984, to require periodic testing of the Fuel Quantity Indication System (FQIS) on certain Boeing Model 757 and 767 airplanes. AD 83-15-05 was revised December 11, 1984, Amendment 39-4967 (49 FR 49434; December 20, 1984), to require replacement of the FQIS processor and terminate the requirement for repetitive inspections. Amendment 39-4967 inadvertently restricted the replacement of processor units to specific part numbers and does not allow for installation of improved processors. This proposed amendment will correct the earlier error by adding the note that, at the option of the operator, subsequent FAA-approved FQIS processor units may be installed.

Since this amendment merely relieves a restriction, it will not impose any regulatory or economic burden on any person.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposd rule, if promulgated, will not have a significant economic impact on a substantial number or small entities because few, if any, Model 757 and 767 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

### List Of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### The Proposed Amendment

### PART 39—[AMENDED]

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

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

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

2. By further amending AD 83-15-05, Amendment 39-4696 (48 FR 34731; August 1, 1983) as revised by Amendment 39-4967 (49 FR 49434; December 20, 1984), by adding a new paragraph F, to read as follows:

"F. Subsequent-FAA approved FQIS processors may be installed in place of part numbers S345T002-42 and S345T002-350 required by paragraphs C or D.," above

All persons affected by this directive who have not already recived these documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 13, 1985.

**Charles R. Foster,**

*Director, Northwest Mountain Region.*

[FR Doc. 85-19800 Filed 8-19-85; 8:45 am]

BILLING CODE 4910-13-M

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### 14 CFR Part 39

**[Docket No. 85-NM-70-AD]**

## Airworthiness Directives; Short Brothers Ltd. Model SD3-60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require modification of the primary control cable guards to prevent foreign objects from interfering with the primary flight control cables on certain Model SD3-60 airplanes. This action was prompted by a report of a foreign object falling behind a furnishing panel and into the elevator control cables. The installation of additional guards is necessary to prevent objects dropped in the passenger cabin from jamming the control cables.

**DATES:** Comments must be received on or before October 15, 1985.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-70-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. The information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

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

### Availability Of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-70-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

### Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which exists on certain Short Brothers, Ltd. Model SD3-60 airplanes. An incident has been reported in which an object, dropped behind a furnishing panel in the passenger cabin, lodged adjacent to the spring pot in the elevator control circuit, and created a jam. To prevent this from recurring, the CAA has required that certain SD3-60 airplanes be modified in accordance with Short Brothers Service Bulletin SD360-27-04 to install extended cable guards and additional cable guards to protect the controls from jamming.

This airplane model is manufactured in the United Kingdom and type

certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the previously mentioned service bulletin.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $11,880.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Short Brothers Model SD3-60 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subject 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

**PART 39—[AMENDED]**

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

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11-89.

2. By adding the following new airworthiness directive:

**Short Brother Ltd.:** Applies to Short Brothers Ltd. Model SD3-60 airplanes serial numbers SH 3601 through SH 3665 inclusive, certificated in any category. Compliance is required within 90 days after the effective date of this AD, unless previously accomplished:

1. To prevent control system interference, install extended and additional guards in accordance with Short Brothers Ltd. Service Bulletin SD360-27-04, dated March 1985.

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

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

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Shorts Aircraft, 1725 Jefferson Davis Highway, Suite 510, Arlington, Virginia 22202. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 13, 1985.

**Charles R. Foster,**

*Northwest Mountain Region.*

[FR Doc. 85-19799 Filed 8-19-85; 8:45 am]

BILLING CODE 4910-13-M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[LR-214-84]**

### Return Relating to Mortgage Interest Received in a Trade or Business From Individuals; Proposed Rulemaking

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking by cross-reference to temporary regulations.

**SUMMARY:** In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the requirements of reporting mortgage interest received in a trade or business from individuals. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

**DATES:** Written comments and requests for a public hearing must be delivered by October 21, 1985. The regulations are proposed to be effective for mortgage interest received after December 31, 1984.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-214-84), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Annette J. Guarisco of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566-3238 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations. The temporary regulations are designated by a "T" following their section citation. The final regulations, which this document proposes to base on those temporary regulations, would amend Parts 1 and 602 of Title 26 of the Code of Federal Regulations.

The regulations provide guidance concerning information returns relating to mortgage interest received in a trade or business from individuals as required by section 6050H of the Internal Reveune Code of 1954. Section 6050H was added to the Code by section 145 of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 685). The regulations are to be issued under the authority contained in sections 6050H and 7805 of the Intrernal Revenue Code of 1954 (98 Stat. 685, 26 U.S.C. 6050H; 68A Stat. 917, 26 U.S.C. 7805). For the text of the temporary regulations, see FR Doc. [T.D. 8047] published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules.

**Special Analyses**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are

submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirement of the Paperwork Reduction Act of 1980. Comments on those requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests that persons submitting comments on those requirements to OMB also send copies to the Service.

**Drafting Information**

The principal author of these regulations is Annette J. Guarisco 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 on matters of both substance and style.

**List of Subjects in 26 CFR 1.6001–1—1.6109–2**

Income taxes, Administration and procedure, Filing requirements.

Roscoe L. Egger, Jr.,

*Commissioner of Internal Revenue.*

[FR Doc. 85–19892 Filed 8–16–85; 8:45 am]

BILLING CODE 4830–01–M

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**26 CFR Part 1**

**[LR–151–83 and LR–179–84]**

## Registration Requirements With Respect to Certain Debt Obligations; Sanctions on Issuers of Registration-Required Obligations Not in Registered Form; and the Application of the Repeal of 30 Percent Withholding by the Tax Reform Act of 1984

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Amendment of notices of proposed rulemaking cross-reference to amendments to temporary regulations.

**SUMMARY:** This document provides an amended notice of proposed rulemaking relating to the definition of the term "registration-required obligation" with respect to certain types of obligations, relating to the imposition of sanctions on issuers issuing registration-required obligations in bearer form, and relating to the repeal of the 30 percent withholding tax on certain types of interest by the Tax Reform Act of 1984. This document amends notices of proposed rulemaking published in the Federal Register at 49 FR 33275, and 49 FR 33276. In the Rules and Regulations portion of this Federal Register, the Internal Revenue Service is issuing amendments to temporary income tax regulations relating to the definition of the term "registration-required obligation" with respect to certain obligations, the imposition of sanctions on issuers issuing registration-required obligations in bearer form, and the repeal of 30 percent withholding by the Tax Reform Act of 1984. The text of those amended temporary regulations serve as the comment document for this notice of proposed rulemaking.

**DATE:** Written comments and requests for a public hearing must be delivered or mailed before October 21, 1985.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–151–83 and LR–179–84).

**FOR FURTHER INFORMATION CONTACT:** P. Ann Fisher of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T [LR–151–83 and LR–179–84], 202–566–3289.

**SUPPLEMENTARY INFORMATION:**

**Background**

The temporary regulations published in the Rules and Regulations portion of this issue of the Federal Register amend existing temporary regulations by adding paragraph (d) to § 1.163–5T, revising subdivisions (v) and (vi) of §§ 1.163–5T(c) (2), revising Q & As 10, 12, 14, and 15 of § 35a.9999–5 (b), and adding paragraph (d) to § 35a.9999–5 consisting of Q & A 20. For the text of the temporary regulations, see FR Doc. 85–19893 [T.D. 8046] published in the Rules and Regulations portion of this issue of the Federal Register.

**Regulatory Flexibility Act and Executive Order 12291**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. Although this document is a notice of a proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

**Drafting Information**

The principal author of this regulation is P. Ann Fisher 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 on matters of substance and style.

**List of Subjects**

*26 CFR 1.16–1 Through 1.281–4*

Income taxes, Taxable income, Deductions, Exemptions.

*26 CFR 1.861–1 through 1.997–1*

Income taxes, Aliens, Exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

*26 CFR Part 35a*

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

*Proposal of Regulations*

The temporary regulations, FR Doc. 85–19893 [T.D. 8046] published in the Rules and Regulations portion of this issue of the Federal Register, are hereby also proposed as final regulations under section 163, 871, and 881 of the Internal Revenue Code of 1954.

Roscoe L. Egger, Jr.,

*Commissioner of Internal Revenue.*

[FR Doc. 85–19894 Filed 8–16–85; 10:29 am]

BILLING CODE 4830–01–M

**26 CFR Parts 1, 20, 25, and 53 and 602**

**[LR-165-84]**

## Below-Market Loans

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the Federal tax treatment of both the lender and the borrower in certain below-market interest rate loan transactions. Changes to the applicable tax law were made by the Tax Reform Act of 1984. These regulations would affect taxpayers who enter into certain below-market loans and provide them with guidance needed to comply with the law.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by October 21, 1985. The regulations are generally proposed to be effective after June 6, 1984, for below-market term loans made after June 6, 1984, and below-market demand loans outstanding after June 6, 1984. Section 1.7872-1(c) provides special effective date rules for certain loan transactions.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-165-84), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Sharon L. Hall of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3828 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Estate Tax Regulations (26 CFR Part 20), the Gift Tax Regulations (26 CFR Part 25) and the Excise Tax Regulations (26 CFR Part 53) under section 7872 of the Internal Revenue Code of 1954. This document also amends the Table of OMB Control Numbers (26 CFR Part 602). These amendments are proposed to provide regulations under new section 7872, which was added to the Code by section 172 of the Tax Reform Act of 1984 (98 Stat. 699).

### In General

Prior to the enactment of section 7872, some taxpayers used interest-free loans or loans with an interest rate below the current market rate (in each case, "below-market loans") which purported to circumvent well-established rules of taxation. Thus, in family or similar situations, below-market loans have been used which purported to have the effect of avoiding taxation under the grantor trust rules and deflecting income to others. Corporations have made below-market loans to shareholders with the effect of avoiding taxation of income at the corporate level which is the economic equivalent of receiving a deduction for dividends paid to those shareholders. Employers have made below-market loans to employees with the effect of providing compensation which has not been subject to employment taxes. Interest-free loans have also been used to convert non-deductible expenses into the equivalent of deductible expenses.

Section 7872 addresses these and similar practices, generally, by treating certain below-market loans described in one of the categories specified in section 7872(c) as economically equivalent to loan bearing interest at the applicable Federal rate coupled with a payment by the lender to the borrower sufficient to fund the payment of interest by the borrower. Thus, the lender is treated as making (i) a loan to the borrower in exchange for a note requiring the payment of interest at the applicable Federal rate, and (ii) a transfer of funds to the borrower in an amount generally equal to the amount of interest imputed under section 7872. In the case of term gift loans, however, the amount of money treated as transferred by the lender to the borrower, which is subject to gift tax, and the amount of the imputed interest payment by the borrower to the lender are unequal because they are computed differently under the statute.

### Character and Timing of Transfers

The character of the imputed transfer by the lender to the borrower is determined in accordance with the substance of the transaction. For example, the transfer is treated as a gift if the transaction is in substance a gift within the meaning of the gift tax provisions of the Code, and it is treated as compensation if the purpose of the transaction is the payment of compensation. This imputed transfer is computed annually and in the case of demand loans is treated as made, generally, on December 31. In the case of term loans, however, the imputed transfer is treated as made at the time the loan is made.

The timing and amount of the imputed interest payments by the borrower to the lender depend on the character of the amount transferred by the lender to the borrower and on whether the loan is a term or a demand loan. The imputed interest payment in the case of gift and demand loans is computed annually and generally is treated as transferred on December 31. The imputed interest payment in the case of term loans other than gift loans is computed on the date the loan is made and is subject to the original issue discount rules of section 1272.

### Definition of Loan

Because the purpose of section 7872 is to eliminate the use of below-market loans as a vehicle for tax avoidance, the term "loan" is interpreted broadly in the regulations. Accordingly, any extension of credit or any transaction under which the owner of money permits another person to use the money for a period of time after which the money is to be transferred back to the owner or applied according to an agreement with the owner, such as a refundable deposit, is a loan for purposes of section 7872. However, only those below-market loans that are gift loans, compensation-related loans, corporation-shareholder loans, tax avoidance loans or loans to be specified as significant-effect loans (see below), are subject to the provisions of section 7872. Proposed § 1.7872-4(g) provides a special rule for a below-market loan which is made between two persons and is attributable to the relationship of a third person to either the lender or the borrower (for example, a loan by an employer to the child of an employee). In this case, the loan is restructured as two successive "indirect" loans for purposes of section 7872. In addition, the regulations provide that if a lender and a borrower use another entity as an intermediary or middleman, such as in a "back-to-back" loan transaction, for the purpose of avoiding the application of section 7872, the intermediary will be ignored and the two loans will be restructured as one loan made directly between the lender and the borrower.

Section 7872(c)(1)(B)(ii) states that loans between an independent contractor and a person for whom the independent contractor provides services are subject to section 7872. In addition, the proposed regulations define a loan to include any transaction which would be treated as a refundable deposit under current law. Accordingly, if a taxpayer makes a refundable deposit to an independent contractor in connection with the performance of services, the deposit will be subject to the imputation rules of section 7872 (unless the *de minimis* rules are applicable). The Service is aware that cash amounts are frequently deposited with independent contractors in the

ordinary course of business and characterized by the parties as prepayments rather than refundable deposits. Consequently, if this characterization is appropriate, those amounts would not be subject to section 7872. The proper distinction between refundable deposits and prepayments is a factual determination, and, to assist the Service in developing guidelines for drawing this distinction, interested parties are invited to comment on this issue.

**Partnerships and Partners**

The Service is aware that some taxpayers have entered into below-market loans with partnerships and that other taxpayers have achieved the economic and tax result afforded a below-market loan transaction by utilizing partnerships and the tax laws under subchapter K. The proposed regulations provide that certain below-market loans made by a partnership to a partner that are made in consideration for services preformed by the partner other than in his capacity as a member of the partnership will be treated as compensation-related loans for purposes of section 7872.

The final regulations under section 7872 will further address the relationship of section 7872 to partnership transactions, such as certain purported distributions which, under the facts and circumstances, may properly be characterized as loans. The Service is considering several proposals regarding the application of section 7872 to transactions between partners and partnerships and requests interested taxpayers to submit written comments on this point.

**Significant Effect Loan**

In addition to the four enumerated categories of below-market loans, section 7872(c)(1)(E) provides regulatory authority for applying section 7872 to any other below-maket loan if "the interest arrangements of such loan have a significant effect on any Federal tax liability of the lender or the borrower." The Conference Report accompanying the Tax Reform Act of 1984 states, among other things, that any loan that results in the conversion of a nondeductible expense into the equivalent of a deductible expense has an effect on the tax liability of the borrower or lender. The Conference Report further provides that whether an effect is significant is determined in light of all the facts and circumstances including:

(1) Whether the items of income and deduction generated by the loan offset each other;

(2) The amount of such items;

(3) The cost to the taxpayer of complying with the provision; and

(4) Any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

The Service is aware of numerous situations in which below-market loans have the potential to convert nondeductible personal expenses into the equivalent of deductible expenses. This potential is particularly apparent where interest earned on the borrowed amount may be used to compensate (or provide additional compensation to) the borrower for services or property provided to the lender. Examples of these situations include:

(1) Loans to a membership organization in lieu of part or all of a membership fee;

(2) Loans to institutions providing meals, lodging, and/or medical services (*e.g.*, continuing care facilities) in lieu of fees for such services;

(3) Loans to colleges and secondary schools in lieu of part or all of the tuition, room, and board that would otherwise be changed; and

(4) Loans to an employee or independent contractor by an employer in lieu of payment for a service provided to such employer by the employee (*e.g.*, housing, life insurance coverage, health care).

Many of these transactions have a significant potential for distortion of tax liability, especially if the amounts loaned are relatively large. The Service has decided, however, not to propose regulations treating transactions as having a significant effect until further comment is received on how the facts and circumstances test should be applied, including the proper role of the factors cited by the Conference Report. The Service intends to hold a hearing after publication of these proposed regulations, if a public hearing is requested by any person who submits written comments. The Service urges taxpayers to submit written comments and to speak on this point at that hearing. No transaction will be treated under the regulations as a significant effect loan earlier than the date that future regulations under section 7872(c)(1)(E) are published in proposed form.

**Exclusion From Section 7872**

Proposed §§ 1.7872-7 and 1.7872-8 provide for the exclusion of certain below-market loans from the rules of section 7872. Generally, if the amount of loans between a lender and a borrower does not exceed $10,000, section 7872 does not apply. Furthermore, in the case of gift loans of less than $100,000, directly between natural persons, the imputed interest payment by the borrower to the lender each year generally is limited to the amount of the borrower's net investment income (as defined section 7872(d)(1)(E)) for the taxable year.

In addition, section 7872(g)(1)(C) provides regulatory authority for exempting from the application of section 7872 any class of transactions if the application of section 7872 would not have a significant effect on any Federal tax liability of the lender or the borrower. Accordingly, proposed § 1.7872-5 provides that certain below-market loans which are not structured as such for tax avoidance purposes are exempted from the provisions of section 7872. If, however, such a loan is structured as one of the exempted loans for tax avoidance purposes, the Service may recharacterize the transaction according to its economic substance and apply section 7872 in accordance with its terms. Interested taxpayers are invited to comment on whether other transactions should be exempted from section 7872, and on the proper tax treatment under section 7872 of private placements of convertible debt.

Section 7872(f)(8) provides that section 7872 does not apply to any loan to which section 483 or 1274 applies. The regulations clarify that generally section 7872 does not apply to any loan to which section 483 or 1274 could apply even though the rules of those sections do not apply because of exceptions or safe harbor provisions in one of those sections. The regulations further clarify that debt instruments issued for property and payable on demand, debt instruments described in section 1273(b)(3) and debt instruments described in section 1275(b) are not subject to sections 483 and 1274 and are subject to section 7872 if those instruments are described in section 7872(c)(1) (A), (B), or (C).

Certain loans subject to section 7872 are also described in section 482 of the Code (concerning the allocaton of income and deductions among related taxpayers). These regulations provide for one limited exception to section 7872 in the case of a loan which is also described in § 1.482-2(a)(3), concerning indebtedness arising in the ordinary course of business out of sales, leases, or the rendition of services by or between members of a group outstanding for six months or less (the "open accounts exception"). This limited

exception will expire on June 30, 1986, by which time the Service plans to have completed its review of the commercial need for an exception from section 7872 in the case of certain "open account" transactions between parties described in section 7872. The Service invites written comments on this issue.

Where an employer makes a below-market term loan to an employee in certain circumstances, the loan is treated for purposes of section 7872 as a demand loan under section 7872(f)(5). In the case where the employer disposes of his interest in the loan by sale to a third party, questions have arisen regarding the proper tax treatment of the employer, employee and third-party purchaser. The Service is considering alternative ways to resolve the issues raised in these circumstances, consistent with the following principles:

(1) The employee should remain subject to section 7872(a)(1), so long as that section would be applicable if the employer had not sold his interest in the loan; and

(2) The disposition of the loan should not present opportunities for tax avoidance that would not arise had the employer not disposed of its interest in the loan.

When promulgated, these rules may also apply to certain loans, such as employee relocation loans, which are generally exempted from the statute under § 1.7872–5. The Internal Revenue Service invites comments concerning this issue.

### Foreign Currency Loans

The proposed regulations state that for purposes of applying the below-market loan rules to loans denominated in a foreign currency, a market rate of interest appropriate for that currency shall be used in lieu of the applicable Federal rate. However, the proposed regulations expressly leave open the question of how the imputed transfer from the borrower to the lender is to be treated for tax purposes. The Service is aware that high nominal rates of interest in currencies expected to depreciate with respect to the dollar may overstate the true cost of borrowing to a U.S. taxpayer if offsetting foreign currency gains are not taken into account. Conversely, low rates of interest in currencies expected to appreciate with respect to the dollar may understate true borrowing costs. The Service is studying this issue further, in the context of transactions governed by section 7872 as well as those governed by sections 1271 through 1275, and plans to address this issue in future regulations under these sections.

### Request for Comments on Certain Transactions

The Service is aware that numerous transactions which occur in the ordinary course of business in many industries may be characterized under section 7872(c)(1)(B) as compensation-related loans. (One example is a transaction in which a cash margin deposit is made pursuant to requirements of an exchange to a futures commission merchant or to the exchange as a condition for trading futures contracts. See § 1.7872–5 for a special temporary rule pending comments.) In order to determine whether these transactions are subject to section 7872 and whether the interest arrangements of such transaction have a significant effect on the Federal tax liability of the lender or borrower, the Service requests that taxpayers submit written comments providing a full explanation of the transactions.

The Service is also aware that other persons subject to section 7872 may enter into numerous short-term demand loans for business-related or other purposes. (One example is short-term loans resulting from the extension of credit through the use of a credit card. See § 1.7872–10(a)(6) for a special rule relating to revolving credit loans.) Because of the volume and the short-term nature of the loans in these situations, the Service is also considering whether special rules of convenience can be formulated in some circumstances to reduce the cost of compliance without creating opportunities for manipulation or tax avoidance. The Service invites comments and suggestions with respect to such possible rules of convenience, the circumstances in which they would be applicable, and any exceptions that may be necessary if such rules are adopted.

### Applicable Federal Rate

Under the proposed regulations, the applicable Federal rate in effect at any time depends upon the Federal statutory rates established for semiannual periods and the alternate Federal rates established by the Commissioner on a monthly basis (see § 1.1274–3T). The Federal statutory rates and the alternate Federal rates are published by the Commissioner along with equivalent rates which are based on different compounding periods. The choice of the appropriate Federal statutory rate or alternate Federal rate for any loan depends upon the payment intervals or compounding periods required under the loan agreement. The regulations provide special rules to permit use of the alternate Federal rate in the case of demand loans. In addition, the proposed regulations provide special rules for certain variable interest rate loans.

### Unascertainable Term

The proposed regulations do not address the treatment of term loans in the case where the period for which the loan is outstanding is unascertainable. For example, a loan which must be repaid when the borrower marries is a term loan outstanding for an unascertainable period of time. In order to make the calculation required by section 7872(b), it is necessary to know the period of time that the term loan is outstanding. The Service invites comments on this issue.

### Other Issues: Consistency; Estate and Gift Tax Rules; Private Foundations

Section 7872(g)(1)(B) provides regulatory authority for assuring that the positions of the lender and borrower are consistent as to the application or nonapplication of section 7872. Accordingly, proposed § 1.7872–11(f) provides that the lender and the borrower each must attach a statement to their income tax returns for any taxable year in which they either have imputed income or claim a deduction for an amount imputed under section 7872.

In addition, proposed § 20.7872–1 implements section 7872(g)(2) by prohibiting the discounting, at other than the applicable Federal rate, for estate tax purposes, of any term loan made by a decedent with donative intent after June 6, 1984. Proposed § 25.7872–1 implements section 7872(a) by providing that the amount transferred by the lender to the borrower and characterized as a gift is subject to the gift tax provisions. Finally, § 53.4941(d)–2 is amended to provide that the amount of interest on loans between a disqualified person and a private foundation is computed without regard to section 7872 for purposes of application of the excise tax imposed by that section.

### Effective Dates

In general, the provisions of section 7872 apply after June 6, 1984, to term loans made after June 6, 1984, and to demand loans outstanding after June 6, 1984. If, however, a demand loan that was outstanding after June 6, 1984, is retired before September 17, 1984, the provisions of section 7872 will not apply to the demand loan for the period ending on the date on which the loan is retired. For this purpose, the demand loan is retired by repayment, cancellation, forgiveness, modification of the interest arrangement, or some other similar

action (see Internal Revenue Service News Release, IR-84-95, published August 28, 1984).

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504 (h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

**Special Analysis**

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accodringly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

**Drafting Information**

The principal author of these proposed regulations is Howard A. Balikov 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 on matters of both substance and style.

**List of Subjects**

*26 CFR 1.7872-1 to 1.7872-14*

Income tax, Gift tax, Below-market loans.

*26 CFR Part 20*

Estate taxes.

*26 CFR Part 25*

Gift Taxes.

*26 CFR Part 53*

Excise taxes, Foundations, Investments, Trusts and trustees.

*26 CFR Part 602*

Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations.**

The proposed amendments to 26 CFR Part 1, 26 CFR Part 20, 26 CFR Part 25, 26 CFR Part 53, and 26 CFR Part 602 are as follows:

**Income Tax Regulations**

**PART 1—[AMENDED]**

**Paragraph 1.** The authority for Part 1 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * §§ 1.7872-1 through 1.7872-14 also issued under 26 U.S.C. 7872.

**Par. 2.** New §§ 1.7872-1 through 1.7872-14 are added in the appropriate place. These new sections read as follows:

**§ 1.7872-1 Introduction.**

(a) *Statement of purpose.* Section 7872 generally treats certain loans in which the interest rate charged is less than the applicable Federal rate as economically equivalent to loans bearing interest at the applicable Federal rate, coupled with a payment by the lender to the borrower sufficient to fund all or part of the payment of interest by the borrower. Such loans are referred to as "below-market loans." See § 1.7872-3 for detailed definitions of below-market loans and the determination of the applicable Federal rate. Accordingly, section 7872 recharacterizes a below-market loan as two transactions:

(1) An arm's-length transaction in which the lender makes a loan to the borrower in exchange for a note requiring the payment of interest at the applicable Federal rate; and

(2) A transfer of funds by the lender to the borrower ("imputed transfer").

The timing and the characterization of the amount of the imputed transfer by the lender to the borrower are determined in accordance with the substance of the transaction. The timing and the amount of the imputed interest payment (the excess of the amount of interest required to be paid using the applicable Federal rate, *over* the amount of interest required to be paid according to the loan agreement) by the borrower to the lender depend on the character of the imputed transfer by the lender to the borrower and whether the loan is a term loan or a demand loan. If the imputed transfer by the lender is characterized as a gift, the provisions of chapter 12 of the Internal Revenue Code, relating to gift tax, also apply. All imputed transfers under section 7872 (*e.g.*, interest, compensation, gift) are characterized in accordance with the substance of the transaction, and, except as otherwise provided in the regulations under section 7872, are treated as so characterized for all purposes of the Code. For example, for purposes of section 170, an interest-free loan to a charity referred to in section 170 for which interest is imputed under section 7872, is treated as an interest bearing loan coupled with periodic gifts to the charity in the amount of the imputed transfer, for purposes of section 170. In addition, all applicable information and reporting requirements (*e.g.*, reporting on Form W-2 and Form 1099) must be satisfied.

(b) *Effective date*—(1) *In general.* The provisions of section 7872 generally apply, for periods after June 6, 1984, to demand loans outstanding after that date and to loans other than demand loans made after that date.

(2) *Demand loans repaid before September 17, 1984.* If a demand loan which was outstanding on June 6, 1984, is repaid before September 17, 1984, section 7872 does not apply to the loan. For purposes of this paragraph (b)(2) only, a loan is treated as repaid if it is repaid, cancelled, forgiven, modified, or otherwise retired. For example, if the loan agreement for an interest-free demand loan, which is outstanding on June 6, 1984, is modified on September 10, 1984, to require the borrower to pay a 5 percent simple rate of interest, then for purposes of this paragraph (b)(2) the original loan is treated as repaid on September 10, 1984, and section 7872 applies to the modified loan beginning on that date.

(3) *Change in loan agreement.* For purposes of section 7872, any loan which is renegotiated, extended, or revised after June 6, 1984, is treated as a loan made after June 6, 1984. Accordingly, for purposes of the effective date provisions of this paragraph (b) in the case of such a loan, the provisions of section 7872 apply as if the loan were a new loan

made on the day the lender and borrower enter into a binding agreement to change the provisions of the loan.

(4) *Other Federal tax consequences.* Section 7872 does not alter the law applicable to below-market loans for periods prior to the effective date of section 7872. Accordingly, below-market interest rate loans which are not subject to section 7872 by reason of the effective date provisions of this paragraph (b), including loans which are repaid under the rule described in paragraph (b)(2) of this section, may still have Federal tax consequences. *See, e.g., Dickman* v. *Commissioner,* 465 U.S. —— (1964), 104 S.Ct. 1086.

(c) *Key to Code provisions.* The following key is intended to facilitate research with respect to specific Code provisions. The key identifies the regulations section in which the principal discussion of a particular Code provision appears. As a result of the interrelationship among Code provisions, other regulation sections may also discuss the particular Code provision. Section 1.7872–2 deals with the definition of the term "loan" for purposes of section 7872. The following table identifies the provisions of section 7872 that are dealt with in §§ 1.7872–2 through 1.7872–14 and lists each provision of Code secion 7872 below the regulation section in which it is covered.

*§ 1.7872–2*
(f)(8)

*§ 1.7872–3*
(e)(1)
(f)(2)
(g)(1)(A)

*§ 1.7872–4*
(c)(1)
(f)(3)

*§ 1.7872–5*
(g)(1)(C)

*§ 1.7872–6*
(a)
(d)(2)

*§ 1.7872–7*
(a)
(d)(2)
(f)(1)
(f)(4)
(f)(10)

*§ 1.7872–8*
(c)(2)
(d)(1)

*§ 1.7872–9*
(c)(3)
(f)(10)

*§ 1.7872–10*
(f)(5)
(f)(6)

*§ 1.7872–11*
(f)(7)
(f)(9)
(g)(1)(A)
(g)(1)(B)

*§ 1.7872–12*
(e)(1)(A)

*§ 1.7872–13*
(e)(2)

*§ 1.7872–14*
(e)(1)(B)
(f)(1)

See § 20.7872–1 for regulations under section 7872(g)(2).

See § 25.7872–1 for gift tax regulations.

See § 53.4941(d)–2 for interest-free loans between private foundations and disqualified persons.

**§ 1.7872–2 Definition of loan.**

(a) *In general*—(1) *"Loan" interpreted broadly.* For purposes of section 7872, the term "loan" includes generally any extension of credit (including, for example, a purchase money mortgage) and any transaction under which the owner of money permits another person to use the money for a period of time after which the money is to be transferred to the owner or applied according to an express or implied agreement with the owner. The term "loan" is interpreted broadly to implement the anti-abuse intent of the statute. An integrated series of transactions which is the equivalent of a loan is treated as a loan. A payment for property, goods, or services under a contract, however, is not a loan merely because one of the payor's remedies for breach of the contract is recovery of the payment. Similarly, a bona fide prepayment made in a manner consistent with normal commercial practices for services, property, or the use of property, generally, is not a loan; see section 461 and the regulations thereunder for the treatment of certain prepaid expenses and for the special rules of sections 461 (h) and (i). However, a taxpayer's characterization of a transaction as a prepayment or as a loan is not conclusive. Transactions will be characterized for tax purposes according to their economic substance, rather than the terms used to describe them. Thus, for example, receipt by a partner from a partnership of money is treated as a loan if it is so characterized under § 1.731–1(c)(2).

(2) *Limitations on applicability of section 7872*—(i) *In general.* Section 7872 applies only to certain below-market loans (as defined in section 7872(e)(1)). Section 1.7872–4 lists the categories of below-market loans to which section 7872 generally applies. Certain below-market loans within these categories, however, are exempt from the provisions of section 7872. See § 1.7872–5 for specific exemptions from the rules.

(ii) *Loans to which section 483 or 1274 applies.* Generally, section 7872 does not apply to any loan which is given in consideration for the sale or exchange of property (within the meaning of section 1274(c)(1)) or paid on account of the sale or exchange of property (within the meaning of section 483(c)(1)), even if the rules of those sections do not apply by reason of exceptions or safe harbor provisions. Any transaction, however, which otherwise is described in section 7872(c)(1) (A), (B), or (C), and is—

(A) A debt instrument that is issued in exchange for property and that is payable on demand,

(B) A debt instrument described in section 1273(b)(3), or

(C) A debt instrument described in section 1275(b), unless the transaction is described in § 1.7872–5(b)(1).

is not subject to sections 483 and 1274 and is subject to section 7872.

(iii) *Relation to section 482.* If a below-market loan subject to section 7872 would also be subject to section 482 if the Commissioner chose to apply section 482 to the loan transaction, then section 7872 will be applied first. If the Commissioner chooses to apply section 482, then the loan transaction is subject to section 482 in addition to section 7872.

(3) *Loan proceeds transferred over time.* In general, each extension or credit or transfer of money by a lender to a borrower is treated as a separate loan. Accordingly, if the loan agreement provides that the lender will transfer the loan proceeds to the borrower in installments, each installment payment is treated as a separate loan. Similarly, in the case of a loan in which the transfer of the loan proceeds to the borrower is subject to a draw-down restriction, each draw-down of loan proceeds is treated as a separate loan.

(b) *Examples of transactions treated as loans*—(1) *Refundable Deposits*—(i) *In general.* If an amount is treated for Federal tax purposes as a deposit rather than as a prepayment or an advance payment, the amount is treated as a loan for purposes of section 7872.

(ii) *Partially refundable deposits.* If an amount is treated for Federal tax purposes as a deposit rather than as a prepayment or an advance payment and the amount is refundable only for a certain period of time or is only partially refundable, then the deposit is treated as a loan only to the extent that it is refundable and only for the period of time that it is refundable.

(iii) *Exception.* Paragraph (b)(1)(i) of this section does not apply if the deposit is custodial in nature or is held in trust for the benefit of the transferor. The deposit is treated as custodial in nature if the transferee is not entitled to the beneficial enjoyment of the amount deposited including interest thereon (except as security for an obligation of the transferor). Thus, if an amount is placed in escrow to secure a contractual obligation of the transferor, and the escrow agreement provides that all interest earned is paid to the transferor and that the transferee has no rights to or interest in the escrowed amount unless and until the transferor defaults on the obligation, then, in the absence of any facts which indicate that the transaction was entered into for tax avoidance purposes, the deposit is not a loan.

(2) *Permitting agent or intermediary to retain funds.* An agreement under which an agent or intermediary is permitted to retain possession of money for a period of time before transferring the money to his or her principal is treated as a loan for purposes of section 7872. For example, a taxpayer who enters into an agreement with a broker under which the broker may retain possession of the proceeds from the sale of the taxpayer's property (*e.g.*, securities issued by the taxpayer) for a period of time and uses or invests those funds (other than for the taxpayer's account) is treated as making a loan to the broker for the period of time that the broker retains possession of the proceeds.

(3) *Advances.* An advance of money to an employee, salesman, or other similar person to defray anticipated expenditures is not treated as a loan for purposes of section 7872 if the amount of money advanced is reasonably calculated not to exceed the anticipated expenditures and if the advance of money is made on a day within a reasonable period of time of the day that the anticipated expenditure will be incurred. An advance or draw of money against a partner's distributive share of income which is treated in the manner described in § 1.731–1(a)(1)(ii) is not a loan for purposes of section 7872.

**§ 1.7872–3 Definition of below-market loans.**

(a) *In general.* Section 7872 does not impute interest on loans which require the payment of interest at the applicable Federal rate. This section defines the applicable Federal rate and provides rules for determining whether an interest-bearing loan provides sufficient stated interest to avoid classification as a below-market loan. The term "below-market loan" means any loan if—

(1) In the case of a demand loan, interest is payable at a rate less than the applicable Federal rate; or

(2) In the case of a term loan, the amount loaned exceeds the present value of all payments due under the loan, determined as of the day the loan is made, using a discount rate equal to the applicable Federal rate in effect on the day the loan is made.

Sections 1.7872–13 and 1.7872–14 contain the computations necessary for determining the amount of imputed interest on a below-market loan which is subject to section 7872.

(b) *Applicable Federal rate*—(1) *In general.* The applicable Federal rate is an annual stated rate of interest based on semiannual compounding. In addition, the Commissioner may prescribe equivalent rates based on compounding periods other than semiannual compounding (for example, annual compounding, quarterly compounding, and monthly compounding), to facilitate application of this section to loans other than those involving semiannual payments or compounding. Thus, loans providing for annual payments or annual compounding of interest over the entire life of the loan will use the applicable Federal rates based on annual compounding; loans providing for quarterly payments or quarterly compounding over the entire life of the loan will use the applicable Federal rates based on quarterly compounding; and loans providing for monthly payments or monthly compounding over the entire life of the loan will use the applicable Federal rates based on monthly compounding. The shorter of the compounding period or the payment interval determines which rate is appropriate. Loans providing for payments or compounding of interest at other intervals (*e.g.*, daily, weekly, bi-monthly) may use the applicable Federal rates published by the Commissioner based on the shortest compounding period that is longer than the shorter of the compounding period or the payment interval provided for over the entire life of the loan. Thus, loans providing for daily or weekly payments or compounding of interest may use the applicable Federal rate based on monthly compounding; loans providing for bi-monthly payments or compounding of interest will use the applicable Federal rates based on quarterly compounding; etc. Alternatively, taxpayers may compute and use interest rates other than those published by the Commissioner for other interest payment or compounding periods if such rates are equivalent to the applicable Federal rates. Any reference to the applicable Federal rate in the regulations under section 7872 includes the equivalent rates based on different compounding or payment periods.

(2) *Determination of applicable Federal rate*—(i) *In general.* The applicable Federal rate for loans described in paragraphs (b)(3), (4), and (5) of this section is defined by reference to Federal statutory rates and alternate Federal rates.

(ii) *Definition of Federal statutory rate.* The Federal statutory rates are the short-, mid-, and long-term rates in effect under section 1274(d) and their equivalent rates based on different compounding assumptions. These rates are published by the Commissioner for each semiannual period January 1 through June 30 and July 1 through December 31.

(iii) *Definition of alternate Federal rate.* The alternate Federal rates are the short-, mid-, and long-term rates established by the Commissioner on a monthly basis, and their equivalent rates based on different compounding assumptions. These rates are published by the Commissioner on a monthly basis.

(iv) *Definition of semiannual period.* For purposes of section 7872 and the regulations thereunder, the first semiannual period means the period in any calendar year beginning on January 1 and ending on June 30, and the second semiannual period means the period in any calendar year beginning on July 1 and ending on December 31.

(3) *Demand loans*—(i) *In general.* In the case of a demand loan, the applicable Federal rate for a semiannual period (January 1 through June 30 or July 1 through December 31), is the lower of:

(A) The Federal statutory short-term rate in effect for the semiannual period; or

(B) The special rate for demand loans described in paragraph (b)(3)(ii) of this section.

(ii) *Special rate for demand loans.* The special rate for demand loans is—

(A) For the semiannual period in which the loan is made, the alternate Federal short-term rate which is in effect on the day the loan is made; and

(B) For each subsequent semiannual period in which the loan is outstanding, the alternate Federal short-term rate which is in effect for the first month of that semiannual period (*i.e.*, January or July).

For a special safe harbor rule for certain variable interest rate demand loans, see paragraph (c)(2) of this section.

(4) *Term loans.* In the case of a term loan, including a gift term loan or a term loan that is treated as a demand loan as provided in § 1.7872–10(a)(5), the applicable Federal rate is the lower of:

(i) The Federal statutory rate for loans of that term in effect on the day the loan is made; or

(ii) The alternate Federal rate for loans of that term in effect on the day the loan is made.

(5) *Loans conditioned on future services.* In the case of a term loan that is treated as a demand loan as provided in § 1.7872–10(a)(5), on the date the condition to preform substantial services is removed or lapses, the demand loan is treated as terminated and a new term loan is created. The applicable Federal rate for the new term loan is the lower of the following:

(i) The applicable Federal rate in effect on the day the original loan was made; or

(ii) The applicable Federal rate in effect on the day the condition lapses or is removed.

(6) *Periods before January 1, 1985.* For term loans made and demand loans outstanding after June 6, 1984, and before January 1, 1985, the applicable Federal rate under section 7872(f)(2) is as follows:

(i) 10.25 percent, compounded annually;

(ii) 10.00 percent, compounded semiannually;

(iii) 9.88 percent, compounded quarterly; and

(iv) 9.80 percent, compounded monthly.

(c) *Loans having sufficient stated interest.*—(1) *In general.* Section 7872 does not apply to any loan which has sufficient stated interest. A loan has sufficient stated interest if it provides for interest on the outstanding loan balance at a rate no lower than the applicable Federal rate based on a compounding period appropriate for that loan. See paragraph (b)(1) of this section for a description of appropriate compounding periods. See § 1.7872–11(a) for rules relating to waiver of interest.

(2) *Safe harbor for demand loans.* If the interest rate on a demand loan is changed, either under the terms of the original loan agreement, or subsequently, the loan will be treated as a new loan for purposes of determining the applicable Federal rate for that loan. Thus, the loan will have sufficient stated interest for the remainder of the semiannual period following such change of interest rate if the new interest rate is not less than the lower of the Federal statutory short-term rate in effect for the semiannual period or the alternate Federal short-term rate in effect on the day the new interest rate takes effect.

(3) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

*Example (1).* On December 1, 1984, A makes a $100,000 5-year gift term loan to B, requiring 10 interest payments of $5,000 each, payable on May 31 and November 30 of each year the loan is outstanding. Since the loan requires semiannual interest payments, the appropriate compounding assumption is semiannual compounding. For term loans made during 1984, the applicable Federal rate based on semiannual compounding is 10 percent. The loan is not a below-market loan because it provides for interest at a rate of 10 percent, payable semiannually.

*Example (2).* Assume the same facts as in Example (1), except that the loan requires 5 annual interest payments of $10,000 each, payable on November 30 of each year the loan is outstanding. Since the loan requires annual interest payments, the appropriate compounding assumption is annual compounding. The loan is a below-market loan because, although interest is stated at a rate of 10 percent, a rate that reflects semiannual compounding is not appropriate for a loan with annual payments.

*Example (3).* Assume the same facts as in Example (2), except that the loan requires 5 annual payments of $10,250 each, payable on November 30 of each year that the loan is outstanding. Since the loan requires annual interest payments, the appropriate compounding assumption is annual compounding. For term loans made during 1984, the applicable Federal rate based on annual compounding is 10.25 percent. The loan is not a below-market loan because it provides for interest at a rate of 10.25 percent, compounded annually.

*Example (4).* Assume the same facts as in Example (1), except that the loan requires 120 monthly interest payments of $816.67 each, payable on the last calendar day of each month that the loan is outstanding. Since the loan requires monthly interest payments, the appropriate compounding assumption is monthly compounding. The loan is not a below-market loan because it requires monthly payments of interest based on a rate of 9.80 percent, the applicable Federal rate of interest based on monthly compounding.

*Example (5).* (i) A makes a demand loan to her son, B, on April 1, 1985. The loan requires quarterly interest payments due at the end of each calendar quarter at a rate of 10 percent. Assume that on April 1, 1985, the Federal statutory short-term rate in effect is 12 percent, compounded quarterly, and that the alternate Federal short-term rate in effect for the month of April is 10 percent, compounded quarterly. The loan is not a below-market loan for the period April 1, 1985, through June 30, 1985.

(ii) Assume that on July 1, 1985, the Federal statutory short-term rate in effect is 11 percent, compounded quarterly, and the alternate Federal short-term rate in effect for the month of July is 10.20 percent, compounded quarterly. The loan no longer has sufficient stated interest. If A raises the interest rate to at least 10.20 percent, the loan will have sufficient stated interest and will not be a below-market loan for the period of July 1 through December 31, 1985.

(iii) Assume that on July 1, 1985, A increases the interest rate on the loan to 10.20 percent, a rate equal to the alternate Federal short-term rate in effect for July. Further assume that the alternate Federal short-term rate subsequently decreases so that such rate in effect for the month of August decreases to 10 percent. On August 1, 1985, A lowers the interest rate on this loan to 10 and does not change that rate for the remainder of the semiannual period. The loan has sufficient stated interest and will not be a below-market loan for the semiannual period beginning on July 1, 1985, even if the alternate Federal rate is greater than 10 percent for any or all of the four remaining months in the semiannual period ending on December 31, 1985.

(d) *Short periods.* The rules for determining whether a loan has sufficient stated interest also apply to short periods (*e.g.*, a period that is shorter than the interval between interest payments or interest compounding under the loan which may occur at the beginning or end of the loan). For special computational rules and examples relating to a short periods, see § 1.7872–12.

(e) *Variable rates of interest*—(1) *In general.* If a loan requires payments of interest calculated at a rate of interest based in whole or in part on an objective index or combination of indices of market interest rates (*e.g.*, a prime rate, the applicable Federal rate, the average yield on government securities as reflected in the weekly Treasury bill rate, the Treasury constant maturity series, or LIBOR (London interbank offered rate)), the loan will be treated as having sufficient stated interest if—

(i) In the case of a term loan, the rate fixed by the index or indices is no lower than the applicable Federal rate, as determined under paragraph (b)(4) of this section (as modified by paragraph (e)(2) of this section), on the date the loan in made; or

(ii) In the case of a demand loan, the interest rate fixed by the index or indices is no lower than the applicable Federal rate, as determined under paragraph (b)(3) of this section, for each semiannual period that the loan is outstanding. See paragraph (e)(2)(i) of this section for rules relating to variable interest rate demand loans the interest rates of which are tied to the applicable Federal rate.

(2) *Special rules*—(i) *Demand loans tied to the applicable Federal rate.* A variable rate demand loan will be

treated as having sufficient stated interest if, by the terms of the loan agreement, the interest rate cannot be less than the lower of the Federal statutory short-term rate or the alternate Federal short-term rate in effect at the beginning (or, if the agreement so provides, at the end) of the payment or compounding period (whichever is shorter).

(ii) *Applicable Federal rate for variable interest rate term loans.* For purposes of determining the applicable Federal rate, if a term loan requires payments or compounding of interest based on a variable rate (within the meaning of paragraph (e)(1) of this section), the term of the loan shall be treated as being equal to the longest period of time that exists between the dates that, under the loan agreement, the interest rate charged on the loan is required to be recomputed (whether or not the recomputation results in a rate different from the immediately preceding rate). Thus, for example, in the case of a 10 year term loan that charges interest at a variable rate equal to a rate 2 points above the prime rate, and that requires that the interest rate be adjusted every 18 months to reflect any changes in the prime rate, the applicable Federal rate is determined by treating the loan as having a term of 18 months rather than a term of 10 years. Accordingly, the applicable Federal short-term rate rather than the applicable Federal long-term rate shall apply.

(3) The provision of paragraph (e)(1) of this section may be illustrated by the following examples:

*Example (1).* On April 1, 1985, A loans $200,000 to B, repayable on demand. The note calls for interest to be paid semiannually on September 30 and March 31 of each year at a rate equal to the alternate Federal short-term rate (based on semiannual compounding) for the month in which the payment is made. The loan has sufficient stated interest.

*Example (2).* Assume the same facts as in *Example (1)* except that the note calls for interest at a rate equal to the lower of the alternate Federal short-term rate or the statutory Federal short-term rate (in each case, based on semiannual compounding) for the month in which the payment is made. The loan has sufficient stated interest.

*Example (3).* Assume the same facts as in *Example (1)* except that interest is computed and compounded at the end of each month at a rate equal to the lower of the alternate Federal short-term rate of the statutory Federal short-term rate (in each case, based on monthly compounding) in effect for that month. Accrued interest is payable semiannually on September 20 and March 31 of each year. The loan has sufficient stated interest.

*Example (4).* Assume the same facts as in *Example (1)* except that interest is payable at the prime rate of a major lending institution at the time each payment is made. The prime rate is not an index which by its terms cannot be less than the lower of the statutory Federal short-term rate of the alternate Federal short-term rate. Therefore, the loan will be tested for sufficient stated interest in each semiannual period under the rules of paragraph (b)(3) of this section.

(f) *Contingent interest.* [Reserved]

**§ 1.7872–4 Types of below-market loans.**

(a) *In general.* Section 7872 applies only to certain categories of below-market loans. These categories are gift loans, compensation-related loans, corporation-shareholder loans, tax avoidance loans, and certain other loans classified in the regulations under section 7872 as significant tax effect loans (*i.e.*, loans whose interest arrangements have a significant effect on any Federal tax liability of the lender or the borrower.)

(b) *Gift loans*—(1) *In general.* The term "gift loan" means any below-market loan in which the foregoing of interest is in the nature of a gift within the meaning of Chapter 12 of the Internal Revenue Code (whether or not the lender is a natural person).

(2) *Cross reference.* See § 1.7872–8 for special rules limiting the application of section 7872 to gift loans. See paragraph (g) of this section for rules with respect to below-market loans which are indirectly gift loans.

(c) *Compensation-related loans*—(1) *In general.* A compensation-related loan is a below-market loan that is made in connection with the performance of services, directly or indirectly, between—

(i) An employer and an employee,

(ii) An independent contractor and a person for whom such independent contractor provides services, or

(iii) A partnership and a partner if the loan is made in consideration for services performed by the partner acting other than in his capacity as a member of the partnership.

The imputed transfer (amount of money treated as transferred) by the lender to the borrower is compensation. For purposes of this section, the term "in connection with the performance of services" has the same meaning as the term has for purposes of section 83. A loan from a qualified pension, profit-sharing, or stock bonus plan to a participant of the plan is not, directly or indirectly, a compensation-related loan.

(2) *Loan in part in exchange for services.* Except as provided in paragraph (d)(2) of this section (relating to a loan from a corporation to an employee who is also a shareholder of the corporation), a loan which is made in part in exchange for services and in part for other reasons is treated as a compensation-related loan for purposes of section 7872(c)(3) only if more than 25 percent of the amount loaned is attributable to the performance of services. If 25 percent or less of the amount loaned is attributable to the performance of services, the loan is not subject to section 7872 by reason of being a compensation-related loan. The loan may, however, be subject to section 7872 by reason of being a below-market loan characterized other than as a compensation-related loan (*e.g.*, corporation-shareholder loan or tax avoidance loan). If—

(i) A loan is characterized as a "compensation-related" loan under this paragraph (c),

(ii) Less than 100 percent of the amount loaned is attributable to the performance of services, and

(iii) The portion of the amount loaned that is not attributable to the performance of services is not subject to section 7872, then the amounts of imputed transfer (as defined in § 1.7872–1(a)(2)) and imputed transfer (as defined in § 1.7872–1(a)) are determined only with respect to that part of the loan which is attributable to services. All of the facts and circumstances surrounding the loan agreement and the relationship between the lender and the borrower are taken into account in determining the portion of the loan made in exchange for services.

(3) *Third-party lender as agent.* A below-market loan by an unrelated third-party lender to an employee is treated as attributable to the performance of services if, taking into account all the facts and circumstances, the transaction is in substance a loan by the employer made with the aid of a third-party lender acting as an agent of the employer. Among the facts and circumstances which indicate whether such a loan has been made is whether the employer bears the risk of default at and immediately after the time the loan is made. The principles of this paragraph (c)(3) also apply with respect to a below-market loan by an unrelated third-party lender to an independent contractor.

(4) *Special rule for continuing care facilities.* Any loan to a continuing care facility will not be treated, in whole or in part, as a compensation-related loan.

(5) *Cross-references.* For a special rule in the case of a below-market loan that could be characterized as both a compensation-related loan and a corporation-shareholder loan, see paragraph (d)(2) of this section. See paragraph (g) of this section for rules with respect to below-market loans

which are indirectly compensation-related loans.

(d) *Corporation-shareholder loans*—(1) *In general.* A below-market loan is a corporation-shareholder loan if the loan is made directly or indirectly between a corporation and any shareholder of the corporation. The amount of money treated as transferred by the lender to the borrower is a distribution of money (characterized according to section 301 or in the case of an S corporation, section 1368) if the corporation is the lender, or a contribution to capital if the shareholder is the lender.

(2) *Special rule.* A below-market loan—

(i) From a publicly held corporation to an employee of the corporation who is also a shareholder owning directly or indirectly more than 0.5 percent of the total voting power of all classes of stock entitled to vote or more than 0.5 percent of the total value of shares of all other classes of stock or 0.5 percent of the total value of shares of all classes of stock (including voting stock) of the corporation; or

(ii) From a corporation that is not a publicly held corporation to an employee of the corporation who is also a shareholder owning directly or indirectly more than 5 percent of the total voting power of all classes of stock entitled to vote or more than 5 percent of the total number of shares of all other classes of stock or 5 percent of the total value of shares of all classes of stock (including voting stock) of the corporation; will be presumed to be a corporation-shareholder loan, in the absence of clear and convincing evidence that the loan is made solely in connection with the performance of services. For purposes of determining the percentage of direct and indirect stock ownership, the constructive ownership rules of section 267(c) apply.

(3) *Cross-reference.* See paragraph (g) of this section for rules with respect to below-market loans which are indirectly corporation-shareholder loans.

(e) *Tax avoidance loans.* A tax avoidance loan is any below-market loan one of the principal purposes for the interest arrangements of which is the avoidance of Federal tax with respect to either the borrower or the lender, or both. For purposes of this rule, tax avoidance is a principal purpose of the interest arrangements if a principal factor in the decision to structure the transaction as a below-market loan (rather than, for example, as a market interest rate loan and a payment by the lender to the borrower) is to reduce the Federal tax liability of the borrower or the lender or both. The purpose for entering into the transaction (for example, to a make a gift or to pay compensation) is irrelevant in determining whether a principal purpose of the interest arrangements of the loan is the avoidance of Federal tax.

(f) *Certain below-market loans with significant effect on tax liability ("significant-effect" loans)*—[Reserved].

(g) *Indirect loans*—(1) *In general.* If a below-market loan is made between two persons and, based on all the facts and circumstances, the effect of the loan is to make a gift or a capital contribution or a distribution of money (under section 301 or in the case of an S corporation, section 1368), or to pay compensation to a third person ("indirect participant"), or is otherwise attributable to the relationship of the lender or borrower to the indirect participant, the loan is restructured as two or more successive below-market loans ("deemed loans") for purposes of section 7872, as follows:

(i) A deemed below-market loan made by the named lender to the indirect participant; and

(ii) A deemed below-market loan made by the indirect participant to the borrower. Section 7872 is applied separately to each deemed loan, and each deemed loan is treated as having the same provisions as the original loan between the lender and the borrower. Thus, for example, if a father makes an interest-free loan to his daughter's corporation, the loan is restructured as a below-market loan from father to daughter (deemed gift loan) and a second below-market loan from daughter to corporation (deemed corporation-shareholder loan). Similarly, if a corporation makes an interest-free loan to another commonly controlled corporation, the loan is restructured as a below-market loan from the lending corporation to the common parent corporation and a second below-market loan from the parent corporation to the borrowing corporation.

(2) *Special rule for intermediaries.* If a lender and a borrower use another person, such as an individual, a trust, a partnership, or a corporation, as an intermediary or middleman in a loan transaction and a purpose for such use is to avoid the application of section 7872(c)(1) (A), (B), or (C), the intermediary will be ignored and the loan will be treated as made directly between the lender and the borrower. Thus, for example, if a father and a son arrange their below-market loan transaction by having the father make a below-market loan to the father's partnership, followed by a second below-market loan (with substantially identical terms and conditions as the first loan) made by the partnership to the son, the two below-market loans will be restructured as one below-market loan from the father to the son.

**§ 1.7872-5 Exempted loans.**

(a) *In general*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, notwithstanding any other provision of section 7872 and the regulations thereunder, section 7872 does not apply to the loans listed in paragraph (b) of this section because the interest arrangements do not have a significant effect on the Federal tax liability of the borrower or the lender.

(2) *No exemption for tax avoidance loans.* If a taxpayer structures a transaction to be a loan described in paragraph (b) of this section and one of the principal purposes of so structuring the transaction is the avoidance of Federal tax, then the transaction will be recharacterized as a tax avoidance loan as defined in section 7872(c)(1)(D).

(b) *List of exemptions.* Except as provided in paragraph (a) of this section, the following transactions are exempt from section 7872:

(1) Loans which are made available by the lender to the general public on the same terms and conditions and which are consistent with the lender's customary business practices;

(2) Accounts or withdrawable shares with a bank (as defined in section 581), or an institution to which section 591 applies, or a credit union, made in the ordinary course of its business;

(3) Acquisitions of publicly traded debt obligations for an amount equal to the public trading price at the time of acquisition;

(4) Loans made by a life insurance company (as defined in section 816(a)), in the ordinary course of its business, to an insured, under a loan right contained in a life insurance policy and in which the cash surrender values are used as collateral for the loans;

(5) Loans subsidized by the Federal, State (including the District of Columbia), or Municipal government (or any agency or instrumentality thereof), and which are made available under a program of general application to the public;

(6) Employee-relocation loans that meet the requirements of paragraph (c)(1) of this section;

(7) Obligations the interest on which is excluded from gross income under section 103;

(8) Obligations of the United States government;

(9) Loans to a charitable organization (described in section 170(c)), but only if at no time during the taxable year will the aggregate outstanding amount of

loans by the lender to all such organizations exceed $10,000;

(10) Loans made to or from a foreign person that meet the requirements of paragraph (c)(2) of this section;

(11) Loans made by a private foundation or other organization described in section 170(c), the primary purpose of which is to accomplish one or more of the purposes described in section 170(c)(2)(B);

(12) Loans made prior to July 1, 1986, to the extent excepted from the application of section 482 for the 6-month (or longer) period referred to in § 1.482-2(a)(3);

(13) For periods prior to July 1, 1986, all money, securities, and property received by a futures commission merchant or by a clearing organization (i) to margin, guarantee or secure contracts for future delivery on or subject to the rules of a qualified board or exchange (as defined in section 1256(g)(7)), or (ii) to purchase, margin, guarantee or secure options contracts traded on or subject to the rules of a qualified board or exchange, and all money accruing to account holders as the result of such futures and options contracts;

(14) Loans where the taxpayer can show that the below market interest arrangements have no significant effect on any Federal tax liability of the lender or the borrower, as described in paragraph (c)(3) of this section; and

(15) Loans, described in revenue rulings or revenue procedures issued under section 7872(g)(1)(C), if the Commissioner finds that the factors justifying an exemption for such loans are sufficiently similar to the factors justifying the exemptions contained in this section.

(c) *Special rules*—(1) *Employee-relocation loans*—(i) *Mortgage loans.* In the case of a compensation-related loan to an employee, where such loan is secured by a mortgage on the new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee, acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The loan is a demand loan or is a term loan the benefits of the interest arrangements of which are not transferable by the employee and are conditioned on the future performance of substantial services by the employee;

(B) The employee certifies to the employer that the employee reasonably expects to be entitled to and will itemize deductions for each year the loan is outstanding; and

(C) The loan agreement requires that the loan proceeds be used only to purchase the new principal residence of the employee.

(ii) *Bridge loans.* In the case of a compensation-related loan to an employee which is not described in paragraph (c)(1)(i) of this section, and which is used to purchase a new principal residence (within the meaning of section 217 and the regulations thereunder) of the employee acquired in connection with the transfer of that employee to a new principal place of work (which meets the requirements in section 217(c) and the regulations thereunder), the loan will be exempt from section 7872 if the following conditions are satisfied:

(A) The conditions contained in paragraphs (c)(1)(i)(A), (B), and (C) of this section;

(B) The loan agreement provides that the loan is payable in full within 15 days after the date of the sale of the employee's immediately former principal residence;

(C) The aggregate principal amount of all outstanding loans described in this paragraph (c)(1)(ii) to an employee is no greater than the employer's reasonable estimate of the amount of the equity of the employee and the employee's spouse in the employee's immediately former principal residence, and

(D) The employee's immediately former principal residence is not converted to business or investment use.

(2) *Below-market loans involving foreign persons*—(i) Section 7872 shall not apply to a below-market loan (other than a compensation-related loan or a corporation-shareholder loan where the borrower is a shareholder that is not a C corporation as defined in section 1361(a)(2)) if the lender is a foreign person and the borrower is a U.S. person, unless the interest income imputed to the foreign lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(ii) Section 7872 shall not apply to a below-market loan where both the lender and the borrower are foreign persons unless the interest income imputed to the lender (without regard to this paragraph) would be effectively connected with the conduct of a U.S. trade or business within the meaning of section 864(c) and the regulations thereunder and not exempt from U.S. income taxation under an applicable income tax treaty.

(iii) For purposes of this section, the term "foreign person" means any person that is not a U.S. person.

(3) *Loans without significant tax effect.* Whether a loan will be considered to be a loan the interest arrangements of which have a significant effect on any Federal tax liability of the lender or the borrower will be determined according to all of the facts and circumstances. Among the factors to be considered are—

(i) Whether items of income and deduction generated by the loan offset each other;

(ii) The amount of such items;

(iii) The cost to the taxpayer of complying with the provisions of section 7872 if such section were applied, and

(iv) Any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower.

**§ 1.7872-6 Timing and amount of transfers in connection with gift loans and demand loans.**

(a) *In general.* Section 7872(a) and the provisions of this section govern the timing and the amount of the imputed transfer by the lender to the borrower and the imputed interest payment by the borrower to the lender in the case of a below-market demand loan. Section 7872(a) and this section also govern the timing and the amount of the imputed transfer by the lender to the borrower and the imputed interest payment by the borrower to the lender from income tax purposes in the case of term gift loans. (See section 7872(b), 7872(d)(2), and § 1.7872-7 for rules governing the timing and the amount of the imputed transfer by the lender to the borrower in the case of term gift loans for gift tax purposes.) Section 7872(d)(1) and § 1.7872-8 limit the amount of the imputed interest payment with respect to certain gift loans. See § 1.7872-10(a) for rules for distinguishing demand loans from term loans. See 1.7872-11(f) for special rules governing loans repayable in foreign currency, which apply notwithstanding any contrary rules set forth in this section.

(b) *Time of transfer*—(1) *In general.* Except as otherwise provided in paragraphs (b) (3), (4), and (5) of this section, the foregone interest (as defined in section 7872(e)(2) and paragraph (c) of this section) attributable to periods during any calendar year is treated as transferred by the lender to the borrower (and retransferred by the

borrower to the lender) on December 31 of that calendar year and shall be treated for tax purposes in a manner consistent with the taxpayer's method of accounting.

(2) *Example.* Paragraph (b)(1) of this section may be illustrated by the following example.

*Example.* On January 1, 1985, E makes a $200,000 interest-free demand loan to F, an employee of E. The loan remains outstanding for the entire 1985 calendar year. E has a taxable year ending September 30. F is a calendar year taxpayer. For 1985, the imputed compensation payment and the imputed interest payment (as computed under paragraph (c) of this section) are treated as made on December 31.

(3) *Gift loans between natural persons.* In the case of gift loans directly between natural persons within the meaning of § 1.7872–8(a)(2), any imputed transfer and any imputed interest payment to which this section applies during the borrower's taxable year is treated, for both the lender and the borrower, as occurring on the last day of the borrower's taxable year.

(4) *Death, liquidation or termination of borrower.* If the borrower dies (in the case of a borrower who is a natural person) or is liquidated or otherwise terminated (in the case of a borrower other than a natural person), any imputed transfer and any imputed interest payment arising during the borrower's final taxable year are treated, for both the lender and the borrower as occurring on the last day of the borrower's final taxable year.

(5) *Repayment of loan.* If a below-market loan is repaid, any imputed transfer and any imputed interest payment arising during the borrower's taxable year which includes the date of repayment is treated, for both the lender and the borrower, as occurring on the day the loan is repaid.

(c) *Amount of transfer.* In the case of a below-market loan to which section 7872 applies and which is a demand loan (including a term loan that is treated as a demand loan as provided in section § 1.7872–10(a)(5)) or a gift term loan, the foregone interest (as computed under the provisions of § 1.7872–13) with respect to the loan is treated as transferred by the lender to the borrower and retransferred as interest by the borrower to the lender. Generally, for any calendar year the term "foregone interest" means the excess of—

(1) The amount of interest that would have been payable in that year if interest had accrued at the applicable Federal rate (as determined in § 1.7872–13); over

(2) Any interest payable on the loan properly allocable to that year.

The amount of foregone interest is computed for each day during the period for which section 7872(a) applies to the loan and is treated as transferred and retransferred on the data specified in paragraph (b) of this section.

**§ 1.7872–7 Timing and amount of transfers in connection with below-market term loans.**

(a) *In General.* This section governs the Federal income tax consequences of below-market term loans, other than gift term loans or term loans treated as demand loans under the provisions of § 1.7872–10(a)(5), to which section 7872 applies. It also governs the Federal gift tax consequences of below-market gift term loans. See § 1.7872–11(f) for special rules which govern loans repayable in foreign currency and which apply notwithstanding any contrary rules set forth in this section.

(1) *Timing and amount of transfer from lender to borrower.* In the case of term loans to which this section applies, the amount of the imputed transfer by the lender to the borrower—

(i) Is treated as transferred at the time the loan is made and is treated for tax purposes in a manner consistent with the taxpayer's method of accounting; and

(ii) Is equal to the excess of—

(A) The amount loaned (as defined in paragraph (a)(4) of this section); over

(B) The present value (as determined in paragraph (a)(5) of this section and § 1.7872–14) of all payments which are required to be made under the terms of the loan agreement, whether express or implied.

(2) *Gift term loans.* In the case of a gift term loan, the rules of paragraph (a)(1) of this section apply for gift tax purposes only. For rules governing the income tax consequences of gift term loans, see § 1.7872–6.

(3) Treatment of amount equal to imputed transfer as original issue discount—(i) *In general.* Any below-market loan to which paragraph (a)(1) of this section applies shall be treated as having original issue discount in an amount equal to the amount of the imputed transfer determined under paragraph (a)(1) of this section. This imputed original issue discount is in addition to any other original issue discount on the loan (determined without regard to section 7872(b) or this paragraph). For purposes of applying section 1272 to a loan described in this paragraph, the issue price shall be treated as equal to the stated principal reduced by the amount of the imputed transfer and the yield to maturity is the applicable Federal rate.

(ii) *Example.* The provisions of this paragraph (a)(3) may be illustrated by the following example.

*Example.* (i) On June 10, 1984, L lends $45,000 to B, a corporation in which L is a shareholder, for five years in exchange for a $50,000 note bearing interest at a below-market rate. Assume that the present value of all payments that B must make to L is $42,000. This loan is a corporation-shareholder term loan under section 7872(c)(1)(C). Accordingly, the amount of the imputed transfer by L to B is determined under the provisions of section 7872(b).

(ii) On June 10, 1984, L is treated as transferring $3,000 (the excess of $45,000 (amount loaned) over $42,000 (present value of all payments)), in accordance with section 7872(b)(1). This imputed transfer is treated as a contribution to B's capital by L. An amount equal to the imputed transfer is treated as original issue discount. This original issue discount is in addition to the $5,000 ($50,000, the stated redemption price, less $45,000, the issue price) of original issue discount otherwise determined under section 1273. As a result, the loan is treated as having a total of $8,000 of original issue discount.

(4) *Amount loaned.* The term "amount loaned" means the amount received by the borrower (determined without regard to section 7872). See § 1.7872–2(a)(3) for the treatment of the transfer of the loan proceeds to the borrower in installments or subject to draw-down restrictions.

(5) *Present value.* The present value of all payments which are required to be made under the provisions of the loan agreement is computed as of the date the loan is made (or, if later, as of the day the loan first becomes subject to the provisions of section 7872). The discount rate for the present value computation is the applicable Federal rate as defined in § 1.7872–3(b) in effect on the day on which the loan is made. For rules governing the computation of present value, see § 1.7872–14. See also *Example (3)* in § 1.7872–8(b)(5).

(6) *Basis.* In the case of a term loan the lender's basis in the note received in exchange for lending money is equal to the present value of all payments which are required to be made under the terms of the loan agreement, whether express or implied, with adjustments as provided for in section 1272(d)(2).

(b) *Special rule for the de minimis provisions*—(1) *In general.* If as a result of the application of the *de minimis* provisions of section 7872(c) (2) or (3), a loan become subject to section 7872 and this section on a day after the day on which the loan is made, the provisions of this section generally apply to the loan as if the loan were made on that

later day. The applicable Federal rate applied to this loan (including for purposes of computing the present value of the loan), however, is the applicable Federal rate (as defined in § 1.7872-3(b)) in effect on the day on which the loan is first made. The present value computation described in paragraph (a)(1)(ii)(B) of this section is made as of the day on which section 7872 and this section first apply to the loan. For purposes of making this computation, the term of the loan is equal to the period beginning on the day that section 7872 first applies to the loan and ending on the day on which the loan is to be repaid according to the loan agreement. Any payments payable according to the loan agreement before the day on which section 7872 and this section first apply to the loans are disregarded.

(2) *Continuing application of section 7872.* Once section 7872 and this section apply to a term loan, they continue to apply to the loan regardless of whether the *de minimis* provisions of section 7872(c) (2) or (3) apply at some later date. In the case of a gift term loan, this paragraph applies only for gift tax purposes and does not apply for income tax purposes.

**§ 1.7872-8 Special rules for gift loans directly between natural persons.**

(a) *Special rules for gift loans directly between natural persons*—(1) *In general.* Section 7872 (c)(2) and (d) apply special rules to gift loans directly between natural persons if the aggregate outstanding amount of loans (as determined in pargraph (b)(2) of this section) between those natural persons does not exceed specified limitations.

(2) *Loans directly between natural persons*—(i) For purposes of this section, a loan is made directly between natural persons only if both the lender and borrower are natural persons. For this purpose, a loan by a natural person lender to the guardian (or custodian, in the case of a gift made pursuant to the Uniform Gift to Minors Act) of a natural person is treated as a loan directly between natural persons. If, however, a parent lends money to a trust of which the child is the sole beneficiary, the loan is not treated as directly between natural persons for purposes of this section.

(ii) A gift loan which results from restructuring an indirect loan as two or more loans (as described in § 1.7872-4(g)) and in which natural persons are deemed to be the lender and the borrower is treated as a loan directly between natural persons. Thus, for example, if an employer makes a below-market loan to an employee's child, the loan is restructured as one loan from the employer to the employee, and a second loan from the employee to his child. The deemed gift loan between the employee and the employee's child is treated as directly between natural persons.

(b) *De minimis exception*—(1) *In general.* Except as otherwise provided in paragraph (b)(3) of this section or in § 1.7872-7(a) (with respect to the gift tax consequences of a gift term loan to which the provisions of section 7872 have already been applied), in the case of any gift loan directly between natural persons, the provisions of section 7872 do not apply to any loan outstanding on any day on which the aggregate outstanding amount of loans between the lender and borrower does not exceed $10,000. The *de minimis* rule of this paragraph (b)(1) applies with respect to a gift loan even though that loan could also be characterized as a tax avoidance loan within the meaning of section 7872(c)(1)(D) and § 1.7872-4(e).

(2) *Aggregate outstanding amount of loans.* The aggregate outstanding amount of loans between natural persons is the sum of the principal amounts of outstanding loans directly between the individuals, regardless of the character of the loans, regardless of the interest rate charged on the loans, and regardless of the date on which the loans were made. For this purpose, the principal amount of a loan which is also subject to section 1272 (without applying the limitation of section 1273(a)(3)) is the "adjusted issue price" as that term is defined in section 1272(a)(4). See § 1.7872-7(a)(3)(i) for the determination of the issue price of a loan which is also subject to section 1272.

(3) *Loans attributable to acquisition or carrying of income-producing assets.* The *de minimis* exception described in paragraph (b)(1) of this section does not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets. A gift loan is directly attributable to the purchase or carrying of income-producing assets, for example, if the loan proceeds are directly traceable to the purchase of the income-producing assets, the assets are used as collateral for the loan, or there is direct evidence that the loan was made to avoid disposition of the assets.

(4) *Income-producing assets.* For purposes of this paragraph (b), the term "income-producing asset" means (i) an asset of a type that generates ordinary income, or, (ii) a market discount bond issued before July 19, 1984. Accordingly, an income producing asset includes, but is not limited to, a business, a certificate of deposit, a savings account, stock (whether or not dividends are paid), bonds and rental property.

(5) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples.

*Example (1).* (i) As of January 1, 1985, the total aggregate outstanding amount of loans by Parent P, to child, C, is $6,000. None of these loans is a below-market loan. On February 1, 1985, P makes a $3,000 below-market demand loan to C. On March 1, 1985, P makes a $2,000 below-market demand loan to C. On November 1, 1985, C repays $1,500 of principal of the market-rate loans to P; all of the other loans remain outstanding as of December 31, 1985. The below-market loans are gift loans and are the only new loans between P and C for calendar year 1985.

(ii) For the periods January 1, 1985, through Febraury 28, 1985, and November 1, 1985, through December 31, 1985, section 7872 does not apply to the loans between P and C because the outstanding loan balance between P and C does not exceed $10,000 during these periods. For the period beginning on March 1, 1985, and ending on October 31, 1985, however, the aggregate outstanding amount of loans directly between P and C exceeds $10,000. Accordingly, the provisions of section 7872(a) apply to the $3,000 gift loan and $2,000 gift loan during that period.

*Example (2).* (i) Assume the same facts as in Example (1) except that the $2,000 gift loan made on March 1, 1985, is a term loan for a period of five years. The Federal gift tax and income tax consequences of the $3,000 gift demand loan made on February 1, 1985, are the same as in Example (1).

(ii) With respect to the $2,000 gift term loan, section 7872(b)(1) applies beginning on March 1, 1985, for purposes of computing the amount on the imputed gift by P to C. For the period beginning on March 1, 1985, and ending on October 31, 1985, section 7872(a) applies to the $2,000 gift term loan for purposes of determining the amount and the timing of the imputed interest payment by C to P. For the two-month period beginning on November 1, 1985, section 7872(a) does not apply to the $2,000 loan for Federal income tax purposes because the outstanding loan balance between P and C does not exceed $10,000 during this period.

*Example (3).* (i) Assume the same facts as in Example (1) except that the $3,000 gift loan made on February 1, 1985, is a term loan for a period of five years. The Federal gift tax and income tax consequences of the $2,000 demand gift loan made on March 1, 1985, are identical to those in Example (1).

(ii) On February 1, 1985, section 7872 does not apply to the $3,000 loan because the outstanding loan balance between P and C does not exceed $10,000. On March 1, 1985, however, the aggregate outstanding amount of loans between P and C exceeds $10,000. For Federal gift tax purposes, section 7872(b)(1) applies to the $3,000 loan beginning on March 1, 1985. Under § 1.7872-7(b), the provisions of section 7872 apply to the loan had been made on March 1, 1985. See § 1.7872-7(a)(5) for special rules for computing the present value of payments due on the loan. For the eight-month period beginning on March 1, 1985, section 7872(a) applies to the $3,000 loan for purposes of determining the imputed interest payment by

C to P. For the two-month period beginning on November 1, 1985, section 7872(a) does not apply to the $3,000 loan for Federal income tax purposes because of the application of the *de minimis* provisions.

*Example (4).* On June 10, 1984, parent L makes an $8,000 interest-free gift term loan to L's child, B. This is the only loan outstanding between L and B during 1984. On June 11, 1984, B invests the $8,000 in corporate stock. The $10,000 *de minimis* provision does not apply to the loan, because the loan proceeds are directly attributable to the purchase of corporate stock, an income-producing asset.

(c) *Limitation on amount of imputed interest payment*—(1) *In general.* In the case of a loan between a borrower and a lender both of whom are natural persons (within the meaning of paragraph (a)(2) of this section), for all days during the borrower's taxable year on which the aggregate outstanding amount of loans (within the meaning of paragraph (b)(2) of this section ) between the borrower and the lender, is $100,000 or less, the amount of the imputed interest payment by the borrower to the lender with respect to any gift loan is limited to the borrower's net investment income (as determined under paragraph (c)(7) of this section) for the taxable year. This paragraph (c) does not affect the gift tax consequences of any loan under section 7872.

(2) *Tax avoidance loan.* Paragraph (c)(1) of this section does not apply to any loan which is a tax avoidance loan within the meaning of § 1.7872-4(e).

(3) *No limitation if investment income is manipulated.* Paragraph (c)(1) of this section does not apply if a borrower can control the timing of the receipt of investment income and actually does manipulate the timing to accelerate or defer the receipt of investment income. For example, if the borrower can, and actually does, control the timing of dividends paid by a closely held corporation, the limitation on the amount of the imputed interest payment does not apply.

(4) *Net investment income of $1,000 or less disregarded.* If paragraph (c)(1) of this section applies and if the borrower's net investment income (as determined under paragraph (c)(7) of this section) for a taxable year is $1,000 or less, the borrower's net investment income for that year is deemed to be zero for purposes of this paragraph (c).

(5) *No proration of net investment income.* The entire amount of the borrower's net investment income for a taxable year (as determined under paragraph (c)(7) of this section) is taken into account in determining the maximum imputed interest payment for those days during the year on which the net investment income limitation applies. Accordingly, the amount of net investment income is not allocated among the days of the borrower's taxable year. Further, for a taxable year of a borrower which ends after June 6, 1984, and includes any day or days before June 7, 1984, the entire amount of net investment income for the taxable year is taken into account in determining the maximum imputed interest payment for the days during that year on which the limitation applies.

(6) *Allocation among gift loans.* In the case of a borrower who has more than one gift loan outstanding during a taxable year, the borrower's net investment income for that year is allocated among the gift loans in proporation to the respective amounts which would be treated as imputed interest payments by the borrower to the lender or lenders with respect to those loans without regard to this paragraph (c). (See Example (2) of paragraph (c)(9) of this section.) No amount of the net investment income is allocable to any gift loan between the lender and the borrower for periods during which the aggregate outstanding amount of loans (within the meaning of paragraph (b)(2) of this section) between the borrower and that lender exceeds $100,000.

(7) *Amounts included in net investment income.* For purposes of section 7872, net investment income for a taxable year equals the sum of—

(i) Net investment income for that year as determined under section 163(d)(3), excluding any item of income on a deferred payment obligation which is treated under section 7872(d)(1)(E)(iii) and paragraph (c)(7)(ii) of this section as interest received in a prior taxable year ending after June 6, 1984, and

(ii) The amount that is treated under section 7872(d)(1)(E) (iii) as interest received for that year on a deferred payment obligation.

(8) *Deferred payment obligation.* The term "deffered payment obligation" means a market discount bond issued before July 18, 1984, or an obligation that, if held to maturity, would produce a predictable and regular flow of ordinary income which, under applicable tax rules, is not recognized until a subsequent period. Accordingly, deferred payment obligations include, but are not limited to, those obligations listed in section 7872(d)(1)(E)(iv).

(9) *Examples.* The provisions of this paragraph (c) may be illustrated by the following examples.

*Example (1).* On January 1, 1985, parent P makes a $50,000 below-market gift loan to C. P's child, who uses the calender year as the taxable year. On March 1, 1985, P makes an additional $75,000 market-rate loan to C. On October 1, 1985, C repays $30,000 of the market rate loan. Assume that C's net investment income (as determined under paragraph (c)(7) of this section) for 1985 is $2,400. The limitation under section 7872(d)(1) on the amount of imputed interest payment applies to the $50,000 loans for the two-month period beginning on January 1, 1985, and the three-month period beginning on October 1, 1985. Accordingly, the imputed interest payment on the $50,000 loan for 1985 may not exceed $2,400.

*Example (2).* During 1985, natural person borrower B has three gift loans outstanding, each from a different lender. Each loan is eligible for the entire year for the special limitation on the amount of imputed interest payments under section 7872(d)(1) but none of the loans is eligible for the de minimis exception of pargraph (b) of this section. B's net investment income for 1985 is $6,000. The aggregate imputed interest payments on these loans (determmined without regard to section 7872(d)(1)) would be $9,000. The amount of imputed interest attributable to each loan after application of section 7872(d)(1) is computed as follows:

| Loan | Imputed interest payments (before application of section 7872(d)(1)) | Relative share of net investment income (imputed interest payment after application of section 7872(d)(1)) | |
|---|---|---|---|
| 1 | $3,000 | $2,000 | ($6,000 × $3,000/$9,000) |
| 2 | 4,000 | 2,667 | ($6,000 × $4,000/$8,000) |
| 3 | 2,000 | 1,333 | ($6,000 × $2,000/$9,000) |
| Total | 9,000 | 6,000 | |

Consequently, the imputed interest payment to lander 1 cannot exceed $2,000; the imputed interest payment to lender 2 cannot exceed $2,667; and, the imputed interest payment to lender 3 cannot exceed $1,333.

**§ 1.7872-9 De minimis exception for compensation-related or corporation-shareholder loans.**

(a) *In general.* In the case of any demand loan described in section 7872(c)(1) (B) or (C), the provisions of section 7872 do not apply to any day on which the aggregate outstanding amount of loans between the lender and the borrower does not exceed $10,000. In the case of any term loan described in section 7872(c)(1) (B) or (C) (relating to the *de minimis* rules), the provisions of section 7872 apply to the loan as of the first day on which the aggregate outstanding amount of loans between the lender and the borrower exceeds $10,000. Once section 7872 applies to a term loan, section 7872 continues to apply to the loan regardless of whether the $10,000 limitation applies at some later date.

(b) *Aggregate outstanding amount of loans.* The aggregate outstanding amount of loans between the lender and the borrower is the sum of the principal

amounts of outstanding loans directly between the parties, regardless of the character of the loans, regardless of the interest rate charged on the loans, and regardless of the date on which the loans were made. For this purpose, the principal amount of a loan which is also subject to section 1272 (without applying the limitation of section 1273(a)(3)) is the " adjusted issue price" as that term is defined in section 1272(a)(4). See § 1.7872–7(a)(3)(i) for the determination of the issue price of a loan which is also subject to section 7872.

(c) *Tax avoidance loan.* This section does not apply to any loan which is a tax avoidance loan within the meaning of § 1.7872–4(e).

(d) *Example.* The provisions of this section may be illustrated by the following example:

*Example.* (i) On January 1, 1985, L made a $4,000 four-year term loan to B, a corporation in which L is a shareholder. On October 15, 1986, L made a $7,000 five-year term loan to B. Both loans are interest-free and are payable on the last day of the loan term. There are no other outstanding loan between L and B. Neither loan is a tax avoidance loan.

(ii) For the period beginning on January 1, 1985 and ending on October 14, 1986, the provisions of section 7872 do not apply to the $4,000 loan because the outstanding loan balance between L and B does not exceed $10,000. On October 15, 1986, however, the aggregate amount of loans between L and B exceeds $10,000. Accordingly, the provisions of section 7872(b) apply to both loans. See § 1.7872–4(d) for the proper Federal tax treatment of the imputed transfer by L to B. For purposes of computing the present value of all payments to be made under the loan agreements, the applicable Federal rate for the $4,000 loan is the applicable Federal rate in effect on January 1, 1985, for loans with a term of 4 years (even though less than three years remain before the loan ends). Under § 1.7872–7(b), the present value of the payment to be made under the $4,000 loan agreement is determined as of October 15, 1986 (the date on which section 7872 first applies to the $4,000 loan) for a loan with a term which begins on October 15, 1986, and ends on January 1, 1989.

### § 1.7872–10 Other definitions.

(a) *"Term" and "demand" loans distinguished.* For purposes of section 7872—

(1) *Demand loan.* Any loan which is payable in full at any time on the demand of the lender (or within a reasonable time after the lender's demand), is a "demand loan."

(2) *Term loan.* A loan is treated as a "term loan" if the loan agreement specifies an ascertainable period of time during which the loan is to be outstanding. For purposes of this rule, a period of time is treated as being ascertainable if the period may be determined actuarially. Thus, a loan agreement which provides that D loans E $16,000 for E's life, will be treated as a term loan because the life expectancy of E may be determined actuarilly.

(3) *Acceleration and extension clauses.* Acceleration clauses and similar provisions that would make a loan due before the time otherwise specified including provisions permitting prepayment of a loan or accelerating the maturity date on disposition of collateral ("due on sale" clauses) are disregarded for purposes of section 7872. Thus, a loan for a term of 15 years is a term loan for 15 years even if it is subject to acceleration upon some action of the borrower. If the loan agreement specifies an ascertainable period of time during which the loan is to be outstanding but contains an extension clause or similar provision that would make the loan due after the time otherwise specified, the loan is a term loan during the ascertainable period and a second demand or term loan thereafter; the classification of the second loan as term or demand depends upon the terms of the extension clause.

(4) *Loans for a period of time not ascertainable.* [Reserved]

(5) *Certain loans conditioned on future services.* For all purposes of section 7872 other than determining the applicable Federal rate (see, § 1.7872–3(b)), if the benefits of the interest arrangements of a term loan are not transferable by the individual borrower and are conditoned on the future performance of substantial services by the individual borrower (within the meaning of section 83), the loan is treated as a demand loan. All facts and circumstances must be examined to determine whether the future services to be performed are substantial.

(6) *Revolving credit loans.* For purposes of section 7872, an extension of credit by reason of the use of a credit card that is available to a borad segment of the general public is treated as a demand loan, and the provisions of section 7872 may apply if the loan is described in one of the categories set forth in § 1.7872–4. The period during which the loan is outstanding begins on the first day on which a finance charge would be assessed if payment of the outstading balance is not made. For rules governing the computation of foregone interest for demand loans with variable balances, see § 1.782–13(c).

(b) [Reserved for further definitions as needed]

### § 1.7872–11 Special rules.

(a) *Waiver, cancellation or forgiveness of interest payments.* If a loan is made requiring the payment of stated interest and the accrued but unpaid interest is subsequently waived, cancelled, or forgiven by the lender, such waiver, cancellation, or forgiveness is treated as if the interest had in fact been paid to the lender and then retransferred by the lender to the borrower but only if—

(1) The loan initially would have been subject to section 7872 had it been made without interest;

(2) The waiver, cancellation of forgiveness does not include in substantial part the loan principal; and

(3) A principal purpose of the waiver, cancellation, or forgiveness is to confer a benefit on the borrower, such as to pay compensation or make a gift, a capital contribution, a distribution of money uner section 301, or a similar payment to the borrower.

The retransferred amount is characterized for Federal tax purposes in accordance with the substance of the transaction. The requisite purpose described in paragraph (a)(iii) of this section is presumed in the case of loans between family members, corporations and shareholders, employers and employees, or an independent contractor and a person for whom such independent contractor provides services unless the taxpayer can show by clear and convincing evidence that the interest obligation was waived, cancelled, or forgiven for a legitimate business purpose of the lender who is acting in the capacity as a creditor seeking to maximize satisfaction of a claim, such as in the case of a borrower's insolvency.

(b) *Disposition of interest or obligation in loan.* [Reserved]

(c) *Husband and wife treated as 1 person.* Section 7872(f)(7) provides that a husband and wife shall be treated as 1 person. Accordingly, all loans to or from the husband will be combined with all loans to or from the wife for purposes of applying section 7872. All loans between a husband and a wife are disregarded for purposes of section 7872.

(d) *Withholding.* In the case of any loan (term or demand) subject to section 7872, no amount is required to be withheld under chapter 24, relating to the collection of income tax at the source on wages and back-up withholding, with respect to any amount treated as transferred or retransferred under section 7872 (a) or (b). Withholding is required where appropriate, however, for purposes of chapter 21, relating to the Federal Insurance Contributions Act, and chapter 22, relating to the Railroad Retirement Tax Act, on any amount of money treated as transferred and retransferred between the lender and borrower because of the application of section 7872.

(e) *Treatment of renegotiations.* [Reserved]

(f) *Loans denominated in foreign currencies*—(1) *Applicable rate.* If a loan is denominated in a currency other than the U.S. dollar, then for purposes of section 7872 and the regulations thereunder, a rate that constitutes a market interest rate in the currency in which the loan is denominated shall be substituted for the applicable Federal rate.

(2) *Treatment of imputed transfer as interest*—(i) *In general.* If a loan is denominated in a currency other than the U.S. dollar then, notwithstanding section 7872(a)(1)(B), § 1.7872–6, and § 1.7872–7, the amount of imputed interest treated as retransferred by the borrower to the lender shall only be treated as interest to the extent consistent with other principles of tax law regarding foreign currency lending transactions and to the extent provided in this paragraph (f)(2).

(ii) *Loans denominated in appreciating currencies.* [Reserved]

(iii) *Loans denominated in depreciating currencies.* [Reserved]

(3) *Example.* The provisions of this paragraph (f)(1) may be illustrated by the following example.

*Example.* A lends here daughter B the sum of 100,000 foreign currency units, repayable in 5 years with interest payable semiannually at a rate of 12 percent. Asaume that the market rate of interest for loans denominated in that foreign currency at the time of the transaction is 30 percent, compounded semiannually, and that the current exchange rate is 5 foreign currency units to the dollar. A has made a below-market gift loan to B. The amount of A's gift to B is the excess of 100,000 foreign currency units (or $20,000) over the present value of all payments to be made under the loan, using a discount rate of 30 percent, which is 54,831 foreign units (or $10,966). Thus, the amount of A's gift is $9,034.

(g) *Reporting requirements*—(1) *Lender.* A lender must attach a statement to the lender's income tax return for any taxable year in which the lender either has interest imputed under section 7872 or claims a deduction for an amount deemed to be transferred to a borrower under section 7872. The statement must—

(i) Explain that it relates to an amount includible in income or deductible by reason of section 7872,

(ii) Provide the name, address, and taxpayer identification number of each borrower,

(iii) Specify the amount of imputed interest income and the amount and character of any item deductible by reason of section 7872 attributable to each borrower,

(iv) Specify the mathematical assumptions used (*e.g.*, 360 day calendar year, the exact method or the approximate method for computing interest for a short period (see, § 1.7872–13)) for computing the amounts imputed under section 7872, and

(v) Include any other information required by the return or the instructions thereto.

(2) *Borrower.* A borrower must attach a statement to the borrower's income tax return for any taxable year in which the borrower either has income from an imputed transfer under section 7872 or claims a deduction for an amount of interest expense imputed under section 7872. The statement must—

(i) Explain that it relates to an amount includible in income or deductible by reason of section 7872,

(ii) Provide the name, address, and taxpayer identification number of each lender,

(iii) Specify the amount of imputed interest expense and the amount and character of any income imputed under section 7872 attributable to each lender,

(iv) Specify the mathematical assumptions used (*e.g.*, 360 day calendar year, the exact method or the approximate method for computing interest for a short period (see, § 1.7872–13)), for computing the amounts imputed under section 7872, and

(v) Include any other information required by the return or the instructions thereto.

(3) *Special rule for gift loans.* In the case of a gift loan directly between natural persons, the lender must recognize the entire amount of interest income imputed under section 7872 (determined without regard to section 7872(d)(1)) unless the borrower notifies the lender, in a signed statement, of the amount of the borrower's net investment income properly allocable to the loan according to the provisions of section 7872(d)(1) and § 1.7872–8(c)(6).

(4) *Information and reporting.* All amounts imputed under section 7872 (*e.g.*, interest, compensation, gift) are characterized in accordance with the substance of the transaction and, except as otherwise provided in the regulations under section 7872, are treated as so characterized for all purposes of the Code. Accordingly, all applicable information and reporting requirements (*e.g.*, reporting on Form W–2 and Form 1099) must be satisfied.

**§ 1.7872–12 Computational rules to determine sufficient stated interest for short periods.**

(a) *Scope.* This section provides computational rules only for the purpose of determining whether the interest payable on a loan during a short period is sufficient to prevent characterization of the loan as a below-market loan under § 1.7872–3. For rules for the calculation of the amount of interest to be imputed on a below-market loan, including rules for short periods, see § 1.7872–13 and § 1.7872–14.

(b) *Short period defined*—(1) *In general.* A short period (as referred to in § 1.7872–3(d)) for a loan is any period shorter than the regular compounding period or regular payment interval required under the loan agreement. Generally, a short period will arise at the beginning or the end of a loan (or at the time the loan first become subject to section 7872 because of the application of the *de minimis* provisions). For example, a loan made on January 17, 1985, and calling for semiannual payments of interest on June 30 and December 31 of each year will have a short period beginning on January 17, 1985, and ending on June 30, 1985.

(2) *Special short periods in the case of demand loans.* In the case of a demand loan, in addition to any short periods described in paragraph (b)(1) of this section, additional short periods may also arise because of the need to adjust the applicable Federal rate on January 1 and July 1 of each year. These short periods arise in cases when the dates January 1 or July 1 fall within the compounding periods or payment intervals required under the loan agreement. For example, a below market demand loan made on April 1, 1985, that is outstanding throughout 1985 and that calls for semiannual interest payments on September 30 and March 31 of each year will have 3 short periods in 1985. The first short period begins on April 1, 1985, and ends on June 30, 1985. The second short period begins on July 1, 1985, and ends on September 30, 1985. The third short period begins on October 1, 1985, and ends on December 31, 1985.

(c) *Interest payable for a short period*—(1) *Exact method.* The smallest amount of interest that must be paid for a short period in order to prevent the loan from being a below-market loan is determined by the exact method. The exact method assumes daily compounding interest.

(2) *Approximate method.* The approximate method is also provided for the convenience of taxpayers who do not wish to use the exact method. The approximate method assumes simple interest within any compounding period and will always produce an amount of interest for the short period that is slightly higher than that produced under the exact method. Under this method, a sufficient amount of interest for any short period is determined by multiplying the amount that would

constitute sufficient stated interest for a full period by a fraction the numerator of which is equal to the length of the short period and the denominator of which is the length of a full period.

(3) *Counting convention.* In computing the length of a short period, any reasonable convention may be used. Common conventions are "30 days per month/360 days per year", "actual days per month/actual days per year", and "actual days per month/360 days per year". The examples in the regulations under section 7872 all use the "30 days per month/360 days per year" convention.

(d) *Examples.* This section may be illustrated by the following examples.

*Example (1).* On February 1, 1986, A makes a $100,000 loan to B for a term of 4 months. The loan is repaid on May 31, 1986. Assume that the applicable Federal rate on February 1, 1986, for a loan of this term is 10 percent, compounded semiannually. Using the exact method, the amount of interest that must be paid on May 31, 1986, if the loan is not to be a below-market loan is $3,306.16, calculated as follows:

$100,000 \times [(1+.10/2)^{4/6}-1]=\$3,306.16$

*Example (2).* Assume the same facts as in Example (1). Using the approximate method, a sufficient amount of interest is stated on the loan if $3,333.33 of interest is payable on May 31, 1986, calculated as follows:

$100,000 \times [(.10/2) \times (4/6)]=\$3,333.33$

**§ 1.7872-13 Computation of foregone interest.**

(a) *Demand loans outstanding for an entire calendar year*—(1) *In general.* In the case of a below-market demand loan of a fixed principal amount that remains outstanding for an entire calendar year, the amount of foregone interest (as referred to in § 1.7872-6(c)) shall be the excess of

(i) The result produced when the "blended annual rate" is miltiplied by the principal amount of the loan, over

(ii) The sum of all amounts payable as interest on the loan properly allocable to the calendar year (including all amounts of original issue discount allocated to that year under section 1272).

The "blended annual rate" will be published annually by the Commissioner and is determined generally by blending the applicable Federal rates for demand loans outstanding for the entire year.

(2) *Example.* Paragraph (a)(1) may be illustrated by the following example.

*Example.* On January 1, 1985, A makes a $100,000 demand loan to B with stated interest equal to 9 percent. Interest is payable semiannually on June 30, and December 31. The loan remains outstanding for the entire year. On both June 30, and December 31, 1985, B makes a $4,500 payment of interest to A. Assume that the blended annual rate for 1985 is 10.45 percent. The amount of foregone interest is $1,450, computed as follows:

$10,450=\$100,000 \times 10.45$ percent

$1,450=\$10,450-\$9,000$

(b) *Demand loans outstanding for less than an entire calendar year*—(1) *In general.* In the case of any below-market demand loan outstanding for less than the calendar year, the amount of foregone interest shall be the excess of—

(i) The amount of interest ("I") which would have been payable on the loan for the year if interest accrued on the loan at the applicable Federal rate and were payable on the date specified in section 7872(a)(2) and § 1.7872-6(b), over

(ii) The sum of all amounts payable as interest on the loan properly allocable to the calendar year (including all amounts of original issue discount allocated to that year under section 1272).

In general, "I" is determined by assuming daily compounding of interest. However, individual taxpayers who are parties to below-market loans in the aggregate of $250,000 or less may choose (see § 1.7872-11(g)) to compute and report foregone interest under the approximate method set forth in paragraph (b)(2) of this section. If the taxpayer chooses the approximate method but fails to properly compute the amount of foregone interest under that method, the correct amount of foregone interest will be recomputed under the approximate method.

(2) *Approximate method.* Under the approximate method, "I" is calculated as follows:

(i) *Loan outstanding during one semiannual period only.* If a loan is outstanding only during one semiannual period of a calendar year, to determine "I", multiply the principal amount of the loan by one-half the applicable Federal rate based on semiannual compounding in effect for that loan, then multiply the result by a fraction representing the portion of the semiannual period during which the loan was outstanding.

(ii) *Example.* Paragraph (b)(2)(i) of this section may be illustrated by the following example.

*Example.* A $200,000 interest-free demand loan is outstanding on January 1, 1986, and is repaid on March 31, 1986. Assume that the applicable Federal rate (based on semiannual compounding) for demand loans made in January 1986, is 10 percent. The amount of interest that would have been payable on the loan for the year if the loan provided for interest at the applicable Federal rate determined under the approximate method is $5,000, computed as follows:

$\$5,000=\$200,000 \times (.10/2) \times (3/6)$

Because no interest is payable on the loan, this amount is also the amount of foregone interest.

(iii) *Loans outstanding during both semiannual periods.* If a loan is outstanding for at least part of each semiannual period (but less than the full calendar year), then, under the approximate method, "I" must be calculated in two steps. First, calculate an amount of interest for the first semiannual period by treating the loan as if it were repaid on June 30, using the approach described in paragraph (b)(3)(i) of this section. Second, add this amount of interest to the principal of the loan, and then calculate an amount of interest for the second semiannual period as if the loan of this higher amount were made on July 1, again using the approach described in paragraph (b)(3)(i) of this section. The sum of these two interest amounts is the value for "I" calculated under the approximate method.

(3) *Examples.* Paragraph (b)(2) of this section may be illustrated by the following examples.

*Example (1).* On March 1, 1986, A makes a $100,000 interest-free demand loan to B. The loan remains outstanding on December 31, 1986. Assume that the applicable Federal rate for a demand loan made in March 1986, based on semiannual compounding, for the first semiannual period in 1986 is 9.89 percent and that the applicable Federal rate, based on semiannual compounding, for a demand loan outstanding in July 1986 is 10.50 percent. The amount of foregone interest under the exact method is $8,691.76, calculated as follows:

$\$100,000 \times [(1+.0989/2)^{4/6}(1+.1050/2) -1]=\$8,691.76$

*Example (2).* (i) Assume the same facts as in Example (1). The amount of foregone interest under the approximate method is $8,719.92, calculated as follows:

(ii) For the short period March 1 to June 30, 1986, the amount of foregone interest is $3,296.67, calculated as follows:

$\$3,296.67=\$100,000 \times (.0989/2) \times (4/6)$

(iii) For the second semiannual period in 1986, the amount of foregone interest is computed by first adding the interest for the first semiannual period ($3,296.67) to the original principal amount to obtain a new principal amount of $103,296.67. Foregone interest for the second semiannual period is then $5,423.08, computed as follows:

$\$5,423.08=\$103,296.67 \times (.1050/2)$

(iv) Using the approximate method, the amount of foregone interest for 1986 is $8,719.75 ($3,296.67+$5,423.08).

(c) *Demand loans with fluctuating loan balances.* If a demand loan does not have a constant outstanding principal amount during a period, the amount of foregone interest shall be computed according to the principles set forth in paragraph (b) of this section, with each increase in the outstanding loan balance being treated as a new

loan and each decrease being treated as first a repayment of accrued but unpaid interest (if any), and then a repayment of principal.

(d) *Examples.* This provision of paragraph (c) of this section may be illustrated by the following examples.

*Example (1).* (i) On October 1, 1984, C makes a $50,000 interest-free demand loan to D. On October 1, 1985, C makes an additional interest-free demand loan of $25,000 to D. Assume that section 7872 applies to both loans, that the blended annual rate for 1985 is 10.45 percent, and that the applicable Federal rate based on semiannual compounding for demand loans made in October 1985, is 10.50 percent. The amount of foregone interest for 1985 is calculated as follows:

(ii) $50,000 is outstanding for the entire year. The foregone interest on this amount is [$5,000 × .1045] = $5,225.00

(iii) $25,000 is outstanding for the last three months of 1985. Under the exact method, the amount of foregone interest on this portion of the loan is $647.86, computed as follows:

$25,000 × [(1 + .1050/2)$^{3/6}$ − 1] = $647.86

Under the approximate method, the amount of foregone interest is $656.25, computed as follows:

$25,000 × (.1050/2) × (3/6) = $656.25

(iv) The total amount of foregone interest is $5,872.86 ($5,225.00 + $647.86) under the exact method, and $5,881.25 ($5,225.00 + $656.25) under the approximate method.

*Example (2).* (i) On September 1, 1985, E makes a $100,000 interest-free demand loan to F. The loan agreement requires F to repay $10,000 of the principal amount of the loan at the end of each month that the loan is outstanding. Assume that section 7872 applies to the loan and that the applicable Federal rate based on semiannual compounding for demand loans made in September 1985, is 10.50 percent. The amount of foregone interest for 1985 is calculated as follows:

(ii) $70,000 is outstanding for four months. Under the exact method, the amount of foregone interest on this portion of the loan is $2,429.05, computed as follows:

$70,000 × [(1 + .1050/2)$^{4/6}$ − 1] = $2,429.05

Under the approximate method, the amount of foregone interest on this portion of the loan is $2,450.00, computed as follows:

$70,000 × (.1050/2) × (4/6) = $2,450.00

(iii) $10,000 is outstanding for 3 months. Under the exact method, the amount of foregone interest on this portion of the loan is $259.14, computed as follows:

$10,000 × [(1 + .1050/2)$^{3/6}$ − 1] = $259.14

Under the approximate method, the amount of foregone interest on this portion of the loan is $262.50, computed as follows:

$10,000 × (.1050/2) × (3/6) = $262.50

(iv) An additional $10,000 is outstanding 2 months. Under the exact method, the amount of foregone interest on this portion of the loan is $172.02, computed as follows:

$10,000 × [(1 + .1050/2)$^{2/6}$ − 1] = $172.02

Under the approximate method, the amount of foregone interest on this portion of the loan is $175.00, computed as follows:

$10,000 × (.1050/2 × (2/6) = $175.00

(v) A final $10,000 is outstanding for 1 month. Under the exact method, the amount of foregone interest on this portion of the loan is $85.65, computed as follows:

$10,000 × [(1 + .1050/2)$^{1/6}$ − 1] = $85.65

Under the approximate method, the amount of foregone interest on this portion of the loan is $87.50, computed as follows:

$10,000 × (.1050/2) × (1/6) = $87.50

(vi) The total amount of foregone interest is $2,945.66 under the exact method, and $2,975.00 under the approximate method.

(e) *Gift term loans and certain loans conditioned on future service*—(1) *In general.* In the case of any gift term loan or any term loan that is treated as a demand loan as provided in § 1.7872-10(a)(5), the amount of foregone interest for income tax purposes shall be computed as if the loan were a demand loan, except that:

(i) In applying paragraph (a)(1)(i) of this section, use the applicable Federal rate based on annual compounding in effect on the day the loan is made instead of the blended annual rate, and

(ii) In applying paragraph (b) of this section, use the applicable Federal rate based on semiannual compounding in effect on the day the load is made instead of the applicable Federal rate for demand loans in effect during the period for which foregone interest is being computed.

(2) *Example.* The provisions of this paragraph (e) may be illustrated by the following examples:

*Example (1).* On January 1, 1986, parent P makes a $200,000 gift term loan to child C. The loan agreement provides that the term of the loan is four years and that 5 percent simple interest is payable annually. Both P and C are calendar year taxpayers, and both are still living on December 31, 1986. Assume that the Federal mid-term rate based on annual compounding in effect on January 1, 1986, is 11.83 percent. The loan is a below-market loan. The amount of foregone interest for each year is $13,600.00, computed as follows:

($200,000) × .1183 = $23,660.00

$23,660.00 − $10,000.00 = $13,660.00

For gift tax purposes, an imputed gift is treated as made on January 1, 1986, and is equal to the excess of the amount loaned ($200,000) over the present value of all payments due under the loan, discounted at 11.83 percent compounded annually ($153,360.82), or $41,639.82. For rules for determining the computation of present value, see § 1.7872-14.

*Example (2).* Assume the same facts as in Example (1) except that C repays the loan on September 30, 1987, along with an interest payment of $7,500. For income tax purposes, the imputed payments are treated as transferred on December 31, 1986 and September 30, 1987. The amount of the imputed payments for 1986 are the same as in Example (1). For 1987, under the exact method the amount of foregone interest is $9,994.73, computed as follows:

$17,494.73 = $200,000 × [(1 + .1183)$^{9/12}$ − 1]

$17,494.73 − $7,500 = $9,994.73

For gift tax purposes, the imputed gift is treated as made January 1, 1986, and is the same as in Example (1).

(f) *Allocation of stated interest.* If interest that is payable on a demand loan is properly allocable to a period which includes more than one calendar year, the amount of interest to be allocated to each calendar year is determined by using any reasonable method of allocation.

(g) *Counting conventions*—(1) *Whole periods.* All whole periods, whether expressed annually, semiannually, quarterly, or monthly, shall be treated as having equal length. For example, a leap year shall be treated as having the same number of days as a non-leap year; all months shall be treated as having the same number of days.

(2) *Short periods.* in computing the length of a short period, any reasonable convention may be used. See § 1.7872-12(c)(2) for a list of conventions commonly used.

**§ 1.7872-14 Determination of present value.**

(a) *In general.* This section provides rules for computing the present value of a payment (as referred to in § 1.7872-7(a)(1)) to be made in the future. In general, for purposes of section 7872, the present value of a loan payment to be made in the future is the amount of that payment discounted at the applicable Federal rate from the date in the future that the payment is due to the date on which the computation is made. For this purpose, the computation date is the date the loan first becomes subject to section 7872. To determine the present value of a payment, use the applicable Federal rate in effect on the day the loan is made the reflects the compounding assumption (*i.e.*, annual, semiannual, quarterly, or monthly) that is appropriate for the loan. See § 1.7872-3(b).

(b) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* (i) On July 1, 1984, corporation A makes a $200,000 interest-free three-year term loan to shareholder B. The applicable Federal rate is 10-percent, compounded semiannually.

(ii) The present value of this payment is $149,243.08, determined as follows:

$$\$149,243.08 = \frac{\$200,000}{[1 + (.10/2)]^6}$$

(iii) The excess of the amount loaned over the present value of all payments on the loan ($200,000 − $149,243.08), or $50,756.92, is

treated as a distribution of property (characterized according to section 301) paid to B on July 1, 1984. The same amount, $50,756.92, is treated as original issue discount under sections 1272 and 163(e).

*Example (2).* (i) On July 1, 1984, Employer E makes a $3,000 interest-free three year compensation-related term loan to employee W. On December 1, 1984, E makes an $9,000 interest-free compensation-related demand loan to W. The demand loan remains outstanding throughout December 1984. The two loans are the only loans outstanding between E and W during 1984, and neither is characterized under section 7872(c)(1)(D) as a tax avoidance loan. The applicable Federal rate for all loans for periods before January 1, 1985, is 10 percent, compounded semiannually.

(ii) For the period beginning on July 1, 1984, and ending on November 30, 1984, the provisions of section 7872 do not apply to the $3,000 loan because of the application of the *de minimis* rules of section 7872(c)(3).

(iii) On December 1, 1984, however, the aggregate amount of loans outstanding between E and W exceeds $10,000. As a result, section 7872 applies to both loans for December 1984. Both the imputed transfer and the imputed interest payment with respect to the $9,000 demand loan are determined under section 7872(a). The amount of the imputed transfer by E to W with respect to the $3,000 term loan is determined under section 7872(b)(1). An amount equal to the amount of the imputed transfer with respect to the $3,000 term loan is treated as original issue discount.

(iv) With respect to the $3,000 term loan, the amount of the imputed transfer is equal to the excess of the amount loaned, over the present value of all payments which are required to be made under the $3,000 two-year term loan agreement, determined as of December 1, 1984 (the day section 7872 first applies to the $3,000 loan). The present value of $3,000 payable on June 30, 1987, determined as of December 1, 1984, is $2,331.54, computed as follows:

$$\$2,331.54 = \frac{\$3,000}{(1+.10/2)^{5\frac{1}{6}}}$$

The imputed transfer on the $3,000 loan is $668.46 ($3,000.00 − $2,331.54).

(v) The foregone interest on the $9,000 demand loan is determined as of December 31, 1984, with respect to the one month during 1984 to which section 7872 applies to the loan. The amount of foregone interest for 1984 under the exact method is $73.48, computed as follows:

$$\$73.48 = \$9,000 \times [(1+.10/2)^{1/6} - 1]$$

*Example (3).* (i) Assume the same facts as in Example (2) except that the provisions of the $3,000 three-year term loan require W to make annual payments of interest at a 5 percent simple rate and except that E makes W the $9,000 loan on November 27, 1985.

(ii) Under the agreement W pays $150 (5 percent of $3,000) on June 30, 1985, June 30, 1986, and June 30, 1987. Since the first of these payments is payable prior to November 27, 1985, only the second and third $150 payments are taken into account. W is treated as paying $150 on June 30, 1986 and $3,150 ($3,000 principal and $150 interest) on June 30, 1987.

(iii) The present value as of November 27 1984 of the $150 payable on June 30, 1986, is $128.39, computed as follows:

$$\$128.39 = \frac{\$150.00}{(1+.10/2)^{3\frac{34}{180}}}$$

(iv) The present value as of November 27, 1984 of the $3,150 payable on June 30, 1987, is $2,445.47, computed as follows:

$$\$2,445.47 = \frac{\$3,150.00}{(1+.10/2)^{5\frac{34}{180}}}$$

The sum of these two present values of $2,573.86 ($128.39 + $2,445.47). Therefore, the amount of the imputed transfer with respect to the $3,000 loan is $426.14 ($3,000.00 − $2,573.86).

(v) The foregone interest on the $9,000 demand loan under the exact method is $83.33 ($9,000 × [(1+.10/2)$^{34/180}$ − 1]).

## Gift Tax Regulations

## PART 25—[AMENDED]

**Par. 3.** The authority for Part 25 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * § 25.2512–4 and 25.7872–1 also issued under 26 U.S.C. 7872.

**Par. 4.** Section 25.2512–4 is amended by adding a new sentence at the end to read as follows:

**§ 25.2512–4 Valuation of notes.**

* * * See § 25.7872–1 for special rules in the case of gift loans (within the meaning of § 1.7872–4(b)) made after June 6, 1984.

**Par. 5.** New § 25.7872–1 is added in the appropriate place to read as follows:

**§ 25.7872–1 Certain below-market loans.**

For purposes of chapter 12 of the Internal Revenue Code, relating to gift tax, if a taxpayer makes a gift loan (within the meaning of § 1.7872–4(b)) that is a term loan (within the meaning of § 1.7872–10(a)(2)) and that is made after June 6, 1984, the excess of the amount loaned over the present value of all payments which are required to be made under the terms of the loan agreement shall be treated as a gift from the lender to the borrower on the date the loan is made. If a taxpayer makes a gift loan that is a demand loan (within the meaning of § 1.7872–10(a)(1)) and that is outstanding during any calendar period after June 6, 1984, and not repaid before September 17, 1984, the amount of foregone interest (within the meaning of section 7872(e)(2)) attributable to that calendar period shall be treated as a gift from the lender to the borrower. The *de minimis* exception described in section 7872(c)(2) applies to the gift tax treatment of a gift loan. In the case of a term gift loan, however, once section 7872 applies to the loan, the *de minimis* exception will not apply to the loan at some later date regardless of whether the aggregate outstanding amount of loans does not continue to exceed the limitation amount. For a detailed analysis of section 7872, see the income tax regulations under section 7872, § 1.7872–1 through § 1.7872–14.

## Estate Tax Regulations

## PART 20—[AMENDED]

**Par. 6.** The authority for Part 20 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * § 20.2031–4 and 20.7872–1 also issued under 26 U.S.C. 7872.

**Par. 7.** Section 20.2031–4 is amended by adding a new sentence at the end to read as follows:

**§ 20.2031–4 Valuation of notes.**

* * * See § 20.7872–1 for special rules in the case of gift loans (within the meaning of § 1.7872–4(b)) made after June 6, 1984.

**Par. 8.** New § 20.7872–1 is added in the appropriate place to read as follows:

**§ 20.7872–1 Certain below-market loans.**

For purposes of chapter 11 of the Internal Revenue Code, relating to estate tax, a gift term loan (within the meaning of § 1.7872–4(b)) that is made after June 6, 1984, shall be valued at the lesser of:

(i) The unpaid stated principal, plus accrued interest; or

(ii) The sum of the present value of all payments due under the note (including accrual interest), using the applicable Federal rate for loans of a term equal to the remaining term of the loan in effect at the date of death.

No discount is allowed based on evidence that the loan is uncollectible unless the facts concerning collectibility of the loan have changed significantly since the time the loan was made. This section applies with respect to any term loan made with donative intent after June 6, 1984, regardless of the interest rate under the loan agreement, and regardless of whether that interest rate exceeds the applicable Federal rate in effect on the day on which the loan was made.

Foundation and Similar Excise Taxes

PART 53—[AMENDED]

Par. 9. The authority for Part 53 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * § 53.4941(d)-2 also issued under 26 U.S.C. 7872.

Par. 10. Section 53.4941(d)-2 is amended by revising paragraph (c)(2) to read as follows:

**§ 53.4941(d)-2 Specific acts of self-dealing.**

* * * * *

(c) *Loans.* * * *

(2) *Loans without interest.* Subparagraph (1) of this paragraph shall not apply to the lending of money or other extension of credit by a disqualified person to a private foundation if the loan or other extension of credit is without interest (determined without regard to foregone interest described in section 7872) or other charge.

PART 602—[AMENDED]

OMB Control Numbers Under the Paperwork Reduction Act

Par. 11. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 12. Section 602.101(c) is amended by adding in the appropriate locations, "§ 1.7872-11 * * * 1545- ."

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Roscoe L. Egger, Jr.,

*Commissioner of Internal Revenue.*

[FR Doc. 85-19785 Filed 8-15-85; 12:11 pm]

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Metal and Nonmetal Mines; Public Hearings

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of Extension of Public Hearings.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) will hold a supplemental public hearing on its proposal to revise the existing safety standards for loading, hauling, and dumping at metal and nonmetal mines.

**DATE:** The public hearing will be held on August 27, 1985, beginning at 9:00 a.m.

**ADDRESS:** The public hearing will be held in Room 622A, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, phone (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** The purpose of the supplemental hearing is to provide interested persons with a further opportunity to comment on the proposed standard dealing with brakes on self-propelled equipment (56/57.9202) and to review video tapes made by MSHA during its field tests to evaluate vehicle braking performance.

MSHA held public hearings on its proposal to revise the loading, hauling, and dumping standards on August 5 in Minneapolis, Minnesota; August 7 in Phoenix, Arizona; and August 9 in Birmingham, Alabama (50 FR 27568, July 3, 1985). During each hearing a video tape was presented to demonstrate to the public how brake testing would be conducted in the field. However, some commenters understood that MSHA would have more extensive video tapes from the various test sites available for viewing. These commenters requested that an opportunity be provided to view and discuss specific tapes in their original context. For this reason, MSHA will make all of the brake test video tapes available for review and comment at the supplemental hearing on August 27, 1985.

As announced during the Birmingham public hearing, the record and opportunity for comment on the proposed rule to revise the loading, hauling, and dumping standards has been extended from August 23, 1985 to September 6, 1985.

Dated August 16, 1985.

David A. Zegeer,

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 85-19981 Filed 8-19-85; 8:45 am]

BILLING CODE 4510-43-M

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 50

National Capital Parks Regulations; Lafayette Park; Structure Prohibitions; Sign Limitations

**AGENCY:** National Parks Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the National Capital Parks regulations in § 50.19 of 36 Code of Federal Regulations to prohibit structures, with certain exceptions, and to place reasonable limitations on the size and number of signs placed or set down in Lafayette Park. The National Park Service has received numerous complaints from the general public concerning the presence in Lafayette Park of semi-permanent, billboard-type signs and large structures that interfere with the view of the White House, occupy an extensive amount of space and generally conflict with the historic and natural of the Park. Furthermore, concerns have been raised about damage to the Park and public safety. The proposed rule addresses the uses of Lafayette Park through a balancing of First Amendment freedoms of speech and expression against the rights of the park visitor to utilize this historic Park for traditional recreational and aesthetic purposes.

**DATE:** Written comments, suggestions, or objections regarding the proposed rule will be accepted until October 21, 1985.

**ADDRESS:** Written comments should be sent to Regional Director, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242.

**FOR FURTHER INFORMATION CONTACT:** Sandra Alley, Associate Regional Director, Public Affairs, National Capital Region, National Park Service, 1100 Ohio Drive, SW., Washington, D.C. 20242, telephone (202) 426-6700; Richard G. Robbins, Assistant Solicitor, National Capital Parks, Office of the Solicitor, Department of the Interior, Washington, D.C. 20240, telephone (202) 343-4338.

**SUPPLEMENTARY INFORMATION:**

Background

*1. History of Lafayette Park*

Lafayette Park, originally know as the President's Park, is a rectangular area of approximately seven acres of land situated directly north of the White House on Pennsylvania Avenue. It is bounded on the east by Madison Place, north by H Street, and west by Jackson Place. The property was one of the first parcels of land donated by the original patentees to the Disttict Commissioners for the formation of the Federal City (later, Washington) in 1971. The site of what is now Lafayette Park (Park) was originally included in the area known as the President's House and the President's Park, according to the plans of Major Pierre L'Enfant. The entire area extended from 15th to 17th Streets, NW., and from H Street on the north and to the Potomac River on the south. In the early 1800's, President Thomas Jefferson

authorized the Park's separation from the President's House, intending its use for local residents and visitors to Washington. The boundaries of the Park have not been altered up to the present day.

In 1824, the grounds were improved and walks laid out in the square on the occasion of the visit of the Marquis de Lafayette, the French general and hero of the American Revolution.

The square was known as the "President's Park" until 1834, when the name "Lafayette Square" was adopted. Since 1933, when control of the National Capital Parks was returned to the Interior Department, the term "Lafayette Park" has been the preferred name and has been adhered to by the National Park Service.

*2. Unique Features of the Park*

Five memorial statues, specifically authorized by legislation of Congress, honoring General Andrew Jackson and four foreign heroes of the American Revolution, grace Lafayette Park. The equestrian statue of General Andrew Jackson, the second one of its type to be cast in the United States, stands in the center of the Park. It was dedicated by Senator Stephen A. Douglas in 1853. The heroic bronze statue of General Lafayette, which stands at the southeast corner of the Park, was dedicated in 1891. The second Frenchman honored in the Park is the Comte de Rochambeau, who led the French Expeditionary Force to America during the Revolution. President Theodore Roosevelt dedicated the Rochambeau statue, which stands at the southwest corner of the Park, in 1902. The statue of Thaddeus Kosciuszko, the Polish engineer who designed some of America's fortifications during the Revolutionary War, was dedicated in 1910 and stands at the northeast corner of the Park. The fifth statue, dedicated by President William Howard Taft in 1910, is that of Baron von Steuben, the Prussian disciplinarian and Inspector General of the Continental Army. It stands at the northwest corner of the Park.

In addition to honoring these five notable figures of America's past, Lafayette Park functions as a formal garden park of the meticulous landscaping with flowers, trees, fountains, walks and benches. This aesthetic aspect of the Park has a rich history, going back over 130 years. In 1851, President Millard Fillmore endorsed the appointment of A. J. Downing, one of the most celebrated landscape architects of the day, to prepare plans for the landscaping of Lafayette Square and other park areas of the Nation's Capital. Downing is credited with the landscape plan of Lafayette Park, which has generally been adhered to over the years with only slight revisions. The central theme then consisted of wide gravel paths leading to the statue of General Andrew Jackson as smaller meandering walks went past beds of roses and other flowers.

A second major change to take place in the landscaping of Lafayette Park was undertaken by the National Capital Parks in 1936 and 1937. The overall changes made during this period were the removal of the bronze urns to their present-day locations, the redesigning and widening of the walks, the relocation of trees and shrubbery, the closing of small gravel paths and the relocation of flower beds. The overall effect enhanced the beauty of the original Downing plan and made the Park more accessible to those people for whom the Park had originally been intended by President Jefferson—visitors and Washington residents.

Money was appropriated by Congress during the Presidency of John F. Kennedy for the purpose of installing decorative fountains in the Park. By 1969, a water sprinkler system for maintenance of the Park, as well as attractive interior brick walkways, were added to Lafayette Park. Improvements to the Park continue up to the present day. A new Park lighting system, historically accurate to the lamps used in the mid 1800's, was installed in 1985.

Lafayette Park is appreciated by Washington, D.C. residents and visitors alike as a unique natural and historic site. Residents and workers come to Lafayette Park each day to play chess, eat a picnic lunch, stroll through the landscaped setting, or to sit quietly on a bench and read a book. Visitors come to the Park for many of the same reasons in addtion to touring the gardens and the monuments. Lafayette Park provides an unequaled setting for viewing the north side of the White House. During the summer months, thousands of persons visit the Park each day.

The National Park Service has long recognized the unique environment and sensitive nature of Lafayette Park as a major component in the historic setting of the White House and the national significance of the five major memorials which it contains. The Park Service has neither sponsored nor permitted special events in Lafayette Park for almost ten years. Unlike Farragut Square, where the Park Servcie permits noontime concerts, or the Ellipse, where the Park Service co-sponsors the National Christmas Pageant of Peace, Lafayette Park has been kept free of all such Park Service-sponsored activities.

*3. Current Situation in Lafayette Park*

Being located across from the White House, Lafayette Park is a popular location for demonstrations of every sort. Under present regulations, individuals and groups numbering twenty-five participants or less need not apply for a permit for, or even notify the National Park Service of, a demonstration in the Park. Groups numbering over tweny-five participants must apply for a permit to demonstrate.

At present, the National Park Service has no specific regulations governing the number and size of signs that can be used by those demonstrators. Further, the Park Service has only limited regulations governing the use of structures.

Due to this lack of specific regulatory prohibitions, Lafayette Park, during the past two years, has become increasingly dominated by large, semi-permanent, billboard-type signs and massive structures which are often unattended by their owners. It has not been uncommon to have signs as large as twenty-five feet by twelve feet in the Park for months at a time. In addition, it has not been uncommon to have structures ten feet high, eight feet long and four feet wide in the Park for long periods of time.

Further, there has generally been a large number of such signs and structures in the Park at the same time. In August of 1984, for example, there were one hundred and forty signs in Lafayette Park on a continuing basis. Rather than a testament to differing opinions, the majority of these signs expressed the views of a handful of demonstrators. Amazingly, eighty of the signs present in the Park in August of 1984 belonged to one demonstrator. Over the past two years, two to six demonstrators have accounted for a vast majority of the hundred or so signs that continuously occupy a large portion of Lafayette Park.

In July of 1985, there were seventy-eight signs in Lafayett Park, ranging in size from two feet by three feet to a sign eight feet by twenty-four feet. There were three signs that measured twelve feet by fifteen feet and thirteen signs that were at least eight feet wide. One of these signs indicated that thirty-three of the total number of signs belonged to two persons who had been in the Park since June of 1981. In addition to signs, there were various structures in the Park, including pyramids, chairs, a grocery cart, and desks.

Having a large number of immense signs and structures in the Park has had a substantial impact on the enjoyment of

the Park by the visiting public. One demonstrator has had up to eight billboard-type signs, along with various smaller signs, lined up on the south sidewalk of the Park for long periods of time. This individual, along with one other demonstrator, has occupied almost half of the length of the south sidewalk of the Park, substantially interfering with the view of the White House from Lafayette Park. In addition, structures and signs belonging to two or three demonstrators have often occupied a quarter to a half of the interior space of the Park, thus preventing the thousands of visitors who come to Lafayette Park from utilizing that portion of the Park.

In addition to the problem of a few individuals continuously preempting the use of a large portion of the Park, visitors complain frequently that the countless large signs and structures amount to a visual blight in the Park and generally create an offensive and unsightly appearance in an otherwise pristine and historic park area. Over the past year, the National Park Service received at least sixteen written requests for some action against the visual blight in Lafayette Park. Almost every request acknowleges the importance of exercising First Amendment rights in the Park, but then pleads for some balance between the rights of demonstrators and those of visitors to enjoy the beautiful and historic park. Typical of these requests is the following from a Washington, D.C. woman:

> I am appalled that Lafayette Square is being permitted to become the eyesore of our Nation's Capitol [sic]. The construction of highway-size billboards and massing of large signs are obliterating the beautiful view and popular photographic site of the White House from the Square and destroying the vista of the park from Pennsylvania Avenue.
>
> I have no quarrel with people peacefully exercising their First Amendment right of free speech if they believe the current Administration is pursuing policies with which they do not agree. I do, however, feel it is exceedingly reasonable to require that any signs or posters be physically carried/worn by those espousing the views, and that such demonstrators be required to keep moving in an orderly fashion that does not interfere with pedestrian traffic rather than the present "camping-out" method.

Further, conversations with United States Park Police officers assigned to Lafayette Park during tourist seasons reveal that they generally receive at least one and sometimes as many as four of five oral complaints each day about the visual blight in Lafayette Park. Complaints noted by the officers include the fact that large signs interfere with the view of the White House, prevent picture taking and, together with the ever-present structures, generally ruin the aesthetic quality of Lafayette Park.

In addition to aesthetic concerns, some commentators have expressed concern about the safety of large billboard-type signs, a concern with merit. Large signs in the Park are generally constructed of plywood and are very often crudely supported. Many times, the signs are not attended by their owners. On several occasions, large signs have been blown down by heavy winds and, in one case, a sign struck a pedestrian resulting in a head wound requiring several stitches. In addition, structures, often crudely constructed and sometimes utilizing glass pieces and protruding nails, present other safety hazards.

The Park Service has attempted to work with individuals having large signs and structures in order to ensure that these items are safe and properly secured. However, it has been the experience of the Park Service that it is almost impossible to keep up with the varied signs and structures that sometimes appear overnight in the Park. Further, some demonstrators are uncooperative in making changes in their property. Even when demonstrators will cooperate in attempting to make their signs and structures safer, the methods for accomplishing that end sometimes result in damage to the Park. For example, it has been found that large signs are most safely secured only by placing numerous stakes in the ground, causing damage to the turf and the Park's inground sprinkler system.

In addition to the damage caused by methods necessary to secure large signs and structures, the signs and structures themselves have caused injury to park resources. Whether the result of being permanently anchored to the ground or because of sheer size, many of the signs and structures in the park can be moved only with considerable difficulty and only if the owner can be located. As long as large signs and structures are in the Park, it is impossible for the Park Service to perform routine maintenance of the Park such as watering, trimming and grass cutting. The placement of heavy signs and structures on the ground causes considerable damage to the turf, creating large patches of dried and dead grass wherever they have been. In addition, bricks making up the sidewalks through the Park have been crushed and damaged by large structures. In short, Lafayette Park has acquired a generally unkempt and unslightly appearance due to the activities of a handful of demonstrators who have added more and more signs, structures and property to their demonstrations.

The presence of structures has been of particular concern in Lafayette Park. Without limitations on the size and use of structures, individuals have acccumulated an odd assortment of buildings and rubbish in the Park, often unattended. Several two and three story structures have been built in Lafayette Park. Desks, chairs, bookcases, carts, doors and a porcelain toilet have all appeared in the Park. One individual filled a broken grocery cart with trash, claiming that it was a symbolic structure. All in all, the presence of these items has produced a dump-like atmosphere in this historical and finely landscaped national park.

Further, it appears that the "development" of Lafayette Park will only worsen in the future. Recently, an individual requested a permit to establish a library, complete with meeting rooms, in the Park. The same individual requested a permit to erect facilities necessary for an actual abortion and a Christmas day live birth. Another individual requested a permit for a spaceship and spaceship-landing facilities. This "building boom" in Lafayette Park threatens aesthetic interests, safety interests, and park resources.

### Regulatory Changes

*1. Signs*

In order to meet substantial government interests in aesthetics, public safety, and preservation of park resources, the National Park Service is proposing a rule that would limit the size of signs permitted to be set down in Lafayette Park; limit the number of signs one individual may place down in the Park; and require that those stationary signs be attended. As noted above, there are no specific limitations on the number or size of stationary signs allowed in the Park at present. Further, enforcement of existing abandonded property regulations has been ineffective in curing the problem of absentee owners of signs and structures.

The National Park Service is not proposing to prohibit demonstrations in Lafayette Park. Nor is it proposing to place any limitation on signs that are hand-carried. The Park Service is merely proposing to place reasonable, content-neutral limitations on signs placed down in Lafayette Park so that visitors might be able to enjoy the history and beauty of the Park while demonstrators continue to have ample avenues of communication. In addition, the proposed rule would apply only to

Lafayette Park and not to the many other park areas in close proximity, for example, the Ellipse on the south side of the White House.

Specifically, the proposed rule would limit the size of signs permitted to be placed or set down in Lafayette Park to the dimensions of four feet in height, four feet in width and one-quarter inch in thickness. Such a size limitation would prohibit the immense billboard-type signs that now dominate Lafayette Park, which substantially impact the aesthetic values of the Park, while creating safety concerns and seriously damaging park resources.

In order to arrive at a permitted sign size that fully accommodates the needs of demonstrators, the *National Park Service Sign System Specification Manual* ("Manual") was consulted. The Manual is utilized by National Park Service personnel to determine the sign size and lettering necessary to be adequately seen by pedestrian traffic. Signs utilized by the Park Service contain directions, instructions, prohibitions and warnings.

Utilizing standards set forth in the Manual, it was calculated that a sign four feet by four feet could contain at least ten lines of writing in a letter size that could be seen up to one-hundred feet away from the sign. The letter size and distance from the sign indicated here is the maximum recommended for pedestrian traffic in the Manual.

On the basis of this research, it was determined that a four foot by four foot sign offered an effective means of communication for demonstrations. Further, the dimensions stated conform to a standard size of plywood commercially available. While there are no magic dimensions above which damage will certainly occur and below which government interests will certainly be satisfied, the Park Service has attempted to accommodate the needs of both visitors and demonstrators with this selection of permissible sign size.

In July of 1985, forty-four percent of the seventy-eight signs located in Lafayette Park had a message consisting of ten or less words; of these, fifty percent had messages of five words or less. For example, one eight foot by eight foot sign had four words written on it: "Wanted Wisdom and Honesty"; another sign, four foot by eight foot, simply had the initials "UFO" written on it, accompanied by what appeared to be symbols; a four foot by six foot sign read simply "Freedom of Religion"; and finally, a three foot by six foot sign read "Sue Your Government Now". The National Park Service does not believe that any serious impediment to free speech would result by requiring these varied messages to be placed on four foot by four foot signs.

To further accommodate individuals and groups who wish to have larger signs, the National Park Service has exempted all hand-carried signs from these size limitations. This allows demonstrators to have large signs, which includes banners, but assures that the signs will not cause damage to park resources because they will not be placed on the ground, will not create safety concerns because they will be held by demonstrators, and finally, will not create aesthetic problems because they can be easily moved and will not be permanent in nature.

To avoid circumvention of the size limitations on stationary signs, the proposed rule would also prohibit a conforming-size sign from being elevated to exceed a height of six feet above the ground. It would do little good to place limitations on the height of stationary signs only to have them again become billboard size by utilizing posts or other means of elevation. In addition, such elevation over six feet could result in additional safety problems.

Also to avoid circumvention of the size limitations, the proposed rule prohibits the arrangement or combination of stationary signs so as to exceed the permitted size limitations. Again, it would be useless to institute sign size limitations if those limitations could be easily circumvented by combining two or more signs so as to create a billboard effect.

To avoid the problem of one individual utilizing a great deal of space with unlimited numbers of signs, the National Park Service further proposes to limit the number of stationary signs that a single individual can have in Lafayette Park at one time. Present regulations do not prohibit a single individual from monopolizing any amount of this national park that attracts thousands of people each year by just adding sign after sign to his or her collection. The proposed rule would eliminate this unfair usurpation of park land by limiting each person to two stationary four foot by four foot signs at any one time in Lafayette Park. The Park Service believes that this is a reasonable accommodation of both visitors and demonstrators.

In addition to limiting the number of signs that an individual may have in Lafayette Park, the proposed rule requires that stationary signs in the Park be attended. The term "attended" is defined in the proposed rule as being within three feet of a sign. This requirement, along with the limitation on the number of signs an individual may have, would prevent the massive accumulation of signs by one or two individuals that is now occurring in Lafayette Park. Further, an attendance requirement assures that signs can be moved temporarily for routine park maintenance such as grass cutting, trimming and watering. Finally, the requirement that signs be attended enables park personnel to distinguish between actvie demonstrations and abandoned signs or property.

*2. Structures*

In addition to restrictions on the use of signs in Lafayette Park, the National Park Service proposes to prohibit the use of structures in the Park, with the exception of certain speaker's platforms.

Structures have substantially intruded upon visitors' enjoyment of Lafayette Park. The lack of specific restrictions in existing regulations has led to massive structures being placed in the Park. These structures substantially detract from the view of the Park and monopolize large areas of the seven-acre ground. Further, it has been the experience of the Park Service that some demonstrators have accumulated a large number of items in the Park, items including piles of rubbish, doors and desks, claiming that these are permitted structures. Rather than communicating a message, these items have generally evoked angry complaints from citizens. Finally, the presence of structures of any sort in the fragile enviornment of Lafeyette Park causes resource damage.

For these reasons, the Park Service initially considered a total ban on all structures in the Park. Consideration of less restrictive alternatives yielded no regulatory scheme that would allow structures to be placed in the Park while avoiding turf damage and the visual blight created by some demonstrators.

However, to avoid working a hardship on large demonstration groups that require a platform so that speakers can be heard and seen efffectively by demonstration participants, the Park Service in the proposed rule makes an exception for temporary speaker's platforms that are reasonably necessary when a demonstrating group numbers one-hundred or more persons. For a group numbering less than one-hundred persons, a small, temporary "soapbox" platform would be allowed. Although the Park Service realizes that some damage to park resources may be done by these structures, it believes that it has an obligation to balance the needs of demonstrators with the needs and rights of the general public. Further, any harm that may be caused by the large speaker's platforms will be minimized

by their short duration in the Park as large demonstrations generally do not remain in the Park as large demonstrations generally do not remain in the Park longer than one day.

*3. Conclusion*

The National Park Service believes that the proposed regulatory restrictions, taken as a whole, accomplish the purpose of restoring Lafayette Park as a historic site and formal garden while still allowing ample avenues of communication for those who wish to demonstrate in the Park or elsewhere in the vicinity of the White House. The Park Service believes that it has a responsibility to maintain a high level of aesthetic quality in the parks under its administration, consistent with its duty to allow citizens an opportunity to express their First Amendment rights. Further, the Park Service would be negligent in its responsibilities to all citizens if it did nothing to curb increasing resource damage or if it ignored safety concerns. Moreover, the National Park Service believes that there is clear legal authority for promulgation of these regulations as they are content-neutral, leave open ample alternative avenues of communication, and are narrowly tailored to meet substantial government interests. The substantial government interest in safety, resource protection and aesthetics has been affirmed repeatedly by the courts. In fact, the Supreme Court has recognized aesthetics as a substantial government interest in at least two cases decided within the past two years.

It is not easy to draw the lines established in the proposed rule. For this reason, the National Park Service especially invites comments from all segments of the public, visitors and demonstrators alike, on this proposal.

**Public Participation**

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed rule to the address noted at the beginning of the rulemaking.

**Drafting Information**

The following persons participated in the writing of this rule: Richard G. Robbins, Patricia S. Bangert, and Steven A. Hemmat, Office of the Solicitor, U.S. Department of the Interior.

**Paperwork Reduction Act**

The information requirements contained in § 50.19 of Part 50 have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, and assigned clearance number 1024–0021.

**Compliance With Other Laws**

The National Park Service has determined that this document is not a major rule requiring preparation of a Regulatory Impact Analysis under Executive Order 12291. The National Park Service also has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, does not require a small entity flexibility analysis under 5 U.S.C. 601. The proposed rule would merely place reasonable limitations on the use of structures and signs in Lafayette Park. The rule will have no significant impact on any aspect of the economy.

The National Park Service has further determined that this proposed rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act, 42 U.S.C. 4332, *et seq.*

**List of Subjects in 36 CFR Part 50**

National parks, National Capital parks.

## PART 50—NATIONAL CAPITAL PARKS REGULATIONS

In consideration of the foregoing, it is proposed to amend 36 CFR Part 50 as follows:

1. The authority citation for Part 50 is revised to read as follows:

**Authority:** 16 U.S.C. 1, 3, 9a, 462(k); D.C. Code section 8–137 (1961) and D.C. Code section 40–721 (1981).

2. Section 50.19 is amended by redesignating paragraphs (e) (11) and (14) as (e) (12) and (15) and adding a new paragraph (e)(11) to read as follows:

**§ 50.19 Demonstrations and special events.**

* * * * *

(e) * * *

(11) The following are prohibited in Lafayette Park:

(i) The erection or placement of structures of any kind except for the structures described in paragraphs (e)(11)(i) (A) and (B) of this section.

(A) When a demonstration involves one-hundred (100) or more persons, a temporary speaker's platform as is reasonably required to serve the demonstration participants is allowed *provided that* only one speaker's platform is allowed per demonstrating group and *provided further that* such speaker's platform is authorized by a permit issued pursuant to paragraph (b) of this section.

(B) When a demonstration involves less than one-hundred (100) persons, a temporary "soapbox" speaker's platform is allowed *provided that* only one speaker's platform is allowed per demonstrating group and *provided further that* the speaker's platform is no larger than two (2) feet in length, two (2) feet in width, and two (2) feet in height.

(ii) The use of signs except for the following:

(A) Hand-carried signs are allowed regardless of size.

(B) Signs no larger than four (4) feet in height, four (4) feet in width and one-quarter (¼) inch in thickness may be placed or set down in Lafayette Park *provided that* no individual may have more than two (2) such signs in the Park at any one time and *provided further that* such signs must be attended at all times, the term "attended" being defined as an individual being within three (3) feet of his or her sign(s), and *provided further that* such signs may not be elevated in a manner so as to exceed a height of six (6) feet above the ground at the highest point.

(C) Signs placed or set down in the Park may not be arranged or combined in a manner so as to exceed the size limitations in paragraph (e)(11)(ii)(B) of this section (for example, two four foot by four foot signs may not be combined so as to create a sign eight feet tall and four feet wide and three such signs may not be arranged to create a sign four feet tall and twelve feet wide, etc.).

Dated: August 14, 1985.

**William P. Horn,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 85–19901 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-70-M

## POSTAL SERVICE

**39 CFR Part 111**

**Combined Mailings of Special Fourth-Class and Bound Printed Matter**

**AGENCY:** Postal Service.

**ACTION:** Posposed rule.

**SUMMARY:** This proposal would allow mailers to combine special fourth-class and bound printed matter in one parcel and pay postage at the rate appropriate for each subclass. Currently, mailers are preparing separate parcels, although

they are mailed to the same addressee. For example, bound printed matter and special fourth-class rate articles are prepared and mailed separately even if they are sent to the same addressee.

**DATE:** Comments must be received on or before September 19, 1985.

**ADDRESS:** Written comments should be mailed or delivered to the Director, Office of Mail Classification, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza West SW., Washington, D.C. 20260-5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. George E. Thomas, (202) 245-4512.

**SUPPLEMENTARY INFORMATION:** The Postal Service is aware that mailers of materials eligible for special fourty-class rates (e.g., book publishers, record companies, etc.) also send material eligible for bound printed matter rates to the same recipients. The proposed change will eliminate the need for separate mailings to the same recipient in order to claim the two rates. The Postal Service will also benefit from these procedures in that one parcel will be processed and delivered instead of two.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 29 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.1.

**List of Subjects in 39 CFR Part 111**

Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001-3011, 3201-3219, 3403-3405, 3601, 3621; 42 U.S.C. 1973 cc-13, 1973 cc-14.

2. Revise the heading of Part 136 and the first sentence of 136.1 of the DMM to read as follows:

PART 136—MIXED CLASSES AND SUBCLASSES OF MAIL

*136.1—General.*

When mail of a higher class in enclosed with mail of a lower class, the rate of postage on the entire piece or package is that of the higher class except as provided in §§ 136.2, 136.3, 136.4, 136.7, and 136.8.

* * * * *

3. Add proposed new 136.8 to read as follows:

*136.8 Combined Mailings of Special Fourth-Class and Bound Printed Matter.*

.81 *Definition.* Mailers may combine separate and distinguishable units of special fourth-class and bound printed matter in one parcel for the same addressee.

.82 *Machinability.* All parcels containing combined special fourth-class and bound printed matter must meet the machinable (regular) parcel criteria stated in 128.41.

.83 *Payment of Postage.* Postage covering each separate unit of mail must be placed on the outside of the parcel. See 780, Domestic Mail Manual, for methods of postage payment.

.84 *Markings Required.* Sections 764.1 and 767.1 prescribe the marking requirements for mailings of special fourth-class and bound printed matter. In addition to those markings, the mailer must place on each parcel below the postage and above the address an endorsement denoting the enclosure and the amount of additional postage paid for it. For example, BOUND PRINTED MATTER ENCLOSED $1.46 or SPECIAL FOURTH-CLASS ENCLOSED $0.69. Parcels containing bound printed matter and special fourth-class are properly chargeable with postage at parcel post zone rates when they are not marked as prescribed, or when the contents do not consist of separate and distinguishable units of mail, or when they are not machinable.

.85 *Bulk or Presort Rate Mailings.* Bulk or presort rates may be claimed if the mail is prepared in accordance with the applicable provisions of sections 763, 764, or 767. Where bulk or presort rates are claimed on both subclasses, the mail must be sorted in accordance with the requirements which provide the finest degree of sortation of the two subclasses. For example, if a mailing consists of bulk bound printed matter and level A presorted special fourth-class rate mail, it must be sorted to 5-digit ZIP Code destinations meeting the provisions of sections 724.222 and 764.22. In this instance, sortation in accordance with the requirements prescribed in section 767 for bound printed matter would not suffice.

.86 *Forwarding and Return.* Combination parcels containing special fourth-class and bound printed matter will be charged postage at the applicable single piece rate for both the principal unit and the enclosure.

An appropriated amendment to 39 CFR 111.3 to reflect these changes will be published, if the proposal is adopted.

**W. Allen Sanders,**

*Associate General Counsel, Office of General Law and Administration.*

Certified to be a true copy of the original.

**Paul J. Kemp,**

*Alternate Liaison Officer for the U.S. Postal Service.*

[FR Doc. 85-19831 Filed 8-19-85; 8:45 am]

BILLING CODE 7710-12-M

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

**[EN-FRL 2857-6]**

**Regulation of Fuels and Fuel Additives; Applicability to Motorcycles and Alternate Labeling Language for All Motor Vehicles**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to exclude motorcycles from the requirement at 40 CFR 80.24(a)(1) concerning the location of "Unleaded Gasoline Only" labels on the instrument panels of vehicles required to use only unleaded gasoline. The EPA is also proposing to exclude motorcycles permanently from the requirement at 40 CFR 80.24(b)(1) concerning the design of the fuel tank filler inlet for vehicles required to use only unleaded gasoline. (At 48 FR 29692 (June 28, 1983), the EPA excluded 1984 model year motorcycles from the requirement at 40 CFR 80.24(b)(1) concerning the design of the fuel tank filler inlet. This "emergency" rule became effective July 28, 1983 and no comments were received in response to the rulemaking.) These changes are necessary because of requirements in the regulations that were probably never intended to apply to motorcycles. The EPA is also proposing to allow the labels on all motor vehicles to read "Unleaded Gasoline Only" or "Undeaded Fuel Only." Only the former version is explicitly included in the regulations at 40 CFR 80.24(a), although the latter was also approved for use by an EPA advisory circular.

**DATES:** Comments should be submitted on or before October 4, 1985. A public hearing will be held upon request. Requests for a hearing must be submitted by September 3, 1985. If a hearing is requested, an announcement will be published in the **Federal Register**

[and the comment period will be extended until 30 days after the date of the hearing].

**ADDRESS:** Send comments to Public Docket EN–85–04, Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should be identified with the docket number. Copies of information relevant to this proposed rule are available for public inspection at the Central Docket Section of the Environmental Protection Agency, West Tower, Gallery I, 401 M Street, SW., Washington, D.C. 20460, and are available for review between the hours of 8:00 a.m. and 4:00 p.m. As provided in 40 CFR Part 2, reasonable fee may be charged for copying services. To expedite review, it is also requested that a duplicate copy of comments be sent to James W. Caldwell at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** James W. Caldwell, Chief, Fuels Section, Field Operations and Support Division (EN–397F), EPA, 401 M Street, SW., Washington, D.C. 20460, (202) 382–2635.

**SUPPLEMENTARY INFORMATION:** Federal rules at 40 CFR 80.24 place certain requirements on the manufacturer of any motor vehicle equipped with an emission control device (primarily the catalytic converter) which will be impaired by the use of leaded gasoline. As defined in the Clean Air Act, "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway. This definition includes motorcycles.

However, 40 CFR 80.24(a) places some labeling requirements on motor vehicles that were probably not intended to apply to motorcycles. It requires that two or more "Unleaded Gasoline Only" labels be affixed to any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline. One label must be located on the instrument panel (40 CFR 80.24(a)(1)) and the other must be located immediately adjacent to each gasoline tank filler inlet (40 CFR 80.24(a)(2)). On a motorcycle, these two label locations are generally about a foot apart. Requiring labels to be affixed so closely together appears unnecessary. Accordingly, EPA is proposing that a motorcycle label should be required only adjacent to the filler inlet, provided it is readily visible when approached from either the left or right side of the motorcycle.

In addition, 40 CFR 80.24(b)(1) places a design requirement on the fuel tank filler inlet of motor vehicles that was never intended to apply to motorcycles. It requires that when a leaded gasoline nozzle is inserted into the inlet, and readily activated to a full-flow condition, no more than 700 cubic centimeters of gasoline pass into the tank before the nozzle shuts off. In order to meet this requirement, the nozzle vacuum port must be plugged by fuel backing up in the inlet, thus shutting off fuel delivery. Due to the inherent design of a motorcycle's fuel tank, which generally has a portion of the frame running closely under the filler inlet, it would be impractical to design an inlet with sufficient depth that it not only contains a restriction to prevent the insertion of a leaded gasoline nozzle, but also allows fuel to back up to a height that would plug the leaded gasoline nozzle vacuum port and shut off fuel delivery.

Those problems were originally called to EPA's attention by the American Honda Motor Company shortly before the commencement of production for the 1984 model year. In response, EPA issued an emergency final rule (48 FR 2969, June 28, 1983) excluding 1984 model year motorcycles from the requirement at 40 CFR 80.24(b)(1). This rule became effective on July 28, 1983 and no comments were received in response to the rulemaking. EPA is now proposing to make the exclusion permanent.

EPA is also proposing to allow the label(s) for all motor vehicles to read "Unleaded Gasoline Only" or "Unleaded Fuel Only." Existing 40 CFR 80.24(a) only refers explicitly to the former language. The latter version is also in use but has never been incorporated into the regulations, although it has been allowed under guidance provided in an EPA advisory circular.

Because the other requirements of 40 CFR 80.24 will remain in effect to deter the introduction of leaded gasoline into motorcycles requiring unleaded gasoline only (i.e., the inlet restrictor and adjacent "Unleaded Gasoline Only" label), EPA does not anticipate any significant risk from excluding motorcycles from the requirements at 40 CFR 80.24 (a)(1) and (b)(1).

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effects of this action are to prevent motorcycles from being subject to requirements that were not intended for motorcycles, and to allow additional flexibility in labeling language. If anything, these changes would reduce costs to manufacturers.

This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments from OMB and any EPA responses to such comments have been placed in the docket.

Finally, under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a Regulatory Impact Analysis. These modifications should not have a significant adverse impact on any of the affected entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this proposed rule would not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 40 CFR Part 80**

Motorcycles, Gasoline.

Dated: August 9, 1985.

**Lee M. Thomas,**

*Administrator.*

## PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set forth in the preamble, 40 CFR Part 80 is proposed to be amended as follows:

1. The authority citation for Part 80 continues to read as follows:

**Authority: Sec. 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 and 7601, unless otherwise noted.**

2. Paragraphs (a) and (b)(2) are revised to read as follows:

**§ 80.24 Controls applicable to motor vehicle manufacturers.**

* * * * *

(a) Affix two or more permanent legible labels reading "Unleaded Gasoline Only" or "Unleaded Fuel Only" to such vehicle at the time of its manufacture, as follows:

(1) One label shall be located on the instrument panel so as to be readily visible to the operator of the vehicle:

*Provided, however,* that the required statement may be incorporated into the design of the instrument panel rather than provided on a separate label, and that this paragraph shall not apply to motocycles as defined at 40 CFR 86.401–78; and

(2) One label shall be located immediately adjacent to each gasoline filler tank inlet, outside of any filler inlet compartment, and shall be located so as to be readily visible to any person introducing gasoline to such filler inlet, and for motorcycles, such label shall be readily visible from the left side and the right side of the vehicle: *Provided, however,* that the Administrator may, upon application from a motor vehicle manufacturer, approve other label locations that achieve the purpose of this paragraph.

(b) * * *

(2) Paragraph (b)(1) of this section shall not apply to motorcycles.

* * * * *

[FR Doc. 85–19586 Filed 8–19–85; 8:45 am]

BILLING CODE 6560–50–M

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**40 CFR Part 180**

**[OPP–300135; FRL–2863–2]**

**Mineral Oil; Tolerance Exemption**

*Correction*

In FR Doc. 85–16477 beginning on page 28956 in the issue of Wednesday, July 17, 1985, make the following correction: In the third column, in the Supplementary Information, in the seventh line, "use a" should read "use as a".

BILLING CODE 1505–01–M

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**40 CFR Part 180**

**[OPP–300133; FRL–2664–8]**

**Octyl Epoxytallate, Stearic Acid, 4,4'-Isopropylidene-Diphenol Alkyl ($C_{12}$–$C_{15}$) Phosphites, Carbon Black, Chlorinated Polyethylene, and Epoxidized Soybean Oil; Tolerance Exemptions**

*Correction*

In FR Doc. 85–16850, beginning on page 28957, in the issue of Wednesday, July 17, 1985, make the following corrections: On page 28958, first column:

1. In the third complete paragraph, fourth line, remove "$C_{15}$)".

2. In the sixth complete paragraph, seventh line, "limoleic" should read "linoleic".

BILLING CODE 1505–01–M

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Part 2910**

**Airport Lease**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The proposed amendments would change the terms for annual rental; provide for an application recordation service fee which more accurately relfects current administrative costs for the processing of applications, and revise procedures to make them more streamlined and efficient. The proposed rulemaking also would amend existing regulations at 43 CFR Part 2911 to remove provisions relating to withdrawal of public lands for beacon lights and air navigation facilities which were repealed by the Federal Land Policy and Management Act of 1976.

**DATE:** Comments should be received by October 21, 1985. Comments postmarked or received after this date may not be considered in the decisionmaking process for the development of a final rulemaking.

**ADDRESS:** Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Etchart, (202) 343–8693.

**SUPPLEMENTARY INFORMATION:** The proposed rulemaking would make a number of changes in existing regulations relating to airport leases on public lands. The changes include addition of definitions that clarify responsibilities for program management, revision of application processes to make them more efficient, and fee revision to help the Department of the Interior offset costs incurred in application processing. These changes are discussed below.

**Changes Discussed**

*Section 2911.0–1 Purpose.*

This section identifies the purpose of these regulations.

*Section 2911.00–3 Authority.*

This section is revised to delete redundant language concerning Secretarial authority to make public lands available for airport leases and beacon lights, other navigational aids, and other uses.

*Section 2911.0–5 Definitions.*

This new section would provide definitions of terms which are used in this subpart. The new definitions are primarily devoted to ensuring clarity regarding what is meants by such terms as "Authorized officer," "Applicant," "Public airport", and the like.

The terms defined in this section are used in other sections of the proposed rulemaking which have been changed to make them reflect current nomenclature for the administrative offices and authorized officers of the Federal Aviation Administration and the Bureau of Land Management.

*Section 2911.1–1 Terms and conditions.*

This section is revised to state more clearly that the authorized officer has the authority to cancel a lease for a variety of reasons, including failure on the part of the lessee to make use of the facility, failure to timely pay rentals due under the lease, or failure to maintain the premises in accordance with standards established by the Federal Aviation Administration.

This section is further revised by amending paragraph (e) to simplify the rental determination and collection process, as well as to reflect the policy of the Department of the Interior to receive fair market value for the use of the public lands. Provisions also is made for rental charges at 50 percent of the fair market value where the lessee is a unit of state government or political subdivision, including counties and municipalities.

*Section 2911.1–3 Beacon lights.*

This section would be eliminated by the proposed rulemaking. The Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.) repealeld a portion of the Airport Grants Act (49 U.S.C. 214) which provided the Secretary of the Interior with the authority to grant permission to establish beacon lights and other air navigation facilities upon the public lands.

*Section 2911.2 Procedures.*

This section would be revised by modifying the application process to add a new section which provides for persons seeking to lease public lands under this subpart to consult with the Bureau of Land Management authorized officer prior to initiation of the formal application process. The intent of this process is to familiarize potential

applicants with statutory and regulatory requirements, determine land availability, clarify respective responsibilities, assess conformity of proposed use with land use plans and minimize the time and expense of the formal application process.

This section would also be revised to include the requirement that a Notice of Realty Action be published in the **Federal Register.**

The proposed rulemaking would provide for a filing fee of $100 to be submitted with the application and also require applicants to pay the cost of publishing the required Notice of Realty Action in the **Federal Register** and in a local newspaper.

As proposed, the regulations would require a minimum period of 45 days following publication of the Notice of Realty Action for the authorized officer to consider public comments prior to determining whether to issue a lease.

The principal author of this proposed rulemaking is Mark D. Etchart, Division of Lands, Bureau of Land Management, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

Based upon the environmental assessment and the finding of no significant impact, it is hereby determined that the publication of this proposed rulemaking is not a major Federal action significantly affecting the quality of the human environment and that a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is not required.

The Department of Interior has determined that this document is not a major rule under Executive order 12291 and no Regulatory Impact Analysis is required. The Department of the Interior has further determined that this proposed rulemaking will not have a negative effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). There will be no significant effect on any user groups; any economic effects of the proposed regulation will be positive.

This proposed rulemaking contains no information collection requirements that must be submitted to the Office of Management and Budget for clearance under 44 U.S.C. 3507.

**List of Subjects in 43 CFR Part 2910**

Airports, Alaska, Mines, Public lands, Recreation areas, Waste treatment and disposal.

Under authority of the Act of May 24, 1928, as amended and the Federal Land Policy and Management Act, it is proposed to amend Group 2900, Part 2910, Subpart 2911, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

## PART 2910—[AMENDED]

1. Part 2910 is amended by revising Subpart 2911 to read:

**Subpart 2911—Airport**

Sec.

2911.0–1 Purpose.
2911.0–3 Authority.
2911.0–5 Definitions.
2911.0–8 Lands available for leasing.
2911.1 Nature of interest and terms.
2911.1–1 Terms and conditions.
2911.2 Procedures.
2911.2–1 Proposal.
2911.2–2 Applications.
2911.2–3 Report by Administrator; Notice of Realty Action.
2911.2–4 Execution of lease.

**Authority:** 49 U.S.C. 211; 43 U.S.C. 1701 et seq.

## Subpart 2911—Airport

### § 2911.0–1 Purpose.

This subpart sets forth procedures for issuance of airport leases on the public lands.

### § 2911.0–3 Authority.

The Act of May 24, 1982 (45 Stat. 728, as amended, 49 U.S.C. 211–213), authorizes the Secretary of the Interior to lease for use as a public airport, any contiguous unreserved and unappropriated public lands not to exceed 2,560 acres in area.

### § 2911.0–5 Definitions.

"As used in this subpart, the term:

(a) "Act" means the Act of May 24, 1928 (45 Stat 728, as amended, 49 U.S.C. 211–213).

(b) "Secretary" means the Secretary of the Interior.

(c) "Authorized officer" means any employee of the Bureau of Land Management who has been delegated the authority to perform the duties described in this subpart.

(d) "Administrator" means the Administrator of the Federal Aviation Administration.

(e) "Applicant" means a citizen of the United States; a group or association of citizens of the United States; a corporation, organized under the laws of the United States or of any State, authorized to conduct business in the State in which the land involved is located; or a State or political subdivisions thereof, including counties and municipalities.

(f) "Public airport" means an airport open to use by all persons without prior permission of the airport lessee or operator, and without restrictions within the physical capacities of its available facilities.

### § 2911.0–8 Lands available for leasing.

Any contiguous unreserved and unappropriated public lands, surveyed or unsurveyed, not exceeding 2,560 acres in area, may be leased under the provisions of the Act, subject to valid existing rights under the public land laws.

### § 2911.1 Nature of interest and terms.

### § 2911.1–1 Terms and conditions.

(a) The lessee shall, within 1 year from the date of issuance of the lease, equip the airport as required by the Administrator and file a report thereof in the Bureau of Land Management District office having jurisdiction over the lands under lease.

(b) At any time during the term of the lease, the Administrator may have an inspection made of the airport, and if the the airport does not comply with the ratings set by the Federal Aviation Administration, the Administrator shall submit a written statement describing the deficiencies to the Bureau of Land Management for appropriate action.

(c) The authorized officer may cancel, in whole or in part, a lease issued under the Act for any of the following reasons: Lessee failure to use the leased premises or any part thereof for a period of a least 6 months; use of the property or any part thereof for a purpose other than the authorized use; failure to pay the annual rental in full on the date due; failure to maintain the premises according to the ratings set by the Federal Aviation Administration; failure to comply with the regulations in this part or the terms of the lease.

(d) Leases under the Act shall be for a period not to exceed 20 years and may be renewed for like periods.

(e) State or political subdivisions thereof, including counties and municipalities, shall pay to the lessor an annual rental calculated at the appraised fair market value of the rental of the property less 50%, with a minimum annual rental payment of $100. Annual rental for leases to any citizen of the United States, any group or association of citizens or corporation of the United States shall be at appraised fair market value of the rental, with a minimum annual rental payment of $100. In fixing the rentals, consideration shall be given to all pertinent facts and circumstances, including use of the airport by government departments and agencies. Rental of each lease shall be reconsidered and revised at 5-year intervals to reflect current appraised fair market value. The first annual rental

payment shall be made prior to issuance of the lease. All subsequent payments shall be paid on or before the anniversary date of issuance of the lease.

(f) The lessee shall agree that all departments and agencies of the United States operating aircraft shall have free and unrestricted use of the airport and, with the approval of the authorized officer, such departments or agencies shall have the right to erect and install therein such structures and improvements as are deemed advisable by the heads of such departments and agencies. Whenever the President may deem it necessary for military purposes, the Secretary of the Army may assume full control of the airport.

(g) The lessee shall submit to the Administrator for approval regulations governing operations of the airport.

**§2911.2 Procedures.**

**§ 2911.2-1 Proposal.**

(a) Persons seeking to lease public lands under this subpart shall first consult with the Bureau of Land Management authorized officer in the District or Resource Area Office in which the lands are located. Such consultation is necessary to determine land availability and conformity of proposed use with approved land use plans, explain associated statutory and regulatory requirements, familiarize the potential applicant with respective managment responsibilities, set forth the application processing procedures for the proposed action, and identify potential conflicts. Upon completion of the consultation, persons seeking an application shall submit development and use proposals to the authorized officer for consideration.

(b) Proposals need not follow a prescribed format, but shall include a description of the affected lands, a concise description of the intended development and use, the names of all persons involved with the proposal, and any other information which the authorized officer consider necessary to evaluate fully the proposal.

**§ 2911.2-2 Applications.**

(a) Upon determination by the authorized officer that a proposal submitted in accordance with § 2911.2-1(b) of this title appears consistent with State and Federal laws, programs, policies, and applicable land use plans, the proponent may file an application with the authorized officer. No specific format is required for the application.

(b) Each application shall clearly describe the lands applied for and contain a plan of development signed by the applicant or by duly authorized agent or officer of the applicant. When required by the authorized officer, the application shall include copies of the appropriate State, county, or municipal airport licenses or permits, as well as such additional States and local clearances as may be required.

(c) Each application shall be accompanied by a non-refundable recordation and service fee of $100. Each applicant shall also be required to pay the cost of publication of a Notice of Realty Action in the **Federal Register** and a newspaper of general circulation in the area in which the lands are located.

**§ 2911.2-3 Report by Administrator; Notice of Realty Action.**

Upon receipt of the application, the authorized officer shall send 1 copy to the Administrator for consideration concerning what fuel facilities, lights, and other furnishings are necessary to meet the rating set by that agency. After receiving the report of the Adminstrator, and before making a determination to issue a lease, the authorized officer shall publish a Notice of Realty Action in the **Federal Register** and in a newspaper of general circulation in the area of the lands to be leased. The notice shall provide 45 days from the date of publication for comments by the public. Comments shall be sent to the office issuing the notice. The notice shall not be published until the authorized officer has received the recordation service fee from the applicant.

**§ 2911.2-4 Execution of lease.**

Upon receipt of the payments required by § 2911.2-2(c) of this title and not less than 45 days following the publications required by § 2911.2-4 of this title, the authorized officer shall make a decision on the application and, if the application is approved, issue the lease.

February 8, 1985.

J. Steven Griles,

*Deputy Assistant Secretary of the Interior.*

[FR Doc. 85-19830 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-84-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 31, 33, 42, and 43

[CC Docket 78-196]

### Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies

**AGENCY:** Federal Communications Commission.

**ACTION:** Order initiating discussions.

**SUMMARY:** The Commission has ordered the staff to initiate discussions with selected carriers who are participants in the rulemaking proceeding, CC Docket 78-196 (50 FR 1590, Jan. 11, 1985). In this proceeding, the Commission proposed to revise the uniform system of accounts for telephone companies. The discussions will focus on three areas of concern and are intended to resolve the problems pertaining to the respondents estimates of longer implementation times and higher implementation costs. The areas of concerns are: 1. the disaggregation of central office equipment plant accounts; 2. the expense matrix; and 3. the expensing versus capitalization of certain costs.

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

**FOR FURTHER INFORMATION CONTACT:** John T. Curry, Chief, Accounting Systems Branch, Common Carrier Bureau, (202) 634-1861.

**SUPPLEMENTARY INFORMATION:**

### Order

In the matter of revision of the Uniform System of Accounts and financial reporting requirements for class A and class B telephone companies (parts 31, 33, 42, and 43 of the FCC's Rules), CC Docket No. 78-196.

Adopted: August 7, 1985.
Released: August 13, 1985.

By the Chief, Common Carrier Bureau.

1. On January 3, 1985, the Commission released a Further Notice of Proposed Rulemaking (50 FR 1590, Jan. 11, 1985) in the above-captioned proceeding which proposed to rescind Part 31 of the Commission's Rules and Regulations (Uniform System of Accounts for Class A and Class B Telephone Companies) and Part 33 of the Commission's Rules and Regulations (Uniform System of Accounts for Class C Telephone Companies). The Commission proposed to replace these Parts with a single new Uniform System of Accounts for Telephone Companies.

2. The proposal was based on recommendations of the Telecommunications Industry Advisory Group (TIAG) which the Commission established to assist in the design and development of the proposed accounting system. The TIAG, which was comprised of representatives from eleven distinct constituencies,[1] was

[1] The eleven constituencies were the Federal Communications Commission, American Telephone and Telegraph Company, Bell Communications Research, large independents, United States Telephone Association, American Institute of Certified Public Accountants, Other Common

Continued

charged with designing the basic framework for the new system along with developing the necessary accounts, account definitions, items lists and accounting rules. While the ultimate responsibility for the revision of the USOA remained with the Commission, the TIAG provided the Commission with the invaluable experience and resources of hundreds of professionals. The proposed revisions of the USOA accounts, account text and general instructions are to a large extent taken from the TIAG recommendations; however, the Commission incorporated some changes to reflect regulatory needs.

3. In response to the Further Notice of Proposed Rulemaking, the Commission has received comments from 163 parties and reply comments from 34 parties which when combined total more than 2500 pages of comments. In reading the comments and reply comments two problems are apparent. These are that the carriers' estimates of the costs of implementation are larger and the estimates of time required for implementation are longer than the Commission had originally expected.

4. The comments indicate three areas of concern which drive the contentions of high implementation costs and the need for a long implementation schedule. These three areas are: a. The disaggregation of the plant accounts, specifically, central office equipment; b. the cost-type expense matrix; and c. the expensing versus capitalization of certain costs. The record is not clear as to why proposed changes in these three areas have such an unexpectedly high impact. Part of the reason for the problem may be due to independent expansion of the carriers' accounting systems beyond current Commission requirements which have taken place over the years because of internal management needs. However, as we have stated, the record is not clear.

5. The only way for the FCC staff to determine the reasons for the longer implementation time-frame and the higher implementation costs is to initiate direct discussions with the carriers. Therefore, the FCC staff will initiate limited discussions with carriers to explore resolutions to these problems.

6. Accordingly, it is ordered that the FCC staff will initiate limited discussions with selected carriers focused on the three topic areas discussed in the preceding paragraphs; and a record of each of the discussions will be entered into the Docket.

Carriers, National Association of Regulatory Utility Commissioners, consumers, equipment manufacturers, and large users.

7. It is further ordered that the Secretary shall cause a copy of this Order to be published in the Federal Register.

Federal Communications Commission.

**Albert Halprin,**

*Chief, Common Carrier Bureau.*

[FR Doc. 85-19849 Filed 8-19-85; 8:45 am]

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**47 CFR Part 64**

**[CC Docket No. 85-229]**

## Third Computer Inquiry

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The FCC is proposing to amend its Computer II rules to establish a revised regulatory framework to address the increasingly competitive telecommunications industry, and to address specific problems that have arisen. The existing rules are impeding the development of efficient new telecommunications services, and the industry conditions that led to their adoption in 1980 have changed. In view of this, proposals are made to establish a regulatory framework that acknowledges these changes, and to establish rules that promote efficiency, rather than impeding it. The intended effect of the proposals is to promote the continued development of unregulated competition, while ensuring that the public can benefit from technological efficiencies that are available.

**DATES:** Comments must be received on or before October 30, 1985 and replies must be received on or before November 29, 1985.

**ADDRESS:** Federal Communication Commission, 1919 M Street NW., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael S. Slomin, Legal Assistant to the Chief, Common Carrier Bureau, 202-632-6910.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 64**

Civil defense, Claims, Communications common carrier, Computer technology, Credit, Foreign relations, Handicapped, Political candidate, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

A major focus of the proposals is on the effects of the Second Computer Inquiry. For reference, refer to 45 FR 31319 (May 13, 1980), 46 FR 5984 (Jan. 21, 1981), and 46 FR 59976 (Dec. 8, 1981).

**Notice of Proposed Rulemaking**

In the matters of: Amendment of § 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); and Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; and Communications Protocols under § 64.702 of the Commission's Rules and Regulations; CC Docket No. 85-229.

Adopted: July 25, 1985.

Released: August 16, 1985.

By the Commission: Commissioner Patrick concurring and issuing a statement at a later date.

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## I. Overview: Introduction

1. In the post-World War II period, and increasingly over the past decade, there has been a near-revolutionary change in telecommunications and related fields in the United States. In the 1940's, telecommunications was virtually a complete monopoly by AT&T and the then-Bell System. Independent telephone compaines participated, but they were partners with the Bell System, not competitors. Some measure of competition was offered by the Western Union Telegraph Company, but it was limited in scope and effect, and overlaid by a series of contracts between AT&T and Western Union. Thereafter, new entry in communications was permitted and facilitated by decisions of this Commission, and new industries that were dependent on telecommunications arose free of the constraints of regulation, *i.e.*, data proceeding and customer premises equipment industries.

2. In the 1960's and earlier, regulated carriers did not participate to a great extent in data processing, but they did provide, on a regulated basis, customer premises equipment.[1] In the *First Computer Inquiry*, begun in the mid-1960's, this agency declared that "communications" offerings would continue to be treated under the Communications Act, that "data processing" offerings would continue to be unregulated, and that regulated carriers might provide data processing services on a structurally separated basis.[2] At the same time, we acknowledged that computer technology could and should be employed to automate and support conventional communications. A third category, the "hybrid" one, was identified where computer technology might support both data processing and communications. Computer I did not address provision of data processing by AT&T and the Bell System since it was thought that these companies were prohibited from providing such service under constraints imposed by the 1956 Consent Decree then in effect.[3]

3. In the *Second Computer Inquiry* (hereafter, "Computer II"),[4] we maintained the unregulated treatment of data processing, but we refined its definition using a new term, "enhanced services," and eliminated the uncertain "hybrid" category. We re-examined the structural separation approaches of the first inquiry, refined them, and applied them in modified form to various carriers: AT&T and the Bell Operating Companies were treated under the approach, and all others were treated under another. At the same time, we required that all customer premises equipment be provided on an unregulated basis.

4. A fundamental purpose in instituting Computer II was to avoid the ambi- guities and uncertainties that were becoming increasingly apparent in the application of the "date processing" and "hybrid" definitions of Computer I to services. Likewise, customer premises equipment was impossible to classify as traditional mere voice equipment or data processing equipment.[5] The "enhanced services" definition of Computer II, and the deregulation of customer premises equipment, were intended to establish a durable dichotomy between regulated and unregulated activities, to facilitate planning and decisionmaking by the public and by industry. While the treatment of customer premises equipment has served this purpose, the treatment of service offerings has not. At an ever-increasing pace since Computer II was adopted in 1980, we have been called upon to clarify, interpret and apply the "enhanced services" definition to offerings that carriers seek to make to the public on a regulated basis, and to offerings that others seek to make on an unregulated basis.

5. A pattern has emerged. Carriers have generally not sought to offer data or information "processing" of their subscriber's communications. Rather, they have sought to offer capabilities that seem to improve the ability of users to communicate. Yet, the specific definition of "enhanced service" adopted in Computer II brought into question whether such capabilities could be offered on a regulated basis.

6. Computer II also imposes structural separation on certain carriers, currently AT&T and the BOCs. Absent a waiver of the Computer II structural separation constraints, facilities that create or implement "enhanced services" are not permitted to be integrated with facilities for common carrier communications. In some cases, however, these capabilities cannot be efficiently created unless they are integrated with the underlying common carrier service. Thus, the result has been a denial to the public of efficient services that can be created through such integration and their benefits.

7. One area where such issues have arisen is protocol conversion, an element of the Computer II definition of enchanced service. In some cases, if protocol conversion is not integrated with communictions facilities it can be performed effectively elsewhere, but only at higher costs. In our *Protocols Decision*,[6] discussed *infra*, we established a framework under which such issues could be analyzed and the most significant inefficiencies of Computer II could be addressed through *ad hoc* waivers. But, while this approach established a framework under which undue inefficiency can be avoided, it has contributed to uncertainty in the capital-intensive telecommunications and related data processing industries where planning decisions often must be made years in advance.

8. A second area where such issues have arisen is voice storage. Shortly after Computer II was adopted, we were confronted with arguments that so-called "Custom Calling II" voice storage services should be subject to structural separation. AT&T contended that while such services could be offered on a separated basis, if offered outside the network they would be uneconomical. Its opponents argued that competition among others and AT&T's separate affiliate, if unperturbed by AT&T's proposed integration of Custom Calling II with its basic services, would create comparably desirable offerings. And, the resulting competition would promote efficiencies to offset the efficiencies fore-gone by preventing co-location in AT&T's (and the BOCs') central offices of the voice storage equipment to implement Custom Calling II. They argued that to accept Custom Calling II as basic would lead to a similar conclusion for other actual information service—library retrieval-type service involving subscriber interaction with stored information—and nullify this element of the enhanced service definition. We accepted these arguments.[7] In the five ensuing years, identical services have not emerged.[8] The principal loser has been the public.

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[1] Indeed, prior to the adoption of our Carterfone decisions, 13 FCC 2d 420, *recon. denied*, 14 FCC2d 571 (1968), customer premises equipment was almost always required to be furnished by the telephone companies (on a regulated, tariffed basis), and therefore was almost a complete monopoly. (Certain "special" entities were permitted to furnish their own equipment, but this was very limited. *See, Interstate and Foreign Message Toll Telephone Service, 56 FCC2d 593, 598 (1975).*

[2] Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities ("Computer I" or "First Computer Inquiry"), 28 FCC2d 291 (1970) (Tentative Decision), 28 FCC2d 267 (1971) (Final Decision), *aff'd in part sub nom., GTE Service Corp., v. FCC, 474 F.2d 724 (2d Cir. 1973), dec'n on remand*, 40 FCC2d 293(1973).

[3] United States v. Western Electric Co., 1956 Trade Cas. 71,134 (D.N.J. 1956).

[4] Second Computer Inquiry, 77 FCC2d 384 (1979) (Final Decision), *aff'd on reconsideration*, 84 FCC2d 50 (1980), 88 FCC2d 512 (1981), *aff'd sub nom.*, CCIA v. FCC, 693 F.2d 198 (D.C. Cir. 1932), *cert. denied sub nom.* Louisiana P.S.C. v. United States, 461 U.S. 938 (1983).

[5] *See, e.g.*, Am. Tel. and Tel. Co. Dataspeed 40/4 Tariff Revisions, 62 FCC2d 21 (1977), *aff'd sub nom.* Intl. Business Machines Corp. v. FCC, 570 F.2d 452 (2d Cir. 1978).

[6] Communications Protocols under § 64.702 of the Commission's Rules, 95 FCC2d 584 (1983). Although that proceeding was terminated in the cited order, petitions for reconsideration are pending. We address the substance of those petitions in this notice, and therefore shall incorporate the record of Gen. Docket No. 80-756 herein. Accordingly, that proceeding remains closed.

[7] 84 FCC2d at 54-56 (deeming Custom Calling II services as "enhanced"); Am. Tel. and Tel. Co. Petition for Waiver ("Custom Calling II"), 88 FCC2d 1 (1961) (denying a waiver to permit Custom Calling II to be offered without structural separation).

[8] Of course, the type of interconnection that might have been used by others to configure services of this nature, at costs comparable to those inherent in AT&T's proposed custom calling services, was unavailable. *See* our discussion of the details of this in Sections IV and V *infra*. Had comparably efficient interconnection been available, others might be providing such services today. Absent such interconnection, the costs were far higher than the telephone companies' costs of providng such custom calling services on an integrated basis, and this may explain why alternatives have not arisen.

9. A third area where such issues have arisen is new routing and call setup capabilities proposed to be introduced in basic switched services. Virtually any new call routing feature that AT&T (or a BOC) might propose to introduce can be (and might be) challenged as violative of Computer II.[9] Most of these do not involve manipulation of information as such, or even protocol conversion. They involve use of stored data in the network by the network to set up users' calls, or delivery of information from the network concerning users' calls. While services of this nature ultimately *could* be used as alternatives to true information manipulation of retrieval services, the ones proposed have not risen to that level.[10] We are asked to bar the introduction of new network capabilities not because of the current proposed uses, but because they *might* at some time (if ever) become enhanced services. To the extent that we might accept arguments of this nature, the public would be the loser.[11]

10. Moreover, the definition of "enhanced service" itself has been ambiguous. The first principal clause of the definition addresses "computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information." Many experts on standardization of protocols, however, would probably include action on the "format" and "code" within processing of the "protocol."[12] A change in the speed of a subscriber's transmission might well be viewed as a change in protocol, yet because we ruled in Computer II that intermediate network storage not under the control of the subscriber does not invoke the definition of "enhanced service", we have treated a speed change as an element of basic service.[13]

11. And finally, the applicability of the definition of "enhanced service" has been somewhat unclear. The rule provides that, "Enhanced services are not regulated under Title II of the Act." Yet, the structure is essentially a resale one, and under the rule involves the use of underlying services that are "offered over common carrier transmission facilities used in interstate communications," implying that underlying facilities are obtained subject to common carrier regulation. A continuing ambiguity has related to what are the underlying facilities and services in this context, since many enhanced services involve a melange of options that do and do not invoke the "enhanced services" definition. Most significantly, this issues has arisen in the context of provision of packet-switched services that ordinarily use the X.25 interface. A data transmission using X.25 at each end does not invoke the "enhanced services" definition. A data transmission on the same network using an asynchronous interface at one end and the X.25 interface at the other does. Is the entire packet-switched service to be treated as "enhanced", with the private lines that ordinarily are used to configure such networks to be thought of as the underlying common carrier services? Is only the option of protocol-converted end-to-end transmission (asynchronous-to-X.25) to be treated as "enhanced"? Or, is the protocol conversion function (asynchronous-to-X.25) alone to be treated as "enhanced."

12. Various circumstances have raised these questions. For example, those entities that have historically formed enhanced services solely using others' transmission facilities have treated the entirety of their offerings as unregulated, including those options that do not invoke the "enhanced services" definition and those that do. Conversely, when AT&T sought to offer X.25/X.25 packet-switched service on a regulated basis, since no element of the proposed offering invoked the "enhanced services" definition we saw no impediment to its doing so.[14] And, in our recent order waiving the structural separation limitations governing provision of asynchronous/X.25 protocol conversion by certain petitioning Bell Operating companies, we concluded that while an entity not subject to structural separation ordinarily has the option of treating such "non-enhanced" and "enhanced" services alike as unregulated, this option would be denied these Bell Operating companies that would place protocol conversion capabilities within their central offices.[15]

13. The foregoing considerations, and others discussed herein, require that we re-examine the definitions. At minimum, those that do not involve manipulation or retrieval of subscribers' message information require new treatment. A change in a code, for example, is not a change in information. If the originator seeks to send forward the letter "A", and the letter "A" ultimately arrives at the destination, the information that the users intend to communicate is the same at both ends, even if the letter "A" is coded in one binary bit pattern at the soure end and another at the destination end. All that has changed in such a transmission are the details of the signal representing the character.

14. Similarly, if the letter "A" may be sent and accepted at any time at the origination end (asynchronously) but only received at a given time or with a special non-informational (overhead) pattern to facilitate synchronization at the destination end (synchronously), the information is unchanged. Different procedures at each end for determining and informing the terminals when transmission is to ensue do not change this. All that has changed in such a transmission is a primitive "protocol." The ability of a communications network to facilitate such transmission of the letter "A" by changing its coding or time of transmission (a code or protocol conversion) facilitates communication of the letter "A". It does not create, alter, or delete the content of the subscriber's communications information, and it does not involve subscriber interaction with stored information.

15. Both of these forms of processing, while not informational, can improve the efficiency of communicating information. In the absence of these forms of processing, the efficiency of communicating the electrical signals that they do alter is impaired. The current Computer II structural separation reaches this result. In this proceeding, we shall examine several alternative means that might be employed to minimize such inefficiency.

16. However, it may develop that proposals directed primarily to improving the treatment of functions in the first major clause of the enhanced service definition may be appropriately applied also to those in the remaining clauses, those that reflect true information processing. Or, it may prove inappropriate or unworkable to seek to

[9] In North American Telephone Association,—— FCC2d ——,FCC 85-248 (released May 29, 1985), we addressed one group of such claims.

[10] *See, e.g.*, Am. Tel. and Tel Co. (Advanced 800 Service), —— FCC2d ——, FCC 84-562, released Nov. 30, 1984, at para. 5 and n. 10.

[11] While the Final Decision in Computer II established principles for treating these "adjuncts" to basic service, North American Telephone Ass'n, n. 9, *supra*., at paras. 23-28, these principles are not reflected in the current rules, creating some degree of uncertainty.

[12] *See*, Zimmerman, "OIS Reference Model—the OSI Model of Architecture for Open Systems Interconnection," IEEE Trans'ns on Comm'ns, Vol. COM-28 No. 4, 425-32 (April, 1980) (cited in the Protocols Decision, 95 FCC2d at 597).

[13] *E.g.*, AT&T (BPSS), 91 FCC2d 1 (1982), 94 FCC2d 46 (1983). *See also*, Protocols Decision, 95 FCC2d at 601, N. 5

[14] BPSS, *Id.*

[15] This condition is expressly subject to the outcome of this proceeding.

differentiate the treatment of first-clause services from second- and third-clause services. Thus, we do not limit our proposals solely to "processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information," the first-clause services.

17. In this regard, it might be noted that the Modification of Final Judgment ("MFJ") governing AT&T and the now-divested Bell Operating Companies, *United States* v. *Am. Tel. and Tel. Co.*, 552 F.Supp 131, 226 (D.D.C. 1982), *aff'd sub nom., Maryland* v. *United States*, 460 U.S. 1001 (1983), would appear variously to restrict, for the present, AT&T and the BOCs from providing at least some true information services. AT&T is restricted from engaging in "electronic publishing" over its own facilities for seven years, and the BOCs are restricted from providing "information services" unless and until the decree is changed, or its restrictions are waived. In view of these external restrictions, a revised Computer II treatment of the services in the second and third clauses of the enhanced service definition might not affect the ability of these carriers to offer such services. However, revision of our rules governing all carriers (including those not subject to structural separation), while not immediately effective for AT&T and the BOCs because of these MFJ constraints, might be desirable for other carriers. For example, our present treatment of information processing as a competitive, unregulated offering may make sense in regions of the country where competitive vendors of such services are available. It may make less sense in those rural areas where, as a practical matter, if a telephone company does not provide such services they may remain unavailable. And, if provision of such services will be a monopoly in such areas, it seems fair to ask whether they might appropriately be treated as part and parcel of basic service, subject to regulation. Thus, while a number of our proposals are focused on the first-clause services, we intend to consider whether they might also be applied to services in the remaining clauses.

18. Wholly apart from the foreign considerations, the industry itself in 1985 is not the same industry that existed in the late 1960's and the late 1970's when the first and second computer inquiries were being considered. The monolithic Bell System is no more. It has been split into eight companies that increasingly seek to compete with one another, subject to the constraints of the new MFJ that replaces the 1956 Consent Decree. Also, the largest Independent telephone company, GTE, is now subject to contraints in an antitrust Final Decree.[16] It was reported recently that the IBM Corporation will seek to increase its already sizeable participation in telecommunications by increasing its ownership of SBS (a satellite carrier) to 100 percent, by selling SBS to MCI (the largest non-traditional interexchange carrier) in exchange for stock in MCI, and by retaining the right to increase its investment in MCI thereafter. (These transfers are subject to Commission approval and antitrust review, therefore it is not necessarily a foregone conclusion that they will be consummated.) IBM already provides telecommunications equipment through its ownership of Rolm Corporation (a large provider of PBXs and related "telephone"-type equipment) and its own manufacturing operation ("data"-type equipment), and it already owns 60 percent of SBS. By any measure, IBM is capable of competing effectively with the most entrenched participants in telecommunications. The competitiveness of telecommunications has improved and will continue to do so, in no small measure as a consequence of these marketplace and antitrust developments, and our Computer II and other pro-competitive decisions.

19. These significant changes in the industry warrant a fresh look at the policies and rules adopted previously. We should no longer subject either AT&T or the BOCs to structural separation based on the criteria we previously utilized. We tentatively find that the concerns that caused us to required structural separation of the provision of enhanced services by AT&T and the BOCs have lost their validity, to the point that the costs of requiring the Computer II subsidiary outweigh the public benefits. Also, AT&T lacks local "bottleneck" facilities, a basis for the Computer II imposition of structural separation on AT&T. And, we tentatively conclude that regulatory protections, short of structural separation, can adequately limit the BOCs, even if aggregated regionally, from using their exchange monopolies to obtain leverage in enhanced services. We encourage commentors herein to address these changes when formulating their views, and to indicate whether it would be appropriate to treat all carriers alike, or to differentiate our treatment of different groups or classes of carriers.

20. In this notice, we are instituting a comprehensive re-examination of the classification and treatment of provision of data processing and data communications services. We do not seek the result that any entity (except, perhaps, some or all dominant carriers) currently providing enhanced services on an unregulated basis be newly subject to state or federal regulation. We intend that their enhanced service offerings will continue to be in unregulated status. And we do not propose that carriers' fundamental obligation, unchanged by Computer II, to offer basic communications services generally, at reasonable terms and without unreasonable discrimination, be altered. What we do propose is that a more realistic line be drawn between those offerings that will continue to be treated under traditional regulatory approaches and those that are to be freed from them, without relying too heavily on artificial definitional approaches that technological advancement may make unworkable. This re-examination will include an examination of the structural separation conditions now governing AT&T and the BOCs. It will also include a re-examination of the bases upon which carriers not subject to structural separation will be permitted to offer services comparable to those now defined as "enhanced."

21. The most significant problems have arisen in the context of the relatively simple signal changes now included in the first principal clause of the enhanced service definition,[17] and perhaps the Custom Calling II-type of voice storage services. In Sections III–VI below, we make specific proposals to amend the Computer II rules to address these problems. However, we recognize that such proposals tend to follow the fundamental approach of Computer II. That is, they still would rely upon a definitional structure. The definition(s) would have varying effects on unregulated entities, entities subject to some regulatory constraints, and entities subject to more particularized regulatory

[16] *United States* v. *GTE*, 1983–2 Trade Cas. ¶65,833, *modified*, 603 F.Supp. 730 (D.D.C. 1984) (GTE's information services are required to be provided through structural separation.) Since the BOCs and GTE together serve about ninety percent of the telephone lines in the United States, it is clear that wholly apart from the treatment of true information services in our rules, the provision of such services by these firms is limited externally. We believe strongly that the MFJ and GTE Final Decree provisions are not an impediment to the provision of services now encompassed in the first major clause of the enhanced service definition.

[17] "[S]ervices, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information," § 64.702(a) of our rules. We term these "protocols-type processing" in this notice.

constraints. Like the present Computer II policies, these proposals fail to address the reality that the previously monolithic telecommunications industry is rapidly moving towards an effectively competitive one, with participants diversifying into allied and unallied endeavors. Computer II addresses two end states: regulated communications, and unregulated provision of two communications-related offerings, CPE and enhanced services. It does not address other communications-related offerings that might be made.

22. In view of this, the centerpiece of this proceeding will be a broad reexamination of regulatory policies that have been developing over the past several years. Computer II has been one of them, but it is not the only one. In Section II of this notice, we invite comment on proposals to greatly reduce reliance upon the definitional approach that governs carriers under Computer II, and the structural separation approaches governing some carriers, and to substitute for them approaches that we tentatively view as better directed to the industry of the mid-1980's and beyond.

23. Finally, we shall seek comment on issues concerning a *limited* class of equipment that has been treated as customer-premises equipment, namely, the current requirement that network channel terminating equipment ("NCTE") be provided on an unregulated basis by carriers, and that it be provided through structural separation by AT&T and the Bell Operating Companies. As is discussed in Section VI of this notice, adverse effects of our current treatment of NCTE may only now becoming apparent, and we seek comment on these. We do not propose, however, to revisit our determination that customer provision of such equipment must be permitted by carriers. We propose re-examination only of the Computer II determination that such equipment, when provided by carriers must be treated no differently than customer-premises equipment.

24. In sum, the purpose of this proceeding will be to establish revised standards and procedures for treating carriers' telecommunication, telecommunications-related and non-communications activities, and to reexamine the Computer II treatment of NCTE. In the past, we have created two largely independent groups of policies for doing so. The Computer I/Computer II policies sought to classify non-communications offerings definitionally. The Competitive Common Carrier ones sought to apply traditional regulatory approaches only to those offerings that raised concerns about the use of market power. In this proceeding we seek to harmonize these appraoches in a framework that will serve the multiple statutory goals of the Communications Act. We seek still greater benefits from the unregulated provision of competitive offerings, and the full exploitation of technological innovation and service improvement.

## II. Regulatory Framework

### *A. Introduction*

25. In the introduction to this notice, we summarized some of the problems that have arisen in the course of implementation of our Computer II policies and rules during the recent past. As noted, our waiver policies have served as a vehicle for avoiding the most significant inefficiencies of the current requirements, but the waiver process itself has created uncertainty and delay, the very adverse consequences of Computer I that Computer II was instituted to cure. The most significant problems have arisen in the context of what we are terming "protocols-type" processing. These are detailed in Section III below, and specific proposals for modification of the existing Computer II rules and policies to address the "protocols" issues are made there. That discussion applies here also. But, the specific proposals made there would not resolve more fundamental problems that arise from a structure that depends upon specific technological and service attributes, and not on underlying economic and policy concepts.[18] By way of introduction, we first explain in summary form the general approach proposed in this section, and broad Computer II problems that would be addressed by this approach. In the remainder of this section, we develop the concepts and issues in greater detail.

26. The current method of distinguishing between regulated and unregulated activities is to define broad service categories ("basic" and "enhanced"), and then determine the regulatory treatment of individual offerings according to how they fit the category definitions. The first proposed change would be to use market power as the distinguishing characteristic for treatment of some or all products, and to use regulatory tools to prevent the abuse of market power in monopoly products, and to prevent the leveraging of legitimate market power in monopoly products into a position of market power in potentially competitive products. The second major change would be to rely on accounting controls to identify the costs of separate categories of products rather than separate subsidiaries.

27. Computer I and Computer II both sought to draw a line between the unregulated data processing industry and the regulated communications industry. The problems detailed in Section I of this notice and below indicate that the definitional demarcation used in those inquiries is becoming increasingly inconsistent with the technology of communications. There is now no fundamental difference between the technology of communications and that of data processing. Technology used in what is generally thought of as data processing often is used to transfer information among terminals and other peripheral devices in a manner analogous to the transfer of information among telephones. The computers used in a digital telephone switch are not significantly different from the computers used in data processing, and both can and do implement the same processing functions. It is not the type of equipment used or specific functions that distinguishes data processing from communications, but rather, the differences in market power. The proposals below would change the basis of determining regulation from the function performed to the degree of market power in the product possessed by the dominant carrier providing it. They thus would integrate the issues which motivated the Computer II framework into our more general concern with market power, and allow a unified treatment of these issues with other issues in the Competitive Common Carrier proceeding.

28. The use of the Computer II separate subsidiaries to distinguish competitive from monopoly products provides strong protection against cross-subsidization and other potential abuses of monopoly power, but it also imposes costs by limiting the flexibility of carriers to devise new products, and by restricting legitimate gains from the economies of producing products together rather than separately ("economies of scope"). The use of separate subsidiaries also makes it difficult to modify the regulatory treatment of products as competitive conditions change. This proposal seeks to improve the economic efficiency of the industry while maintaining protection against abuse of market

[18] Our proposals in this section may ultimately complement the adoption of one or more of those made in the remaining sections of this notice, or supplant them. After the record is complete in this proceeding, we intend to adopt appropriate rules and policies, and we have specifically given notice of this.

power, by using accounting distinctions among classes of products rather than separate subsidiaries.

29. The proposed framework seeks to guard against the use of monopoly power in basic communications services to monopolize competitive services. This is a generic problem, and does not depend on the type of functional definitions that have been employed in Computer II. Consequently, no regulatory controls are proposed for services related to communications offered by non-common carriers or for services offered by non-dominant carriers. We do seek to draw a regulatory line with accounting separations between monopoly services of dominant common carriers and competitive offerings of these carriers. If a dominant common carrier offers an ancillary product that has cost characteristics that make it unlikely to receive effective competition, we propose to regulate that product directly together with basic communications services. If a dominant carrier offers a non-communications product, we propose that accounting controls be used to ensure that the non-communications product is not a burden to ratepayers of monopoly or near-monopoly services. If a dominant carrier offers an ancillary product that is subject to competition, but which does not depend on the bottleneck facilities of the carrier, we propose to treat that ancillary product the same as a non-communications product. Finally, if a dominant carrier offers an ancillary product that is subject to competition, and which depends on the bottleneck facilities of the carrier, we propose a set of accounting and tariff controls to ensure that the ancillary product is not a burden to ratepayers of the basic service, and that the carrier does not gain improper competitive advantage from its control of bottleneck facilities.

30. We now discuss several of the underlying problems that have been created by the Computer II definitional framework. Again, as noted previously, there are more specific problems that have arisen that are discussed in Sections III–VI of this notice, and these too would be addressed under the broad proposals of this section. To avoid repetition, that discussion is incorporated by reference.

31. First, in cases where enhanced and basic offerings are to be combined, it remains unclear *what* offerings are, or are not, still the subject of regulation. The existing definitional policies do not distinguish among those service vendors and offerings that, as a matter of broad policy, should be the subject of regulation and those that should not. Second, firms without market power, for example resellers of underlying capacity, remain subject to regulation (to varying degrees) if their offerings do not specifically invoke the definition of enhanced services; depending upon the treatment accorded under the previous issue, they may be wholly free of regulation if their offerings do invoke this definition. Yet, the economic concepts and policy bases are the same for all firms without market power, and do not depend on whether or not the offerings have features that invoke the Computer II definition. And third, even offerings that might have monopoly characteristics—and which might properly be subjected to a regulatory surrogate for competition—could be unregulated if they are within, or are treated as within, the present definition of "enhanced service."

32. An example of the first and third points above arose during the course of our consideration of the asynchronous/X.25 protocol conversion waiver requests of various Bell Operating Companies. There was precedent for the proposition that a combination of enhanced and basic services could be treated in its entirety as a unitary unregulated enhanced service (although there was also precedent that such a "contamination" approach need not be followed). The petitioners were seeking to integrate, in a relatively minimal sense for the present, protocol conversion capabilities with those used to provide those conventional telephone services that are unquestionably basic, *i.e.*, conventional switched exchange services and private line. Over time, such integration could be expected to become more comprehensive. Were we to have followed the "contamination" theory, at some point it might be argued that conventional exchange telephone service also will be unregulated because it is contaminated with the enhanced service of protocol conversion. This would be an improper policy result if exchange service remains, as it is now, a near monopoly otherwise warranting regulation. We declined, in that decision, to embark upon this path.[19]

33. The circumstances surrounding our grant of the X.25/X.75 waiver requests of these companies demonstrate the related point that some services presently defined as "enhanced" themselves may have monopoly characteristics, and as a matter of policy should not be treated as unregulated. The X.75 internetworking interface for interconnecting packet-switched networks was developed because the overall efficiency of packet-switched data transport through interconnected networks will decline dramatically unless it is employed to interconnect them. This interface *cannot* be generated externally to a packet-switched network without defeating the very purpose of utilizing it; it must be generated in the packet switches themselves to perform its intended function. Thus, creation of this interface is a "monopoly" for each network involved. No vendor, other than the one operating a given network, can generate the interface outside the network if it is to perform its function. If the network itself is otherwise providing a regulated basic service, it makes little sense to treat this interface as unregulated (or non-communications), yet under the present *Computer II* policies it would be so treated since the protocol conversion involved, X.25/X.75 conversion, is defined as an enhanced service.

34. In Sections III–V below, we make proposals that address the specific problems in these sections. Several of these proposals are phrased in the alternative, and we conclude tentatively that individually or in combination they would ameliorate the most pressing problems of *Computer II*. However, in this section we describe a broader change of course. We do so because increasingly it appears that a regulatory policy that turns on service definitions and service attributes—the basic/enhanced and network/CPE dichotomies established in Computer II—is fundamentally flawed. The important policy question is whether a given offering does or does not have monopoly characteristics, not what its service attributes are. If the offering has such characteristics, regulation may be appropriate. If it does not, regulation should permit competition to flourish. This approach does not turn on the nature or definition of an offering; it turns on its economic characteristics.

35. At the same time, *Computer II* both articulated goals governing all carriers, and employed the structural separation technique to achieve these goals in the case of AT&T and the Bell Operating Companies. Their then-dominance of the competitive CPE market, and their potential dominance of the enhanced service one (through a potential leveraging of market power in communications in these markets) made more stringent regulation of these firms necessary. While these goals remain valid, structural separation is not the only means that can be employed to achieve them. Indeed, no such devices

[19] Petitions for Waiver, *supra*, paras. 77–79. The treatment accorded therein was specifically made subject to the outcome of this proceeding.

have been employed for carriers other than AT&T and the BOCs, and problems do not appear to have arisen.

36. Thus, we believe it desirable to reopen the issue of regulatory tools, if any, that may be needed at this time to govern AT&T, the BOCs and perhaps other dominant carriers. We do so particularly since the entities and the markets involved have changed significantly since 1980. AT&T and the BOCs individually and together are no longer the Bell System. As a consequence of the divestiture, The size, scope and incentives of these firms have changed.

37. With the increasing trend towards diversification by carriers,[20] our disparate treatment of competitive enterprises that are within the CPE or enhanced services treatment of *Computer II*, and those that are not, may create significant problems. Our regulatory concerns are more immediate in the context of the uregulated CPE and enhanced service offernings than others. CPE and enhanced services depend upon basic communications services, and a dominant carrier may leverage its market power over such communications services into the related markets, or deny its competitors the ability to compete effectively through control over the communications capabilities these competitors depend upon for access to their markets. but, no subscribers to regulated service should bear the costs of competitive ventures. This baseline regulatory concern does not depend upon whether such ventures are, or are not, related (as CPE and enchanced services are) to the offerings addressed under the Act.

38. For these and other reasons discussed below, we are inviting comment on the broader change of course outlined in this section of the notice. Proposals in the remaining sections of this notice address, in a focused manner, some of the most pressing problems of Computer II, and comment thereon may aid in establishing a practical anchor for commenting on the concepts of the broader framework to be addressed in this section.[21] Thus, we strongly encourage those who file comments to address the relationships of both groups of proposals.

*B. Issues*

39. In the following sub-sections, we describe communications and non-communications undertakings, and our proposals.

1. Types of Offerings

40. We start by observing that our *Computer II, Competitive Common Carrier*, tariff and accounting policies have addressed three categories of offerings that are relevant to the regulatory plan of the Communications Act. We are not proposing to change these categories, only the treatment of offerings within these categories.[22] We first set forth these categories and briefly describe the treatment presently accorded:

a. *Basic Communications.* These are offerings that are unquestionably basic communications under the present *schema*, i.e., transport of information and electrical signals from one subscriber to another unchanged (or as that category might be modified in accordance with the proposals in Sections III–VI below).[23]

b. *Ancillary to Communications.* These are offerings that are cognizable under the Act, but which are not directly regulated under Title II thereof.[24] Examples include the supply of customer premises equipment[25] and the offering of enhanced services as presently defined. The category itself is broader, but our Computer II decisions have addressed only customer premises equipment and enhanced service offerings.[26]

c. *Non-Communications.* Apart from the above, there are offerings that do not involve communications, but which if made by an entity otherwise regulated under the Act might have some effect on that entity's ability to discharge statutory obligations governing its regulated offerings.

2. Present Treatment

41. Basic communications offerings in the first category above are subject to Title II of the Act. Prior to the development of telecommunications competition, the various tariff and certification (Section 214) provisions of the Act that subject offerings to routine regulatory review were applied to all carriers, and generally to all their service offerings. Significant distinctions were not drawn among carriers that were and were not subject to competitive pressures that could make such routine regulatory review unnecessary.[27]

42. Over the past several years, we have refined this treatment in our Competitive Common Carrier proceedings.[28] While non-dominant

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[20] AT&T has has been freed of the diversification constraints of the 1956 Consent Decree, and is increasingly entering new unregulated businesses. The BOCs are being permitted to do so under the district court's policies permitting line-of-business waivers (subject to an overall capitalization constraint of ten percent). Other dominant carriers have long been diversified.

[21] For Example, we invite comment below on accounting approaches to cost separation issues. An issue in Section IV below is whether others' equipment should have, or be required to have, the ability to achieve interconnection efficiencies comparable to those achieveable by carriers that integrate capabilities in their central offices. If others were able to receive interconnection to loops and inter-office circuits comparably efficient to that of the carriers, this could serve as a competitive constraint on unwarranted apportionment of the costs by the carriers, potentially making detailed regulation of cost separation less important than otherwise. The availability of comparably efficient interconnection would bear directly upon the nature and degree of regulatory constraints to govern ancillary-to-communications offerings of dominant carriers.

[22] However, the classification of particular offerings as communications or ancillary-to-communications ones might change if certain proposals in Sections III–VI of this notice were adopted together with the broader ones of this section. We specifically are holding open the possibility of combining some or all of the focused proposals with the broader ones here.

[23] *See*, Final Decision, 77 FCC2d at 420; Satellite Business Systems, 62 FCC2d 997, 1052 (1977), *aff'd sub nom.*, United States v. FCC, 652 F.2d 72 (D.C. Cir. 1979) (en banc) (discussion of transparency); Communications Protocols, 95 FCC2d 584, 585 (1983).

[24] *E.g.*, Final Decision, *id.*, 77 FCC2d at 432–35 and 450–57. In the Final Decision, we pre-empted all state regulation of enhanced services and customer premises equipment (other then certain transitional regulation of pre-existing customer premises equipment and enhanced services by entities then regulated), and resolved not to regulate such offerings federally under Title II of the Act. Since we have not otherwise employed our Title I ancillary jurisdiction over enhanced services and customer premises equipment, these offerings are currently unregulated at the state and federal level.

[25] We use customer premises equipment only as an example of this concept. Other than NCTE equipment addressed in section VI of this notice, customer-premises equipment is not at issue in this proceedings.

[26] An example of another "ancillary" offering that has variously been regulated is messenger delivery of a traditional telegram. Delivery of the telegram was not itself communication by wire or radio. It was encompassed under the Act under the broad definitions in sections 3(a) and 3(b) addressing "the receipt, forwarding, and delivery of communications" incidental to transmission by wire or radio. Although these provisions brought such delivery under the ambit of the Act if performed by an entity that already was subject to the Act, they did not establish jurisdiction over entities engaged solely in messenger delivery business.

[27] Our accounting rules, however, long distinguished among classes of carriers. For examples, refer to the following sections of the FCC's rules: Part 31 (accounting for large telephone companies), Part 33 (accounting for smaller telephone companies), Part 34 (accounting for radiotelegraph carriers), and Part 35 (accounting for wire-telegraph and ocean-cable carriers). Similarly, our periodic reporting requirements long distinguished among classes of carriers, see Part 43 of the rules.

[28] Notice of Inquiry and Proposed Rulemaking in Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor, 77 FCC2d 308 (1979), First Report and Order 85 FCC2d 1 (1980); Further Notice of Proposed Rulemeking, 84 FCC2d 445 (1981), Second Report and Order, 91 FCC2d 59 (1982).

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carriers remain subject to the substantive common carrier duties of the Act and its complaint processes, we have resolved to regulate their offerings upon complaint, and not routinely. And, we have made clear that a very strong *prima facie* showing must be made before we will actively regulate a non-dominant entity. In contrast, dominant carriers and their offerings remain subject to the full panolpy of regulatory procedures of Title II of the Act.

43. Enhanced service offerings in the second category above are unregulated at the state and federal level.[29] Most such offerings are made by non-carriers who, as subscribers, obtain underlying transmission capacity from carriers under their tariffs, combine it with the functional enhancements included in the enhanced service definition, and offer the combination to others on an unregulated basis. This is essentially a "resale structure."

44. Three types of "resale" exist. First, carriers subject to structural separation (i.e., AT&T and the Bell Operating Companies) may engage in this type of "resale" through a separate corporate entity that itself is a non-carrier, and that obtains underlying transmission capacity (basic service) under tariff no differently than an unaffiliated subscriber. Second, other carriers may do so themselves, without such a separate corporate entity, provided that they too obtain underlying service under tariff,[30] and that they ensure that the costs of providing their enhanced service(s) do not enter regulatory accounts, so that the costs of providing these services are not improperly borne by subscribers to basic service.[31] And third, carriers may offer enhanced services through a separate corporate entity that is a non-carrier, although not required under our rules to do so.[32]

45. Enhanced service offerings that are made by a carrier's separate affiliate (whether the affiliate is employed by choice, or is required) are unregulated in their entirety. What remains subject to regulation is the underlying transmission offering of the carrier upon which the enhanced service is engrafted. Also, various safeguards have been employed to ensure that the underlying regulated service offering is not adversely affected by dealings between the affiliate and the organization providing basic service (e.g., the requirement that underlying service be received under tariff, the requirement that the costs of providing enhanced services not be sustained by subscribers to basic service, certain information disclosure requirements governing all carriers, and the structural separation and more focused information disclosure requirements that now govern AT&T and the Bell Operating Companies).

46. The regulation of enhanced service offerings made by a carrier that is not subject to structural separation, however, has been inconsistent. It is clear that an end-to-end enhanced service may not be tariffed, and that it is to be offered on an unregulated basis. By definition, however, an enhanced service involves the use of underlying basic service. We stated on reconsideration of the Final Decision that:

> This proceeding does not remove a carrier's obligation to provide basic services, nor does this proceeding alter existing policies and rules under which carriers are certificated, or transmission facilities are owned or constructed.

84 FCC 2d at 75, n. 19. Where the underlying service is basic, it was intended to be treated as basic under our non-Computer II general regulatory policies governing the regulation of communications offerings. However, we have permitted resellers who have engrafted a combination of end-to-end "basic" and end-to-end enhanced services on underlying facilities provided by others to treat the entirety of the resale offering as unregulated (the "contamination" approach adverted to earlier). In these cases, there may be two "basic" services involved, the underlying ones the resellers obtain from others and the "basic" sub-elements of their own services. On the other hand, in the context of the asynchronous/8.25 waivers, we denied this option to the petitioning BOCs. If there were functional integration of basic and enhanced services, which is permissible for carriers not subject to structural separation, it is not clear which approach would apply.[33] [34]

47. Offerings in the third category above, the non-communications one, are not themselves regulated. They are not within the subject matter jurisdiction conferred by the Communications Act. If an entity other than a communications common carrier engages in them, we have no jurisdiction to address such activity. If a common carrier otherwise subject to our jurisdiction engages in them, we still do not regulate such activity, but we may have an interest in how the regulated enterprise is affected by such activity [35] to the extent that we have a regulatory interest in the communications offerings of the entity.[36]

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*recon. denied*, 93 FCC2d 54 (1983); Further Notice of Proposed Rulemaking, 47 FR 17308 (1982). Third Report and Order, 48 FR 46791 (1983). Fourth Report and Order, 95 FCC2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, 49 FR 11586 (1984). Fifth Report and Order, 98 FCC2d 1191 (1984). The Sixth Report and Order in that proceeding, 57 P & F Rad.Reg.2d 1391 1985), which is not germane to this proceeding, was reversed and remanded to the Commission *sub nom.*, MCI Telecomm'ns Corp. v. FCC, — F.2d —, No. 85-1030 (D.C. Cir. July 9, 1985).

[29] *See*, Computer II Further Reconsideration Order, 88 FCC2d, 512, 541-42 and at n. 34 (1981), *aff'd sub nom., C.C.I.A., v. FCC supra*, n. 4, 693 F.2d at 205.

[30] We so required in the Final Decision in Computer II and upon reconsideration thereof. However, as is discussed in Section III.C below, there may be conceptual problems in actually applying this requirement.

[31] *See, e.g.*, C.C.I.A. v. FCC, *supra*, n. 4, 693 F.2d at 205; *see also*, Report and Order, 95 FCC2d 1117, 1128, ("We also recognized that, for some carriers [those not subject to structural separation], another way to protect ratepayers from overpricing was to require that competitive costs and revenues be placed in separate books of account from those associated with regulated services.")

[32] They may choose to do so for business reasons; state regulators may require them to do so; and, in the case of GTE, an antitrust decree has required structural separation of its enhanced services from exchange telephone operations.

[33] Alternatively, it could be argued that since these carriers may provide enhanced services only as presently defined, a definition that states that such services are "offered over common carrier transmission facilities," and since they must obtain the use of such facilities by tariff, 77 FCC2d at 475 and 84 FCC2d at 75, n. 19, such integration is impermissible unless basic service continues to be offered by tariff.

[34] These disparate policies (i.e., a "contamination" one for entities lacking market power and a non-"contamination" one for dominant carriers such as AT&T and the BOCs) have made sense as a policy matter, but since we have not articulated a basis for treating the two groups differently some confusion may have been created. Deregulation of entities that do not have underlying facilities and that obtain transmission capacity from others pursuant to their tariffs is sensible; no policy goal is served by regulating any aspect of these entities' offerings. Conversely, the offerings of dominant carriers are often monopoly or near-monopoly ones. Such offerings are needed and used by competitors and can be manipulated anticompetitively. Ensuring that such offerings continue to be made subject to the common carrier duties of reasonableness and avoidance of unreasonable discrimination serves important policy goals. We propose below to develop policies that apply such a dominant/non-dominant entity split.

[35] For example, we have an interest, in the case of dominant carriers, in ensuring that subscribers do not sustain the costs of a non-communications enterprise and thereby pay unjust or unreasonable rates for basic service. This interest has long been reflected in accounting procedures that seek to ensure that non-communications investments and expenses are accounted for "below the line", i.e., in accounts that are not utilized in the development of rates. Alternative structural approaches for addressing this problem were employed in Computer I and Computer II, but they were focused on the services within the second category above (those cognizable under the Act) and not generalized to other unregulated undertakings of carriers.

[36] Under our Competitive Common Carrier decisions, we have foreborne from actively regulating many non-dominant carriers. As a practical matters, therefore, if there is no rationale

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48. In the next sub-section, we propose to alter the treatment services in these three categories by dispensing with artificial structural separation constraints (for those new subject thereto), and by integrating our approaches to firms and markets that are partially competitive and partially not. Regulation was never intended to impede the development of competition. Rather, it is a surrogate for effective competition. Where effective competition is present, or where participants in a market actually act competitively because of the threat of entry, the regulatory surrogate for competition is unnecessary and often can be counter-productive. We first address our proposed treatment of each of the three service categories that we identified above, and then frame specific issues upon which we seek comment.

3. Proposed Regulatory Framework

49. *Basic Communications Services.* The first category above is that of traditional communications service. We propose no alteration of our current policies governing such services. They are offered subject to Title II of the Communications Act, and under developed policy our actual regulation thereof depends upon whether the carrier involved is dominant or non-dominant. If the vendor is non-dominant, we have foreborne from applying many of the routine regulatory requirements of the Act. If the vendor is dominant, we have sought to improve the application of traditional regulatory requirements to reflect the degree of competitive pressure that a given vendor and service is subject to.

50. *Service Ancillary to Communications.* We propose changes in the treatment of enhanced service offerings. We are seeking a result that properly acknowledges competitive pressures and the public interest goals of the statute. Although we are seeking comment elsewhere in this notice on whether the current definition of "enhanced services" should be changed, our discussion does not depend on the exact language of the rule. For purposes of this discussion it can be assumed that the existing definition remains largely unchanged, but that the language "Enhanced Services are not regulated under Title II of the Act" will be modified in accordance with the proposals that follow.

for actively regulating these entities' communications offerings, there is no logical reason to consider the impact on these offerings of other non-communications activities of such entities.

51. First, although we propose to subject non-competitive offerings of this nature directly to regulation, we propose that no entity be classified as a "carrier" solely because it is providing an ancillary service. It will be a "carrier" only if it provides *other* offerings that are basic communications. We have ancillary jurisdiction over such offerings only if there is a jurisdictional service to which such an offering is "ancillary." Thus, if a non-carrier provides an ancillary service, it will remain unregulated.[37]

52. Second, even if a service in this category is to be provided by a carrier, we would propose, as an exercise of the discretion exercised in Computer II,[38] and confirmed in the course of appellate review of our Computer II decisions,[39] not to subject it to regulation if the carrier is non-dominant.

53. And third, we propose that an ancillary offering by a dominant carrier be examined to determine whether the offering has economic characteristics that tend towards competition (i.e., limited economies of scale and/or scope) so that there can be expected to be multiple vendors of the service). If the answer to this question is "no," we would propose to regulate the offering directly under Title II if it is to be provided by a dominant common carrier (see the previous two paragraphs).[40]

54. Conversely, if the answer to this question is "yes", the treatment of the offering should depend upon whether the carrier has control over the "bottlenecks" needed by its competitors to compete. If it does not, regulation of its offering of enhanced services should be no different than regulation of its non-communications services, i.e., not to regulate the provision of enhanced services themselves, but only to protect subscribers to monopoly or near-monopoly services from adverse effects such as cost-shifting. This is discussed in connection with the "non-communications" services, below. If the dominant carrier has control over such "bottlenecks", protection may be required for three forms of potentially anticompetitive conduct, and we seek comment on the possible extent of such problems and on measures that may be effective in dealing with them:

a. There is the potential that bottleneck facilities and services may be made available in a preferred fashion by the dominant carrier for its own ancillary service offerings.[41] This could take the form of delays and other impediments to access, or could take the form of preferential pricing. We seek specific comment on the following issues:

(i) How should we determine when a facility constitutes a bottleneck and distinguish bottleneck facilities from cases where there are similar, but not necessarily identical, alternatives available in a given geographic area? What alternative means of communication should be considered in determining whether a facility is a bottleneck in this context?

(ii) What existing general and/or line of business accounting procedures can ensure that the terms on which apparent bottleneck facilities are offered are the same to all users?

(iii) Would a formula approach comparable to that contained in the Iowa State Commerce Commission's *Joint Plan for Deregulation*, Docket RPU–84–8, April 1, 1985, be useful in this and similar situations?[42]

b. There is also the potential that a dominant carrier could plan for the provision of ancillary services well in advance of others because of advance knowledge of improvements and modifications to the basic communications facilities and services.[43]

[37] We seek comment, however, on any difficulty that may be encountered in determining whether or not a firm is a "carrier" in this context.

[38] *E.g.*, 77 FCC2d 433, n. 44. Under our present Computer II rules and policies, we have exercised this discretion to conform to the general policy that enhanced services are not regulated under Title II of the Act. Yet, we have consistently viewed the alternative, of actually regulating an enhanced service offering by a common carrier, as permissible to achieve the public interest goals of the Act. *See, e.g.*, Reconsideration Order, 84 FCC2d at 92–96. We are proposing below to subject some non-competitive enhanced services to regulation; the purpose of this paragraph is to declare, before describing these, that only offerings by dominant carriers may be eligible for such treatment, and not those of non-dominant carriers.

[39] C.C.I.A. v. FCC, *supra*, n. 4, 693 F.2d at 210.

[40] Under our present Computer II policies, even if the answer were "no," absent waiver the offering would still be unregulated; the change we are proposing here would be to subject the offering to a regulatory surrogate for competition if there will be no competition.

[41] In the asynchronous/X.25 waiver petitions, for example, a number of the petitioners had proposed to take inter-office channels at net book prices that were significantly lower than the tariffed rates their competitors must pay. We precluded this extreme preference by specific condition. However, less extreme cases could occur. For example, service installation intervals could differ, as could circuit quality.

[42] A copy of this document has been associated with the docket file of this proceeding.

[43] We have addressed this through a requirement that such planning be disclosed publicly. Computer and Business Equipment Manufacturers Association, 93 FCC 2d 1226 (1983). It has also been an important component of the antitrust decrees governing the Bell Operating Companies and GTE. *See*, United States v. Am. Tel. and Tel. Co., 552 F. Supp. 131, 227 (Sections II.B.1–4 of the Modification of Final Judgment) and United States v. GTE Corp., 1983–2 Trade Cas. ¶50,833 at 56,812–13 (Sections

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c. There is the possibility that a dominant carrier could use its unique knowledge of the nature of its monopoly (or near-monopoly) customers' communications needs to enhance its ability to market competitive services to them.[44] (Comment is invited on issues b. and c. below.)

55. Our Computer II rules and policies have addressed each of these concerns. A carrier not subject to structural separation may not enter the costs of its enhanced services in regulatory accounts and is required to offer underlying basic services by tariff.[45] Our structural separation procedures have combined these general requirements with specific obligations not to discriminate in the provision of "bottleneck" services, requirements that certain costs be sustained separately, and restrictions on the flow of planning and customer information.

56. *Non-communications offerings.* The final category is the clearly unregulated one. These offerings are not communications, and are not within the subject matter jurisdiction of the Act. We do not regulate them, and do not propose to do so here.

57. Nonetheless, the Communications Act expresses a public interest in the availability of service and in the reasonableness of rates. Both of these interests could be adversely affected by non-communications enterprises of a common carrier. For example, a carrier might deplete all of its available capital pursuing non-communications ventures, and adversely affect its ability to raise capital for continued growth of the regulated service. Communications service could be adversely affected, or its price could rise unnecessarily. Or, costs associated with the non-communications ventures might be improperly borne by subscribers to regulated services (so-called "cost shifting").

58. Computer II required that transfers of capital to the separate affiliates of AT&T and the Bell Operating Companies be approved in advance. This technique was limited solely to these firms and it addressed transfer of capital solely to enhanced service and customer premises equipment ventures. AT&T and the Bell Operating Companies are pursuing a variety of non-communications ventures currently, and if approval of capitalization has validity for some unregarded ventures, it seemingly has validity for others.

59. We have no desire to embark upon a new frontier of regulation of the investments of common carriers in non-communications enterprises. Yet, at some point this type of concern could become important.[46]

60. The alternative concern, that of potential cost-shifting, is more immediately relevant to the regulatory plan of the Act. Carrier's rates are required to be just and reasonable. We have long interpreted this requirement as synonomous with their covering the relevant costs of providing communications service, and not other costs. It is in the cost area that some of the most difficult problems addressed in the first and second Computer Inquiries arose. While these concerns were narrowly addressed in the context of the unregulated "data processing" (Computer I) and "enhanced services" and "customer premises equipment" (Computer II) offerings of these inquiries, they are more general, and arise whenever a carrier engages in non-communications enterprise.

61. In the first Computer Inquiry, we imposed a requirement that unregulated "data processing" services by carriers be offered through a separate subsidiary dealing "at arm's length" with the parent/carrier.[47] This was a *device* that was intended to achieve the goal of ensuring that the costs of such activities would not enter revenue requirements underlying such carriers' rates for communications services. In the Second Computer Inquiry we maintained the *goal* that such costs not enter regulatory revenue requirements (for all carriers), and adopted structural devices for ensuring this only for AT&T and the Bell Operating Companies. These latter carriers are required to perform many functions in their competitive affiliates separately, with no commingling of costs of such functions with regulatory costs.

62. The most difficult cost issues have surrounded the treatment of joint and common costs (i.e., costs that can be incurred to support both a communications and non-communications service or product).[48] Structural separation responds to these issues by limiting the opportunities for incurring such costs. If personnel and equipment are required to be separate for communications and unregulated offerings, as they were both computer inquiries, these costs are incurred separately, not jointly or in common. While this has been a relatively "clean" regulatory result, it has not been an efficient one. The sum of separately incurred costs of this nature often (if not usually) is higher than the total cost that would result if they were incurred jointly or in common. The public pays the difference, a difference that might not be there absent structural separation.

63. We recognize that cost-shifting is possible. It is more of a concern in the case of the ancillary-to-communications services, that are intimately related to communications offerings, than true non-communications offerings where a strong commonality of plant and personnel may not be present.[49]

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IV.A.3 and V.B.1-3), *entered*, 603 F. Supp. 730 (D.D.C. 1984).

[44] Non-carrier providers of ancillary services have argued, with validity, that a monopoly service provider knows a considerable amount about its customers because they must obtain service from it. Thus, a dominant telephone company can readily identify "hot prospects" for a competitive enhanced service (or customer premises equipment) from telephone billing records. Others cannot do so. Others normally cannot access such records and must identify, and sustain the costs of identifying, sales prospects themselves.

[45] *E.g.*, Final Decision, 77 FCC 2d at 475; Reconsideration Decision, 84 FCC 2d at 73-75 and at 75, n. 19.

[46] We invite comment below on whether a non-burdensome approach predicated upon some percentage of overall investment might be employed to trigger a reporting or approal requirement.

[47] This requirment was imposed on all common carriers other than AT&T and the Bell System. The latter were excluded since it was thought that the then-effective 1956 Consent Decree restricted AT&T and the Bell Operating Companies from providing "data processing" services.

[48] Examples of this might be personnel, who absent structural separation could perform tasks for both enterprises, equipment, and overhead associated with the foregoing. In our asynchronous/.25 waiver decision, we addressed apportionment of investment in packet asemblers and disassemblers that could be used both as switching devices (for basic X.25/X.25 service, and as protocol conversion devices (an enhanced service). By condition, we have required the petitioners to propose reasonable apportionment techniques that will be employed to achieve the goal of removing the relevant investment in the protocol conversion capabilities from revenue requirements for basic service, and we proposed two techniques that might be employed. Furthermore, we required that the regulated enterprise be reimbursed for the use of telephone company personnel to install and maintain the equipment.

[49] Moreover, this problem is not limited to provision of non-communications services by a communications common carrier. It arises whenever a carrier makes some offerings that are subject to effective competition and others that are not. Our Computer II policies have addressed it only in the context of provision of unregulated customer premises equipment and enhanced services. But, it also arises in the context of providing communications services themselves. Examples of this might include: provision of centrex services, which traditionally have been regulated no differently than monopoly or near-monopoly exchange services, but which are competitive with private branch exchanges (supplied competitively free of regulation); provision of mobile radio services by exchange carriers; and provision of competitive satellite communications services by a dominant interexchange carrier. In each of these examples, there is competition by other service providers with a communications offering by a dominant carrier, and the same cost-shifting opportunities and incentives that apply to the offerings addressed in Computer II would similarly apply. An important goal of this proceeding is to

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Nevertheless, we believe that the present approach should be reexamined broadly, in view of its obvious inefficiency. We propose generally that accounting approaches be substituted for structural separation ones, and in the next sub-section we solicit specific comment on how this might be achieved.[50]

4. Addjtional Issues

64. The preceding discussion has presented policies that have been evolving for some time. While we seek comment on certain changes we are proposing, we do not seek to reopen decisions already made. For example, our Competitive Common Carrier policies establishing forbearance for non-dominant providers of service are not at issue in this proceeding. Similarly, our existing Computer II waiver policies are not at issue herein; they will continue unabated during the pendency of this proceeding, and may well continue thereafter.

65. In a number of the following issues, we are seeking comment on the treatment to be accorded "dominant carriers" as that classification has evolved during the course of our Competitive Common Carrier proceedings. It may be unnecessary or undesirable to apply all of our proposals equally to all dominant carriers, a classification that now includes telephone companies ranging in size from the smallest Independent companies to the largest Bell and Independent companies and AT&T. Thus, we seek comment generally on whether distinctions should be drawn in the treatment of different carriers, or groups of carriers, that are within the dominant category.

66. We propose first to utilize our ancillary jurisdiction over the "ancillary to communications" services if such services are provided by a dominant carrier, and if such services are not subject to effective competition.[51] We would propose that offerings in this category be made on a regulated basis, pursuant to relevant regulatory policies then governing the offering carrier at the state and federal level. Since such offerings would be treated no differently than basic communications service, and since such offerings would not be competitive, no special conditions or constraints would apply to them. However, if competition later develops we would consider revising the treatment of the offering to conform to the treatment of competitive ones.

67. We invite comment on the following issues related to implementation of such an approach.

a. How is "competitive" to be defined in this context, and how is any such definition to be applied? We believe it desirable to establish the criteria that will govern such determinations by general rule. We invite comment on the nature and wording of such a rule.

b. What requirements, if any, should be established to ensure that the treatment of such offerings as part of the regulated offerings does not inhibit entry and effective competition thereafter?

c. If an offering is initially classified as non-competitive and treated as proposed, at what point should its classification and treatment be changed? What criteria should be established for transition toward treatment of a non-competitive offering to a competitive one? What transitional safeguards, if any, should be established to promote such transaction?

68. Our second proposal is to alter the treatment of competitive "ancillary to communications" offerings and non-communications enterprises engaged in by dominant carriers. We have a strong interest in ensuring that subscribers to their monopoly and near-monopoly services not bear costs of competitive enterprises, or suffer other adverse effects from their engaging in them. We also are concerned that their competition in these fields is effective, vigorous and fair.[52] In Computer II, we addressed these concerns through the goals (governing all carriers) and structural devices (governing AT&T and the BOCs) previously identified. Although we do not see any need to revisit the goals, we solicit comment herein on whether they should be altered. More to the point of this section, we are reopening the matter of the devices to be employed.

69. The following issues are currently addressed, in the case of AT&T and the BOCs, by our structural separation requirements. While we are proposing to dispense with structural separation, the goals of Computer II need to be addressed alternatively. In this regard, we request comment on the following:

a. *Capitalization issues.* What, if any, periodic or special reporting requirements should be established to govern some or all investments by dominant carriers in: (1) Competitive "ancillary to communications" activities; and (2) non-communications activities. Should levels of capital transfer be established beyond which approval should be required, to ensure that a dominant carrier's service does not, or will not, suffer adverse effects? Should the foregoing be applied to all dominant carriers, or only to some? What distinctions, if any, should be established?

b. *Cost separation issues.* What cost-shifting problems, if any, have arisen under Computer II in the context of the many carriers tht are *not* subject to structural separation, and that have been subject only to the requirement that the costs of providing enhanced services and customer premises equipment not enter regulatory accounts? What procedures have these carriers employed to discharge this obligation? Should similar procedures be employed by those carriers now subject to structural separation, in lieu of structural separation? What alternative special reporting or other procedures should be employed by some or all dominant carriers to ensure that the investments, expenses and revenues associated with the provision of "ancillary to communications" and non-communications services do not enter regulatory accounts (and are not borne by subscribers to monopoly and near-monopoly services)?[53, 54]

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develop tools for addressing the competitive cost-shifting problems regardless of whether the activity involved is communications, ancillary-to-communications, or non-communications.

[50] Application of such accounting approaches to non-communications activities in addition to ancillary-to-communications ones should create no additional burden. The cost separation issue is generic, and approaches addressing the one should address the other too.

[51] Although many offerings by carriers that would fall in this classification were regulated under Title II of the Act prior to the adoption of our Computer II rules and decisions, we have generally not exercised this jurisdiction since then. Rather, we have normally required enhanced service offerings to be removed from tariffs, and in two instances where we waived structural separatioin we nevertheless required the activity to be taken "below the line" (i.e., outside of regulatory accounts and revenue requirements): (1) Time and weather announcement services; and (2) asynchronous/X.25 protocol conversion. Conversely, in one circumstance, X.25/ X.75 protocol conversion, we recognized the otherwise-enhanced protocol conversion as properly part of basic service, and conditioned grant of authority to perform such conversion on an unseparated basis on the effectiveness of exchange access tariffs offering this capability (on a regulated basis).

[52] To be sure, given the subject matter jurisdiction of the Act, our concern is more direct in the context of the "Ancillary to communications" offerings over which we have jurisdiction than non-communications enterprises, over which we do not have jurisdiction, and we have taken careful note of this distinction in formulating our proposals herein.

[53] In the Fifth Report and Order in CC Docket No. 81-893, 49 FR 46378 (Nov. 26, 1984), the Commission revised Part 31 of the FCC's rules to establish provisions to account for carriers' nonregulated activities in separate books of accounts. However, the establishment of procedures for allocating joint and common costs between regulated and nonregulated activities was deferred to a future

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c. *Technical information issues.* In our Computer and Business Equipment Manufacturers Association order, 93 FCC2d 1226 (1983), we noted that all telephone companies are obliged to give advance public notice of changes in telephone network interface specifications under § 68.110(b) of our rules, and we clarified the special disclosure obligations of carriers subject to structural separation.[55] Since much of the information involved would be transferred to the structurally separated affiliates, we generally require public disclosure when the information was disclosed to these affiliates.[56] However, we also addressed three cases of information flow where information was not specifically disclosed to the affiliate: (1) Use by unseparated research, development and manufacturing operations on behalf of a future competitive offering (to be made by the affiliate then);[57] (2) use in connection with research and development jointly sponsored by separated and unseparated operations; and (3) development by the carriers of a new service or capability at the request of the separated operations (just as carriers do at the request of other customers). We believe the approaches of that order to these non-structurally separated cases could be applied if structural separation were minimized or dispensed with, and we invite comment on this. Since such information would only be relevant to the provisions of competitive "ancillary to communications" services, and not to non-communications ones, we would limit this proposal to the former.

d. *Customer information issues.* Dominant carriers providing monopoly and near-monopoly exchange, and in some cases interexchange, services have a great amount of information about their subscribers in their possession.[58] If such carriers vend "ancillary to communications" services to these subscribers, access to such information would give them a significant advantage over others that might not have access to such information. Transfer of such information to the structurally separated affiliates required of AT&T and the BOCs has been restricted in Computer II. If structural separation were dispensed with, what safeguards, if any, should be imposed on some or all dominant carriers?

e. *Limited structural separation issues.* While we are proposing generally to dispense with the requirement that provision of "ancillary to communications" services by AT&T and the BOCs be through the structurally-separated affiliate now required, we believe that the development of competition for these services, if they rely upon "bottleneck" facilities controlled by one competitor, requires our oversight. We invite comment on this generally, and in particular request that the costs and benefits of such separation be identified and quantified to the extent possible. As is developed in Sections III–V of this notice, the major "costs" have resulted from the requirement that facilities be separated. Are subsets of the present structural separation, perhaps limited to marketing (which would avoid the customer information issues above), feasible and desirable? Should a separate affiliate be required (but without specific limitations on joint facilities, joint research or joint development): (1) To channel all transfers of capital into "ancillary to communications" and non-communications ventures; and/or (2) to take underlying communications service from the common carrier (see Section III.B.2 below)?

f. *Common carrier obligation issues.* We propose to limit to ancillary-to-communications services of dominant carriers the Computer II policy that underlying offerings remain regulated. As noted, we have accepted the deregulated treatment of combinations of enhanced and basic service if offered by a non-dominant entity, but we have not done so when the BOCs (dominant carriers) sought similar treatment if structural separation were waived for their provision of asynchronous/X.25 conversion.[59] We tentatively conclude that this dual treatment of non-carriers and non-dominant carriers, on the one hand, and dominant carriers, on the other, is proper and that it should be made more explicit.

g. *Conditions.* In our Asynchronous/X.25 waiver decision, we established non-structural conditions to ensure continued achievement of the goals of Computer II. In brief, we required that: (1) Costs of equipment used both for basic service and asynchronous/X.25 protocol conversion be rationally apportioned so that the latter costs do not enter regulatory revenue requirements; (2) the impact on the basic service of its connection (or integration) with the ancillary-to-communications protocol conversion service be reflected in the pricing of such connection; (3) underlying transmission capabilities be unbundled and used by the carriers and others without discrimination; (4) integration efficiencies (i.e., avoidance of loop costs) be permitted to be made available, if identified; and (5) end users must have access through their loops to enhanced services of others on a basis comparably efficient to that to be made available to the petitioners' enhanced services. We tentatively conclude that such conditions might appropriately be applied by rule to dominant carriers offering ancillary-to-communications

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proceeding. We expect, before the end of this year, to issue a notice of proposed rulemaking proposing detailed accounting rules for such allocation. In this proceeding, we shall accept comment on the overall objectives of such allocation, not the detailed accounting treatment thereof. Comments related to the more specific issues of the upcoming proceeding will be included in the record thereof.

[54] As stated earlier, we also seek comment on: (i) What existing general and/or line of business accounting procedures can be employed to address the cost separation issues? (ii) What changes in the framework or principles of the Uniform System of Accounts would be necessary in this context? (iii) Would a formula approach comparable to that contained in the Iowa Commerce Commission's *Joint Plan for Deregulation*, Docket RPU–84–8, April 1, 1985, be useful in this and similar situations?

[55] In brief summary, to ensure that a carrier does not use its internal knowledge of network changes to produce (or have produced) products for use with the changed network in advance of other producers that do not have such knowledge, we required that information of this nature be made available to all producers timely, once the nature of such changes is sufficiently certain that planning can proceed. (Our shorthand summary of this complex order is not intended to modify the decisions therein made.)

[56] Id. at 1239 (the "relatively simple" case). Thus, this disclosure requirement was predicated upon the existence of structural separation.

[57] Although the BOCs are restricted, under the MFJ, from engaging in manufacturing, they are permitted to vent customer premises equipment manufactured by others. The decree does not appear to restrict them from providing such a supplier with advance information about network changes, unless that supplier is AT&T or an affiliate of AT&T. The decree does not phrase a general non-discrimination obligation.

[58] For example, by knowing the number and nature of lines used by a subscriber, a vendor can "target" sales of special customer premises equipment and relatively exotic enhanced services. In general, subscribers overwhelmingly obtain such lines from their local telephone company (a dominant carrier), which has this information and can use it to promote such sales. Also, since subscribers generally will order needed lines from the telephone company when procuring equipment and enhanced services, the desire for "one stop shopping" may, as a practical matter, limit competitive supply to some extent. Subscribers often place such line orders when negotiating an order with another vendor. The opportunities for telephone companies to seek to affect such negotiations are evident and have been the subject of complaints to this Commission and in antitrust proceedings.

[59] There, we adhered to the views expressed in the Protocols Decision that underlying service must be unbundled and made available indiscriminately to all users and service vendors. The purposes of the unbundling requirement were to ensure that basic services continue to be available generally; to ensure that others may evolve their own enhanced services differently than the underlying carriers might choose to; and to promote effective competition between such dominant carriers and others that depend upon their services to form their offerings and reach their customers.

services (not limited solely to protocol conversion services).

h. *Enforcement issues.* Finally, we seek comment on what procedures, if any, should be employed to ensure that dominant carriers continue to discharge their obligations (including any limitations or conditions that might be the result of this proceeding). The structural separation approaches of Computer II did not change any incentives of carriers to favor their own competitive offerings at the expense of those of others; it merely made them somewhat more detectable since a "paper trail" would often be required to reflect the dealings between the carriers and their separated affiliates. However, "paper trails" do not require structural separation; they can be created alternatively, or the patterns they disclose can be reported or audited directly. We invite comment herein on what reporting or other measures should be adopted to ensure that dominant carriers continue to discharge their common carrier obligations when offering "ancillary to communications" services. In addressing these issues, we must appropriately balance ensuring that appropriate detection measures are established, with avoiding unwarranted or unnecessary burden, and we invite comment on how best to attain both goals.

## III. Evolutionary Changes to the Computer II Definitional Treatment

70. In this and the following sections of the notice, we make specific proposals for change in the existing Computer II rules. We emphasize that while the proposals of Section II above, if adopted, may make some of these unnecessary, others may well complement the resolution of the preceding issues.

### *A. Proposed Refinement of When the Enhanced Service Definition Applies*

71. Our first proposal is to clarify the existing definition of enhanced service to make clear that the signal processing, subscriber interaction with stored information, and information processing, addressed in the definition apply only to the content of a subscriber's message information, and not to action by or interaction with the network to set up calls, to route calls, to end calls, to provide the user with information about calls, or to exchange billing or service ordering information with the subscriber. In two previous decisions we have clarified that such was the intent of the Final Decision in Computer II. We propose to amend the rules to reflect this.

72. First, in the Protocols Decision, n. 6 *supra.*, we explained that so-called network processing functions, i.e., network actions that set up, route and end calls, are not within the enhanced service definition, 95 FCC2d at 590–91. These functions are inherent in switched service, and any protocol processing or conversion necessary for their implementation may be associated either with basic or enhanced service without affecting the classification of such service under the Computer II rules, *id.* at 596. And second, in our recently-adopted *North American Telephone Association* decision, ——— FCC 2d ———, FCC 85–248 (released May 29, 1985), we reemphasized the conclusion in the Final Decision in Computer II that we were not foreclosing telephone companies from providing to consumers optional services to facilitate their use of traditional telephone service, the services we described as "adjuncts" to basic services. *See, id.* at paras. 23–27 citing the Final Decision, 77 FCC2d at 421.

73. We accordingly propose to change the existing rule to reflect this, as follows:

> For the purpose of this subpart, the term 'enhanced service' shall refer to services, offered over common carrier transmission facilities used in interstate communications, *during any end-to-end communications*, which employ computer processing applications that * * *
>
> [language proposed to be added *italicized*].

This change would make clear that the tests embodied in the three principal clauses of the definition apply only to end-to-end communications between or among subscribers, and not to communications between a subscriber and the network itself for call setup, call routing, call cessation, calling or called party identification, billing, and accounting. It would not change the *status quo.*[60] However, such a change would make clear that we will not entertain claims in the future that services of this nature are, or should be treated as, enhanced.

### *B. Treatment of "Protocols-Type Processing"*

74. Our second group of proposals relates to the future treatment of what, for want of a better term, we shall call "protocols-type" processing. These are functions included in the first major clause of the enhanced services definition in § 64.702(a) of our rules:

> services offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information;

47 CFR 64.702(a). As was noted in our Protocols Decision, the unparticularized "act on" language could be applied to two potential groups of actions by a network: (1) Action by the network itself in response to the subscriber's transmission (*e.g.*, setting up a call by responding to dialing-type transmission); and (2) action by the network to alter a subscriber's transmission to another subscriber (*e.g.*, alteration of the format, content, code or protocol of the subscriber's transmission).[61]

#### 1. Reasons for Proposing Changes

75. As we noted in our Protocols Decision *supra*, 95 FCC2d at 585, when we adopted the definition of enhanced service in the Final Decision in Computer II, we included not only the type of information processing that is generally thought of as processing of data, but also more primitive signal processing.

76. But, even when we did so, we recognized that the structural separation imposed on AT&T (and the Bell System companies that it then owned) could foreclose communications efficiency if code and protocol processing were inflexibly treated. For that reason, institution of the proceeding that became the *Communications Protocols* proceeding was promised in the Final Decision in Computer II, and it was begun shortly after the definition was adopted. *See, Final Decision* (Computer II), 77 FCC2d 384, 422 n. 37 (1980); *Notice of Inquiry* (Protocols Proceeding), 83 FCC2d 319 (1980) (instituting the proceeding). Thus, even when we adopted the present definition, we knew that it could have potentially undesirable effects, and we sought to establish a framework for their mitigation.

77. The record in the Protocols Proceeding confirmed our expectation that undesirable inefficiencies would result from an inflexible application of the Computer II rules, *see,* 95 FCC2d at

[60] We make this proposal independently of additional ones made in Section II above and in the sections that follow. To the extent that one or more these latter ones is ultimately adopted, we wish to make clear that we would propose to utilize the proposals of this section in conjunction therewith in formulating any final rules that might be the outcome of this proceeding.

[61] In Section III.A above, we have proposed to clarify in the rules that the intent of Computer II was not to reach the first of these, communications between the subscriber and the network.

587–90. The Protocols Decision established a framework for addressing such matters. First, it clarified that processing of protocols for call initiation, cessation and routing was implicit in the notion that switched services are basic, and not within the intent or scope of the definition of "enhanced services."[62] Second, it indicated that network-implemented changes in protocols, to introduce new technology so that users of existing services can communicate with new-technology implementations of the same services, would be "favorably" and "expeditiously" treated by waivers. Third, it indicated that intermediate internetworking interfaces to carriers' basic services will be treated specially, and it highlighted that such treatment might particularly be required for international services. And fourth, it concluded that all other proposals to associate the facilities for protocols processing with those for basic service by carriers subject to structual separation would be treated *ad hoc* by waiver.

78. We recognized that such *ad hoc* treatment itself could create uncertainties. Two groups of protocols conversion waiver requests were thereafter filed by carriers subject to structural separation under Computer II. First, requests were filed seeking authority to create the X.75 intermediate internetworking interface on packet switched networks otherwise using the X.25 protocol user interface. And second, requests were filed to perform asynchronous to X.25 (and X.75) protocol conversion in such networks. Both of these involved proposals to integrate with basic facilities protocol conversion capabilities.[63]

79. We placed both groups of requests on public notice, invited public comment thereon, and sought additional information from the petitioners. Thereafter, we decided these requests. These procedures were time consuming. During the months-long pendency of the petitions, carriers, users and others remained in a period of uncertainty.

80. Having compiled a focused record on these waiver requests, and in view of the broader record compiled during the course of the Protocols Inquiry and the underlying Computer I and Computer II proceedings themselves, it behooves us to eliminate the uncertainties of this *ad hoc* waiver process. We are now in a position to make specific proposals for evolution of the Computer II framework. While the result may not be quite the clear dichotomy we sought to establish in Computer II, it will be less uncertain than an *ad hoc* decisional process.

81. In the proposals below, we propose generally to reach the result that carriers subject to structural separation be permitted to co-locate with or integrate in their facilities for basic service the relatively primitive signal processing now included in the first major clause of the enhanced service definition ("protocols-type" processing). We tentatively conclude that this result will serve the public interest in significant ways.

83. First, based on the experience we have gained in the five years that have elapsed during which the present definitions and structure have been effective, we tentatively conclude that our present treatment of protocols-type processing alike with the true information processing of the second and third clauses of the definition may be incorrect in overall principle, and increasingly will lead to undesirable results. It is now clear to us that inflexible treatment of such signal processing has denied the public valuable and efficient *communications* capabilities. Unlike true information services, which have value when not combined with communications capabilities,[64] and which, if not included with communications capabilities do not adversely affect the efficiency of the communications capabilities themselves, these "protocols-type" signal processing functions do not have such stand-alone value. Their value is that they facilitate and improve the efficiency of communications itself. Thus, there is a strong nexus between such signal processing and communications, and this makes questionable our present treatment of these as non-communications, and our present limitation on the deployment by carriers subject to structural separation of these capabilities in their communications facilities.

84. Second, because of the delays associated with a waiver process the public has been denied valuable services while requests have been pending, and will continue to suffer such delay if future requests are filed. Furthermore, this is only the delay that is manifested. Preparation of requests before we see them takes time, and this is an additional period of delay. Even more problematical is the fact that whole industries are uncertain as to what requests may be filed, how long it will take for the agency to act on them, and what will be the ultimate resolution.

83. Third, related to the foregoing is the baseline mission of this agency to promote the availability, "so far as possible, to all the people of the United States a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges . . . ." Section 1 of the Communications Act. It is clear that protocols-type processing promotes communications efficiency, and that at least in those cases addressed heretofore in the waiver process (X.75/X.25 protocol conversion and asynchronous/X.25 protocol conversion), that provision of such processing in structurally separated facilities is materially less efficient than doing so in facilities integrated with those for basic service. Based on the record of the Protocols Proceeding, there is a strong indication that this may generally be the case.

84. And fourth, these proposals will remove the artificial constraints on the efficient use of currently available (and deployable) technology that our Computer II rules have created.

85. For example, packet switched technology has been sought to be introduced in various carriers' networks. In our asychronous/X.25 waiver decision and *AT&T (BPSS)* decisions, *supra.*, we noted that such technology can be used to provide unquestionably basic services, those that conform to the

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[62] As noted, in Section III. A above we propose to amend the rules to reflect this.

[63] In the X.25/X.75 conversion case, conversion performed outside of a carrier's packet switching facilities would defeat the purpose of using the special X.75 internetworking interface, and therefore, as a practical matter, such conversion cannot be performed elsewhere. X.25/X.75 conversion was authorized and treated as part of basic service in Petitions for Waiver (X.75/X.25), ——— FCC2d ———, FCC 84-581 (released Nov. 28, 1984). In the asynchronous/X.25 conversion case, such conversion can be performed outside of a carrier's network facilities, but at increased costs to users. In Petitions for Waiver (asynchronous/X.25), ——— FCC2d ———, FCC 85-101 (released Mar. 28, 1985), we granted the requests of several petitioning BOCs to perform asynchronous/X.25 protocol conversion, upon compliance with certain conditions.

[64] Two examples demonstrate this. First, an automated information retrieval computer need not be accessed remotely over communications circuits. It can be located in a library, be used by patrons there, and still have value and utility without communications facilities. Second, an information processing computer that performs numerical or text processing need not be accessed over communications circuits. It too can be used locally, as the use of literally millions of personal computers—without telephone connections—demonstrates. Both of these services would be treated as enhanced if offered remotely over communications circuits. The first would involve "subscriber interaction with stored information" (the third major clause of the enhanced service definition) and the second would involve provision to the subscriber of "additional, different or restructured information" (the second major clause thereof).

X.25 protocols at each end of a packet switched transmission. Clearly, carriers may use packet switched technology for such an X.25/X.25 basic service offering without invoking any of the definitions or requirements of Computer II. But, such technology may also be used for other forms of basic services. The packet assemblers and disassemblers ("PADs") available today that implement packet switched networks inherently can perform protocol conversion. Such conversion is not limited to creation of end-to-end communications involving asynchronous/X.25 conversion, the subject of the waiver order. Although the origination-end PAD may convert an incoming transmission to a packet network's X.25 or other internal network protocol for transmission, the PAD at the destination-end may reconvert back to the same code, format or protocol employed at the origin. Such a transmission also would involve no end-to-end conversion of the subscriber terminals' codes, formats or protocols, and carriers may offer it without invoking the definitions or requirements of Computer II.

86. The net effect of this is that carriers are free to deploy all of the elements of a packet switched network as part of basic service, and are free to use them to support communications involving all current or future terminal codes, formats and protocols, through the use of the protocol conversion capabilities inherent in the PADs, provided that the technology inherent in these facilities is artificially constrained to prevent an end-to-end cross-protocol, cross-format, or cross-code communication from being supported. We cannot rationally continue to pursue a policy of this nature. Carriers' investments in such technology would be the same, regardless of whether cross-protocol, cross-format or cross-code communications are or are not supported. The public would simply not be able to enjoy the full benefits of the technology that carriers are free, under th present rules, to deploy. The public's interest is not served by such a result, even assuming that restrictions on the deployment and efficient use of such technology for cross-protocol, cross-form or cross-code services, currently defined as "enhanced", are otherwise justified (or even possible).

87. In view of the foregoing, we are proposing herein to dispense with the requirement in our rules that protocols-type processing be provided only in structurally separate facilities. Our proposals in this regard are phrased in the alternative, and represent somewhat different paths for achieving this result, with potentially varying effects on carriers and enhanced service providers. We will examine whether the present treatment of protocols-type processing should be changed, and if so, we will adopt one or more of the approaches outlined below, or a variant thereon (unless adoption of the proposals of Section II above makes such action unnecessary).

88. One possibility for doing so might be to delete some or all of the first major clause of the enhanced service definition.[65] Under this approach, such functions could then be provided as part of a carrier's basic service or as part of an enhanced service vendor's unregulated offerings without affecting the classification of either service.[66] However, numerous vendors of enhanced service that are currently (and appropriately) unregulated at the federal and state level,[67] could be needlessly exposed to reregulation if their offerings are today unregulated solely because they include functions in the first major clause. We could avoid this result if we were to seek to preempt and deregulate federally the "resale" inherent in their enhanced services as presently defined, to retain the *staus quo*. But, such action is unnecessary to achieve the results of this section in view of the three alternatives phrased below. For this reason, we shall not pursue such an approach.

2. Alternative #1: Leave the Current Definition of Enhanced Service Essentially Unchanged; Remove the Present Requirement That Certain Carriers Offer Enhanced Services Solely Through Structural Separation; Replace This With a Requirement That All Dominant Carriers Do So Solely on a Computer II "Resale" Basis

89. Our first approach would be to remove the requirement that those carriers now subject to structural separation offer enhanced service solely through a structurally separated affiliate, and to replace it with a requirement that dominant carriers (as defined in our Competitive Common Carrier decisions) offer such service on a resale basis.[68] Structural separation would not be required for such resale. Presently unregulated enhanced service vendors would be unaffected as the enhanced service definition would not be materially changed under this proposal.

90. This approach would place all dominant carriers in the same regulatory status if they provide enhanced services, and, as discussed below, would provide us an opportunity to clarify certain ambiguities in the present treatment of carriers not subject to structural separation. Since § 64.702(b) already states that common carriers may be prohibited from providing enhanced services to others "except as provided for in paragraph (c) of this section, or as otherwise authorized by the Commission" a rule amendment might be unnecessary. However, to minimize uncertainty, we would propose to amend the rules to make such an alternative clear. Since some carriers already have structurally separated affiliates, and may wish, for business reasons, to continue to offer enhanced services through such affiliates, we would propose to phrase our new approach an option for those carriers now subject to structural separation, and leave them the option of continuing to comply with the present rules.

91. Computer II utilizes a "resale" structure for carriers subject to structural separation.[69] Such separation is not implicit in the notion of resale, and can be dispensed with while maintaining a resale structure for the provision of enhanced services. In principle, this is the result of the present Computer II requirements governing carriers not subject to structural separation, which seem to require that these other carriers also take service on this basis when providing enhanced services.

92. Specifically, in the Final Decision in Computer II we said:

. . . an essential thrust of this proceeding has been to provide a mechanism whereby non-discriminatory access can be had to basic transmission services by all enhanced service providers. Because enhanced services are dependent upon the common carrier offering of a basic service, a basic service is the building block upon which enhanced services are offered. Thus, *those carriers that own common carrier transmission facilities and*

[65] Proposals of this nature were considered in the Protocols Inquiry.

[66] Similar treatment has been accorded switching functions under the present definition. Since switching is not included in the enhanced service definition, carriers have been free to associate switching with regulated services and enhanced service vendors have been free to associate switching with unregulated ones. The classification of these offerings has been indifferent to whether or not switching has been included.

[67] *See*, Further Reconsideration Order, 88 FCC2d at 541, n. 34; C.C.I.A. v. FCC, 693 F.2d at 205.

[68] As is developed below, such a resale-type structure was implicit in the Computer II rules when they were adopted, and the additional requirements for structural separation in § 64.702(b)–(d) were merely added to this underlying requirement. Thus, this alternative might be viewed as a reduction in the details of such structural separation, and not as a wholly new approach.

[69] *E.g.*, Final Decision, 77 FCC 2d at 466 and 474.

*provide enhanced services, but are not subject to the separate subsidiary requirement, must acquire transmission capacity pursuant to the same prices, terms and conditions reflected in their tariffs when their own facilities are utilized.* Other offerors of enhanced services would likewise be able to use such a carrier's facilities under the same terms and conditions.

77 FCC 2d at 475, emphasis added. On reconsideration, we reemphasized the same point as follows:

> Those carriers not subject to the separate subsidiary requirement, when employing their own common carrier transmission facilities in the provision of enhanced services, *must obtain transmission capacity pursuant to the terms and conditions embodied in their tariff.*

84 FCC 2d at 75, n. 19, emphasis added.

93. Those who would resell a common carrier service take service under tariff, a species of contract, and enter a normal subscriber/carrier contractual relationship with the carrier providing the underlying service. Where the carrier and the "reseller" are separate entities, such a contract clearly can be entered.[70] However, since a contract normally requires two contracting parties, it is unclear just how this requirement might operate in practice. It is less than fully clear, therefore, how a carrier might "take" service from itself if utilizing a resale structure, unless it were to do so through a legal entity with separate personality (the result of structural separation). The present Computer II structure ensures that such personality exists for those carriers subject to structural separation.[71]

94. We do not raise this matter for abstract reasons. As we discussed at length in the asynchronous/X.25 waiver order, unregulated enhanced service vendors depend largely upon the use of services obtained from facilities-based dominant carriers to form their networks and to provide services to the public. A dominant carrier can engage in a classic price squeeze in this environment by charging those that are dependent upon its "wholesale" offerings more than the costs included in its own "retail" ones. Also, if dominant carriers are free, as they would be under alternative #1, to include code, format and protocols processing in basic services, these services may be configured technically to frustrate the ability of others to perform such processing alternatively, or may not support to particular codes, formats and protocols that a given user or enhanced service vendor (under the present definition) might wish to employ.

95. In the Protocols Decision and in the asynchronous/X.25 waiver order, we addressed these concerns directly. We required that certain underlying basic channel offerings be unbundled, and made available for the use of the carrier and others on the same basis and at the same price. And, we required that protocols-type processing be an *option* that a given user might avoid using, and that underlying communications offerings unencumbered by such processing remain generally available, so that others could perform such processing differently than the carriers if they chose to do so. These were general principles adopted in the Protocols Decision, and they were applied specifically in the asynchronous/X.25 waiver order in the form of conditions on the waivers that were granted. Such a result would appear to flow directly from the requirement that carriers "take" underlying basic service under tariff, if any uncertainty that may relate to that requirement is removed.[72]

96. In the asynchronous/X.25 waiver order, we addressed the possibility that the petitioning BOCs might be authorized to vend asynchronous/X.25 services directly, rather than through their separate affiliates. We noted that their affiliates—separate entities which can contract with the carrier—might no longer be involved, raising directly the potential uncertainty we seek to address here. At para. 116 of that order, we required those carriers that might seek to vend these services directly to demonstrate how the unbundling conditions, which would otherwise be implemented automatically if the separate affiliate were still involved and receiving underlying service by tariff, would be complied with in the absence of the affiliate.

97. One approach that we suggested at para. 128 of that order was for each carrier's affiliate to be technically considered as vending the service to the public (and receiving underlying service from the carrier pursuant to its tariffs), but that it contract back with the telephone company for the provision of marketing services. This arrangement would preserve the legal posture of two contracting parties, and could be generalized. Each dominant carrier could form a separate affiliate for the sole purpose of receiving underlying service pursuant to tariff. This would admittedly be a legal fiction, as there would be *no* requirement that this affiliate be structurally separated. We believe any burden created would be insignificant, involving only the preparation of appropriate corporate papers and maintenance of the corporate form. This legal fiction seems undesirable however, and we welcome the submission of alternatives by commenting parties.

98. We bring these concepts together in the following proposed change to § 64.702(b) and a new paragraph (f):

> (b) Communications common carriers subject, in whole or in part, to the Communications Act may provide enhanced services and customer premises equipment; *provided,* however, that the Commission may prohibit any such common carrier from engaging directly or indirectly in furnishing:
>
> (i) Customer-premises equipment to others exept as provided for in paragraph (c) of this section, and
>
> (ii) Enhanced services to others except as provided for in paragraph (c) or alternatively paragraph (f) of this section, or as otherwise authorized by the Commission.
>
> . . . . .
>
> (f) A dominant communications common carrier, as defined by the Commission and prohibited by the Commission pursuant to paragraph (b) of this section from engaging in the provision of enhanced services, may provide enhanced services involving computer processing applications that act on the format, content, code, protocol or similar aspects of the subscriber's transmitted information directly or indirectly, if it resells services obtained under the tariffs of the dominant communications common carrier, without regard to the requirements of paragraph (c) of this section.

Under these proposed changes, dominant carriers wishing to avoid any requirements for structural separation that may otherwise govern them would be required to provide enhanced services by reselling underlying services "obtained under the tariffs." Since the enhanced service definition would not be changed, enhanced services would remain unregulated under this alternative.

99. Comment on the meaning and application of the requirement that underlying service be received under tariff if a dominant carrier offers enhanced service would aid in resolution of the "contamination" issue in Section II of this notice, and in resolving issues in alternative #3 below.

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[70] There are two parties to a contract between a carier and an unaffiliated reseller or enhanced service vendor, or a contract between a carrier subject to structural separation and its affiliate with separate legal personality.

[71] While we are discussing this in connection with our alternative #1 proposal, we hereby give notice that we may amend or clarify our rules on this point regardless of whether this alternative is ultimately adopted.

[72] In the asynchronous/X.25 waiver order, we adopted additional conditions to ensure that costs of the unregulated services addressed therein would not enter regulatory accounts (which implemented that general regulatory requirement that the costs of unregulated activities not be borne by subscribers to basic communications services) and to ensure that interconnection with conventional exchange services would continue to be tariffed and without unreasonable discrimination.

Under our proposal in alternative #3, protocols-type processing by dominant carriers would be permitted to be included with and treated as part of basic service. Standing alone, however, alternative #3 would not address the unbundling and unencumbered service availability objectives addressed heretofore in the Protocols Decision and asynchronous protocol conversion waiver decision. In contrast, clarification of the requirement that underlying service be received under tariff could clarify *what* underlying unencumbered services are to be unbundled and offered generally by tariff, *i.e.*, those that do not involve the protocols-type functions.

100. Finally, even if a "dummy corporation" approach were to be employed to implement this proposal, at least some transactions between this corporation and the carrier could be reduced to contract, which would facilitate any needed apportionment of costs between the carriers' basic services and those offered through the resale approach of this alternative. We invite comment on this.

3. Alternative #2: Maintain the Definition Unchanged (Except as Noted in Section III.A Above) and Modify Solely the Structural Separation Requirements of Subsections (c) and (d)

101. A second alternative could be to make general the approach utilized in connection with our grant of the asynchronus/X.25 waivers, namely, to maintain unchanged the present definitions and state, by rule, the conditions under which structural separation need not apply to integration of protocols-type processing with facilities for basic service. This would avoid the chief disadvantages of the present waiver approach, uncertainty and delay. The requirements would be published in a generally applicable rule and known at the outset. Carriers could formulate their plans based on such requirements, and the Commission would not need to become involved, as it is now, with their planning for new services.

102. In the asynchronous/X.25 waiver proceedings, we considered a comprehensive record on the effects of the present Computer II limitations on integrating protocols-type processing with facilities for basic service, the effects on competition of permitting such integration, and the broad public interest. *See, Petitions for Waiver* (asynchronous/X.25), *supra*, para. 4, notes 3 and 4. We reached a result that would permit such integration and its economic efficiencies to be realized and passed along to the public in the form of lower transport charges. But we carefully conditioned the waivers to ensure that only true efficiencies are realized, and that pricing disparities between facilities used identically by the petitioners and their competitors are avoided. As one of the alternatives to be considered in this proceeding, we propose that the approach of the asynchronous/X.25 waiver order be generalized by rule.

103. Specifically, we propose that § 64.702 (c) and (d) be modified and a new paragraph (f) be added as follows:

(c) A communications common carrier prohibited by the Commission pursuant to paragraph (b) of this section from engaging in the furnishing of enhanced services or customer-premises equipment may * * *

(1) * * *

(2) Each such separate corporation shall operate independently in the furnishing of enhanced services and customer premises equipment. It shall maintain its own books of account, have separate officers, utilize separate operating, marketing, installation and maintenance personnel, and utilize separate computer facilities in the provision of enhanced services, *provided* that, it may alternatively furnish enhanced services in accordance with paragraph (f) of this section.

* * * * *

(d) A carrier subject to the proscription set forth in paragraph (c) of this section:

(1) Shall not engage in the sale or promotion of enhanced services or customer—premises equipment on behalf of the separate corporation, or sell, lease or otherwise make available to the separate corporation any capacity or computer system component on its computer system or systems which are used in any way for the provision of its common carrier communications services (this does not apply to communications services offered the separate subsidiary pursuant to tariff), except in accordance with paragraph (f) of this section.

* * * * *

(f) Notwithstanding the proscriptions of paragraphs (c)(2) and (d)(1) of this section, facilities for the provision of enhanced services by the separate subsidiary may be co-located or integrated with the carrier's facilities for basic service, and installation, repair and maintenance of the facilities for the provision of enhanced services may be performed by the carrier, provided that the following conditions are met:

(1) The carrier shall identify and remove from "above the line" regulatory accounts the investment and expense associated with the facilities for the provision of enhanced services and their installation, repair and maintenance, and no less than 60 days notice of how this will be accomplished shall be given the Commission;

(2) All interconnection with basic services of the facilities for the provision of enhanced service shall be governed by tariff. Such tariff or tariffs shall apply without discrimination to the subsidiary and to others and state separately:

(i) Charges for any interoffice communications services forming part of the enhanced service or services to be furnished, and

(ii) Charges for any loss of efficiency, or impact on the operation of, any basic service with which facilities for the provision of enhanced services are integrated.

(3) Interconnection of facilities for the provision of enhanced service with intraoffice facilities used to achieve interconnection with exchange services may reflect any loop costs that are avoided through the substitution of intraoffice facilities for loops, provided that:

(i) these cost savings are identified and reflected in the tariffs that will govern such interconnection,

(ii) notice of such proposed tariffs is provided the Commission no less than 60 days before their effective date, and

(iii) the Commission does not notify the carrier of its disapproval of such proposed tariffs prior to the expiration of this 60 day period.

These notice and disapproval procedures shall not apply if general tariff offerings available to the subsidiary and to others without discrimination, will govern such interconnection.

(4) Access by end users of basic services to the facilities used to achieve interconnection with the facilities for the provision of enhanced service shall be governed by general tariffs that apply without discrimination to comparable access by end users to enhanced services of others.

104. The rationales for the foregoing proposed rule changes are contained in the Protocols Decision and in our asynchronous/X.25 order, and are incorporated herein by reference. In phrasing these proposed rule changes, we have not differentiated protocols-type processing from true information processing since, under the present constraints of the MFJ BOCs provision of the latter by AT&T and the BOCs may be limited, and there would appear to be no reason to duplicate in our rules any such limitations that may be applicable. The foregoing proposed amendment would apply, absent further order of the Commission, only to those carriers that are now subject to structural separation. However, it need not be so limited. It might make sense to apply these approaches to dominant carriers more broadly, and we invite comment on this. Also, since the provisions of § 64.702(a) are unchanged by these proposals, entities that currently are in unregulated status because they provide protocols-type processing would remain so.

4. Alternative #3: Create a New Category of "Network Processing" That is Treated as Part of Enhanced or Basic Service Depending Upon the Status of the Vendor

105. A third alternative might be to repeat the protocols-type processing clause of the current enhanced service definition in a separate definitional category that could be basic, if it included in the offerings of dominant carriers. Currently unregulated of vendors of enhanced service would remain unregulated since the enhanced service definition would remain unchanged. This approach would follow the overall principle of the Competitive Common Carrier proceeding of limiting regulation to those services and entities that merit it, and dispensing with regulation for those that do not.

106. Upon focused re-examination of the nature and effects of treating as non-communications relatively primitive processing in carrier's networks of protocols (and related formats and codes), what we are terming "protocols-type" processing, we believe that there is a potentially valid argument that these functions are sufficiently communications-related that carriers should be able to include them in their offerings. *See*, paras. 13–15 and 83, *supra*.

107. This proposal would promote a baseline policy of Computer II, namely, that technological improvements in telecommunications continue to be introduced in the basic services. Under our present Computer II rules, many improvements that in the final analysis can promote *communications* efficiency are treated as non-communications, and must undergo the waiver process if they are sought to be integrated with basic services by carriers subject to structural separation. Absent such a waiver efficiency can be seriously impaired by the requirement for separation. Our processes have become tantamount to a design review step that carriers must traverse before they can make many significant service improvements. Such a result was not intended in Computer II. Computer II was intended to promote innovation and efficiency, not to impair them.

108. More fundamentally, the thrust of our Computer I and Computer II proceedings was to define those offerings that are uses of communications and therefore unregulated, rather than the provision of communications itself. Data processing, in the Computer I definitional *schema* was such a use. Activities in the second and third major clauses of the present definition of "enhanced service" may be such uses. Action on protocols (or related codes and formats) of signals is not; it seemingly is in the nature of communications itself. A realistic philosophical framework for differentiating between uses of communications and communications itself might depend on the answer to the question: "Why did a given user make a telephone call? If the user did so merely to pass information to another user unchanged, the call could be thought of as communications employing a carrier's facilities, even if changes in electrical signals are involved. If the user did so to have the information manipulated or changed by the carrier's facilities, or to gain information from the carrier's facilities, other than information aiding in using these facilities (*e.g.*, speed dialing, billing information and other adjunct services that do not involve the content of the message), the call could be thought of as an information use of these facilities. Our proposed creation of a new definition of protocols-type processing functions as an includable subset of basic service could lead to a treatment that would follow philosophical framework, since uses by enhanced service vendors would remain unregulated. At the same time, this proposal would solve the internetworking and new-technology protocol conversion problems that remain under alternatives #1 and #2, and which we address separately below.

109. In some respects, this approach follows the treatment of the overlap category of "hybrid" services of the original computer inquiry (Computer I). We would not, however, permit the vice of the Computer I approach to intrude. Under Computer I, services in the "hybrid" category were required to pass a weighing test to determine whether they were primarily communications or primarily data processing. Since there was no guidance in the Computer I rules on how such a test was to be applied, we increasingly were forced to examine individual proposed services *ad hoc*. We propose to treat such offerings by general rule, to promote certainty.

110. The following proposed amendment of § 64.702(a) for treatment of what we would term "network processing" would appear to reach this result:

(a) For the purpose of this subpart:

(i) the term "enhanced service" shall refer to services, offered over common carrier transmission facilities used in interstate communications, which employ computer processing applications that act on the format, content, code, protocol or similar aspects of the subcriber's transmitted information; provide the subscriber additional, different or restructured information; or involve subscriber interaction; and

(ii) the term "network processing" shall refer to the employment of computer processing applications that act on the format, code, protocol or similar aspects of the subscriber's transmitted information in providing interstate communications.

Enhanced services are not regulated under Title II of the Act.

111. Were an amendment of this nature to be made, carriers could provide "network processing" (as defined above) in connection with basic service, since it would be in the new category that specifically recognizes these functions as includable in the provision of interstate communications.[73] This approach would directly recognize protocols-type processing as related to basic communications, but would preserve the deregulated status of enhanced service vendors under the existing definition.

5. Additional Problems Needing Resolution Under Alternatives #1 and #2

112. Under alternative #3, protocol conversion could be treated as part of dominant carriers' regulated basic service offerings. However, under alternatives #1 and #2, protocol conversion would remain an unregulated enhanced service. Although this might be appropriate generally, there are two circumstances addressed in previous decisions for which such treatment might be inappropriate. These are: protocol conversion in connection with the introduction of new technology to implement existing services, and conversion to create internetworking protocols used primarily between and among carriers (and their foreign correspondents). *See*, 95 FCC2d at 591–92 and 594.

113. In the Protocols Decision, we resolved to treat these specially and expeditiously by waiver, and indeed did so in the case of the X.75/X.25 internetworking waivers *supra*. However, such waivers still must be sought and approved, which introduces delay. No party has seriously challenged our conclusion that flexibility to engage in protocol conversion for these purposes is needed, nor our conclusion in the X.75/X.25 waiver order that an internetworking interface of this nature should be treated no differently than a

[73] Or, for even more clarity, the following phrase could be added to the end of § 64.702(b), "*provided* that no such prohibition shall apply to the furnishing of network processing services by such common carrier."

basic service offering (which seemingly should apply equally to the new technolgy circumstance). To do so could impair the introduction of new technology and the efficacy of interconnected through service, domestic and foreign. Thus, it seems pointless and counter-productive to require that such matters be treated by *ad hoc* waiver. A rule, appropriately bounded, seems most appropriate.

114. Although protocol conversion facilities would be permitted to be integrated with basic facilities under alternatives #1 and #2, even protocol conversion for these purposes would remain classified as an unregulated enhanced offering absent more. While it might make sense generally to continue to treat many forms of protocols-type processing as unregulated non-communications offerings, and such treatment would apply in most cases under alternatives #1 and #2, the internetworking and technology introduction circumstances do not merit such treatment. In these cases, the essential nature of the basic service is unchanged, and electrical signal conversion occurs only either to promote its technological evolution or to promote its interconnection, both of which are *statutory* and policy goals of this agency.[74] Because of this, while our proposals under alternatives #1 and #2 would generally leave the enhanced service definition unchanged and address only requirements for structural separation, we also propose to change this treatment in these cases to ensure that they are treated as part of basic service. Again, our approach would be to do this by rule and not *ad hoc* waiver, to minimize uncertainty and delay. Language comparable to the following might accomplish this:

(a) * * * Enhanced services are not regulated under Title II, other than conversion of protocols between those employed in a new implementation of an existing communications service and prior implementations thereof, and conversion of protocols for internetworking of services.

## IV. Comparably Efficient Interconnection Issues; ISDN

115. It is clear that policy concerns are raised if a dominant carrier may place equipment within its central offices and connect it to basic service with intra-office wiring, while other providers of comparable services must achieve such connections using higher-price loops.[75] The lower cost of such wiring as compared with the loops that others must use is a true efficiency that properly can (and should) be passed on to the public. However, as a result of the fact that business firms, including the basic service providers in question here, do not normally allow competitors to locate on their premises, others cannot achieve the same efficiencies.[76] [77]

116. We believe strongly in the notion that free and unfettered competition will create a range and variety of services that will serve the public interest. If the carriers and their competitors could be similarly placed at reasonable cost, they would compete on the services they provide. But, if the carriers can realize an efficiency that others cannot—as appears to be the case here—this competition would be perturbed, and achievement of its benefits might to some degree be impaired. Our existing Computer II rules avoid this outcome by preventing the carriers subject to structural separation from achieving such efficiency. The major theme of this notice, however, is that sacrificing material efficiencies to achieve competitive parity is undesirable as a public policy, particularly if less inefficient alternatives are available. Indeed, the very purpose of our pro-competitive policies is to bring to the public the benefits of all available efficiencies.

117. In our asynchronous/X.25 waiver order, we acknowledged that the public's interest, as opposed to the interest of the petitioners' competitors, is in realizing whatever economies may be available. We explicitly declined to destroy this true efficiency by averaging techniques that might artificially raise the costs of the intra-office wiring to levels comparable to those sustained by others that must currently utilize loops for comparable purposes.[78] Such a result comports with our statutory mission to promote "rapid and efficient" services. However, the point still remains that the competition between such carriers and others is perturbed by this result.

118. A result that might serve the dual goals of promoting efficiency while not unduly perturbing competition would be for *both* groups to be able to realize these efficiencies to the maximum extent feasible. For this to occur, however, the carriers would have to be willing, or required, to allow others to achieve efficiencies comparable to those the carriers themselves received by using intra-office wiring rather than loops. By this, we do *not* mean that the carriers should artificially raise the costs of their offerings; rather, we mean that they might offer others comparably efficient interconnection.

119. There are two ways that this might be accomplished. First, new forms of interconnection to basic service could be developed that could be used by others, not located in the central office, to achieve interconnection on a minimal number of loops (loops that the carrier itself would not need). One such proposal that has been made is addressed below. And second, carriers could allow others' equipment to be co-located in their central offices, in which case it too would avoid using loops no differently than the carriers' equipment. As is discussed below, it has been claimed that this latter approach is problematical.

120. We seek comment on whether allowing some of all dominant carriers to integrate the innovative technology associated with enhanced services with their basic facilities, as is proposed variously in Sections II and III of this notice, should be keyed to their allowing others to achieve comparable efficiencies, through new forms of interconnection or allowing others' equipment to be located in their central offices.

121. Furthermore, the availability of such interconnection or co-location opportunities would appear to bear directly upon the treatment to be accorded dominant carriers' offerings under the framework proposed in Section II. For example, to the extent that others can utilize services priced on misallocated costs, marketplace incentives are created for the allocation procedures to be corrected. The nature and extent of regulatory protections that might be warranted for provision of ancillary-to-communications services by dominant carriers that can be competitive, under the Section II framework, should depend on this availability and we seek comment on this. We discuss the interconnection and co-locations concepts in detail below, and their seeming relationship to the development of integrated services digital network (ISDNs).

122. *Interconnection.* Comparably efficient interconnection opportunities would avoid the potential problems of co-location, discussed below, and for

[74] *E.g.*, Section 1 of the Act ("rapid and efficient . . . service"); Section 218 (technical developments and improvements . . . to the end that the benefits of new inventions and developments may be made available to the people of the United States"); Section 201(a) ("establish physical connections with other carriers"); and section 303(g) ("provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest").

[75] For a more complete explanation of this, see the asynchronous/X.25 waiver order, paras. 66–67 and 74–75.

[76] *Id.*, para. 75, n. 58.

[77] We know of no industry where such location has successfully been made compulsory, but we do think that cooperative co-location of facilities is practical and feasible.

[78] *Id.*, para. 76.

that reason may be the preferred approach. In the asynchronous/X.25 waiver decision, we considered petitions seeking authority to locate separate equipment that creates enhanced services in the petitioners' central offices. Such equipment was to be connected to the exchange similarly to equipment located elsewhere. The only difference was that it would use intra-office wiring for such connections rather than loops. However, actual integration of protocols-type and other enhanced service functions in the computers used for provision of basic service is feasible and potentially efficient.

123. Actual integration would be permitted under our Section II and Section III proposals. If actual integration occurs, the carrier's "interconnection" may be within the innards of a computer or its software, and it may be infeasible to make identical "interconnection" available to separately-housed equipment of others. Thus, we use the term "comparably efficient" rather than "identical" because we would not wish to foreclose integration of the carriers' enhanced service capabilities with equipment used to provide basic service. In such case, rough comparability (that is, some measure of pricing and functional comparability) might suffice, and we invite comment on whether, and how, such "comparability" might be assessed. If interconnection is to adequately address this comparability concern, forms of loop multiplexing may be required to minimize the loops that others, but not the carrier itself, would continue to use, and we invite comment on how the costs of such multiplexing equipment may best be minimized. However, there may be intrinsic efficiencies associated with particular integrated services that warrant non-comparability [79] and the public benefits of these would be weighed in our treatment.

124. The notion that efficient new forms of interconnection can be developed is not theoretical. There have been of press reports that one regional Bell company, Ameritech, has been developiing new interconnection options and functions to be implemented in its central office facilities that might address this matter.[80] We strongly urge this carrier to explain fully in its comments herein the nature of these developments, and others to comment on their ramifications.

125. *Co-location.* During the course of our consideration of the asynchronous/X.25 waiver petitions, our staff requested information from the petitioners on whether co-location of others' equipment might be feasible. In response, they strongly and uniformly opposed making co-location available to others, citing a number of administrative, operational and security problems that might arise. Although we expressed misgivings about the validity of these claims, we were not prepared in the context of the *ad hoc* waiver requests to address them comprehensively. We are, however, prepared to seek comment on these matters in this proceeding.

126. We note in this regard that this is not the first time claims of this nature have been made. They were made in the course of our *Carterfone* proceedings in the late 1960's;[81] they were made in our mid-1970's WATS rate investigation;[82] and they were made in the context of co-location of domestic satellite facilities at the international satellite earth stations. In the first two cases, we did not reach the co-location issues. In the third case, we ordered the involved carriers to reach agreements addressing the administrative, operational and security issues,[83] and they did so,[84] which indicates that such issues may be more theoretical than real once it is decided to address them. Also, one carrier that historically argued strongly against co-location,[85] AT&T, is now offering it in its traiffs, in the form of an offering central office-located interconnection with subscriber-provided communications facilities. *See,* Tariff F.C.C. No. 9, 1st Revised Page 57x, section 2.8 (effective April 27, 1985). We seek comment on: the experience gained in these instances of permitted co-location; the likely effectiveness of comparable industry cooperation in helping to foster an improved competitive envrionment for enhanced services competition; and the extent to which the circumstances of this proceeding are analogous to these.

127. As was noted in the asynchronous/X.25 waiver order, carriers themselves may well have incentives to change their long-held views against co-location. Space appears to be available in many central offices, most particularly the older ones where physically large electro-mechanical equipment has been replaced by smaller electronic equipment, and lease (or even sale) of unused space would represent a potential source of profits.[86]

128. And finally, some of the arguments raised against co-location relate to entry by non-carrier personnel in the carriers' central offices. A co-location opportunity does not necessarily imply such entry. Telephone company personnel could install, operate and maintain equipment owned by others, and appropriate contractual relationships could govern provision of such services. Under such an approach, the efficiencies would be achievable by others in a manner that would minimize the claimed administrative difficulties. We seek information or experience with such arrangements in this or other industries.

129. In sum, we conclude that these matters have not been explored in depth, and we propose to do so in this proceeding. We are especially seeking comment on whether the flexibility to be granted some or all dominant carriers under our proposals herein should be keyed to whether the carrier makes available under tariff comparably efficient interconnection or co-location opportunities to others providing comparable enhanced services, on a space-available basis in the same or nearby central office.

130. *ISDN.* We note that interconnection and internetworking

[79] Applied Spectrum Technologies, ENF No. 85-6, Mimeo No. 5532 (June 27, 1985) at para. 31-2.

[80] *See, e.g.,* Communications Week (Feb. 25, 1985) at 29; Telecommunications Reports, vol. 51, no. 7 (Feb. 18, 1985) at

[81] Claims of this nature were made testimony in the proceedings. In Am. Tel. and Tel. Co. ("Foreign Attachment") Tariff Revisions, 15 FCC2d 605, 609 (1968) we noted that they were not germane to the interconnection tariffs then before us.

[82] The issue was raised in Am. Tel. and Tel. Co. (WATS), 46 FCC2d 81, 84-85 (1974) (designating interconnection issues in a pending complaint for hearing), and written submissions were made that included comparable claims. In the final decision, we deferred resolution of these issues to separate proceedings, 59 FCC2d 871, 703-04 (1976).

[83] International Record Carriers, 78 FCC2d 115, 147 (1980).

[84] International Record Carriers, mimeo no. 33141, released July 3, 1980 (order by the Chief, Common Carrier Bureau accepting the parties' negotiated arrangement). *See also,* Communications Satellite Corp. (Torus), 90 FCC2d 1205, 1214 (1982) (discussing the co-location opportunities required to made available if Torus antennas were to be authorized); August 9, 1983 letter of the Chief, Common Carrier Bureau to Communications Satellite Corporation (discussing the co-location arrangements made to satisfy the requirements of the Torus order).

[85] The arguments in the Carterfone and WATS proceeding, noted in the previous paragraph, were made by AT&T.

[86] Not only floor space has been freed up by the replacement of electro-mechanical equipment with electronic equipment. The predecessor relay racks were taller than current equipment, and relatively inexpensive "catwalks" conceivably could be deployed to utilize room space above current switching equipment.

among a wide variety of service providers, both basic and enhanced, is a subject being intensively considered in the context of planning for integrated services digital networks ("ISDNs").[87] The ISDN network functional principles recently adopted by the CCITT also clearly envision a broad range of "users" availing themselves of network services. Potential customers employing the user-network interfaces include "local area, private, existing telephone or dedicated networks, specialized storage and information processing centres, another ISDN, or service providers outside an ISDN." [88] In addition, the draft ISDN architecture functional model recognizes the ultimate need for many more reference points, interfaces and connection types to accommodate a matrix of configurations involving ISDNs, specialized networks internal and external to ISDNs, dedicated networks, and users.[89] This effort, occurring in CCITT Study Groups and in domestic preparatory bodies such as the ANSI-accredited T1.D committees, seems to complement our efforts to pursue comparatively efficient, cost-based opportunities for interconnection and interoperation among the facilities of carriers and enhanced service vendors.

131. The potential problems of "interconnection" when there is integration may rise to the fore when integrated services digital networks (ISDNs) are considered.[90] Briefly, international ISDN planning has encompassed integration of packet switching and some degree of protocol conversion with conventional telephony. Enhanced service vendors offering packet switched transport to the public utilize carriers' conventional telephone and private line services to configure their netowrks and for their customers' access to these networks. These vendors' customers have not utilized local telephone companies' packet switched services for access to their services, as such services do not currently exist. Indeed, a number of the petitioners requesting asynchronous/X.25 waivers stated that they would not consider deploying such services in the absence of the waivers.

132. Our asynchronous/X.25 waiver order allowed the petitioning carriers to offer services similar to those of the existing enhanced service vendors through the use of largely separate packet switched networks built on these carriers' underlying basic services. This was similar to the enhanced service vendors' offerings, except that the petitioners' packet assemblers and disassemblers, and similar equipments, could be located in telephone central offices, unlike those of the existing vendors. In both cases, conventional telephone services are used for users' access *to* the carriers' and enhanced service vendors' packet switched services. But, in ISDN this approach may be infeasible. ISDN ultimately may involve integration of packet switching *with* the conventional services, and not the creation of a separate packet switched networks accessed through them. As we noted in the asynchronous/X.25 waiver order, such integration is most direct in the case of "D" channel. The "D" channel is used not only to control "B" channels that can be used for competitive access to one or more vendors of data transport (be it basic or enhanced); it also can be used for end-to-end packet switched data transport. The only manner in which another vendor of packet switched service could be accessed on the "D" channel itself is through the carrier's "D" channel switching capabilities.

133. In sum, these switching capabilities appear to have bottleneck characteristics. Even if others' packet switching equipment were co-located at the central office, it is unclear whether comparably efficient "interconnection" to these switching capabilities could be gained, as compared with the internal "interconnection" through integration of the carriers' packet switches and channel derivation capabilities. In such circumstances, new interconnection opportunities, such as those being developed by Ameritech, may well determine the nature and effectiveness of competition, and we seek comment on this. More broadly, we solicit comments on the ISDN developments and on appropriate definitional and structural approaches that can best serve our dual goals of promoting communications efficiency and the benefits of competition. To the extent that these comments relate to the proposals in Sections II and III of this notice, we would hope that this relationship is fully explored and explained.

## V. Voice Message Storage Services

134. We seek also to address the voice message storage services that were the subject of our *Custom Calling II* determinations.[91] As was noted in the introduction to this notice, when we were considering the nature and treatment of the voice storage services that were the subject of the *Custom Calling II* order, we were told that competitive alternatives were being developed and would be offered to the public. Five years have elapsed, and we are not aware of any that are available. It would appear, therefore, that our faith in the validity of these claims was misplaced, and that the public has truly been denied a desirable service. This seems to be a very unfortunate effect of the application of the Computer II rules and policies.

135. At the same time, interconnection of others' equipment to subscribers' loops that might have efficiently implemented services comparable to Custom Calling II was not available. Consider, for example, delayed message service. If a call were placed by caller A to caller B's telephone number and caller B did not answer, the call would be diverted to a central voice storage capability and caller A's message would be stored. Later, when caller B was prepared to receive calls, he or she would dial a code and the central storage would replay the message.[92] Service of this nature could be implemented in a central office, or in an answering machine at caller B's premises.

136. AT&T and the Bell Operating Companies were seeking to make such a service available not only to caller B, but also to other telephone subscribers on the exchange. Suppose there were twenty-four others on that exchange, C–Z, that did so. Now the central office-located and premises equipment implementations become different. On a statistical basis, the carrier might conclude that no more than three of these subscribers would actually be receiving an incoming voice message at the same time. Thus, only three channels would be required between the storage facility and the switch, and the switch would connect each of them to an actual

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[87] *See, e.g.*, Definition of Service Principles, Question 2/XVIII; ISDN Architecture Functional Model, Question 3/XVIII; Protocol Reference Model, Question 4/XVIII; Interworking of ISDNs and other networks, Quesiton 7/XVIII (questions allocated to Study Group XVIII for the 1985–88 Study Period, CCITT Doc. COM XVIII No. 1, Nov. 1984).

[88] ISDN Network Functional Principles, Rec. No. I.310, CCITT Red Book (1985).

[89] *See*, ISDN Architecture Functional Model, Draft Rec. I.32X, Annex to Question 3/XVIII, n. 87, *supra*, at 21.

[90] Asynchronous/X.25 waiver decision, paras. 56–61.

[91] Similar services are available in mobile radio services.

[92] On reconsideration of the Final Decision in Computer II, we concluded that the combination of storage by caller A and purposeful retrieval by caller B was the type of "subscriber interaction with stored information" addressed in the third major clause of Section 64.702(a), and therefore an enhanced service. 84 FCC2d 50, 54 (1980). Therefter, we declined to waive the Computer II treatment of this service. Custom Calling II, 88 FCC2d 1 (1984).

incoming call. Such a connection might be termed a "trunk side" connection. If storage equipment could not obtain such a connection to the switch, it would have to have connections with each of the lines that *might* receive a call, i.e., twenty-five connections in this example to the lines of subscribers B–Z. This latter connections would be termed a "line side" connection.

137. "Trunk-side"-type connections of this nature are not available. The price of line-side connections, which involve loops connected to each of the lines that might subscribe to a storage service of this nature, would be either at normal exchange rates or at rates governing comparable interconnection of answering service bureaus to their subscribers. Current call forwarding services can be used, if invoked manually, to route to a common storage facility incoming calls made to the lines of all subscribers. However, most existing call forwarding services do not send forward the number that was actually dialed, thus such a central storage facility would not necessarily know the identity of the subscriber to whom the message was directed. Furthermore, call forwarding must normally be invoked manually. A subscriber to call forwarding must dial a code each time he or she wishes calls to be forwarded, and must dial another code each time such forwarding is to be cancelled. And finally, forwarding does not operate quite the same as typical answering services, i.e., where the telephone will ring several times (during which it can be answered normally) and then the call will be diverted automatically to the answering device or bureau. All other things being equal (and they are not), such a manually-initiated and cancelled message service could well prove less desirable in the marketplace than an automatic one.

138. We are aware that concentrator/identifier equipment might be installed in central offices to give outsiders an interconnection opportunity somewhat comparable to that achievable in the form of the "trunk side"-type connections. However, since such equipment may be costly, it may limit the development of services of this nature. If such capabilities have been offered, their price has apparently been too high to make such services viable. Or, such capabilities may not have been offered, and the costs of loops between the central office and the central message facility may have been too high to make such services viable.[93]

139. These factors may well change, either as a consequence of this proceeding or in the marketplace. First, in Section IV above we are soliciting comment on interconnection (or co-location) opportunities that could facilitate efficient access by others to the exchange. As noted, Ameritech is actively pursuing the development of new interconnection options. Under these approaches, which may become available in the future, the interconnection disparities between telephone companies' voice storage equipment and that of others would be minimized. And second, new custom calling-type services could send forward the identity of the originally-dialed number in the case of call forwarding service (which could make it possible for subscribers' messages to be separately identified automatically, if call forwarding-type services were used to access central message storage facilities).[94] This latter option could be combined with a more automatic form of call forwarding than may presently be available. For example call forwarding could occur after a specified number of rings without manual initiation/cancellation. Or, it may develop that the present manual forwarding initiation/cancellation procedures are adequate. One or more of these changes might make it possible for services of this nature to be provided consistently with our Computer II policies. We invite comment on this, and specifically request that Ameritech address how, if at all, the new developments it is pursuing might affect these matters.

140. Of course, it may be that none of these changes is, or will be, significant. This would bring us back to the start of this discussion: there appear to be potentially valuable services that could be deployed with relative ease and fairly minimal additional investment. Alternatives now available are less efficient, more costly, or more difficult to employ; and the sole reason the public is not receiving these services is because our Computer II rules and decisions have prevented their implementation. Under our proposals in Sections II and III, services of this nature might be implementable, but such proposals may not be adopted. Also, the proposals in Section III are largely focused on protocols-type processing, which would not include these services. Given the five year history of denial of voice message services to the public, we believe it important that they be considered specifically and independently of proposals made elsewhere in this notice. Therefore, we invite comment on whether voice message services should be treated together with one or more of the alternatives for treatment of "protocols-type" processing in Section III of this notice, or alternatively, whether our Computer II rules should be waived to permit such services to the offered on an efficient basis, that is, co-located with or integrated in facilities for basic service. Finally, we invite comment on whether such services should be treated as an adjunct to basic service.

## VI. Network Channel Terminating Equipment

141. The final area on which we seek comment concerns network channel terminating equipment ("NCTE"). Under long-standing FCC rules and policies, CPE generally may be connected to the telephone network if registered under Part 68 of the Commission's rules. In the pre-*Computer II* time period, although both groups of equipment were registered, carriers' CPE was supplied subject to economic regulation at the state and federal level while others' CPE was supplied free of any such regulation. In *Computer II* we freed the supply of all such equipment from regulation. However, *Computer II* did not answer the fundamental question: Where does the "network" end and the "premises equipment" begin? *Computer II* did not purport to deregulate digital and analog basic services and facilities, only CPE.

142. This matter became significant in the case of NCTE. NCTE is equipment that does not serve as the end of a communications channel. Rather, it is inserted in the stream of such a channel, and other equipment is connected to it to actually use the channel for communications. It is physically located at a subscriber's permises. The telephone companies argue that such

[93] Comparable cost concepts govern the connections with their customers' lines by answering service bureaus. Although the prices of these bureaus' services (which reflect the cost of these connections) are almost invariably higher than would be the case if their customers simply purchased answering machines, their services are purchases. This often reflects a need for the judgment that can only be exercised by a live operator. A doctor's answering service bureau, for example, can judge when to get in touch with the doctor immediately in an emergency; a machine cannot.

[94] *See*, North American Telephone Assn., *op cit.*, at paras. 36–39, discussing "forwarded call information" as a feature to be offered in connection with centrex and central office-located automatic call distribution systems. If such services can also be offered to equipment of comparable function at customers' premises (e.g., centralized message storage or call answering equipment) they should be made available, just as a variety of other capabilities that also originated as centrex ones (denominated "Local Area Signalling Service" in that order at paras. 42–52) have been made available. Indeed, it could be argued that a failure to do so could constitute centrex customers an improperly preferred group.

equipment is part of the channel and that it should therefore be supplied by them when they install a channel (i.e., on a monopoly basis) since it serves only to make the channel usable. Those who wish to supply such equipment competitively argue that it is part of the CPE and should fall under the Part 68 registration program (which would permit subscriber-provided NCTE to be used) and under *Computer II* CPE treatment. The latter would require the telephone companies themselves to furnish such equipment on an unregulated basis, and require AT&T and the BOCs to furnish this equipment subject to structural separation. In our CC Docket No. 81-216 decisions, 94 FCC2d 5 (1983), *recon. denied*, 97 FCC2d 527 (1984), we accepted the latter group of arguments, and deemed such equipment CPE in the context of our *Computer II* policies. At the same time, we began developing appropriate Part 68 rules under which this equipment could be registered, and subscriber's ability to use it nationwide would be secured.

143. We see no reason to revisit the Part 68 determinations. Subscribers should be permitted to provide their own NCTE, ast least as an option. But, we now believe that the treatment of such equipment as CPE under *Computer II*, and particularly the application of structural separation to AT&T and BOCs, carries costs that may not have been apparent when we reached our decisions, and that this equipment may be somewhat different in kind than the vast range of CPE that has been treated generally under *Computer II*.

144. *Petitions for Waiver.* Several petitions seeking waiver of the requirement that AT&T and the BOCs supply this equipment on a structurally separated basis are pending. The claims made are two-fold. First, the type of operations involved in installing and maintaining this equipment are more akin to installation and maintenance of lines than premises equipment, and the wrong telephone company craftspeople—those trained and equipped to work on premises equipment—are required, under structural separation, to deal with the NCTE. NCTE has historically been treated as part of the channel, and those who install and maintain the channel are better equipped by training, experience and day-to-day work function to deal with NCTE.

145. Second, it is claimed that subscribers (and their equipment suppliers) have suffered delays and malfunctions in attempting to obtain and utilize NCTE.[95] The structurally-separated affiliates of AT&T and the BOCs do not always have such equipment in stock, nor do other equipment suppliers. But, the structural separation governing AT&T and the BOCs ensures that these companies may not supply the equipment. We did not intend such a "Catch 22" result in applying our Computer II rules.

146. And third, it has been claimed that while our decision about the particular NCTE that laid out the original policy may have been appropriate,[96] we unwisely generalized this decision to all current and future digital NCTE without adequately considering the impact of such a decision on innovation and network evolution. Viewed narrrowly, it has been argued, the decision to deregulate NCTE promotes competition for NCTE. But, viewed more broadly, the ubiquitous supply of NCTE by the telephone companies can create standard interfaces for other terminal equipment. Such interfaces would be independent of the loop technology and characteristics to which the NCTE is connected, and competition among loop technologies and in terminal equipment would be promoted.[97] Stated another way, it has been argued that if telephone companies supply NCTE with the channels, they may implement the channels as they please, so long as the NCTE creates a standard interface to which premises equipment may be designed and connected. Thus, they are free to change channel characteristics and technologies at will, or to utilize multiple technologies in different regions of their service areas, without considering the effects on terminal equipment suppliers and users. Competitive terminal equipment can be utilized without concern for the channel characteristics under such an approach, and competition for the terminal equipment can be promoted since the standard interfaces created by the NCTE may be the same nationwide, or even worldwide, and relatively small producers of terminal equipment can serve very broad markets with the same equipment design.

147. These problems are only now surfacing because of the introduction of new services. They did not arise until recently for embedded NCTE. Both the disrtict court that implemented the MFJ and this Commission treated existing NCTE as *sui generis*, and not identically with other CPE, for some time. Under the MFJ, the embedded base of premises equipment was transferred to AT&T, and the BOC's were obliged not to discriminate in their treatment of AT&T and other equipment suppliers. Yet, under the Plan of Reorginization accepted by the court the BOC's and not AT&T, retained the embedded base of NCTE. Thus, the divestiture did not disrupt past practices in the supply, installation and maintenance of NCTE. Similarily, when this Commission considered issues surrounding deregulation of the embedded base of customer-premises equipment, treatment of embedded NCTE was deferred, and during the deferral period structural separation was similarly deferred.[98] In sum, while the determination that NCTE would be treated in the future as CPE under Computer II was made some time ago, the effects are only becoming apparent now.

148. *"Multiplexing" Exception.* In addition to these practical problems, there is a continuing uncertainty invovling "multiplexing" devices, created in the Computer II Final Decision, that may relate directly to the evolution of basic and enhanced services. Multiplexing is a technology that permits individual channels of communications to be combined ("multiplexed") into a single channel, and separated out again ("demultiplexed") a the other end . It can be used by subscribers to create sub-channels of the channels furnished by the carriers, or it can be used by carriers themselves to create the channels they offer to the public. Subscribers typically use multiplexing equipment that they supply as CPE to "break down" private lines leased from carriers into individual data channels. The equipment that performs this function has long been furnished by subscribers (or telephone companies) as customer-premises equipment. Carriers

[95] *E.g.*, Letter filings of Bell South Corporation in ENF 84-33, dated June 13 and June 14, 1985, summarizing presentations made to Commissioners' offices and to the Common Carrier Bureau. Requests by Ameritech, Bell South and Southwestern Bell are pending seeking waiver of the requirement that digital DS-1 and/or DDS NCTE be provided through structural separation. The BOCs do not always have such equipment in stock, nor do other equipment suppliers. But, the structural separation governing AT&T and the BOCs ensures that these companies may not supply the equipment. We did not intend such a "Catch 22" result in applying our Computer II rules.

[96] *I.e.*, NCTE used with the stable DDS technology and service.

[97] This argument really is one in favor of monopoly supply of the NCTE by the telephone companies, a possibility that we reject consistent with our decision to register such equipment under Part 68 of the rules.

[98] In July, 1984, the Common Carrier Bureau granted Ameritech, Bell Atlantic, Bell South, Northwestern Bell and NYNEX permisison to continue to provide and support, on an unseparated basis, digital NCTE placed in service during the transition period between January 1, 1984 and June 30, 1984, pending the outcome of proceedings in CC Docket No. 81-893 directed towards establishing procedures for deregulating such embedded NCTE. While equipment placed in service thereafter has been required to be supplied subject to structural separation, as a practical matter a pool was created of equipment not subject to such separation. It may be that only recently has this pool been depleted.

typically use multiplexing (as part of the network) where loop facilities are limited, to create multiple channels on the loops that are available. In the latter case, the subscriber is indifferent to whether the channels it has ordered are delivered on individual loops, or are created by multiplexing equipment from loops that carry other channels. Multiplexing is also used in digital or a system, where it is an intrinsic part of providing transport.

149. In the Final Decision, we stated that, "Excluded from CPE is * * * multiplexing equipment to deliver multiple channels to the customer." 77 FCC2d at 447, n. 57. We recently explained that this was intended to retain carriers' historic flexibility to deliver channels using multiplexing technology, and differentiated this from the type of multiplexing where the channels offered by carriers are subdivided by the subscribers. In the former case, the equipment, although located at subscribers' premises, is considered part of the network; in the latter case, it is treated as customer-premises equipment. We also emphasized that this treatment is limited to a multiplexing function alone, and that inclusion of multiplexing capabilities with others will not redefine the combined equipment as part of the network.[99] However, as networks increasingly become more digital, a different approach will be needed for a third case not heretofore explicitly considered.

150. Here, the carrier offers multiple channels to one subscriber, and delivers only one (or some) of them to another subscriber. For example, if a data channel were multiplexed on a conventional telephone loop, the end-user would receive two channels at its premises that would be created through multiplexing. At the central office end, however, only one of them, the data sub-channel, would be connected to a data transport service or to a data service vendor (the other subscriber involved). Only the carrier would perform the multiplexing function at the central office end (unless co-location, as discussed in Section IV of this notice, were available). We seek comment on whether the multiplexing equipment at the end-user's premises should be treated as akin to the case where subscribers performing multiplexing at each end of a connection (in their premises equipment), or akin to the case where the telephone company delivers multiple channels through multiplexing equipment that is deemed part of the network.

151. This also relates to the treatment to be accorded enhanced services. If the telephone company supplies the multiplexers at both ends of a channel, there is no protocol conversion between the ends. If it supplies the central office end multiplexer but not the one at the subscriber's end, is there a net protocol conversion involved, and if so, between what points? What is the significance of such conversion under the proposals made in other sections of this notice?

152. We believe the problems and "multiplexing" ambiguities identified above merit addressing in this proceeding. In view of the claims that have been made, and the problems that may now be surfacing for the first time, we shall carve out the NCTE issues as a special area for comment, and maintain the option of treating this equipment *sui generis*.[100] We specifically give notice of the following potential results that may be adopted individually or in combination:

a. That NCTE will continue to be treated as unregulated customer-premises equipment, but that structural separation will not apply to its supply, installation and maintenance;

b. That NCTE may be treated as part of carrier's network facilities on condition that service is offered to subscriber-provided NCTE with a price differential that reflects that the carrier will not be providing NCTE to subscribers that seek to provide their own;

c. That equipment implementing "multiplexing" (and not other functions) will continue to be eligible for treatment as part of the network, but that "multiplexing " will be more clearly defined than heretofore; and

d. That subsets of the circuit termination, signal conditioning, testing and multiplexing functions now included within the ambit of the term "NCTE" might be accorded special treatment.

We emphasize that we are not reopening the question of whether subscribers should have the ability to supply their own NCTE. That right is established.

## VI. Summary and Ordering Clauses

153. In summary, we are broadly reopening the enhanced services issued addressed in Computer II, and certain limited NCTE issues. As discussed previously, we do so for three principle reasons. First, the industry has changed markedly in the five years since we reached our Computer II decisions, and policies and requirements adopted then may no longer be appropriate. Second, the result of the definitions and structural separation requirements governing AT&T and the BOCs have demonstrably impaired communications efficiency. Our waiver policies have ameliorated this to some extent, but at the expense of uncertainty and delay. And third, it is clear that the existing rules do not establish a clear dichotomy; the line that now exists has been interpreted and explained in *ad hoc* decisions virtually since the day the Final Decision was adopted. In the light of these factors, it is imperative that the 1980 rules and policies be reexamined.

154. In saying the foregoing, we do not wish to convey the impression that Computer II was misconceived. It has had some unfortunate consequences, but has also materially contributed to the evolution of the telecommunications industry towards a more effectively competitive structures. Computer premises equipment has been deregulated and competition in the supply of such equipment is flourishing, to the benefit of the public. Entities with little or no market power, for which regulation (and its costs) is unnecessary and counter-productive have been deregulated, even when offering substitutes for basic communications service. We confirmed the deregulated status of the information and data processing industry, and removed the uncertainty attendant to our treatment of the "hybrid" category in the Computer I rules. And, with all of their faults, our waiver approaches have blunted the most untoward and inefficient effects of rigidly applying to AT&T and the BOCs the definitional and structural separation requirements of Computer II.

155. However, as telecommunications continues to evolve domestically and worldwide, we can no longer blithely apply the approaches of Computer II without considering their effects. Structural separation has been employed in the First and Second Computer Inquiries to respond to the age-old problem in regulated industries of seeking to separate the joint and common costs of providing multiple services, some of which are regulated and others of which are not. The costs of unregulated undertakings should not be borne by subscribers to regulated services; the result would be that their rates for these services would be

[99] Int'l Business Machines Corp. (IADT).—— FCC2d——, FCC 85-292, released June 11, 1985.

[100] Our decision to reopen the Computer II aspects of the CC Docket No. 81-216 NCTE decisions generically is without prejudice to action on the various pending requests for waiver of that treatment. We specifically disclaim any intention to delay resolution of those requests pending the outcome of this proceeding.

excessive ("unjust and unreasonable" under the statute). At the same time, competition for the unregulated competitive services could be adversely affected. Structural separation solves this problem, fundamentally, by saying: "If you cannot separate joint and common costs, ensure that they cannot be incurred." Under structural separation, such costs are limited.

156. The result, however, can be to deny the public true efficiencies that can result from implementing services using joint and common plant, the efficiencies that can result from integration of functions that today are deemed part of enhanced service with the facilities used to provide basic services. And, in some cases, the result can be (and has been) to deny the public services that, at least in the past, could not be provided except through such integration. These problems, discussed throughout this notice, have occurred most significantly in the context of the protocols-type functions and the custom calling services. They will continue to occur at an ever-increasing pace as the technology continues to evolve and the rest of the world, operating without the artificial constraints of the current Computer II policies, demonstrates just how short-sighted our present policies are.

157. For example, integrated digital networks including ISDN will inherently involve the broad use of processing capabilities in carriers' central offices. The hardware that will be used will have capabilities beyond merely setting up and switching channels. Just as today's packet assembler and disassembler devices almost invariably contain protocol conversion capabilities, future equipments of this nature will also. If such capabilities will be present, and can be employed at little additional cost by the carriers that will be purchasing them, are we to continue to restrict their use under Computer II rules that dictate that the inherent technical capabilitis of the equipment cannot be used? That result of our current rules can and must be changed. The public interest is not served by artificially restricting the use of technology, or subjecting its designers to legalistic design review.

158. We continue to believe that the nation's telephone network, even in the post-divestiture environment, remains one of the nation's most valuable and most underutilized resources. The local loops that connect the nation into an increasingly sophisticated network have the special ability to bring diverse and exciting services and benefits to the American public. Conversely, artificial limitations on the capabilities of these loops can deny broad sectors of the public these services. We believe that the Communications Act requires us to encourage and stimulate an environment in which these potential benefits will realized.

159. *Regulatory Flexibility Act Certification.* Pursuant to section 605(b) of the Regulatory Flexibility Act, we hereby certify that this proceeding does not address a "proposed or final rule" that will have a "significant impact on a substantial number of small entities." The pertinent definition of "small entity" is a "small business," which has the same meaning as "small business concern" under section 3 of the Small Business Act, *i.e.*, "one which is independently owned and operated and which is not dominant in its field of operation." Clearly, none of the entities which could be subjected to regulation as a result of this proceeding are small businesses. AT&T is the nation's largest provider of interexchange telecommunications service, and the other carriers that might be subjected to regulation have been classified as dominant by the Commission because of their monopolies or near-monopolies over service.

160. Accordingly, it is hereby ordered, that, pursuant to sections 1, 4(i), 4(j), 201–05, 218, 220, 303(g), 303(r) and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 151, 154(i)–(j), 201–05, 218, 220, 303(g), and 303(r) and 403, and 5 U.S.C. 553 notice is hereby given of proposed amendments to § 64.702 of the Commission's Rules and Regulations, 47 CFR 64.702, in accordance with the proposals, discussion and delineation of issues in this Notice of Proposed Rulemaking. We hereby give notice that in reaching our decisions herein we will not necessarily be limited to the comments, replies and responses that may be filed, and that we may utilize other information, analyses and reports, provided that in each such case a copy of the material relied upon will be associated with the record of this proceeding.

161. It is further ordered, that, comments, responses and replies may be filed in accordance with § 1.46, 1.49 and 1.419 of the Commission's Rules and Regulations, 47 CFR 1.48, 1.49 and 1.419. Comments will be due on or before October 30, 1985 and replies will be due on or before November 29, 1985.

162. It is further ordered, that this proceeding will be conducted as a non-restricted informal rulemaking proceeding. The public is advised that *ex parte* presentations to the Commission and its staff in such a proceeding are governed by § 1.1231 of the Commission's Rules and Regulations, 47 CFR § 1.1231. Under these provisions, *ex parte* presentations[101] are permitted until a draft order proposing a substantive disposition of this proceeding is placed on the Commission's Sunshine Agenda and a final order is released (or the matter is returned to the staff for further consideration), *provided that* the substance of each presentation is summarized in a document to be associated with the public record of the proceeding, or is reflected in documents already made part of the record by the party making the presentation.[102] Those who might make such presentations are reminded of their obligation to prepare and file timely any summaries that may be required.

163. It is further ordered, that, pursuant to section 603 of the Regulatory Flexibility Act, 5 U.S.C 603, the Secretary shall send a copy of this Notice to the Chief Counsel for Advocacy of the Small Business Administration.

164. And, it is further ordered, that the Secretary shall cause a copy of this Notice of Proposed Rulemaking to be published in the **Federal Register.**

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 85-19520 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 85-239]**

## FM Broadcast Station in Reno, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes the substitution of Channel 269A for 272A at Reno, Nevada, in response to a petition filed by Emerald Broadcasting Company.

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[101] A "presentation" is any communication going to the merits of the proceeding. An *ex parte* presentation is any written presentation made to decision-making personnel that is not served on other parties to the proceeding, or any oral presentation made to decision-making personnel without advance notice to other parties to the proceeding and the opportunity to be present. *See*, § 1.1201 (f) and (g) of the Commission's Rules, 47 CFR 1.1201 (f)–(g).

[102] The provisions of our *ex parte* rules, §§ 1.1231–1.1243 are dispositive. Our shorthand summary of their requirements does not alter them.

**DATES:** Comments must be filed on or before October 7, 1985, and reply comments on or before October 22, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret on apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

**Notice of Proposed Rule Making**

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Reno, Nevada), MM Docket No. 85–239, RM–5026.

Adopted: August 1, 1985.
Released: August 15, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Emerald Broadcasting Company ("petitioner"), requesting the substitution of FM Channel 269A for Channel 272A at Reno, Nevada. The channel can be allocated in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

2. Petitioner is the licensee of FM Station KZFR, Channel 275, South Lake Tahoe, California. Station KZFR obtained Class B status approximately two years ago (*Report and Order* in BC Docket 80–522, BC–30688, released January 15, 1982) and has since been operating under special temporary authority from its existing site with reduced power. Petitioner states that it recently found the only suitable available site on Genoa Peak that would be free of multipath distortion, and provide line-of-coverage to South Lake Tahoe. However, the site is short spaced to the sites proposed by seven applicants for Channel 272A at Reno, Nevada. In order to permit Station KZFR to operate as full Class B facility, the Reno channel must be deleted and a substitute channel is available according to Emerald.

3. The current applicants for Channel 272A at Reno will be mailed a copy of this *Notice* in order to elicit their comments. In accordance with Commission policy, we would retain cut-off protection for the pending applicants when they amend their applications to the proposed Channel 269A, since the channels are equivalent. See *Phillipsburg, Kansas* (Docket 82–145) 48 FR 10844, published March 15, 1983.

4. In view of the foregoing, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Reno, Nevada | 225, 238, 272A, 283, 289, and 295. | 225, 238, 269A, 283, 289, and 295. |

5. It is ordered, that the Secretary of the Commission shall send by certified mail, return receipt requested, a copy of this *Notice of Proposed Rule Making* to the following applicants for Channel 272A at Reno, Nevada:

Arthur Winburn Saunders, Jr., 1126 Pine Street, Santa Monica, CA 90405 (BPH831216CG)
James N. & Rita Lencionia, 921 Desert View Drive, Sparks, Nevada 89431 (BPH840404IB)
Reno Broadcasters, Inc., 1360 Manzanita, Reno, Nevada 89509 (BPH8404231S)
Joy Denise Hill, 2809 Camulos Way, Redding, CA 96002 (BPH8404231Q)
Carrillo Broadcasting Co., 1330 Sala Place, Sun Valley, CA 91352 (BPH840423IL)
Meryle Karloff Holmes, 1425 Calveras Avenue, San Jose, CA 95126 (BPH840423IR)
Bonnie Broadcasting Corp., 359 Wheeler No. A, Reno, Nevada 89502 (BPH840423IN)

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before October 7, 1985, and reply comments on or before October 22, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, on their counsel or consultant, as follows: Michael H. Bader, Melodie A. Virtue, Haley, Bader & Potts, 2000 M Street NW., Suite 600, Washington, D.C. 20006 (counsel for petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to the rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

**Appendix**

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85-19786 Filed 8-19-85; 8:45 am]
BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 84-14; RM-4601; RM-4720; RM-4826]**

## FM Broadcast Station in Cookeville, Livingston, Lebanon, Celina, and Goodlettsville, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes five options for the allocation of Channel 246 in response to five mutually exclusive proposals for the channel at Cookeville, Lebanon, Celina, Livingston and Goodlettsville, Tennessee. Due to the minimum mileage separation requirements, the channel can only be allocated to one community.

**DATES:** Comments must be filed on or before October 4, 1985, and reply comments on or before October 21, 1985.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

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

**SUPPLEMENTARY INFORMATION:**

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

### Further Notice of Proposed Rule Making

In the matter of table of allotments, FM broadcast stations. (Cookeville, Livingston,[1] Lebanon,[1] Celina,[1] and Goodlettsville,[1] Tennessee (MM Docket No. 84-14, RM-4601, RM-4720, RM-4826).

Adopted: July 12, 1985.

Released: August 13, 1985.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 3220, published January 26, 1984, proposing the substitution of Channel 234 for Channel 232A and modification of the license of Station WGSQ, Cookeville, Tennessee, to specify operation on the Class C channel. The *Notice* was adopted in response to a petition filed by Gallaher and Huffines ("petitioner"), licensee of Station WGSQ, Cookeville, Tennessee. Comments in response to the *Notice* were filed by: Globe Fuel, Inc.; Gwen's Stout Shop; U.S. Energy, Inc., WHUB, Inc.; S. Roger York; Richard Gillespie; B&B Associates; Carl Story Company; and petitioner, all expressing an interest in the channel. A counterproposal [2] was filed by William O. Barry ("Barry") proposing Channel 229C2 in lieu of Channel 234 to Cookeville, to permit the allocation of Channel 233A to Lebanon, Tennessee.

2. In response, petitioner filed a *Motion* to hold the proceeding in abeyance pending the outcome of the proceedings in MM Docket No. 83-1148.[3] Subsequent pleadings filed by Barry and petitioner, and related Commission actions have raised matters which require additional comment and consideration in this *Further Notice*.

3. In June 1984, Barry filed a supplementary petition [4] amending his counterproposal and requesting the allocation of Channel 246A to Lebanon in lieu of Channel 233A. In support, Barry stated that the impact of the newly created ten mile "buffer zone" in BC Docket 80-90 [5] was not yet apparent and further engineering studies indicated that a suitable site for Channel 233A at Lebanon could not be found. Barry's new proposal resolved the conflict with the Cookeville proposal. However, Commission engineering studies indicated that the new proposal conflicted with a pending petition [6] to allocate Channel 246 to Livingston, Tennessee.

4. In September 1984, petitioner filed reply comments proposing the allocation of Channel 246 to Cookeville to satisfy the criteria newly adopted in § 1.420(g)[7]

[1] These communities have been added to the caption.

[2] Barry's counterproposal for Lebanon was later amended to specify Channel 246A which would resolve the conflict with petitioner's proposal to allot Channel 234 to Cookeville. Barry subsequently filed pleadings requesting the substitution of various channels at Celina, Spring City and Calhoun, Tennessee, to maintain his proposal for Channel 229C2 at Cookeville. However, in view of Barry's current position seeking the allocation of Channel 246A to Lebanon, these requests are moot.

[3] *Report and Order*, MM Docket No. 83-1148, 98 F.C.C. 2d 916 (1984).

[4] *Motion for Leave to File Supplemental Statement* and *Supplemental Statement of William O. Barry*, filed June 14, 1984, and granted herein. Barry's petition also requested the allocation of Channel 255A to Celina, Tennessee. In view of our action taken herein that request is moot.

[5] See *Memorandum Opinion and Order*, BC Docket No. 80-90, 94 F.C.C. 2d 152 (1983); *recons.* 97 F.C.C. 2d 279 (1984).

[6] Cherokee National Standing Stone Broadcasting Company filed a petition for rule making (PM-4720) on December 15, 1983, proposing the allocation of Channel 246 to Livingston, Tennessee.

[7] See fn. 3, *supra*.

which would permit the direct modification of its license if another channel of equal class could be allotted to Cookeville for general application. In support, petitioner acknowledged the other expressions of interest in Channel 246 aruging that there is a greater need for a wide area coverage facility in a community the size of Cookeville. Petitioner pointed out that there are alternate Class A facilities available which would satisfy the need for an FM facility in the smaller communities. With respect to Barry's proposal for Channel 246A at Lebanon, petitioner stated that it would be a more efficient use of the channel as a Class C to provide broad coverage to an area with few FM services, such as Cookeville rather than a Class A at Lebanon which already has both regional and local FM services available.

5. After petitioner filed its Reply Comments in this proceeding, additional pleadings [8] were filed by Barry, petitioner and WHUB, Inc. accompanied by a request for their acceptance. We will not consider these additional pleadings in view of our determination to issue this *Further Notice* which will allow interested parties ample opportunity to state their views on the proposed allocation of Channel 246 in the area. Further, there is no provision in the Rules for the filing of responses to reply comments, and the information contained therein is not of decisional significance. See § 1.415(d) of the Commission's Rules. Accordingly, acceptance of the additional pleadings are denied.

6. In related actions during the pendency of this proceeding, the Commission had under consideration numerous counterproposals filed in response to the *Notice* in MM Docket 84-231,[9] the omnibus proceeding. Two counterproposals proposed alternate uses for Channel 246 in the Cookeville and Livingston, Tennessee, area. The first, filed on May 10, 1984, by John Heidelberg ("Heidelberg") proposed to allocate Channel 246C2 to Goodlettsville, Tennessee. We have incorporated Heidelberg's petition into this proceeding as a request for a new allocation at Goodlettsville on Channel 246C2. The second counterproposal, filed on May 14, 1984, by David E. Goff ("Goff"), proposed the allocation of Channel 246C1 to Celina, Tennessee. Goff argued that Channel 246C1 could provide first and second aural services to areas significantly greater than that which could be achieved by the Commission's proposal to allocate Channel 229A to Celina. Goff's proposal was, therefore, separated from Docket 84-231 and incorporated into this proceeding.

7. In view of the foregoing, it appears that there are numerous requests for the use of Channel 246 which preclude its use as an alternate channel allocation at Cookeville to satisfy the requirements of § 1.420(g) of the Rules. As noted below, Commission engineering studies have determined that the channel can be allotted to only one of the five communities. Petitioner's proposal advanced in reply comments has also raised pertinent issues to which the other proponents of Channel 246 have not had an opportunity to respond, i.e., the most efficient use of the channel, populations served, availability of other services, etc. Further, the petitions for Livingston and Lebanon were not previously noticed by the Commission in this proceeding since they were filed separately from this docket. The Commission is, therefore, unable to determine on the basis of the information before it, that the allocation of Channel 246 to Cookeville would best achieve the objectives of section 307(b) of the Communications Act of 1934, as amended. We have, therefore, decided to issue this *Further Notice* to allow interested parties to demonstrate which community should receive the allocation of Channel 246 and address the issues raised by petitioner in its reply comments.

We have also determined that no additional channel (other than Channel 246) is available for Cookeville to meet the criteria prescribed by § 1.420(g) which would enable us to make a direct modification of petitioner's license in view of the other expressions of interest in that channel.

## Discussion

8. In order to comment on the comparative need for Channel 246 among the five communities, the following information is provided:

| City | Population [1] | Local service |
|---|---|---|
| Celina, Tennessee | 1,560 | Vacant Channel 268A [2] |
| Cookeville, Tennessee | 20,535 | WHUB(AM), WPTN(AM) (daytime only), WQSQ(FM), (Channel 232A), WHUB(FM), (Channel 252A), WYHY(FM) (Channel 298). |
| Goodlettsville, Tennessee | 8,327 | |
| Lebanon, Tennessee | 11,872 | WYHY(FM), (Channel 296). |
| Livingston, Tennessee | 3,372 | WLIV(AM), (daytime only), WXKG(FM), (Channel 240A). |

[1] Population data is taken from the 1980 U.S. Census.
[2] Channel 268A appears on the random selection list for Dkt. 84-231 channel allotments as $55 for receipt of applications. (See *Public Notice* of May 8, 1985.)

9. Commenters are invited to address their remarks on the five options listed below, providing specific details on first or second aural service, populations served, other demographic information and issues raised in this *Further Notice*, as well as the priorities concerning mutually exclusive proposals enunciated in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982).

## Options

10. A staff engineering study indicates that under *Option1*, Channel 246 can be allotted to Cookeville with a site restriction 31.4 km southeast [10] to avoid short spacing to the new transmitter site recently approved for Station WFOX, Channel 246, Gainesville, Georgia; Station WSEK, Channel 244A, Somerset, Kentucky; and Station WRSA, Channel 245, Decatur, Alabama. In addition, Channel 234 can be allotted to Cookeville with a site restriction 4.3 km southeast provided Station WSMT-FM relocates its transmitter site 11.3 km southeast of Sparta, Tennessee, in accordance with an agreement between the parties to eliminate short spacing due to the IF spacing requirements. Under this option, we also propose to modify the license of Station WGSQ(FM), Channel 232A, Cookeville, to specify operation on Channel 234 and in accordance with the criteria specified in § 1.420(g) of the Rules, Channel 246 could be available for general application. Alternate Class A channel allocations are available at Celina, Channel 229A; Livingston, Channel 255A, and Goodlettsville, Channel

[8] *Motion for Leave to File Statement* and *Statement of William O. Barry* filed by William O. Barry on October 16, 1984; *Motion to Accept Supplemental Comments* filed by WHUB, Inc. on November 26, 1984; *Motion for Leave to File Comments on Statement of William O. Barry* and *Comments of Gallaher & Huffine on Statement of William O. Barry*, filed by Gallaher and Huffines on December 20, 1984; *Opposition to Supplemental Comments of WHUB, Inc.* filed by Gallaher and Huffiness on December 20, 1984; *Motion for Leave to File Petition and Statement* and *Petition for Partial Reconsideration* filed by William O. Barry on February 12, 1985.

[9] 49 Fed. Reg. 11214, published March 26, 1984.

[10] It should be noted that under rules adopted in BC Docket 80-90, this site does not provide the 16 kilometer buffer zone permitted Station WRSA, Channel 245, Decatur, Alabama. However, as the petition was filed before March 1, 1984, this protection is not required. See *Memorandum Opinion and Order*, BC Docket 80-90, 97 F.C.C. 2d 279 (1984). Nevertheless potential applicants should attempt to avoid infringing upon the buffer zone when considering transmitter site locations.

294A. No alternate channel is available at Lebanon, Tennessee, under this plan.

11. Under *Option II* Channel 246A can be allocated to Lebanon. Alternate Class A allocations can be made to Celina, Channel 229A; Goodlettsville, Channel 294A; and Livingston, Channel 255A. Channel 234 is available for allocation to Cookeville, Tennessee, only if Station WGSQ, Channel 232A, elects to compete for the allocation.

12. Under *Option III* Channel 246 can be allocated to Livingston, with a site restriction 10 kilometers northeast [11] to avoid short spacing to the new transmitter site recently approved for Station WFOX, Channel 246, Gainesville, Georgia; and to Station WSEK, Channel 244A, Somerset, Kentucky. Alternate Class A allocations can be made to Celina, Channel 229A; and Goodlettsville, Channel 294A. Also Channel 234 is available for allocation to Cookeville, Tennessee, only if Station WGSQ Channel 232A, elects to compete for the allocation. No alternate channel is available for allocation to Lebanon.

13. Under *Option IV*, Channel 246C1 can be allocated to Celina. Alternate Class A allocations can be made to Goodlettsville—Channel 294A and Livingston, Channel 255A. Channel 234 is available for allocation to Cookeville only if Station WGSQ(FM) elects to compete for the allocation. No alternate channel is available for allocation to Lebanon.

14. Under *Option V*, Channel 246C2 can be allocated to Goodlettsville with a site restriction 15.1 km east to avoid short spacing to Station WDDJ, Channel 245, Paducah, Kentucky; and Station WRSA, Channel 245, Decatur, Alabama. Under this plan, Class A channel allotments can be made to Celina, Channel 229A, and to Livingston, Channel 255A. Channel 234 is available for allocation to Cookeville, Tennessee, only if Station WGSQ(FM), elects to compete for the allocation. No alternate channel is available for allocation to Lebanon.

15. In view of the foregoing, the Commission considers it appropriate to solicit comments on the alternative amendments to the Table of FM Allotments, § 73.202(b) of the Commission's Rules, for the following communities:

| | Present | Proposed |
|---|---|---|
| **Option I** | | |
| Celina, Tennessee | 268A | 229A, 268A. |
| Cookeville, Tennessee. | 232A, and 252A | 234, 246, and 252A. |
| Goodlettsville, Tennessee. | | 294A. |
| Livingston, Tennessee. | 240A | 240A, 255A. |
| **Option II** | | |
| Celina, Tennessee | 268A | 229A, 268A. |
| Goodlettsville, Tennessee. | | 294A. |
| Lebanon, Tennessee. | 287 | 246A, 298. |
| Livingston, Tennessee. | 240A | 240A, and 255A. |
| **Option III** | | |
| Celina, Tennessee | 268A | 229A, 268A. |
| Goodlettsville, Tennessee. | | 294A. |
| Livingston, Tennessee. | 240A | 240A, 246A. |
| **Option IV** | | |
| Celina, Tennessee | 268A | 246C1, 268A. |
| Goodlettsville, Tennessee. | | 294A. |
| Livingston, Tennessee. | 240A | 240A, 255A. |
| **Option V** | | |
| Celina, Tennessee | 268A | 229A, 268A. |
| Goodlettsville, Tennessee. | | 246C2. |
| Livingston, Tennessee. | 240A | 240A, 255A. |

16. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

17. For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

18. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

19. Interested parties may file comments on or before October 14, 1985, and reply comments on or before October 21, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

Michael H. Bader, Esq., Richard M. Riehl, Esq., Haley, Bader & Potts, 2000 M Street NW., Washington, D.C. 20036 (counsel for Gallaher and Huffines)

Rudolph L. Ennis, Esq., McCampbell & Young, 2021 Plaza Tower, Knoxville, Tennessee 37901-0550 (counsel for David E. Goff)

John L. Tierney, Esq., Tierney and Swift; 1925 K Street NW, Suite 300, Washington, D.C. 20006 (counsel for William O. Barry)

Cherokee Nation, Standing Stone Broadcasting Co., c/o Joseph Patrick Williams, Station WKWR-TV, P.O. Box 2848, Cookeville, Tennessee 38502.

Timothy K. Brady, Esq., One Tennessee Square, Box 3194, Oak Ridge, Tennessee 37830 (counsel for John Heidelberg)

Richard Gilliespie, 422 Woodland Avenue, Box 462, Livingston, Tennessee 38570

Lou Ann Smothers, Gwen's Stout Shop, P.O. Box 296, Herrin, Illinois 62948

H. G. Bone, P.O. Box 1194, Lebanon, Tennessee 38570

Earl R. Stanley, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue NW., Washington, D.C. 20006 (counsel for WHUB, Inc.)

S. Roger York, Esq., York & York, P.O. Box 423, 211 West Fifth Street, Crossville, Tennessee 38555

William F. Cheroweth, Globe Fuel, Inc., P.O. Box 171, Marion, Illinois 62959

J.C. Smothers, U.S. Energy, Inc., P.O. Box 247, Marion, Illinois 62959

James C. Glascock, Jr., Carl Storey Company, 222 4th Avenue North, Nashville, Tennessee 37219.

20. It is ordered, that the *Motion for Leave to File Supplemental Statement* and *Supplemental Statement of William*

[11] This site restriction does not provide the 16 kilometer buffer zone permitted to Station WRSA, Channel 245, Decatur, Alabama. However, as the petition was filed before March 1, 1984, this protection is not required. See *Memorandum Opinion and Order*, BC Docket No. 80-90, 97 F.C.C. 2d 279 (1984). Nevertheless, potential applicants should attempt to avoid infringing upon the buffer zone when considering transmitter site locations.

*O. Barry*, filed by William O. Barry, is granted.

21. It is ordered, that the *Motion to Accept Late Filed Reply Comments* and *Reply Comments of Gallaher and Huffines*, filed by Gallaher and Huffines, is granted.

Federal Communications Commission.

**Charles G. Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

**Appendix**

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(G) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.402(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflicts with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposal Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.402(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85-19787 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

**[MM Docket No. 85-240; RM-5075]**

## FM Broadcast Stations in McKinnon, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein, at the request of David R. Ross, proposes the allotment of Channel 268A to McKinnon, Tennessee, as that community's first FM service.

**DATES:** Comments must be filed on or before October 7, 1985, and reply comments on or before October 22, 1985.

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

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 73**

Radio.

The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

**Proposed Rule Making**

In the matter of amendment of §73.202(b), table of allotments, FM Broadcast stations (McKinnon, Tennessee); MM Docket No. 85-240, RM-5075.

Adopted: August 5, 1985.

Released August 15, 1985.

By the Chief, Policy, and Rules Division.

1. The Commission has before it for consideration a petition for rule making filed by David R. Ross ("petitioner"), seeking the allotment of FM Channel 268A to McKinnon, Tennessee, as that community's first FM service. Petitioner has stated his intention to apply for the channel. The channel can be allotted in compliance with the Commission's minimum distance separation requirements.

2. In view of the fact that McKinnon, Tennessee, could receive its first local FM service, the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, §73.202(b) of the Commission's Rules, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| McKinnon, Tennessee | ..... | 268A |

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note:—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before October 7, 1985, and reply comments on or before October 22, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: David R. Ross, Route One, Dover, Tennessee 37058 (Petitioner).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do No Apply to Rule Making to Amend*

*§§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

**Charles Schott,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

**Appendix**

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rule, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Purusant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 85–19788 Filed 8–19–85; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 50, No. 161
Tuesday, August 20, 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

### Packers and Stockyards Administration

### Proposed Posting of Stockyards; M & R Livestock Co., Inc., et al.; Correction

On August 5, 1985, a notice was published in the **Federal Register** giving notice of the proposed posting for certain stockyards listing their facility number, name, and location of stockyards.

This notice is to correct the location assigned to the following market in that publication.

The notice should have read:

ND–132 Litchville Feeder Pig, Litchville, North Dakota

Done at Washington, D.C., this 13th day of August, 1985.

**Harold W. Davis,**

*Director, Livestock Marketing Division.*

[FR Doc. 85–19877 Filed 8–19–85; 8:45 am]

BILLING CODE 3410–02–M

### Soil Conservation Service

### Columbia Water Plant Critical Area Treatment RC&D Measure, Kentucky; Environmental Impact

**AGENCY:** Soil Conserevation Service, USADA.

**ACTION:** Notice of a Finding of No Significant Impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that environmental impact statement is not being prepared for the Columbia Water Plant Critical Area Treatment, RC&D, Measure, Adair County, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2749.

**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, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concern a plan for reducing erosion and sedimentation along a 490 foot section of Russell Creek streambank adjacent to Columbia Water Treatment Plant. The planned works of improvement include: Riprapping the streambank and seeding the disturbed area.

The 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 Mr. Randall W. Giessler, State Conservationist, Soil Conservation Service, 33 Waller Avenue, Lexington, KY 40504.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regardiang State and local Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 1, 1985.

**Randall W. Giessler,**

*State Conservationist.*

[FR Doc. 85–19843 Filed 8–19–85; 8:45 am]

BILLING CODE 3410–16–M

### Coxton Flood Prevention RC&D Measure, Kentucky; Environmental Impact

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of a finding of no significant impact.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Coxton Flood Prevention RC&D Measure, Harlan County, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504, telephone: 606–233–2749.

**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, Randall W. Giessler, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for reducing first floor level flooding of four homes and foundation and lawn flooding of 14 homes. The planned works of improvement include: cleaning out culverts, constructing inlet boxes, "V" ditches, a gabion wall, and establishing vegetation.

The 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 Mr. Randall W. Giessler, State Conservationist, Soil Conservation Service, 333 Waller Avenue, Lexington, KY 40504.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372 regarding State and local

Clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 1, 1985.

**Randall W. Giessler,**

*State Conservationist.*

[FR Doc. 85-19844 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-16-M

## COMMISSION ON CIVIL RIGHTS

### Kentucky Advisory Committee; Agenda and Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 8:45 a.m. and adjourn at 5:00 p.m. on September 19, 1985, at the University of Kentucky, College of Law, Court Room, South Limestone Street, Lexington, Kentucky. The purpose of the meeting is to conduct a community forum on desegregation in public housing in the city of Lexington.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Porter Peeples or Bobby Doctor, Director of the Southern Regional Office, at (404) 221-4391, (TDD 404/221-4391).

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., August 15, 1985.

**Bert Silver,**

*Assistant Staff Director for Regional Programs.*

[FR Doc. 85-19859 Filed 8-19-85; 8:45 am]

BILLING CODE 6335-01-M

### Michigan Advisory Committee; Agenda of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on September 12, 1985, at the Westin Hotel, 400 E. Jefferson, Davinci Room, Detroit, Michigan. The purpose of the meeting is to hold an orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Charles Tobias or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188).

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., August 15, 1985.

**Bert Silver,**

*Assistant Staff Director for Regional Programs.*

[FR Doc. 85-19860 Filed 8-19-85; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

*Correction*

In FR Doc. 85-19347 beginning on page 32755 in the issue of Wednesday, August 14, 1985, make the following correction: In the third column, in the second paragraph, in the last line "17374" should read "13734".

BILLING CODE 1505-01-M

[A-580-007]

### Circular Welded Carbon Steel Pipes and Tubes From Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on circular welded pipes and tubes from Korea. The review covers the period from October 1, 1984. The petitioner in this proceeding has notified the Department that it is no longer interested in the antidumping duty order. This affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all circular welded pipes and tubes exported on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

**EFFECTIVE DATE:** October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 7, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 19369-70) an antidumping duty order on circular welded pipes and tubes from Korea.

In a letter dated July 16, 1985, the Committee on Pipe and Tube Imports, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

#### Scope of the Review

Imports covered by the review are shipments of circular welded pipes and tubes, currently classifiable under items 610.3231, 610.3232, 610.3241, and 610.3244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

#### Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioner's affirmative statement of no interest in continuation of the antidumping duty order on circular welded pipes and tubes from Korea provides a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this review at this time.

Therefore, we tentatively determine to revoke the order on circular welded pipes and tubes from Korea effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of

estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of circular welded pipes and tubes from Korea which were exported prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

**Gilbert B. Kaplan,**

*Acting Deputy Assistant Secretary for Import Administration.*

August 2, 1985.

[FR Doc. 85-19852 Filed 8-19-85; 8:45 am]

BILLING CODE 3510-DS-M

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[A-580-010]

## Rectangular Welded Carbon Steel Pipes and Tubes From Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Antidumping Duty Order

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke antidumping duty order.

**SUMMARY:** The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the antidumping duty order on rectangular welded carbon steel pipes and tubes from Korea. The review covers the period from October 1, 1984. The petitioner in this proceeding has notified the Department that it is no longer interested in the antidumping duty order. This affirmative statement of no interest provides a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all rectangular welded pipes and tubes exported on or after October 1, 1984. Interested parties ae invited to comment on these preliminary results and tentative determination to revoke.

**EFFECTIVE DATE:** October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** Chip Hayes or G. Leon McNeill, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

**SUPPLEMENTARY INFORMATION:**

Background

On May 11, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 20045) an antidumping duty order on rectangular welded carbon steel pipes and tubes from Korea.

In a letter dated July 16, 1985, the Committee on Pipe and Tube Import, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support for revocation of the order. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may revoke an antidumping duty order that is no longer of interest to domestic interested parties.

### Scope of the Review

Imports covered by the review are shipments of rectangular welded carbon steel pipes and tubes, currently classifiable under item 610.4975 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

### Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the petitioner's affirmative statement of no interest in continuation of the antidumping duty order on rectangular welded carbon steel pipes and tubes from Korea provides a reasonable basis for revocation of the order. In light of the October 1, 1984, effective date for revocation requested by the petitioner, there is good cause (as required by section 751(b)(2) of the Tariff Act) to conduct this reveiw at this time.

Therefore, we tentatively determine to revoke the order on rectangular welded carbon steel pipes and tubes from Korea effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise exported on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries. The current requirement for a cash deposit of estimated antidumping duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of rectangular welded carbon steel pipes and tubes from Korea which were exported prior to October 1, 1984. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and sections 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

August 2, 1985.

**Gilbert B. Kaplan,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 85-19853 Filed 8-19-85; 8:45 am]

BILLING CODE 3510-DS-M

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[C-580-003]

## Small Diameter Carbon Steel Pipes and Tubes From Korea; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Revoke Countervailing Duty Order

**AGENCY:** International Trade Administration/Import Administration, Commerce.

**ACTION:** Notice of Intention to Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination to Revoke Countervailing Duty Order.

**SUMMARY:** The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act of 1930, as amended, of the countervailing duty order on small diameter carbon steel pipes and tubes from Korea. The review covers the period from October 1, 1984. The petitioner and the other domestic interested parties to this proceeding have notified the Department that they are no longer interested in the countervailing duty order. These affirmative statements of no interest provide a reasonable basis for the Department to revoke the order. Therefore, we tentatively determine to revoke the order. In accordance with the petitioner's notification, the revocation will apply to all small diameter carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after October 1, 1984. Interested parties are invited to comment on these preliminary results and tentative determination to revoke.

**EFFECTIVE DATE:** October 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Henderson or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 18, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 7241) a countervailing duty order on small diameter carbon steel pipes and tubes from Korea.

In a letter dated June 19, 1985, United States Steel Corporation, the petitioner in this proceeding, informed the Department that it was no longer interested in the order and stated its support of revocation of the order. The Department received similar letters from the other domestic interested parties, the Committee on Pipe and Tube Imports, Republic Steel Corporation, Inland Steel Company, Jones & Laughlin Steel Incorporated, National Steel Corporation, Cyclops Corporation, and Laclede Steel Company. Under section 751 of the Tariff Act of 1930, as amended ("the Tariff Act"), the Department may revoke a countervailing duty order that is no longer of interest to domestic interested parties.

### Scope of the Review

Imports covered by the review are shipments of Korean small diameter carbon steel pipes and tubes. Such merchandise is currently classifiable under items 610.3208, 610.3209, 610.3231, 610.3232, 610.3241, 610.3244, and 610.3247 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

### Preliminary Results of the Review and Tentative Determination

As a result of our review, we preliminarily determine that the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order on small diameter carbon steel pipes and tubes from Korea provide a reasonable basis for revocation of the order.

Therefore, we tentatively determine to revoke the order on this product effective October 1, 1984. We intend to instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries. The current requirement for a cash deposit of estimated countervailing duties will continue until publication of the final results of this review.

This notice does not cover unliquidated entries of small diameter carbon steel pipes and tubes from Korea which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, and which were not covered in a prior administrative review. The Department will cover any such entries in a separate review, if one is requested.

Interested parties may submit written comments on these preliminary results and tentative determination to revoke within 30 days of the date of publication of this notice, and may request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on revocation, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to revoke, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 9, 1985.

**Gilbert B. Kaplan,**

*Acting Deputy Assistant Secretary, Import Administration.*

[FR Doc. 85–19854 Filed 8–19–85; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting at the National Marine Fisheries Service, Southwest Fisheries Center in Tiburon, CA, August 27–29, 1985, to: (1) Review the status of the current groundfish fishery and project landings through the end of the year, (2) develop acceptable biological catches for 1986, (3) recommend additional items for amending the Groundfish FMP, (4) review management line changes and by-catch methodology, and (5) review other items as directed by the Council and develop appropriate reports to the Council. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201; telephone: (503) 221–6352.

Dated: August 15, 1985.

**Carmen J. Blondin,**

*Deputy Assistant Administrator for Fisheries Resource Management.*

[FR Doc. 85–19895 Filed 8–19–85; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government,and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

*Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.*

**Department of Agriculture**

SN 6-423,402 (4,526,586)
Microemulsions from Vegetable Oil and Aqueous Alcohol with 1-Butanol Surfactant as Alternative Fuel for Diesel Engines
SN 6-474,996 (4,527,000)
Diolefin Pheromone Mimics as Disruptants of Sexual Communication in Insects
SN 6-749,905
Process to Impart Smooth-dry and Flame Retardant Properties to Synthetic-Cellulosic Blended Fabrics
SN 6-749,906
Preparation of Pellets Containing Fungi and Nutrient for Control of Soilborne Plant Pathogens

**Department of Commerce**

SN 6-436,124 (4,525,067)
Twin-Etalon Scanning Spectrometer

**Department of Health and Human Services**

SN 6-683,428
Metaphit, A Specific Acylating Agent for the [$^3$H] Phencylidine
SN 6-749,442
Purification of Uromodulin

**Department of the Army**

SN 6-404,783 (4,524,675)
Detachably Connectable Sight Assembly for a Small Defense Weapon
SN 6-460,323 (4,524,674)
Military Vehicles
SN 6-465,851 (4,527,081)
Overshoot Predriven Semi-Asynchronous Driver
SN 6-544,764 (4,527,137)
Evanescent Resonator Frequency Multiplier
SN 6-544,770 (4,526,881)
Method of Pretreating Carbon Black Powder to Improve Cathode Performance and Lithium Sulfuryl Chloride Cell Including the Pretreated Carbon Black Powder
SN 6-571,301 (4,527,276)
Digital Pulse Position Modulation Communications System with Threshold Extension
SN 6-576,992 (4,527,063)
Solid State Nuclear Radiation Detector Circuit with Constant Sensitivity

[FR Doc. 85-19847 Filed 8-19-85; 8:45 am]

BILLING CODE 3510-04-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Public Hearing Concerning Hazards Associated with All Terrain Vehicles

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Consumer Product Safety Commission will hold a public hearing in Milwaukee, Wisconsin, on September 3, 1985, to obtain safety-related information on All Terrain Vehicles (ATVs). This will be the fourth of five hearings on the hazards associated with ATVs the Commission plans to hold across the United States. Hearings were held in Jackson, Mississippi, on May 30, 1985, in Dallas, Texas on June 17, 1985 and in Concord, New Hampshire on July 25, 1985. The Commission also plans to hold a hearing in Los Angeles, California on October 17, 1985.

The Commission is aware of at least 233 deaths associated with ATVs occurring between January, 1982 and July 3, 1985. Estimates on the number of hospital emergency room treated injuries associated with ATVs in 1984 were 66,956. This is almost two and one half times the number of injuries in 1983 and more than seven times the number in 1982. The Commission also estimates that 52,000 ATV related injuries were treated in hospital emergency rooms in the first six months of 1985. This is approximately 70 percent higher than the estimated injuries treated during the same time period in 1984.

The Commission is primarily concerned about accidents which result from: (1) Loss of control of the ATV; (2) the ATV overturning by flipping over backward, tipping over forward, or rolling over sideways; and (3) the rider being thrown from the vehicle.

The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in participation from owners and users of ATVs; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials or organizations involved with ATV safety and training or state legislation or local ordinances; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs. The hearing will specifically focus on the hazards associated with ATVs and ways the industry, the Commission, state and local governments or voluntary standards organizations can address these hazards.

**DATE AND ADDRESS:** The hearing will be held on Tuesday, September 3, 1985, beginning at 9:00 a.m. at the Performing Arts Center, Bradley Pavilion Room, 929 North Water Street, Milwaukee, Wisconsin. Requests from persons who wish to make presentations must be received by the Office of the Secretary no later than August 26, 1985. Persons who wish to testify must submit a written copy or summary of their testimony to the Office of the Secretary not later than August 28, 1985. Presentations at the hearing should be limited to approximately 5 minutes.

**FOR FURTHER INFORMATION CONTACT:** For information about the hearing or to request an opportunity to make a presentation at the hearing, contact Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; or call Mr. Butts on the Commission's toll free hotline number at 800-638-2772 or the Commission's commercial number at 301-492-6800.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The Commission is holding a series of five public hearings across the United States to assist it in obtaining safety-related information on ATVs and in deciding what, if any, regulatory or voluntary action is warranted. The Consumer Product Safety Commission is concerned about whether the performance characteristics of ATVs, including dynamic stability and handling, are adequately safe. To address this concern, the Commission has issued an advance notice of proposed rulemaking (ANPR), which formally commences a rulemaking proceeding. 50 FR 23139 (May 31, 1985). In the ANPR, the Commission discusses methods by which any unreasonable risks of injury associated with ATVs could be adequately reduced or eliminated. These methods include the promulgation of a performance standard, a labeling or warning standard, a ban of ATVs, the development of a voluntary standard, an administrative recall proceeding under section 15 of the CPSA, an imminent hazard action under section 12 of the CPSA or the dissemination of safety related information.

An ATV is a motorized machine intended to be ridden by one person and designed for off-road use. The majority of ATVs have three wheels in a tricycle configuration, although there has been a large increase in the available number of ATVs with four wheels. (The Commission's inquiry at this time is focused only on three and four wheel ATVs.) ATVs typically have gasoline-

powered engines of between 50 and 250 cubic centimeters displacement. Currently, ATVs use large, soft, low pressure tires. Most ATVs have no rear axle differential and limited suspension systems.

Sales of all terrain vehicles have increased substantially since the mid-1970s. From 1980 to 1983 sales more than tripled with an average rate of growth over this period of 55% per year. While the number of sales increased sharply in 1984, the percentage rate of growth slowed somewhat to 24%.

The Commission staff estimates that by the end of 1985, 2,480,000 to 2,540,000 ATVs will be available for use, based on an average product life expectancy of 7 to 8 years and on a normally distributed rate of product survival.

The Commission's National Electronic Injury Surveillance System (NEISS) estimates that the number of hospital emergency room treated injuries associated with ATVs in 1984 was 66,956. This is almost two and one half times the number of injuries in the previous year and more than seven times the number in 1982. The Commission estimates that the number of ATV related injuries treated in hospital emergency rooms during the first six months of 1985 was 52,000. This approximately 70 percent higher than the estimated injuries treated during the same time period in 1984.

At least 233 ATV associated fatalities are known to the Commission to have occurred from January, 1982 to July 3, 1985. Reports of 233 reported deaths for 1983, 1984, and 1985 are still being received. The Commission staff review of these deaths revealed that 116 victims were under 16 years of age and 54 were under 12 years of age.

The Commission staff believes that the basic configuration of ATVs, and their unique performance characteristics including dynamic stability and handling, appear to play a major role in accidents involving ATVs. Many serious injuries and deaths reported in in-depth investigations conducted by the Commission staff resulted from loss of control of the ATV following an abrupt change in the equilibrium of the vehicle. A number of different factors, such as a change in terrain, or a sudden change in direction can contribute to the change in equilibrium. The subsequent loss of control follows a pattern in which the machine overturns or the rider is thrown off. In many of these accidents, other factors such as drinking, riding with passengers, or operating the vehicle illegally on paved roads, may obscure the pattern of loss of control as the critical element in the incident.

**B. Request for Public Participation At Hearing**

The Commission requests the public to provide it with information on ATVs and on what action, if any, it should take to adequately reduce or eliminate hazards associated with ATVs. The Commission is particularly interested in the views of persons who own or use ATVs in recreational and occupational applications and who have specific observations about ATV handling characteristics; persons who belong to ATV clubs and/or racing associations; persons who have been involved in accidents or who have been injured while riding an ATV; state and local government officials such as police officers, health and safety officials and legislators who are involved with ATV safety, training or legislation concerning ATVs; persons or organizations involved in the testing and evaluation of ATVs; and manufacturers, distributors, importers and retailers of ATVs.

The hearing will focus on the following areas:

(1) Information which identifies the degree, if any, to which the general design of ATVs as well as specific design and operational features of individual models of ATVs influence the performance characteristics of ATVs and contribute to the risk of injury;

(2) Information identifying any changes in general or specific design characteristics of ATVs, including the cost of these changes, that would reduce or eliminate the risks of injury;

(3) Information concerning the handling characteristics of ATVs and the ability of users at various ages and levels of experience to maintain control of ATVs under various conditions of terrain and speed;

(4) Information relating to techniques of evaluating and testing the performance of ATVs;

(5) Information on current activities to educate or train users of ATVs, including children, in the proper method of operation and ways these efforts could be improved;

(6) Information on any accidents involving ATVs, including information on specific injuries sustained in ATV accidents and the nature, degree, duration, treatment and outcome of such injuries. Copies of physicians' and hospital records are sought;

(7) Information identifying any voluntary standard applicable or adaptable to AVTs which could reduce or eliminate the risk of injury;

(8) Information concerning any state or local licensing requirement, restriction or legislation involving ATVs;

(9) Information concerning the development of the three and four wheel ATVs including information relating to design features which take into account the hazards of overturning, and loss of control and

(10) Information on the sale, marketing and distribution of ATVs, particularly for use by childern.

Presentations should be limited to approximately 5 minutes. The Commission reserves the right to impose further time limitations on all presentations and to impose further restrictions to avoid duplication of presentations.

Persons unable to attend the hearing may submit their comments in writing, for the record. Written comments for the record must be received in the Office of the Secretary no later than September 3, 1985. Also, persons who cannot attend the hearing or make a presentation should be aware that they can submit written comments in response to the ANPR until September 30, 1985.

Dated: August 15, 1985.

**Sadye E. Dunn**

*Secretary, Office of the Secretary.*

[FR Doc. 85-19870 Filed 8-19-85; 8:45 am]

BILLING CODE 6355-01-M

## COPYRIGHT ROYALTY TRIBUNAL

**[Docket 84-1-83CD; Req. No. 5-10059]**

### Order Granting Motion for Distribution of 1983 Cable Royalty Fund Awarded to National Public Radio

On July 29, 1985, the Tribunal approved a settlement for National Public Radio (NPR) reached by all the parties to the 1983 Cable Distribution Proceeding. The settlement stipulated an award of 0.18 percent of the 1983 cable copyright royalty fund to National Public Radio. On August 6, 1985, NPR filed a motion for distribution of that portion of the fund to which it is entitled. By this Order, the Tribunal grants NPR's motion.

**NPR's Request**

NPR received from the Tribunal on June 27, 1985 a partial distribution from the 1983 cable fund of $99,454.16. NPR requests as full and complete settlement of its interest in the fund a distribution based on 0.18 percent of the total fund as of September 30, 1985 minus the partial distribution it received on June 27, 1985. The computation is as follows:

| | |
|---|---|
| Total funds distributed on 6/27/85 | $39,781,662.71 |

| | |
|---|---|
| Total funds available on 9/30/85 | 40,494,916.84 |
| | 80,276,579.55 |
| Multiplied by .0018 | .0018 |
| | 144,497.85 |
| Less amount received by NPR 6/27/85 | 99,454.16 |
| Amount to be distributed | [1]45,043.69 |

[1] The Tribunal bases its calculation of $45,043.69 on the projection that $40,494,916.84 will be the funds available on September 30, 1985. However, this figure is subject to change. Should the figure be slightly higher or lower on September 30, NPR's distribution will be recalculated accordingly.

Accordingly, NPR will receive on September 30, 1985, $45,043.69. The Tribunal accepts NPR's waiver of any interest in the growth of the 1983 Cable Royalty fund after September 30, 1985 and for any late payment paid into the fund after September 30, 1985. The Tribunal reiterates what it stated on the record on July 29, 1985, that approval of the settlement of NPR's claim is not intended to indicate the Tribunal's position on whether the 1983 cable royalty fund should be considered as one pool, two pools, or three pools. That decision will be rendered at a later date in this proceeding.

**Edward W. Ray,**

*Chairman, Copyright Royalty Tribunal.*

August 15, 1985.

[FR Doc. 85-19840 Filed 8-19-85; 8:45 am]

BILLING CODE 1410-15-M

## DELAWARE RIVER BASIN COMMISSION

### Commission Meetings and Public Hearings

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Monday, August 26, 1985 beginning at 1:30 p.m. in Room B of the Holiday Inn at Route 100 and West King Street in Pottstown, Pennsylvania to consider the following application:

*Philadelphia Electric Company D-69-210 CP (Final): Revision No. 3.* An application by Philadelphia Electric Company and Reading Anthracite Company to temporarily, during 1985, revise portions of the Limerick Generating Station project as included in the Comprehensive Plan and to approve the temporary changes under Section 3.8 of the Compact. The proposed revision is for withdrawal of water from the Schuylkill River for consumptive use at Limerick Unit No. 1; when existing dissolved oxygen or flow constraints would otherwise prevent such withdrawal, in amounts not exceeding existing docket limits and not exceeding amounts released into the West Branch of the Schuylkill River from the Beechwood Pit, under a coordinated plan of release from Beechwood and withdrawal at Limerick, with existing dissolved oxygen and flow constraints to be inapplicable to such withdrawal.

* * * * *

The Commission will hold a public hearing on Wednesday, August 28, 1985, beginning at 1:30 p.m. in the Goddard Conference Room of the Commission offices at 25 State Police Drive, West Trenton, New Jersey. The hearing will be part of the Commission's regular business meeting which is open to the public.

*Applications for Approval of the Following Projects Under Article 10.3, Article 11 and/or Section 3.8 of the Compact:*

1. *Holdover Project—Town of Rockland-Livingston Manor Sewer District D-85-28 CP.* An application to eliminate the use of chlorination facilities at the existing sewage treatment plant in the Town of Rockland, Sullivan County, New York. The applicant has requested a waiver of the current DRBC disinfection requirement. The Livingston Manor wastewater discharge was approved with a design capacity of 1,050,000 gallons per day (gpd) to be discharged to Willowemoc Creek as described in Docket No. D-67-29 CP on April 26, 1967. The receiving waters are classified by the New York Department of Environmental Conservation as C(T) trout waters and as such do not require any disinfection. The New York State Health Department has stated that there is no demonstrated need for disinfection at this facility. This hearing continues that of May 29, 1985.

2. *Totten Farms D-80-5 RENEWAL.* Renewal of an approved ground water withdrawal which supplies water for irrigation of the applicant's farm crops in North Hanover Township, Burlington County, New Jersey. Commission approval was limited to five years and will expire unless renewed. The proposed 30-day withdrawal limit remains at 8.64 million gallons (mg)/30 days. The applicant's single well is located approximately 400 feet west of Ellisdale-Arneytown Road and approximately 1,000 feet south of Stewart Road in North Hanover Township. The well is drilled in the Englishtown Formation.

3. *Old Craigsville Television Association D-82-46 (Revised).* An application resubmitted by Old Craigsville Television Association for reconsideration of a previously denied cable crossing. The proposed cable would extend from Kilgour Road, Shohola Township, Pike County, Pennsylvania to the Town of Lumberland, Sullivan County, New York, crossing a section of the Delaware River designated "recreational" under the National Wild and Scenic Rivers program. The renewed application included a report by the New York State Cable Commission which acknowledges there are alternatives and includes more detailed cost estimates. The application has also forwarded a copy of a letter by James Coleman, Regional Director, indicating the National Park Service has reversed its position and now would not oppose the proposed river crossing.

4. *Crown Advanced Films (Formerly Crown Zellerbach) D-83-19 (RENEWAL).* The applicant seeks approval to continue withdrawing ground water from Well No. 7 or from standby Well No. 3 in accordance with Delaware River Basin Commission's temporary approval given November 30, 1983. That approved docket incorporated a phased water use reduction program in which the 30 day limit was to be reduced from 15.5 mg to 6.0 mg, and the yearly limit was to drop from 180 mg to 60 mg, prior to September 1985. The application is consistent with the phased schedule. Current ground water use is 6.9 mg/30 days and 63.4 mg/year. The wells withdraw from the Potomac Formation. The plant is located immediately east of the intersection of Route 9 (River Road) and Grantham Lane, in New Castle County, Delaware.

5. *Moyer Packing Company D-83-31.* A ground water withdrawal project to supply approximately 0.19 million gallons per day (mgd) of water to the applicant's meat packing plant in Franconia Township, Montgomery County, Pennsylvania. Well Nos. 1, 2, 3, 4 and 5, located in Franconia Township, were previously placed in service and have collectively withdrawn in excess of 100,000,gpd without approval of the Delaware River Basin Commission. Ground water from the wells is used in conjunction with water purchased from the North Penn Water Authority. The wells are located in the Southeastern Pennsylvania Ground Water Protected Area.

6. *Bristol Township Authority D-85-12 CP.* Upgrading of the applicant's sewage treatment facility located in Bristol Township, Bucks County, Pennsylvania. The existing plant will be modified to provide for compliance with existing NPDES limits and design capacity will remain at 2.25 mgd. Treated effluent will continue to discharge to the Delaware River near Croydon, Pennsylvania.

*7. E.I. du Pont de Nemours and Company—Repauno Plant D–85–32.* Approval is sought for three operating wells, Nos. 3, 5, and 6, and for a ground water decontamination well, No. 46, to serve the du Pont Repauno Plant, Gibbstown, Gloucester County, New Jersey. Well No. 46 which is designed to yield 17.3 mg/30 days will be installed and operated to prevent ground water containing benzene, nitrobenzene and aniline from contaminating the public water supply of Greenwich Township. Water withdrawn from Well No. 46 will be treated by activated carbon filter prior to discharge. All four wells draw from the Raritan-Magothy geologic formation. The proposed maximum withdrawal from the four wells is 57.3 mg/30 days. The wells are located within the plant property: Well No. 3 is located southeast of Gate A; Well No. 5 is located north of Morse Street, between Patterson and Bacchus Avenue; Well No. 6 is located at the northeast corner of Morse Street and Repauno Avenue; and Well No. 46 is located on Repauno Avenue, northeast of the main gate.

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact David B. Everett. Persons wishing to testify at these hearings are requested to register with the Secretary prior to the hearings.

**Susan M. Weisman,**

*Secretary.*

August 13, 1985.

[FR Doc. 85–19807 Filed 8–19–85; 8:45 am]

BILLING CODE 6360–01–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Deputy Under Secretary for Management invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** Interested persons are invited to submit comments on or before September 19, 1985.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster (202) 426–7304.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public in an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Deputy Under Secretary for Management publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: August 15, 1985.

**Linda M. Combs,**

*Deputy Under Secretary for Management.*

### Office of Elementary and Secondary Education

Type of Review Requested: Extension
Title: Application for Civil Rights Technical Assistance and Training State Educational Agency Program
Agency Form Number: ED 296–1
Frequency: Annually
Affected Public: State educational agencies
Reporting Burden: Responses: 120; Burden Hours: 2,400
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is used by State educational agencies to apply for assistance under Title IV of the Civil Rights Act of 1964, as amended. The Department uses this information to evaluate the proposed projects and make awards in accordance with program regulations.
Type of Review Requested: Extension
Title: Application for Civil Rights Technical Assistance and Training Desegregation Assistance Center Program
Agency Form Number: ED 296–2
Frequency: Annually
Affected Public: Non-profit institutions
Reporting Burden: Responses: 100; Burden Hours: 2,000
Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0
Abstract: The application is used by non-profit institutions to apply for desegregation assistance center awards under Title IV of the Civil Rights Act of 1964, as amended. The Department needs this information to evaluate these proposed projects and set the amount of each award in accordance with program regulations.

[FR Doc. 85–19863 Filed 8–19–85; 8:45 am]

BILLING CODE 4000–01–M

### Office of Postsecondary Education

### Special Services for Disadvantaged Students Program; Application for Noncompeting Continuation Awards for Fiscal Year 1986

Applications are invited for noncompeting continuation awards under the Special Services for Disadvantaged Students Program.

Authority for this program is contained in sections 417A and 417D of the Higher Education Act of 1965, as amended. (20 U.S.C. 1070d, 1070d–1b)

The Secretary awards grants under this program to institutions of higher education only. The purpose of the award is to allow applicants to carry out projects designed to provide supportive services to disadvantaged students who are pursuing programs of postsecondary education.

*Closing date for transmittal of applications:* To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by October 15, 1985.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it. Grantees are strongly advised to respond by the closing date.

*Applications delivered by mail:* An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center,

Room 3633, ROB—3, Attention: 84.042 (Special Services for Disadvantaged Students), Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

*Application delivered by hand:* An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

*Available funds:* The Congress has not yet appropriated funds for fiscal year 1986 for the Special Programs for the Disadvantaged. The Senate Budget Resolution recommends fiscal year 1986 funding for these programs at the fiscal year 1985 level of $174,940,000. Should this amount be appropriated, approximately $70,323,000 would be available for noncompeting continuation grant awards under the Special Services program. The average grant award under the Special Services program in fiscal year 1985 was $105,900. Noncompeting continuation applications are being requested at this time to allow for sufficient time to evaluate them and complete the grants process prior to the end of the fiscal year.

*Application forms:* Application forms for noncompeting continuation awards are expected to be ready for mailing no later than Sept. 3, 1985. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by September 20, 1985 the grantee should telephone the Special Services Branch of the Division of Student Services at (202) 245–2165.

Applications must be prepared and submitted in accordance with the regulations, instructions and forms included in the program information package. However, the program information package is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those imposed under the statute and regulations. The Secretary strongly urges that applicants not submit information that is not requested. (Approved by the OMB under Control number 1840–0017.)

*Applicable regulations:* The following regulations are applicable to noncompeting continuation awards:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 78. Applicants should note that the criteria for making Continuation awards are in 34 CFR 75.253; and

(b) Regulations for the Special Services for Disadvantaged Students Program in 34 CFR Part 646.

*Further information:* For further information contact the Special Services Branch, Division of Student Services, U.S. Department of Education, (L'Enfant Plaza Station, P.O. Box 23772, Washington, D.C. 20026–3772). Telephone: (202) 245–2165.

(20 U.S.C. 1070d, 1070d–1b)

(Catalog of Federal Domestic Assistance Number: 84.042—Special Services for Disadvantaged Students Program)

Dated: August 15, 1985.

**C. Ronald Kimberling,**

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 85–19881 Filed 8–19–85; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Office of Energy Research

### Energy Research Advisory Board International R&D Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: International R&D Panel of the Energy Research Advisory Board (ERAB).

Date and Time: September 19, 1985: 9:00 a.m.—5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW, Room 4A–110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252–5767.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The purpose of the Panel is to report to the parent Board on international energy R&D and specifically on international collaboration on large scale scientific and technology programs involving long time horizons for energy research and development.

Tentative Agenda:

- Review of Draft Report
- Public Comment (10 minute rule)

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 6, 1985.

**Charles E. Cathey,**

*Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.*

[FR Doc. 85–19883 Filed 8–19–85; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Project No. 9087–000 et al.]**

### Sunshine Hydroelectric Facility et al.; Availability of Environmental Assessment and Finding of No Significant Impact

August 9, 1985.

In the matter of City of Boulder, Colorado, Project No. 9087–000; Springville City, Utah, Project No. 1715–000; Independence County,

Arkansas, Project No. 4660–002; Androscoggin Water Power Company, Project No. 4784–008; International Falls Power Company, Project No. 5223–001; Niagara Mohawk Power Corporation, Project No. 7518–000; City of Rome, New York, Project No. 7610–000; Power Authority of New York, Project No. 8303–000; D. William Saulsberry, Project No. 5447–003; Blind Canyon Aquarach, Inc., Project No. 8375–001; Hydrodynamics, Inc., Project No. 8831–000; Levan Town Corporation, Project No. 9030–000; Red Bluff Water Power, Project No. 9075–000; Northeast Utilities Service Company, Project No. 2004–006; Georgia-Pacific Corporation, Project No. 2392–001; Owyhee Project Irrigation Districts, Project No. 4359–001; Dr. Daniel C. Merrill, Project No. 5776–001; Ronald and Arlene Ott, Project No. 7178–001; F&T Energy Corporation, 8201–001.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

EXEMPTIONS

| Project No. | Project name | State | Water body | Nearest town | Applicant |
|---|---|---|---|---|---|
| 9087-000 | Sunshine hydroelectric facility | CO | City of Boulder distribution system | Boulder | City of Boulder. |
| 5447-003 | Little Boulder Creek | CA | Little Boulder Creek | Trinity Center | D. William Saulsberry. |
| 8375-001 | Blind Canyon aquarach project | ID | Snake River | Hagerman | Blind Canyon Aquarach, Inc. |
| 8831-000 | South Dry Creek | MT | Rock Creek-Clear Creek | Red Lodge | Hydrodynamics, Inc. |
| 9030-000 | Cobble Rock | UT | Cobble Rock Spring | Levan | Levan Town Corp. |
| 9075-000 | Red Bluff | TX/NM | Pecos River | Pecos | Red Bluff Water Power. |

LICENSES

| Project No. | Project name | State | Water body | Nearest town | Applicants |
|---|---|---|---|---|---|
| 1715-000 | Spring Canyon | UT | Spring Creek | Springville City | Springville City. |
| 4660-002 | White River Lock & Dam No. 2 | AR | White River | Batesville | Independence County. |
| 4784-008 | Pejepscot | ME | Androscoggin River | Topsham, Brunswick, Dunham, Lisbon | Androscoggin Water Power Company. |
| 5223-001 | International Falls | MN | Rainy River | International Falls | International Falls Power Company. |
| 7518-000 | Hogansburg | NY | St. Regis River | Bombay Falls | Niagara Mohawk Power Corp. |
| 7610-000, 8303-000 | Delta Hydro | NY | Mohawk River | Rome | City of Rome, NY; and Power Authority of the State of New York. |
| 2004-006 | Hadley Falls | MA | Holyoke Canals/Connecticut River | Holyoke | Northeast Utilities Service Company. |
| 2392-001 | Gilman | VT/NH | Connecticut River | Gilman VT and Dalton NH | Georgia-Pacific Corp. |
| 4359-001 | Owyhee Tunnel No. 1 | OR | Owyhee River/Lake Owyhee | Nyssa | Owyhee Project Irrigation Districts. |
| 5776-001 | Mawah Creek | CA | Mawah Creek | Weitchpec | Dr. Daniel D. Merrill. |
| 7178-001 | Arbuckle Mountain | CA | Middle Fork Cottonwood Creek | Platina | Ronald & Arlene Ott. |
| 8201-001 | Cypress Bayou-Caddo Lake Dam | LA | Cypress Bayou-Caddo Lake | Mooringsport | F&T Energy Corp. |

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85–19887 Filed 8–19–85; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP85–737–000, et al.]**

## Texas Gas Transmission Corp. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

### 1. Texas Gas Transmission Corporation

[Docket No. CP85–737–000]

August 9, 1985.

Take notice that on July 26, 1985, Texas Gas Transmission Corporation (Applicant), P.O. Box 1160, Owensboro, Kentucky 42302, filed in Docket No. CP85–737–000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to sell natural gas to the Town of Basile, Louisiana (Basile), for resale, and to construct and operate facilities therefor, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell Basile up to 750 Mcf per day of natural gas from its general system supply, with an annual maximum of 78,500 Mcf, for residential, commercial and agricultural use. Such service would be rendered pursuant to Applicant's Rate Schedule SG–SL.

Applicant proposes to construct and operate a sales meter station and related facilities, in order to render service to Basile. The cost of such facilities is estimated at $47,140 and would be financed by Applicant from funds on hand.

Applicant states that Basile currently purchases natural gas on a day-to-day basis from the city of Eunice, Louisiana.

*Comment date:* August 30, 1985, in accordance with Standard Paragraph F at the end of this notice.

### Transcontinental Gas Pipe Line Corporation

[Docket No. CP85–738–000]

August 9, 1985.

Take notice that on July 26, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85–738–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to The Brooklyn Union Gas Company (BUGCo) and to construct and operate appurtenant facilities 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 on file with the Commission and open to public inspection.

Transco proposes to add a delivery point to BUGCo on Staten Island, New York, where Transco's facilities intersect facilities owned by BUGCo. It is stated that this would be a standby delivery point which would be used in the event that BUGCo was unable to obtain contracted-for firm system supplies of natural gas from Texas Eastern Transmission Corporation (TETCO) through TETCO's Goethals station or for other emergencies. It is claimed that any delivery by Transco at this standby point would be offset by a corresponding reduction in Transco's deliveries to BUGCo at other existing delivery points.

It is indicated that the $45,140 estimated cost of the facilities would be reimbursed by BUGCo.

*Comment date:* September 23, 1985, in accordance with Standard Paragraph G at the end of this notice.

**3. Arkla Energy Resources, a division of Arkla, Inc.**

[Docket No. CP85-724-000]

August 13, 185.

Take notice that on July 18, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-724-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related facilities necessary to enable Arkla to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (ALG), under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Arkla states that the sales tap would be located on its Line K in Union Parish, Louisiana, and is expected to cost $8,757 to install. The initial customer, West Monroe Gas Gathering Systems, Inc., it is stated, would use the gas to operate its compressors and miscellaneous equipment. Peak day and annual deliveries are expected to be 13.2 Mcf and 4,818 Mcf, respectively. Arkla advises that the deliveries would be made under Priority 3 of its curtailment plan and that they would have a *de minimis* impact on its system supply. Arkla further advises that the gas would be billed at ALG's regular retail rates applicable from time to time to this type of customer.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**4. Arkla Energy Resources, a divison of Arkla, Inc.**

[Docket No. CP85-740-000]

August 13, 1985.

Take notice that on July 26, 1985, Arkla Energy Resources, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP85-740-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authority to construct and operate a sales tap and related jurisdictional facilities necessary to enable Arkla to deliver gas from one of its jurisdictional pipelines to one or more consumers served by Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkansas Louisiana), under the certificate issued in Docket Nos. CP82-384-000 and CP82-384-001 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.

Arkla proposes to construct and operate a sales tap on its Line J in Pope County, Arkansas, to enable Arkla to deliver gas to GMC Farms, Inc., which it is estimated would use approximately 8,600 Mcf per year for commercial purposes.

Arkla states that this would be a routine delivery of gas to a customer served by Arkansas Louisiana and that the gas would be delivered from Arkla's general system supply, which it is stated is adequate to provide the service. Arkansas Louisiana, it is indicated, would charge GMC Farms, Inc., its regular approved retail rate for this class of customer as contained in its presently effective Rate Schedule No. 2 as filed with the Arkansas Public Service Commission.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**5. Columbia Gas Transmission Corporation**

[Docket No. CP85-675-000]

August 13, 1985.

Take notice that on July 5, 1985, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325-1273, filed in Docket No. CP85-675-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for permission and approval to abandon certain facilities and points of delivery, under the authorization issued in Docket No. CP83-76-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia requests permission and approval to abandon approximately 2.4 miles of 4-inch and 8-inch pipeline, related measuring and regulating facilities and five points of delivery to existing wholesale customers, as follows:

1. Abandon a delivery point and related facilities to Columbia Gas of Kentucky, Inc. (CKY), in Knott County, Kentucky, which were used to supply several residential customers of CKY and which are said no longer to be required due to said customers conversion to alternative fuels. The delivery point is said to have been inactive since May 1983.

2. Abandon a delivery point and related facilities to CKY in Floyd County, Kentucky, previously used by CKY to serve Smith Branch Stone Company which, it is said, has moved.

3. Abandon a delivery point to Columbia Gas of Ohio, Inc. (COH), 142 feet of 4-inch pipeline and related facilities in Jefferson County, Ohio, previously used by COH to serve Kaul Clay Company whose industrial plant, it is said, has closed.

4. Abandon a delivery point and related facilities to COH in Columbiana County, Ohio, previously used by COH to serve Cardinal Stone Company whose industrial plant, it is said, is no longer in operation.

5. Abandon a delivery point and related facilities to COH in Fairfield County, Ohio, previously used by COH to serve C.D.B. & T. Materials whose industrial plant, it is said, has closed.

6. Abandon approximately 2.3 miles of 8-inch pipeline in Washington County, Pennsylvania, originally installed in 1891, which is paralleled by Columbia's 10-inch pipeline, Line 23. Columbia states that no points of delivery are currently supplied directly from the 8-inch pipeline and that the market area previously supplied from this segment of pipeline is now being supplied from another pipeline.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**6. Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company**

[Docket No. CP85-759-000]

August 13, 1985.

Take notice that on August 6, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., 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. CP85–759–000 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 Lukens Steel Company (Lukens) under their 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 their request on file with the Commission and open to public inspection.

Applicants propose to transport up to 5 billion Btu equivalent of natural gas per day on behalf of Lukens through October 31, 1985. It is explained that Columbia Gulf would receive the quantities at existing points of receipt in Louisiana and redeliver to Columbia Transmission which would redeliver to Columbia Gas of Pennsylvania, Inc. (CPA), for ultimate delivery to Lukens. It is stated that the gas would be purchased by Lukens from Exxon Company, USA.

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 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.

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 the distributor customer'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 the distributor customer'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.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

### 7. Natural Gas Pipeline Company of America

[Docket No. CP85–744–000]

August 13, 1985.

Take notice that on July 30, 1985, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP85–744–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new sales delivery point and to deliver natural gas for Peoples Natural Gas Company's (Peoples) account in Ford County, Kansas, under the certificate issued in Docket No. CP82–402–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

It is stated that Peoples has requested that Natural provide a new sales delivery point in Ford County, Kansas; and that peak daily flow at the proposed point is expected to be 100 Mcf of gas. It is explained that the proposed deliveries would enable Peoples to serve the commercial gas needs of a feed yard operated by the Ford County Feed Yard Inc. The delivery would not result in any increase in Peoples' total entitlements or contract quantity from Natural, it is asserted. Natural states it would be required to construct and operate a 2-inch tap connection and measuring station plus appurtenant facilities at an estimated cost of $33,000 which cost would be reimbursed by Peoples.

Natural states that the proposed action is not prohibited by its existing applicable tariff, Rate Schedule G–1, and that it has sufficient capacity to accomplish the proposed change in deliveries to Peoples without detriment or disadvantage to its other customers.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

### 8. Panhandle Eastern Pipe Line Company

[Docket No. CP85–745–000]

August 13, 1985.

Take notice that on July 31, 1985, Panhandle Eastern Pipe Line Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85–745–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authority to transport natural gas on behalf of a qualified end-user under the certificate issued in Docket No. CP83–83–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Applicant requests authority to transport gas on behalf of Chrysler Corporation (Shipper) pursuant to a transportation agreement dated June 12, 1985, among Applicant, Shipper and Indiana Gas Company (Indiana Gas) (agreement). The agreement provides for Applicant to receive a transportation quantity of up to 1,200 Mcf of gas per day on an interruptible basis, at an existing point of interconnection between Applicant and EnTrade Corporation's designee in Weld County, Colorado. Applicant states that it would then transport and redeliver such gas, less a four percent reduction for fuel, to Indiana Gas in Grant County, Indiana, and that Indiana Gas in turn would make ultimate delivery to Shipper for its end use at its Newcastle, Indiana, facilities. Applicant states that the gas would be used for boiler fuel, process billet heating, metal heat treating, and comfort heating. It is explained that Indiana Gas is an existing jurisdictional customer of Applicant and that Shipper is an existing end-use customer of Indiana Gas.

Applicant states that it would be compensated in accordance with its Rate Schedule OST, presently 42.0 cents plus a 1.24-cent GRI surcharge per million Btu redelivered at the point of redelivery. It is explained that the term of the service is from the date automatic authorization expires (October 15, 1985) until the earlier of eighteen months from the effective date of the agreement, termination of authorization as provided by Subpart F of 18 CFR Part 157, or termination of the agreement by either of the parties.

Applicant 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 in the market area. Applicant 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 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**9. Tennessee Gas Pipe Line Company, a Division of Tenneco Inc.**

[Docket CP85-739-000]

August 13, 1985.

Take notice that on July 26, 1985, Tennessee Gas Pipe Line Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP85-739-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon in place approximately 3,500 feet of gas supply line in Hidalgo County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee states that local developers are planning to develop the land on and around the lateral, and that abandoning the line would minimize interference with any construction that would take place in the area. Further, the one and only producer's well connected to the line has been plugged, and no other gas is anticipated to be available for connection, it is indicated.

*Comment date:* September 3, 1985, in accordance with Standard Paragraph F at the end of this notice.

**10. Texas Eastern Transmission Corporation**

[Docket No. CP85-755-000]

August 13, 1985.

Take notice that on August 2, 1985, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP85-755-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for La Gloria Oil and Gas Company (La Gloria), under the certificate issued in Docket No. CP82-535-000 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 Eastern proposed to transport through October 31, 1985, an average daily volume of 7,000 dt equivalent of natural gas on an interruptible basis for La Gloria to replace gas lost due to processing at the Mobil Oil Corporation Iowa processing plant (Mobil plant) in Jefferson Davis Parish, Louisiana. Texas Eastern estimates the peak day and annual volumes to be 10,000 dt and 2,555,000 dt equivalent of natural gas, respectively.

Texas Eastern states that La Gloria is purchasing the gas from Texas Eastern Gas Trading Company. Texas Eastern further states that it would receive the gas at an existing interconnection with Valero Transmission Company in LaVaca County, Texas, and redeliver such quantities, less applicable shrinkage, to La Gloria at the discharge of the Mobil plant. Texas Eastern 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. Texas Eastern 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.

Texas Eastern proposes to charge La Gloria its currently effective TS-2 transportation rate of 13.26 cents per dt transported.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**11. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP85-749-000]

August 13, 1985.

Take notice that on August 1, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-749-000 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 under certificate issued in Docket No. CP82-426-000 pursuant to section 7(c) of the Natural Gas Act, on behalf of thirty-two end-users, all of whom Transco indicates are being represented by the PSNC Production Corporation (PSNC Production), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco states that it would receive the gas at (1) the interconnection with GHR Transmission Corporation (GHR) in the Agua Dulce Field, Nueces County, Texas, (2) the interconnection with Valero Transmission Company in La Salle County, Texas, (3) the interconnection with GHR at Miranda Prospect, Duval County, Texas, and (4) the tailgate of the Katy Exxon plant in Waller County, Texas. Transco states it would redeliver, on an interruptible basis, equivalent quantities (less quantities retained for compressor fuel and line loss make-up) to existing points of delivery between Transco and Public Service Company of North Carolina (Public Service) which in turn, would redeliver such gas to the end-user's plants as follows:

To American & Efird Mills, Inc., at its plant in Mount Holly, North Carolina—on a peak day 750 dt equivalent of gas, on an average day 500 dt equivalent, and on an annual basis 182,500 dt equivalent.

To Armtex, Inc., at its plant in Gastonia, North Carolina—on a peak day 525 dt equivalent of Gas, on an average day 350 dt equivalent, and on an annual basis 127,750 dt equivalent.

To Asheville Dyeing & Finishing at its plant in Asheville, North Carolina—on a peak day 825 dt equivalent of gas, on an average day 550 dt equivalent, and on an annual basis 200,750 dt equivalent.

To Berkeley Mills at its plant in Hendersonville, North Carolina—on a peak day 413 dt equivalent of gas, on an average day 275 dt equivalent, and on an annual basis 100,375 dt equivalent.

To Burlington Industries, Inc., at its plant in Statesville, North Carolina—on a peak dy 550 dt equivalent of gas, on an average day 185 dt equivalent, and on an annual basis 66,000 dt equivalent.

To Cannon Mills Company at its plant in Concord, North Carolina—on a peak day 150 dt equivalent of gas, on an average day 100 dt equivalent, and on an annual basis 36,500 dt equivalent.

To Carolina Yarns Processors, Inc., at its plant in Tryon, North Carolina—on a peak day 375 dt equivalent of gas, on an average day 250 dt equivalent, and on an annual basis 90,000 dt equivalent.

To Collins & Aikman Corporation at its plant in Roxboro, North Carolina—on a peak day 1,950 dt equivalent of gas, on an average day 1,300 dt equivalent, and on an annual basis 474,500 dt equivalent.

To Collins & Aikman Corporation at its plant in Spindale, North Carolina—on a peak day 600 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 146,000 dt equivalent.

To Cone Mills Corporation at its Cliffside Plant #1 in Cliffside, North Carolina—on a peak day 375 dt equivalent of gas, on an average day 250 dt equivalent, and on an annual basis 91,250 dt equivalent.

To Cone Mills Corporation at its Cliffside Plant #2 in Cliffside, North Carolina—on a peak day 600 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 146,000 dt equivalent.

To Foote Mineral Company at its plant in Cleveland County, North Carolina—on a peak day 800 dt equivalent of gas, on an average day 750 dt equivalent, and on an annual basis 126,000 dt equivalent.

To Gerber Products Company at its plant in Asheville, North Carolina—on a peak day 825 dt equivalent of gas, on an average day 550 dt equivalent, and on an annual basis 200,750 dt equivalent.

To Harriet & Henderson Yarns at its North Plant in Henderson, North Carolina—on a peak day 188 dt equivalent of gas, on an average day 122 dt equivalent, and on an annual basis 44,500 dt equivalent.

To Harriet & Henderson Yarns at its South Plant in Henderson, North Carolina—on a peak day 172 dt equivalent of gas, on an average day 110 dt equivalent, and on an annual basis 39,602 dt equivalent.

To Ithaca Industries, Inc., at its plant in Gastonia, North Carolina—on a peak day 650 dt equivalent of gas, on an average day 436 dt equivalent, and on an annual basis 159,073 dt equivalent.

To Mount Hope Finishing Company at its plant in Butner, North Carolina—on a peak day 1,275 dt equivalent of gas, on an average day 850 dt equivalent, and on an annual basis 310,250 dt equivalent.

To N.C. Dept. Mental Health at its hospital in Butner, North Carolina—on a peak day 390 dt equivalent of gas, on an average day 260 dt equivalent, and on an annual basis 94,900 dt equivalent.

To Pharr Yarns, Inc., at its Sterling Division Plant in Belmont, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 300 dt equivalent, and on an annual basis 109,500 dt equivalent.

To Pharr Yarns, Inc., at its Main Street Plant in McAdenville, North Carolina—on a peak day 188 dt equivalent of gas, on an average day 125 dt equivalent, and on an annual basis 45,625 dt equivalent.

To Pharr Yarns, Inc., at its Plants, #4 and #5 in McAdenville, North Carolina—on a peak day 900 dt equivalent of gas, on an average day 600 dt equivalent, and on an annual basis 219,000 dt equivalent.

To Stowe Mills, Inc., at its plant in McAdenville, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 300 dt equivalent, and on an annual basis 109,500 dt equivalent.

To Sandoz Chemicals Corporation at its plant in Mount Holly, North Carolina—on a peak day 1,500 dt equivalent of gas, on an average day 900 dt equivalent, and on an annual basis 328,500 dt equivalent.

To Threads USA at its plant in Gastonia, North Carolina—on a peak day 550 dt equivalent of gas, on an average day 500 dt equivalent, and on an annual basis 182,500 dt equivalent.

To Piedmont Processing at its plant in Belmont, North Carolina—on a peak day 200 dt equivalent of gas, on an average day 150 dt equivalent, and on an annual basis 54,750 dt equivalent.

To Amtex at its plant in Asheville, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 146,000 dt equivalent.

To J. C. Cowan at its plant in Forest City, North Carolina—on a peak day 875 dt equivalent of gas, on an average day 645 dt equivalent, and on an annual basis 235,200 dt equivalent.

To Durham Domestics at its plant in Durham, North Carolina—on a peak day 400 dt equivalent of gas, on an average day 375 dt equivalent, and on an annual basis 135,000 dt equivalent.

To W. G. Lord at its plant in Cramerton, North Carolina—on a peak day 1,000 dt equivalent of gas, on an average day 400 dt equivalent, and on an annual basis 147,000 dt equivalent.

To Mooresville Mill at its plant in Mooresville, North Carolina—on a peak day 650 dt equivalent of gas, on an average day 225 dt equivalent, and on an annual basis 82,000 dt equivalent.

To Beacon Manufacturing Company at its plant in Swannanoa, North Carolina—on a peak day 450 dt equivalent of gas, on an average day 300 dt equivalent, and on an annual basis 109,500 dt equivalent.

To Granite Finishing at its plant in Haw River, North Carolina—on a peak day 3,750 dt equivalent of gas, on an average day 2,500 dt equivalent, and on an annual basis 912,500 dt equivalent.

It is stated that the total volume of gas to be transported to the end-users' plants on a peak day is 23,226 dt equivalent, on an average day is 15,358 dt equivalent, and on an annual basis is 5,453,275 dt equivalent and represents all of the gas requirements of each plant. Transco states that the transportation for the end-users would continue through October 31, 1985. Transco would charge the rates provided by its Rate Schedule T–II which are currently 41.1 cents per dt equivalent of gas plus a 1.21-cent Gas Research Institute allowance and a 5.8 per cent fuel allowance.

Transco has submitted the following end-use profile:

| End user and plant location | Amount [1] in dt | Proposed end-use | Percent |
|---|---|---|---|
| American & Efird, Mt. Holly, NC | 500 | [2] | 2 |
| | | [3] | 98 |
| Armtex, Gastonia, NC | 350 | [2] | 28 |
| | | [3] | 72 |
| Asheville Dyeing, Asheville, NC | 550 | [2] | 27 |
| | | [3] | 73 |
| Berkely, Hendersonville | 275 | [2] | 4 |
| | | [3] | 96 |
| Burlington, Statesville, NC | 185 | [2] | 30 |
| | | [3] | 70 |
| Cannon Mills, Concord, NC | 100 | [3] | 100 |
| Carolina Yarn, Tryon, NC | 250 | [3] | 100 |
| Collins & Aikman, Roxboro, NC | 1,300 | [2] | 28 |
| | | [3] | 8 |
| | | [4] | 64 |
| Collins & Aikman, Spindale, NC | 400 | [4] | 100 |
| Cone Mills-Cliffside Plant No. 1, Cliffside, NC | 250 | [4] | 100 |
| Cone Mills-Cliffside Plant No. 2, Cliffside, NC | 400 | [4] | 100 |
| Foote, Cleveland County, NC | 750 | [4] | 37 |
| | | [5] | 63 |
| Gerber, Asheville, NC | 550 | [2] | 5 |
| | | [4] | 95 |
| Hamet & Henderson North Plant, Henderson, NC | 122 | [4] | 100 |
| Harriet & Henderson South Plant, Henderson, NC | 110 | [4] | 100 |
| Ithaca, Gastonia, NC | 436 | [2] | 15 |
| | | [4] | 85 |
| Mt. Hope, Butner, NC | 850 | [2] | 9 |
| | | [4] | 91 |
| N.C. Dept. Mental Health Hospital, Butner, NC | 260 | [4] | 100 |
| Pharr Yarns—Sterling Division, Belmont, NC | 300 | [4] | 100 |
| Pharr Yarns—Main Street Plant, McAdenville, NC | 125 | [4] | 100 |
| Pharr Yarns—Plants 4 & 5, McAdenville, NC | 600 | [4] | 100 |
| Stowe, McAdenville, NC | 300 | [4] | 100 |
| Sandoz, Mt. Holly | 900 | [2] | 11 |
| | | [3] | 89 |
| Threads USA, Gastonia, NC | 500 | [4] | 100 |
| Piedmont, Belmont, NC | 150 | [4] | 100 |
| Amtex, Asheville, NC | 400 | [2] | 31 |
| | | [3] | 69 |
| J. C. Cowan, Forest City, NC | 645 | [4] | 100 |
| Mooresville Mill, Mooresville, NC | 225 | [2] | 53 |
| | | [4] | 47 |
| W.G. Lord, Cramerton, NC | 400 | [2] | 49 |
| | | [4] | 51 |
| Durham, Durham, NC | 375 | [3] | 22 |
| | | [4] | 78 |
| Beacon, Swannanoa, NC | 300 | [4] | 30 |
| | | [5] | 70 |
| Granite, Haw River, NC | 2,500 | [2] | 9 |
| | | [4] | 91 |

[1] This figure is based on an average day end-use requirements.
[2] Industrial less than 50 Mcf of gas per day. Process, feedstock and plant protection with no alternative fuel capability. Large commercial requirements of 50 Mcf or more of gas per day except for large commercial boiler fuel requirements above 300 Mcf of gas per day.
[3] All other industrial requirements not greater than 300 Mcf of gas per day.
[4] Non-boiler use between 300 and 3,000 Mcf of gas per day.
[5] Boiler fuel requirements of more than 300 Mcf of gas per day but less than 1,500 Mcf of gas per day.
[6] Boiler fuel requirements between 1,500 and 3,000 Mcf of gas per day.

Transco also requests flexible authority to change supply sources or to add or delete receipt points if such altered service is on behalf of the same end-user at the same end user location within the maximum daily and annual

transportation volumes authorized in this docket. Transco indicates that following the addition or deletion of gas supplies or receipt points, it would file with the Commission certain information within 30 days following the implementation of the changes.

Transco has submitted statements from Public Service, GHR and Valero indicating that they have sufficient capacity to transport the gas without detriment to their other customers.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**12. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP85-754-000]

August 13, 1985.

Take notice that on August 2, 1985, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP85-754-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport gas for an end-user 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, on file with the Commission and open to public inspection.

Transco proposes to transport up to 1,200 Mcf of natural gas per day, on an interruptible basis, for Wheaton Industries (Wheaton), an eligible end-user. It is stated that the gas to be transported would be purchased by Wheaton from reserves available to Transco Energy Marketing Company in various counties in Texas. It is explained that Transco would receive such gas at the existing point of interconnection between Transco and GHR Transmission Corporation (GHR) in the Agua Dulce Field, Nueces County, Texas; the existing point of interconnection between Transco and GHR at Miranda Prospect, Duval County, Texas; the existing point of interconnection between Transco and Valero Transmission Company (Valero) in LaSalle County, Texas; and the tailgate of the Katy Exxon gas plant in Waller County, Texas. Transco, it is stated, would then transport and redeliver equivalent quantities, less quantities retained for compressor fuel and line loss make-up, to existing points of delivery to South Jersey Gas Company (South Jersey) in New Jersey. In turn, South Jersey would redeliver such gas to Wheaton's Millville plant. It is stated that Wheaton is a manufacturer of glass containers and viles for the pharmaceutical industry. It is explained that the end-use of the gas would be for heating the vat utilized to manufacture the raw products into the glass.

Transco states that it would charge Wheaton in accordance with its currently effective Rate Schedule T-II, FERC Gas Tariff, Second Revised Volume No. 1, which is currently 44.81 cents per dt equivalent of gas, including a GRI funding charge of 1.21 cent per million Btu.

It is explained that the tranportation agreement would be for an initial period of 120 days from the date of commencement of transportation and would remain in full force and effect until October 31, 1985.

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 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**13. Transcontinental Gas Pipe Line Corporation**

[Docket No. CP85-761-000]

August 13, 1985.

Take notice that on August 6, 1985, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP85-761-000 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 Jersey Central Power and Light Company (Jersey Central) 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 60,000 dt equivalent of natural gas per day on an interruptible basis for Jersey Central for a term expiring October 31, 1985. Transco indicates that the gas to be transported would be purchased from Transco Energy Marketing Company and that it would receive said volumes at: (1) The existing interconnection with GHR Transmission Corporation (GHR) at Agua Dulce, Nueces County, Texas, (2) the existing point of interconnection with GHR at Miranda Prospect, Duval County, Texas, (3) the existing interconnection with Valero Transmission Company in LaSalle County, Texas, and (4) the tailgate of the Katy Exxon gas plant in Waller County, Texas. Transco stated that it would transport and deliver an equivalent quantity, less quantities retained for compressor fuel and line loss makeup to existing points of delivery with Elizabethtown Gas Company (Elizabethtown) for Jersey Central's account and that Elizabethtown would ultimately deliver said volumes to Jersey Central for its use in combustion turbines and steam boilers in its Gilbert gathering station in Milton, New Jersey. Transco states that it commenced this transportation service on June 4, 1985, under the automatic authorization of § 157.209 of the Regulations and that existing facilities were utilized.

Transco indicates that it would charge Jersey Central 44.81 cents for each dt equivalent of natural gas delivered to Elizabethtown for its account, which is in accordance with its Transportation Service Rate Schedule T-II. In addition, Jersey Central would pay a Gas Research Institute surchange, if applicable, it is stated.

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 would file a report providing certain information with regard to the additional 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 27, 1985, in accordance with Standard Paragraph G at the end of the notice.

**14. Trunkline Gas Company**

[Docket No. CP84-577-015]

August 13, 1985.

Take notice that on July 31, 1985, Trunkline Gas Company (Applicant), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP84-577-015 a request pursuant to section 7 of the Natural Gas Act and § 157.205 of the Regulations under the Natural Gas Act for authorization to make an off-system sale of natural gas. It is explained that the request is pursuant to authorization

received in the Commission's order issued October 29, 1984, in Docket No. CP84–577–000, authorizing a sales for take-or-pay relief program (STOPR). The proposal is more fully set forth in the requests which is on file with the Commission and open for public inspection.

Applicant proposes to make an off-system sale of gas to Michigan Power Company (Michigan Power), a local distribution company. Pursuant to the terms of a service agreement dated July 23, 1985, between Applicant and Michigan Power, Applicant proposes to deliver up to 15,000 Mcf of gas per day, on an interruptible basis, to Consumers Power Company (Consumers), for the account of Michigan Power, at an existing point of interconnection between Applicant and Consumers in Elkhart County, Indiana, it is stated. It is indicated that Consumers would then transport the gas to Michigan Power.

Applicant indicates that Michigan Power would use the gas for system supply for resale within its service area. It is stated that the sales price which Michigan Power would pay Applicant is $2.6731 per dt equivalent of gas. It is further stated that the sales price consists of Applicant's average cost of gas, the GRI surcharge, and an added margin pursuant to the authorization in the STOPR order.

It is explained that the service is conditioned upon the availability of capacity sufficient to provide service without detriment to Applicant's existing customers. The term of the service under the authorization sought herein would be from the date of the first delivery, with termination to coincide with the expiration under the STOPR program, it is indicated.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**15. United Gas Pipe Line Company**

[Docket No. CP85–751–000]

August 13, 1985.

Take notice that on August 2, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–751–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a 1-inch sales tap to be located on United's Latex to Forth Worth pipeline in Kaufman County, Texas, for the delivery of natural gas to Entex, Inc. (Entex), its local area distributor, under the certificate issued in Docket No. CP82–430–000 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. United estimates the cost of construction to be $900.00.

United states that the proposed sales tap would enable sale and delivery to Entex an estimated daily average of 20 Mcf of natural gas per day for resale for commercial use in Entex's longview, Texas, billing area, under United's Rate Schedule DG–N. United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. The proposed tap would not increase Entex's contractual maximum daily quantity, nor its entitlement under United's effective curtailment plan, it is explained.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**16. United Gas Pipe Line Company**

[Docket No. CP85–752–000]

August 13, 1985.

Take notice that on August 2, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–752–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a 2-inch sales tap to be located on United's Letourneau 4-inch pipeline in Warren County, Mississippi, for the delivery of natural gas to The Union Gas Company (Union), it local area distributor, under the certificate issued in Docket No. CP82–430–000 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. The cost of construction is estimated to be $2,500.00.

United states that the proposed sales tap would enable sale and delivery to Union of an estimated daily average of 37 Mcf of natural gas per day for resale to the Hondus Brothers in Port Gibson, Mississippi, for industrial use, under United's Rate Schedule G–N. United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. The proposed tap would not increase Union's contractual maximum daily quantity, nor its entitlement under United's effective curtailment plan, it is explained.

*Comment date:* September 27, 1985, in accordance with Standard Paragraph G at the end of this notice.

**17. United Gas Pipe Line Company**

[Docket No. CP85–753–000]

August 13, 1985.

Take notice that on August 2, 1985, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP85–753–000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a 2-inch sales tap to be located on United's 8-inch pipeline in Rankin County, Mississippi, for the delivery of natural gas to Mississippi Valley Gas Company (Mississippi Valley), it local area distributor, under the certificate issued in Docket No. CP82–430–000 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. The cost of construction is estimated to be $2,500.00.

United states that the proposed sales tap would enable sale and delivery to Mississippi Valley an estimated daily average of 3,088 Mcf of natural gas per day for resale to Pursue Gas Processing and Petrochemical Company in Jackson, Mississippi, for commercial use, under United's Rate Schedule DG–N. United advises that it has sufficient capacity to render the proposed service without detriment or disadvantage to its other customers. The proposed tap would not increase Mississippi Valley's contractual maximum daily quantity, nor its entitlement under United's effective curtailment plan, it is explained.

*Comment Date:* September 27, 1985, in accordance with Standard Paragraph G 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, DC 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. 85-19832 Filed 8-19-85; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. QF85-630-000 et al.]**

## David J. Lohman et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

August 13, 1985.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

### 1. David J. Lohman

[Docket No. QF85-630-000.]

On July 29, 1984, David J. Lohman (Applicant), of 29616 150th Avenue North Hillsdale, Illinois 61257 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 10 kilowatt wind facility is located in Hillsdale, Illinois.

### 2. AES Thames, Inc.

[Docket No. QF85-638-000]

ON August 2, 1985, AES Thames, Inc., (Applicant) of 1925 N. Lynn Street, Suite 1200, Arlington, Virginia 22209, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration will be located at Uncasville, Connecticut. It will consist of two circulating fluidized bed boilers and one extraction steam turbine generating unit. Extraction steam generated will be used in a Recycle Paper Mill. The net electric power production capacity of the facility will be 150 MW. The primary energy source will be coal. The installation of the facility will begin in August, 1986.

### 3. Frontier Energy Associates

[Docket No. QF85-640-000]

On August 5, 1985, Frontier Energy Associates, (Applicant), of P.O. Box 497, Olean, New York 14760 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The combined cycle cogeneration facility will be located at Jefferson County, Pennsylvania. It will consist of a combustion turbine generating unit with a waste heat recovery boiler, and condensing steam turbine generating unit. Thermal energy will be extracted from the steam turbine condenser for greenhouse operation. The electric power production capacity of the facility will be 14.5 MW. The primary energy source will be natural gas. The facility is scheduled to startup on March 1, 1986.

### Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 85-19833 Filed 8-19-85; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS-59727; FRL-2883-6]**

## Certain Chemicals Premanufacture Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722), in the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMNs requirements for certain types of polymers. PMN for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of seventeen such PMNs and provides a summary of each.

**DATES:** Closed of Review Period:

Y 85-115, 85-116, 85-117, 85-118, 85-119, 85-120, 85-121, 85-122, 85-123, 85-124, 85-125, 85-126, 85-127, 85-128—August 22, 1985.

Y 85-129—August 25, 1985.

Y 85-130—August 26, 1985.

Y 85-131—August 27, 1984.

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above

address between 8:00 a.m. and 4:00 pm., Monday through Friday, excluding legal holidays.

**Y 85–115**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range. 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y85–116**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y85–117**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y85–118**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–119**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–120**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–121**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–122**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–123**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–124**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–125**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–126**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–127**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–128**

*Manufacturer.* Emery Chemicals.
*Chemical.* (G) Dimer acid polyamide.
*Use/Production.* (S) Industrial thermographic printing (solventless coatings). Prod. range: 120,000–840,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–129**

*Importer.* Confidential.
*Chemical.* (G) Aliphatic polyurethane aqueous dispersion.
*Use/Import.* (S) Industrial, commercial and consumer general purpose coating and modifier for coatings and inks. Import range: 50,000–300,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.
*Environmental Release/Disposal.* No data submitted.

**Y 85–130**

*Manufacturer.* Confidential.
*Chemical.* (G) Acrylic Copolymer Latex.
*Use/Production.* (S) Industrial, commercial and consumer general purpose coating, modifier for inks, coatings and adhesives. Prod. range: 300,000–1,500,000 kg/yrs.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacture: dermal, a total of 4 workers, up to 2 hr/da, up to 35 da/yr.
*Environmental Release/Disposal.* No data submitted.

**Y 85–131**

*Importer.* Kay-Fries, Inc.
*Chemical.* (G) Polyester resin.
*Use/Import.* (S) Industrial metal coating. Import range: Confidential.

*Toxicity Data.* No data submitted.
*Exposure.* No data submitted.

Dated: August 12, 1985.

**Linda A. Travers,**

*Acting Director, Information Management Division.*

[FR Doc. 85-19710 Filed 8-19-85; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-51584; FRL-2883-5]**

## Certain Chemicals Premanufacture Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-one and provides a summary of each.

**DATES:** Closed of Review Period:

P 85-1297 and 85-1298—October 30, 1985.

P 85-1299, 85-1300 and 85-1301—November 2, 1985.

P 85-1302, 85-1303, 85-1304, 85-1305, 85-1306, 85-1307, 85-1308, 85-1309, 85-1310, 85-1311, 85-1312 and 85-1313—November 3, 1985.

P 85-1314, 85-1315, 85-1316, 85-1317, 85-1318, 85-1319, 85-1320, 85-1321, 85-1322, 85-1323, 85-1324, 85-1325 and 85-1326—November 4, 1985.

P 85-1327—November 5, 1985.

Written Comments by:

P 85-1297 and 85-1298—September 30, 1985.

P 85-1299, 85-1300 and 85-1301—October 3, 1985.

P 85-1302, 85-1303, 85-1304, 85-1305, 85-1306, 85-1307, 85-1308, 85-1309, 85-1310, 85-1311, 85-1312 and 85-1313—October 4, 1985.

P 85-1314, 85-1315, 85-1316, 85-1317, 85-1318, 85-1319, 85-1320, 85-1321, 85-1322, 85-1323, 85-1324, 85-1325 and 85-13—October 5, 1985.

P 85-1327—October 6, 1985.

**ADDRESS:** Written comments, identified by the documents number "[OPTS-51582]" and the specific PMN number should be sent to: Document Control Office (TS-793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Evironmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**P 85-1297**

*Importer.* Confidential.

*Chemical.* (g) Poly-beta-fluoroalkylethyl acrylate and alkyl acrylate.

*Use/Import.* (S) Industrial water and oil repellent finishes for textiles. Import range: Confidential.

*Toxicity Data.* Acute oral: >5,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames Test: No significant increases.

*Exposure.* Processing: dermal, a total of 500 workers, up to 8 hrs/day, 250 da/yr.

Environmental Release/Disposal. No release. Disposal by landfill.

**P 85-1298**

*Manufacturer.* Confidential.

*Chemical.* (G) Condensation product of an alkylphenol and alkylamine, and formaldehyde, calcuim salt.

*Use/Production.* (S) Lubricating oil additive for industrial, commercial and consumer use. Prod. range: Confidential.

*Toxicity Data.* Acute oral: >5 g/kg; Acute dermal: >5 g/kg; Irritation: Skin—Non-irritant, Eye—Mild; Ames test: Not mutagenic.

*Exposure.* Confidential.

Environmental Release/Disposal. 1 to 200 kg/batch released. Disposal by incineration.

**P 85-1299**

*Manufacturer.* Confidential.

*Chemical.* (G) Polymer from coconut fatty acids with alkanedioic acids and an alkanediol.

*Use/Production.* (G) Polymer for industrially used coatings having an open use. Prod. range: 500,000-1,200,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: dermal, a total of 43 workers; up to 8 hrs/da, up to 250 da/yr.

Environmental Release/Disposal. 3 to 162 kg/batch released to land. Disposal by publicly owned treatment works (POTW), incineration and landfill.

**P 85-1300**

*Importer.* Springborn Laboratories, Inc.

*Chemical.* (G) Phenylene sulfide copolymer

*Use/Import.* (G) Film for electronic use. Import range: Confidential.

*Toxicity Data.* Acute oral: >5,000 mg/kg; Acute dermal: >5,000 mg/kg; Ames test: No mutagenic.

*Exposure.* No data submitted.

Environmental Release/Disposal. No data submitted.

**P 85-1301**

*Manufacturer.* E.I. du Pont de Nemours Company & Inc.

*Chemical.* (G) Esterified polyamic acid.

*Use/Production.* (G) Open, non-dispersive use. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

Environmental Release/Disposal. Confidential.

**P 85-1302**

*Manufacturer.* Confidential.

*Chemical.* (G) Functional alkyl methacrylate.

*Use/Production.* (G) Industrial chemical mixture having a semi-contained use. Prod. range: 20,000-51,500 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture and processing: a total of 15 workers, up to 7 hr/da, up to 55 da/yr.

Environmental Release/Disposal. 4 to 50 kg/batch release to land. Disposal by incineration and landfill.

**P 85-1303**

*Manufacturer.* Rohm & Haas Company.

*Chemical.* (G) Modified acrylic polymer.

*Use/Production.* (g) Coating additive in an open non-dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Practically non-irritating, Eye—Slight.

*Exposure.* Manufacture: dermal, a total of 24 workers.

*Environmental Release/Disposal.* Release to water and land. Disposal by POTW and approved landfill.

**P 85–1304**

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Modified acrylic polymer.

*Use/Production.* (G) Coatings additive in an open-dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Practically non-irritating, Eye—Practically non-irritating.

*Exposure.* Manufacture: dermal, a total of 24 workers.

*Environmental Release/Disposal.* Release to water and land. Disposal by POTW and approved landfill.

**P 85–1305**

*Manufacturer.* Rohm and Haas Company.

*Chemical.* (G) Modified acrylic polymer.

*Use/Production.* (G) Coatings additive in an open non-dispersive use. Prod. range: Confidential.

*Toxicity Data.* Acute oral: >5.0 g/kg; Acute dermal: >5.0 g/kg; Irritation: Skin—Practically non-irritating, Eye—Inconsequential irritant.

*Exposure.* Manufacture: dermal, a total 24 workers.

*Environmental Release/Disposal.* Release to water and land. Disposal by POTW and landfill.

**P 85–1306**

*Importer.* Confidential.

*Chemical.* (G) Substituted isothiazolanthracene.

*Use/Import.* (G) A dyestuff for fibers. Import range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**P 85–1307**

*Importer.* Confidential.

*Chemical.* (G) Alkenoic acid, trisubstituted-benzyl disubstituted phenyl ester.

*Use/Import.* (G) Assitive for plastics. Import range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Confidential.

*Environmental Release/Disposal.* Confidential.

**P 85–1308**

*Manufacturer.* Confidential.

*Chemical.* (G) Amine salt of a carboxyl terminated polyester urethane polymer.

*Use/Production.* (S) Industrial fabric coating. Prod. range: 100,000–200,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, total of 4 workers, up to 2 hr/da, up to 100 da/yr.

*Environmental Release/Disposal.* 0.5 kg/batch released to air.

**P 85–1309**

*Manufacturer.* Confidential.

*Chemical.* (G) Amine salt of carboxyl terminated polyether urethane polymer.

*Use/Production.* (S) Industrial fabric coating. Prod. range: 100,000–200,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 5 workers, up to 2 hr/da, up to 100 hr/yr, 5 persons/shift.

*Environmental Release/Disposal.* 0.5 kg/batch released to air.

**P 85–1310**

*Manufacturer.* Confidential.

*Chemical.* (G) Polyether urethane polymer.

*Use/Production.* (S) Industrial fabric coating. Prod. range: 100,000–200,000 kg/yr.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 10 workers, up to 8 hr/da, up to 100 da/yr.

*Environmental Release/Disposal.* 0.5 kg/batch release to air.

**P 85–1311**

*Manufacturer.* American Hoechst Corporation.

*Chemical.* (S) Polymer of tall oil rosin, phenol-formaldehyde copolymer, calcium hydroxide, paraformaldehyde, acetic acid and p-tert-butylphenol-formaldehyde copolymer.

*Use/Production.* (S) Resin for printing inks. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 3 workers, up to 7 hr/da, up to 26 da/yr.

*Environmental Release/Disposal.* No release.

**P 85–1312**

*Manufacturer.* American Hoechst Corporation.

*Chemical.* (S) Isononanoic acid, sodium salt.

*Use/Production.* (G) Dispersive. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 2 workers, up to 2 hr/da, up to 10 da/yr.

*Environmental Release/Disposal.* No release.

**P 85–1313**

*Manufacturer.* American Hoechst Corporation.

*Chemical.* (S) Polymer of tall oil rosin, phenol-formaldehydecopolymer, calcium hydroxide, paraformaldehyde and acetic acid.

*Use/Production.* (S) Resin for printing inks. Prod. range: Confidential.

*Toxicity Data.* No data submitted.

*Exposure.* Manufacture: dermal, a total of 3 workers, up to 7 hr/da, up to 265 da/yr.

*Environmental Release/Disposal.* No release.

**P 85–1314**

*Importer.* Confidential.

*Chemical.* (G) Substituted copper phthalocyanine.

*Use/Import.* (S) Colorant for paper. Import range: Confidential.

*Toxicity Data.* Acute oral: >3,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

*Exposure.* Use: dermal and ocular, a total of 3 workers, 1 hr/8 hr. shift.

*Environmental Release/Disposal.* Release to waste water treatment systems. Disposal by sanitary landfill.

**P 85–1315**

*Importer.* Confidential.

*Chemical.* (G) Nitrochlorophenylazo-N-ethyl-N-substituted aniline.

*Use/Import.* (S) Industrial textile dye for polyester and polyester/cotton blend fibers as granular product and paste. Import range. Confidential.

*Toxicity Data.* Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; $LC_5O$ 96 hr. (Zebrafish): 500 mg/L; $IC_5O$ (Bacteria): >1,000 mg/L.

*Exposure.* Processing: dermal, a total of 8 workers.

*Environmental Release/Disposal.* Confidential.

**P 85–1316**

*Importer.* Confidential.

*Chemical.* (G) 2-Naphthalenesulfonic acid, 6-acetamido-4-hydroxy-[substituted]azo, 1:2 metal complex, trisodium salt.

*Use/Import.* (S) Industrial dyeing of anodic treated aluminum. Import range: Confidential.

*Toxicity Data.* Acute oral: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.

*Exposure.* Processing: dermal, a total of 750 workers, 8 hr. shift/worker.

*Environmental Release/Disposal.* Disposal by waste treatment and approved landfill.

**P 85–1317**

*Manufacturer.* Confidential.

*Chemical.* (S) Hydrolyzed animal proteins.

*Use/Production.* (S) Industrial retanning of leather. Prod. range: Confidential.

*Toxicity Data.* No data submitted.
*Exposure.* Manufacture and processing: dermal, a total of 2 workers.
*Environmental Release/Disposal.* 11 kg released to water. Disposal by navigable waterway.

**P 85–1318**

*Manufacturer.* Confidential.
*Chemical.* (G) Functional polyurethane from polyalkylene oxide, aliphatic diisocyanate and substituted alkanol.
*Use/Production.* (G) Polymer for industrial specialty coatings. Prod. range: 50,000–200,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacture: dermal, a total of 19 workers, up to 8 hr/da, up to 20 da/yr.
*Environmental Release/Disposal.* 10 to 125 kg/batch released to land. Disposal by incineration and landfill.

**P 85–1319**

*Manufacturer.* Confidential.
*Chemical.* (G) Fatty acids, amides from alkanolamines.
*Use/Production.* (G) Lubricant additive. Prod. range: 14,600–44,000 kg/yr.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacture: dermal, a total of 6 workers, up to 2 hr/da, up to 3 da/yr.
*Environmental Release/Disposal.* 292 kg/batch released to water. Disposal by POTW.

**P 85–1320**

*Manufacturer.* Confidential.
*Chemical.* (G) (Isocyanato oxazolidonyl) isocyanurate.
*Use/Production.* (G) Adhesives for open, non-disperive use. Production range: Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Confidentisl.
*Environmental Release/Disposal.* Confidential.

**P 85–1321**

*Manufacturer.* E.I. du Pont de Nemours & Company, Inc.
*Chemical.* (G) Aromatic polyester resin.
*Use/Production.* (G) Polymer for automotive parts. Prod. range: Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Confidential.
*Environmental Release/Disposal.* Confidential.

**P 85–1322**

*Manufacturer.* Confidential.
*Chemical.* (G) MDI-polyol prepolymer.
*Use/Production.* (S) Polyurethane elastomers for industrial components. Prod. range: Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Manufacture and disposal: dermal and inhalation.
*Environmental Release/Disposal.* Less than 1 kg/batch released.

**P 85–1323**

*Manufacturer.* Confidential.
*Chemical.* (G) Nitrogen containing alkyl phenol.
*Use/Production.* (G) Fuel additive. Prod. range: Confidential.
*Toxicity Data.* Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant. Ames test: Negative.
*Exposure.* Confidential.
*Environmental Release/Disposal.* Confidential. Disposal by POTW.

**P 85–1324**

*Manufacturer.* Confidential.
*Chemical.* (G) Sulfurized ester.
*Use/Production.* (G) Lube oil additive. Prod. range: Confidential.
*Toxicity Data.* Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Negative.
*Exposure.* Confidential.
*Environmental Release/Disposal.* Confidential.

**P 85–1325**

*Manufacturer.* Confidential.
*Chemical.* (G) Alkyl Phenol.
*Use/Production.* (G) Site-limited intermediate. Prod. range: Confidential.
*Toxicity Data.* Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Negative.
*Exposure.* Confidential.
*Environmental Release/Disposal.* Confidential.

**P 85–1326**

*Manufacturer.* Confidential.
*Chemical.* (G) Polysuccinimide amide.
*Use/Production.* (G) Fuel additive. Prod. range: Confidential.
*Toxicity Data.* Acute oral: >5 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Slight, Eye—Slight; Ames test: Negative..
*Exposure.* Confidential.
*Environmental Release/Disposal.* Disposal by POTW.

**P 85–1327**

*Manufacturer.* E.I. du Pont Nemours & Company, Inc.
*Chemical.* (G) Aromatic polyester resin.
*Use/Production.* (G) Polymer for automotive parts. Prod. range: Confidential.
*Toxicity Data.* No data submitted.
*Exposure.* Confidential.
*Environmental Release/Disposal.* Confidential.

Dated: August 12, 1985.

**Linda Travers,**

*Acting Director, Information Management Division.*

[FR Doc. 85–19711 Filed 8–19–85; 8:45 am]
BILLING CODE 6560–50–M

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**[OPTS–59203; FRL–2883–4]**

## Saturated and Unsaturated Alkylcarboxylic Acid Diethanolamine/Triethanolamine Salt

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the Federal Register of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application for an exemption, provides a summary, and requests comments on the appropriateness of granting the exemption.

**DATE:** Written comments by: September 4, 1985.

**ADDRESS:** Written comments, identified by the document control number "[OPTS–59203]" and the specific TME number should be sent to: Document Control Office (TS–793), Chemical Information Branch, Information Management Division, Office of Toxic Substances, Evironmental Protection Agency, Rm. E–201, 401 M Street, SW., Washington, DC 20460, (202) 382–3532.

**FOR FURTHER INFORMATION CONTACT:** Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

**SUPPLEMENTARY INFORMATION:** The following notice contains information extracted from the non-confidential

version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

**T 85-63**

*Close of Review Period.* September 21, 1985.

*Manufacturer.* Air Products and Chemicals, Inc.

*Chemical.* (G) Saturated and unsaturated alkylcarboxylic acid diethanolamine/triethanolamine salt.

*Use/Production.* (G) Corrosion inhibitor. Prod. range: Confidential.

*Toxicity Data.* Acute oral: >2,000 mg/kg; Irritation: Skin—Severe, Eye—Severe.

*Exposure.* Manufacture and processing: dermal, up to 8 hrs/da.

*Environmental Release/Disposal.* Greater than 10 kg released to water. Disposal by incineration and municipal waste treatment facility.

Dated: August 12, 1985.

**Linda A. Travers,**

*Acting Director, Information Management Division.*

[FR Doc. 85-19712 Filed 8-19-85; 8:45 am]

BILLING CODE 6560-50-M

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**[OPTS-42068; TSH-FRL 2849-1]**

## Carbofuran Intermediates; Response to the Interagency Testing Committee

*Correction*

In FR Doc. 85-17343 beginning on page 29761 in the issue of Monday, July 22, 1985, make the following corrections:

1. On page 29761, in the third column, in the summary, in the third line, "methally-2-" should read "methallyl-2-".

2. On page 29763, in the first column, the second italicized heading should read "*C. Environmental Effects*".

3. On page 29763, in the first column, in the third line from the bottom, "affluent" should read "effluent".

BILLING CODE 1505-01-M

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**[OPP-100025; FRL-2873-7]**

## Transfer of Data to Forest Service, U.S. Department of Agriculture

*Correction*

In FR Doc. 85-18264, beginning on page 31025, in the issue of Wednesday, July 31, 1985, make the following correction:

On page 31025, third column, under **SUPPLEMENTARY INFORMATION,** the third entry in the list of subject chemicals, "Amilizine", should read "Anilizine."

BILLING CODE 1505-01-M

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**[OPTS-51581; FRC-2869-8]**

## Certain Chemicals Premanufacture Notices

*Correction*

In FR Doc 85-17764 beginning on page 30513 in the issue of Friday, July 26, 1985, make the following corrections:

1. On page 30514, in the first column, under "P85-1189" in the second line, "O,O'-" should read "0,0'-".

2. On page 30515, in the second column, the fourth line under "P85-1207" should read "isobenzofuranone] [alkylimidazolyl]methylene]".

3. On page 30515, in the third column, the last line under "P85-1211" should read "Disposal by POTW."

4. On page 30516, in the first column, in the last line, "185,000" should read "1,185,000".

BILLING CODE 1505-01-M

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## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## Agency Report Forms Under OMB Review

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Reqest for Comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection request to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

**DATE:** Comments must be received on or before October 4, 1985. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

**ADDRESS:** Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be otained from the Agency Liaison Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:** EEOC Agency Liaison Officer: Margaret P. Ulmer, Financial and Resource Management Services, Room 386, 2401 E. Street, NW., Washington, DC, 20507; Telephone (202) 634-1932.

*OMB Reviewer:* James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC, 20503; Telephone (202) 395-6880.

Type of request: Revision of a currently approved collection
Title: Local Union Report EEO-3
Frequency of Report: Biennially
Type of Respondent: Business/other institutions Standard Industrial Classification (SIC) Code: 863
Description of Affected Public: Local referral unions with 100 or more members.
Responses: 3,000
Reporting Hours: 4,500
Federal Costs: $19,100
Applicable Under section 3504(h) of Pub. L. 95-511: Not applicable
Number of Forms: 1

Abstract-Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and appprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

For the Commission.

**John Seal,**

*Management Director, Equal Employment Opportunity Commission.*

[FR Doc. 85-19812 Filed 8-19-85; 8:45 am]

BILLING CODE 6570-06-M

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## FEDERAL COMMUNICATIONS COMMISSION

## Digital Paging Systems, Inc., et al.; Hearing Designation Orders

In re Applications of: CC Docket No. 85-241; Digital Paging Systems, Inc. (File No. 50081-CM-P-74); and KC Corp. (File No. 50015-CM-P-75); and Mobile Radio System of San Jose, Inc. (File No. 50037-CM-P-75). For construction permits in the Multipoint Distribution Service for a new station on Channel 2, at Palo Alto, California.

## Memorandum Opinion and Order

Adopted July 30, 1985.
Released August 12, 1985.
By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 2 at Palo Alto, California. The

applications are therefore mutually exclusive and require comparative consideration. These applications have been amended as result of informal requests by the Commission's staff for additional information. There were no petitions to deny filed.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Digital Paging Systems, Inc., KC Corporation, Mobile Radio Systems of San Jose, Inc. and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, that any authorization granted to Digital Paging Systems, Inc. a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned as follows:

(a) Without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc. et al,* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

**James R. Keegan,**

*Chief, Domestic Facilities Division, Common Carrier Bureau.*

[FR Doc. 85-19795 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain,* 77 FCC 2d 20 (1980).

## Page-A-Call et al.; Hearing Designation Order

In re applications of: CC Docket No. 85-244; Gary G. Harvey d/b/a Page-A-Call (Assignee) (File No. 24763-CD-P/L-84; Poka-Lambro Rural Telephone Cooperative, Inc. (Assignor). For the partial assignment of the authorization for Station KNKB357 on frequency 158.10 MHz in the Public Land Mobile Service at Lubbock, Texas. Gary G. Harvey d/b/a Page-A-Call (File No. 20980-CD-P/L-8-85). For a Construction Permit for new two-way facilities to operate on frequencies 454.375 MHz, 454.425 MHz, 454.575 MHz and 454.600 MHz at Amarillo, Texas and on frequencies 454.400 MHz, 454.450 MHz, 454.625 MHz and 454.650 MHz at Lubbock, Texas in the Public Land Mobile Service; and Poka-Lambro Rural Telephone Cooperative, Inc. (File No. 22687-CD-MP-01-85). For extension of construction permit.

### Order Designating Applications for Hearing

Adopted August 7, 1985.
Released August 16, 1985.
By the Common Carrier Bureau.

1. On August 16, 1984, Poka-Lambro Rural Telephone Cooperative, Inc. (Poka-Lambro) and Gary G. Harvey d/b/a Page-A-Call (Harvey) filed applications for the partial assignment of Station KNKB357 [1] from Poka-Lambro to Harvey. On October 12, 1984, Lubbock Radio Paging Service, Inc. (Lubbock) filed a Petition to Deny. Subsequent pleadings, including a request for an extension of the construction permit, were filed. In a separate action, Harvey filed an application on December 6, 1984 for new two-way facilities to serve Lubbock and Amarillo, Texas. Robert D. McLeod (McLeod), president of Lubbock, filed informal objections to Harvey's applications and responsive pleadings were filed. Due to the similarity and significance of the issues raised we will evaluate McLeod's objections at the same time we consider Lubbock's Petition to Deny.[2]

2. Lubbock argues that: Poka-Lambro does not have the authority to assign its construction permit since it is not actively seeking state certification; [3] a partial assignment of a wireline station to a non-wireline carrier is not in keeping with the Commission's rules or the interim policy established in 80-57; [4] there is a question as to the real party-in-interest in these applications; [5] this arrangement constitutes an anti-competitive action designed to discourage the entry of other competitors into the Lubbock market; and that this action is a *de facto* violation of state law. In his petition, McLeod again raises the questions concerning Harvey's status as a real party-in-interest, implies that Harvey's application to serve Lubbock and Amarillo contained duplicitous responses and asserts that Harvey's status as an employee of Poka-Lambro creates inherent conflicts of interest and will interfere with his ability to maintain the proposed service.

3. Harvey responds that Poka-Lambro has one year to obtain state certification and that state law should not be litigated before the Commission. Harvey also argues that since the Commission

[1] Specifically, the assignment requested is for the Construction Permit for Location 2, located at Lubbock, Texas (File No. 21187-CD-P/ML-84), on Frequency 158.10 MHz, an exclusive paging frequency.

[2] In an opposition to McLeod's objections Harvey asserts that the Commission no longer considers informal petitions under § 22.30 of the Commission's rules as amended by Public Mobile Service, 95 FCC 2d 769, 796-7 (1983) (Part 22 Rewrite). We have examined McLeod's petition and find that it satisfies the pleading requirements set out in § 22.30 of the rules, as amended, and shall be considered a formal petition entitled to full consideration in this proceeding.

[3] Lubbock further argues that the state law prohibiting Poka-Lambro from providing service to the Lubbock area is a bar to its application before the Commission and that the one-year period allowed for construction of the proposed station should be held irrelevant since Poka-Lambro has elected not to take steps to challenge the state's statutes. Lubbock asserts that the construction permit should be forfeited as the result of this election and, therefore, could not be assigned.

[4] In its Report and Order in CC Docket 80-57, the Commission established interim procedures for applications requesting waivers of the separate allocations for wireline and non-wireline carriers. Revision of Part 22, 95 FCC 2d 769, 825 (1983).

[5] Lubbock argues that Harvey is under the control of Poka-Lambo because of his full-time employment by Poka-Lambro—operating seven other PLMS stations as well as a Telephone Maintenance Radio Service facility for Poka-Lambro. Additionally, Lubbock cites the channel sharing agreement, attached to Harvey's application, in which it is stated that the service provided by Harvey will be secondary to that provided by Poka-Lambro.

has recently dropped the "fence" there is no violation of the Commission's rules or the interim procedures adopted in Docket 80-57. He further states that the two companies will be separate and distinct and that he will be fully capable of exercising his rights and responsibilities as an independent licensee and provides certification to that effect. Finally, Harvey argues that the proposed assignment is not anti-competitive because there is already a competitive environment in the Lubbock market and marketplace forces will determine the level of service and number of providers.

4. In its application for the extension of time to construct, Poka-Lambro raises the issue of administrative delay and argues that its application for partial assignment was filed eight months prior to the expiration date of the construction permit and that it was an undue delay in the processing of its application and not the application for assignment itself which necessitates the extension of time.

**Discussion**

5. *Violation of State Law.* Section 22.13(f)(1), which requires that licensees comply with all applicable requirements for state certification, allows a period of one year from the grant date for the licensee to gain compliance with state requirements. No violation of this rule has been demonstrated.

6. *Anti-competitive Action.* Lubbock offers no facts to substantiate its claim that assignment of the proposed paging facility to Harvey would be anti-competitive and prevent the entry of another licensee into the Lubbock market, whether or not that licensee has facilities serving adjacent markets. There is no evidence of anti-competitive action.

7. *Authority to Seek Assigment.* Section 22.39(a)(5) of the Commission's rules specifically allows for partial assignments and § 22.40(a) exempts exclusive paging frequencies from the review process normally required by § 22.40(b) for assignment of facilities which are not yet constructed. Since frequency 158.10 MHz is an exclusive paging frequency, Lubbock's argument that Poka-Lambro does not have authority to seek partial assignment of its construction permit is without merit.

8. *Violation of the Commission's Rules or Interim Policy.* The Interim Procedures set forth in CC Docket No. 80-57 [6] provided for the acceptance of applications by non-wireline carriers for wireline frequencies and vice versa, but also called for such applications to be held in abeyance until the Commission reached a final decision in this matter and amended its rules to reflect that decision. The *Report and Order* in CC Docket Nos. 83-1146 and 80-57 (FCC 84-485, released December 11, 1984) amends Part 22 of the Commission's rules, dropping the fence, effective January 17, 1985. The application filed by Poka-Lambro and Harvey is, therefore, in accordance with the Commission's rules and interim procedures.

9. *Real Party-In-Interest.* After carefully examining the pleadings, in these matters, as well as the respective applications, we conclude that a substantial question has been raised whether Poka-Lambro exercises *de facto* control over Harvey and, this, is the real party-in-interest behind Harvey.[7] In addition to the question raised by Lubbock[8] and McLeod is the fact that Harvey's service would be secondary to that of Poka-Lambro since the stations would be electrically mutually exclusive. It, therefore, needs to be determined whether Harvey will be able to exercise the independent judgement and control required of a Commission licensee.

10. *Extension of Time to Construct.* Section 22.43(b)(1) of the Commission's rules specifically prohibits the extension of time to complete construction for delays caused by the transfer of an authorization. While we are not persuaded by the arguments raised by Poka,[9] we are designating this issue for hearing since the grant or denial of this extension is integral to the question of partial assignment.

**Conclusions**

11. In view of the foregoing, we are designating the referenced applications for hearing, and we are making Lubbock and McLeod parties to the hearing. In the event that the findings and conclusions for Issue F are adverse to Harvey and Pola-Lambro, the applications of both parties will be denied without further proceedings.

12. Accordingly it is ordered that the applications of Gary G. Harvey d/b/a Page-A-Call and Poka-Lambro Rural Telephone Cooperative, Inc., for partial assignment (File No. 24763-CD-P/L-84) as well as the applications of Gary G. Harvey d/b/a Page-A-Call for construction permits to serve Lubbock and Amarillo, Texas (file No. 20980-CD-P/L-8-85) and Poka-Lambro Rural Telephone Cooperative, Inc., for an extension of construction permit (File No. 22687-CD-MP-01-85) are designated for hearing, under section 309(e) of the Communications Act of 1934, as amended, upon the following issues:[10]

A. To determine the relationship between Poka-Lambro and Harvey, including the facts and circumstances surrounding Harvey's employment;

B. To determine the facts and circumstances surrounding the conceptions, initiation, preparation, filing and prosecution of the referenced applications;

C. To determine the facts and circumstances surrounding the channel sharing agreement including its effect on the service proposed by Harvey;

D. To determine, in light of the evidence adduced above, whether Poka-Lambro is a real party-in-interest behind Harvey;

E. (1) To determine, in light of the evidence adduced above, whether Harvey is qualified to become a Commission licensee; and

(2) To determine, in light of the evidence adduced above, what disposition of the referenced applications would best serve the public interest, convenience and necessity.

13. It is further ordered, that the applicants and the petitioners shall have a responsibility to adduce evidence on the fact-finding issues (A), (B), and (C), and that the order in which the parties will go forward with the presentation of evidence on the fact-finding issues shall be determined by the administrative Law Judge. The burden of proof in the ultimate issues (D) and (E), is placed on the applicant.[11]

(14) It is further ordered, That the petitions filed by Lubbock Radio Paging Service, Inc. and Robert D. McLeod, are granted in part to the extent indicated herein, and Denied in all other respects.

[6] *See* note 4, *supra.*

[7] The test for detemining whether a party is a real party-in-interest is whether that party has a ownership interest in the applicant, or is or will be in a position to actually or potentially control the operation of the applied-for radio station. *See, e.g.*, Kathleen Ann Brown, Mimeo 3719, released April 8, 1985. *See also* Sumiton Broadcasting Company, Inc., et al., 15 FCC 2d 400 (1968); *WLOX Broadcasting Co.* V *FCC*, 260 F 2d 712 (1965).

[8] *See* note 5, *supra.*

[9] *See* note 4, *supra.*

[10] No lack of candor issue is being designated in this order. The judge, however, has the option of enlarging the issues during the course of the hearing based upon the facts of the case as presented.

[11] Where an applicant against whom; charges of misconduct have been raised, has within its peculiar knowledge the facts regarding the alleged misconduct, the applicant will have the burden of proof. *See* discussion and cases cited in Granbury Communications Co., 68 FCC 2d 966, 969 (1978) and Miami Broadcasting Corp., 11 FCC 2d 920, 923 (Rev. Bd. 1968).

15. It is further ordered, That the Chief, Common Carrier Bureau and the petitioners are made parties to this hearing which shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent order.

16. It is further ordered, That the applicants may avail themselves of an opportunity to be heard by filing with the Commission pursuant to § 1.221 of the rules within 20 days of the release date hereof, a written notice stating an intention to appear on that date for hearing and present evidence in the issues specified in the order.

17. This order is issued under § 0.291 of the Commission's rules and is effective on its release date. Applications for review under § 1.115(e)(3) of the rules may be filed within 30 days of the date of public notice of this order. *See* 1.4(b)(2). Petitions for reconsideration of designation orders may not be filed except insofar as they relate to an adverse ruling as to participation of a party in the hearing under § 1.106(a)(1).

18. The Secretary shall cause a copy of this order to be published in the **Federal Register.**

Federal Communications Commission.

**Michael Deuel Sullivan,**

*Chief, Mobile Services Division, Common Carrier Bureau.*

[FR Doc. 85-19796 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

## New FM Stations; Applications for Consolidated Hearing; Northeast Communications Corp. and Central New Hampshire Broadcasting

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, city, and state | File No. | MM Docket No. |
|---|---|---|
| A. Northeast Communications Corporation; Franklin, NH. | BPH-810205AB | 85-243 |
| B. Nancy C. Howard, et al., d/b/a/ Central New Hampshire Broadcasting; Franklin, NH. | BPH-811026AH | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. (See Appendix), A
2. (See Appendix), A
3. Comparative, A, B
4. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street NW., Washington, D.C. 20554. Telephone (202) 632-6334.

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

### Appendix

*Issue(s)*

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8 [1], the applicant(s) is financially qualified: A (Northeast)

2. If a final environmental impact statement is issued with respect to A (Northeast) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the Northeast Environmental Policy Act, as implemented by §§1.301-1.319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 85-19797 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Paragraph 8 reads as follows:

The material submitted by the applicant(s) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

| Applicant(s) | Deficiency |
|---|---|
| A (Northeast) | Failure to provide corporate balance sheet per FCC Form 301, Section III, Item 2. |

## Telecommunications Systems, Inc. and Microband Corp. of America; Memorandum Opinion and Order

In re applications of: CC Docket No. 85-242; Telecommunications Systems, Inc., File No. 50111-CM-P-81; and Microband Corporation of America, File No. 50260-CM-P-81. For construction permits in the Multipoint Distribution Service for a new station at Emporia, Kansas.

Adopted July 30, 1985.

Released August 9, 1985.

By the Common Carrier Bureau.

1. For consideration are the above-referenced applications. These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Emporia, Kansas. The applications are therefore mutually exclusive and require comparative consideration. There are no petitions to deny or other objections under consideration.

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

[1] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

4. It is further ordered, That Telecommunications Systems, Inc., Microband Corporation of America and the Chief of Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

**James R. Keegan,**

*Chief, Domestic Facilities Division, Common Carrier Bureau.*

[FR Doc. 85-19798 Filed 8-19-85; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL HOME LOAN BANK BOARD

### Sierra Federal Savings and Loan Association, Denver, CO; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed Melvin Karthauser as conservator for Sierra Federal Savings and Loan Association, Denver, Colorado, effective August 9, 1985.

Dated: August 14, 1985.

**Nadine Y. Penn,**

*Acting Secretary.*

[FR Doc. 85-19815 Filed 8-19-85; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 221-010619-002.

Title: Oakland Terminal Agreement.

Parties:

City of Oakland by and through its Board of Port Commissioners (Port)

EAC Lines Trans Pacific Service, Ltd. (EAC)

Synopsis: Agreement No. 221-010619-002 modifies the basic agreement between the Port and EAC whereby the Port assigns certain marine terminal facilities in the Port's Charles P. Howard Terminal to EAC. The amendment provides that EAC shall make its compensation payments and all other applicable tariff payments to the Port through the Port's assigned terminal operator rather than directly to the Port.

Agreement No.: 224-010805.

Title: Los Angeles Terminal Agreement.

Parties:

Eagle Marine Services, Ltd. (Eagle)

American President Lines, Ltd. (APL)

d'Amico Societa Di Navigazione SpA (d'Amico Line)

Italia Di Navigazione SpA (Italian Line)

Synopsis: This agreement provides that APL and its wholly owned subsidiary Eagle will provide terminal facilities together with stevedoring and terminal services for the benefit of d'Amico and Italian Line vessels. The facilities are located at Berths 121/126 in the Port of Los Angeles. The term of the agreement is for five years. The parties have requested a shortened review period for the agreement.

Agreement No.: 224-010806.

Title: Portland Terminal Agreement.

Parties:

The Port of Portland (Port)

Brady Hamilton Stevedore Company, dba Stevedoring Services of America, Inc. (SSA)

Synopsis: Agreement No. 224-010806 provides that SSA will perform the marine terminal services the Port is presently performing at Terminal 2 in Portland. The initial term of the agreement is for five years, with provision for three five-year extensions. The term for their performing the marine terminal operations at an additional portion of Terminal 2 beyond that presently performed by the Port shall be for an initial period of one year with two additional two-year periods. The Port and SSA will share the Port's wharfage and dockage revenues as indicated in the agreement, (depending upon whether they were existing customers at Terminal 2, existing customers of the Port, or new customers at the Port.) The revenues for the marine services performed by SSA would accure 100 percent to SSA. SSA will provide the Port a minimum guarantee of $600,000 per year for the agreement, increasing by $50,000 per year for each additional year of the five-year term. Minimums are also provided during the renewal periods of the agreement. All marine terminal operating equipment, except for cranes, will be provided and maintained by SSA.

By Order of the Federal Maritime Commission.

Dated: August 15, 1985.

**Bruce A. Dombrowski,**

*Acting Secretary.*

[FR Doc. 85-19865 Filed 8-19-85; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

| Transaction | Waiting period terminated effective |
|---|---|
| (1) 85-0858—Fujisawa Pharmaceutical Company Limited's proposed acquisition of voting securities of LyphoMed, Inc. | July 29, 1985. |
| (2) 85-0861—BYCOM Systems, Inc.'s proposed acquisition of assets of Siecor Corporation, Cooper Cable and Wire Manufacturing Divisions, (Siemens Aktiengesellschaft, UPE). | Do. |
| (3) 85-0862—BYCOM Systems, Inc.'s proposed acquisition of assets of Corning Glass Works. | Do. |
| (4) 85-0868—Cyprus Minerals, Co.'s proposed acquisition of voting securities of The Getty Group which is composed of Getty Minerals Marketing, Twenty Mile Coal Co., Colorado Yampa Coal Co., Plateau Mining Co., Getty Australian Coal Co., Colorado Yampa Leasing Co., and Plateau Co., (Texaco, Inc., UPE). | Do. |

| Transaction | Waiting period terminated effective |
|---|---|
| (5) 85-0869—Cyprus Minerals, Co.'s proposed acquisition of voting securities of Getty Minerals Co. from Getty Mining Company, (Texaco, Inc., UPE). | Do. |
| (6) 85-0855—Westinghouse Electric Corporation's proposed acquisition of voting securities of TSC, Inc. | July 30, 1985. |
| (7) 85-0875—The Prospect Group, Inc.'s proposed acquisition of voting securities of Wood River Capital Corporation, (Louis Marx, Jr., UPE). | Do. |
| (8) 85-0922—Anheuser-Busch Companies, Inc.'s proposed acquisition of voting securities of Exploration Cruise Lines, Inc. a corporate joint venture. | Do. |
| (9) 85-0923—Anheuser-Busch Companies, Inc.'s proposed acquisition of assets of Alaska Tour and Marketing Services, Inc., (Robert and Lorraine Giersdorf, UPE's). | Do. |
| (10) 85-0901—Chrysler Corporation's proposed acquisition of voting securities of E.F. Hutton Credit Corporation, (The E.F. Hutton Group, Inc., UPE). | Do. |
| (11) 85-0358—Monsanto Company's proposed acquisition of assets of Witco Chemical Corporation. | July 31, 1985. |
| (12) 85-0642—1964 Simmons Trust's proposed acquisition of voting securities of Sea-Land Corporation. | Do. |
| (13) 85-0854—Ciba-Geigy Ltd.'s proposed acquisition of assets and voting securities of Spectra-Physics, Inc. | Do. |
| (14) 85-0859—William I. Koch's proposed acquisition of voting securities of Sun Geothermal Company, (Sun Company, Inc., UPE). | Do. |
| (15) 85-0864—R.J. Reynolds Industries, Inc.'s proposed acquisition of voting securities of Boulevard Distillers and Importers, Inc., (Societe Pernod Ricard, UPE). | Do. |
| (16) 85-0890—Hudson County News Company's, (Robert B. Cohen, UPE), proposed acquisition of assets of McGrath Services Corporation. | Aug. 1, 1985. |
| (17) 85-0881—American Medical International, Inc.'s proposed acquisition of assets of North Ridge General Hospital, Inc. | Do. |
| (18) 85-0883—Cyprus Minerals Company's proposed acquisition of voting securities of Sandy Ridge Energy Corporation, (The LTV Corporation, UPE). | Do. |
| (19) 85-0884—Cyprus Minerals Company's proposed acquisition of voting securities of Sandy Ridge Energy Corporation, (The LTV Corporation, UPE). | Do. |
| (20) 85-0887—American Medical International's proposed acquisition of voting securities of FL Health Complex, Inc., (Fort Lauderdale Health Complex Limited, a partnership, UPE). | Do. |
| (21) 85-0888—Rykoff-Sexton, Inc.'s proposed acquisition of assets of Interstate Restaurant Supply Company, Inc. | Do. |
| (22) 85-0898—Heritage Communications, Inc.'s proposed acquisition of assets of Warner Amex Cable Holding Company. | Do. |
| (23) 85-0912—BTR, plc's proposed acquisition of voting securities of BAE Automated Systems, Inc., (M.L. Sharp, UPE). | Do. |
| (24) 85-0915—Heritage Communications, Inc.'s proposed acquisition of assets of Warner Amex Cable Communications Company of Dallas. | Do. |
| (25) 85-0916—Heritage Communicaitons, Inc.'s proposed acquisition of assets of Warner Amex Cable Communications Company of Mesquite. | Do. |
| (26) 85-0947—Merrill Lynch & Co., Inc.'s proposed acquisition of voting securities of Palm Beach Incorporated. | Aug. 2, 1985. |
| (27) 85-0835—Libbey-Owens-Ford Company's proposed acquisition of voting securities of Sterling Plastics, Inc., (Lindsay and Haskins Trust, UPE). | Aug. 5, 1985. |
| (28) 85-0844—Gannett Co., Inc.'s proposed acquisition of voting securities of Cowles Media Company. | Do. |
| (29) 85-0902—Martin Marietta Corp.'s proposed acquisition of voting securities of Equatorial Communications, Co. | Do. |
| (30) 85-0940—Pergamon Holding Foundation's proposed acquisition of voting securities of The Excello Press, (Estate of Milton Feldmar, Dorothy and Gary Feldmar, executors). | Do. |
| (31) 85-0913—PacifiCorp's proposed acquisition of voting securities of Northwest Acceptance Corporation, (Orbanco Financial Services Corporation, UPE). | Aug. 6, 1985. |
| (32) 85-0925—O'Neal Steel, Inc.'s proposed acquisition of voting securities of Shelby Steel Investment Corp. | Do. |
| (33) 85-0927—Johnston Southern Company's, (S.K. Johnston, Jr., UPE) proposed acquisition of voting securities of The Coca-Cola Company, (Central States Coca-Cola Bottling Company, UPE). | Do. |
| (34) 85-0934—Nationwide Mutual Insurance Company's proposed acquisition of voting securities of Beaver Pacific Corporation. | Do. |
| (35) 85-0877—UNC Resources, Inc.'s proposed acquisition of voting securities of ICC Communications Corporation, (David H. Lubetzky, UPE). | Aug. 7, 1985. |
| (36) 85-0891—Dow Jones & Company, Inc.'s proposed acquisition of voting securities of Exco International Inc., (Exco International p.l.c., UPE). | Do. |
| (37) 85-0892—The Oklahoma Publishing Company's proposed acquisition of voting securities of Exco International, Inc., (Exco International, p.l.c., UPE). | Do. |
| (38) 85-0897—The Kroger Company's proposed acquisition of voting securities of Price Savers Wholesale, Inc., (TG Limited, UPE). | Do. |
| (39) 85-0939—Bunzl plc's proposed acquisition of voting securities of Monmouth Paper Company. | Do. |
| (40) 85-0885—ASEA AB's proposed acquisition of assets of Barry Wright Corporation. | Aug. 8, 1985. |
| (41) 85-0899—The Alonzo F. and Norris B. Herdon Foundation's proposed acquisition of voting securities of Mammoth Life and Accident Insurance Company. | Aug. 9, 1985. |
| (42) 85-0933—Allegheny International, Inc.'s proposed acquisition of assets of Gay Products, Inc. | Do. |
| (43) 85-0951—Masco Corporation's proposed acquisition of voting securities of Merillat Industries, Inc., (Orville and Ruth Merillat, UPE's). | Do. |
| (44) 85-0953—Trilogy Limited's proposed acquisition of voting securities of ELXSI. | Do. |
| (45) 85-0958—IC Industries, Inc.'s proposed acquisition of voting securities of Pearle Health Services, Inc. | Do. |
| (46) 85-0965—Munford, Inc.'s proposed acquisition of voting securities of Lee-Wards Creative Crafts, Inc., (General Mills, Inc., UPE). | Do. |
| (47) 85-0950—A. Jerrold Perenchio's proposed acquisition of voting securities of The Evening News Association. | Aug. 12, 1985. |
| (48) 85-0889—McDonnell Douglas Corporation's proposed acquisition of assets of S.E.C.C. Financial Services, Inc., (Sun Electric Corporation, UPE). | Aug. 13, 1985. |
| (49) 85-0911—Southmark Corporation's proposed acquisition of voting securities of Integon Corporation, (Ashland Oil, Inc., UPE). | Do. |
| (50) 85-0950—Tele-Communications, Inc.'s proposed acquisition of voting securities of United Cable Television Corporation. | Do. |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

**Benjamin Berman,**

*Acting Secretary.*

[FR Doc. 85-19826 Filed 8-19-85; 8:45 am]

BILLING CODE 6750-01-M

## GENERAL SERVICES ADMINISTRATION

### Agency Information Collections Under Review by the Office of Management and Budget

**AGENCY:** Office of Policy and Management Systems, GSA.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to reinstate two previously approved information collections.

**ADDRESSES:** Send comments to Franklin S. Reeder, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** John Hansley, Office of Property Management (703-557-0814).

**SUPPLEMENTARY INFORMATION:**

**1. Purpose**

a. *Deposit Bond—Individual Invitation—Sale of Government Personal Property.* The data from this collection provides a guarantee to the Government that payment by the bidder will be accomplished either by the bidder or the surety. Respondents and responses 50, hours 25.

b. *Deposit Bond—Annual Sale of Government Personal Property.* This data meets the legal requirements for collection of bid deposits if bidders fail to provide full purchase price within the time frames specified in the invitation for bid. Respondents and responses 400, hours 100.

**2. Copies of Proposal**

Copies may be obtained from the Directives and Reports Management Branch (ATRAI), Room 3013, GS Building, Washington, DC 20405 (202-566-0666).

Dated: August 13, 1985.

**Johnny T. Young,**

*Acting Director, Information Management Division.*

[FR Doc. 85-19842 Filed 8-19-85; 8:45 am]

BILLING CODE 6820-24-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### Cooperative Agreement To Assist the Department of Health, Commonwealth of Pennsylvania, With Developing a Surveillance System and Cohort Registry of Former Chemical Workers; Availability of Funds for Fiscal Year 1985

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, announces the availability of funds for Fiscal Year 1985 for a cooperative agreement with the Department of Health, Commonwealth of Pennsylvania, to provide assistance in developing a surveillance system and cohort registry for former employees of the Drake Chemical Company. Those workers who may have been occupationally exposed to known carcinogens will be indentified, medically evaluated, and peridocally monitored. This assistance is authorized under section 104(d)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The former Drake Chemical Company site located in Lock Haven, Clinton County, Pennsylvania, has been designated by the U.S. Environmental Protection Agency as eligible for superfund intervention. Chemicals used, manufactured, and/or stored at the Drake site include the human carcinogens betanaphthlamine, benzidine, and benzene as well as the herbicide fenac (trichlorophenylacetic acid), dichlorobenzene, arsenic, and pentachlorophenol. Studies have described adverse health effects which are possibly associated with exposure to hazardous substances at the Drake site.

Assistance will be provided only to the Department of Health, Commonwealth of Pennsylvania, which has the responsibility to proetect the health of Pennsylvania residents. Since it has a vested interest in the health of former Drake plant workers who have possibly been exposed to known carcinogens, the Department of Health has requested financial and technical assistance with developing a surveillance system and cohort registry. This notice is for information only, and no other applications will be accepted.

The proposed project is of 20 years' duration. It is expected that approximately $200,000 will be available in Fiscal Year 1985. The cooperative agreement will have an initial 5-year project period with annual budget periods. Continuation awards will depend upon the availability of funds. This application is not subject to review under Executive Order 12372.

**FOR FURTHER INFORMATION CONTACT:**

For business information: Luther E. DeWeese, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 310, Atlanta, Georgia 30305, Telephone: (404) 262-6576 or FTS 236-6576.

For technical information: Paul Schulte, Ph.D., NIOSH, Centers for Disease Control, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 841-4386 or FTS 684-4386.

Dated: August 12, 1985.

**J. Donald Millar,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 85-19855 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-19-M

### Food and Drug Administration

**[Docket No. 80N-0012; DESI 8924]**

### Drugs for Human Use; Drug Efficacy Study Implementation; Certain Topical Anti-Infective Drug 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 pertinent parts of new drug applications (NDA's) for Neosporin Topical Powder, Neosporin Aerosol, and Neosporin-G Cream. FDA is withdrawing approval because these combination drug products lack substantial evidence of effectiveness in the treatment of various dermatological conditions.

**EFFECTIVE DATE:** September 19, 1985.

**ADDRESS:** Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 8924 and directed to the Division of Drug Labeling Compliance (HFN-310), Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Judy O'Neal, Center for Drugs and Biologics (HFN-336), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

**SUPPLEMENTARY INFORMATION:** In a notice of opportunity for hearing published in the **Federal Register** of September 25, 1981 (46 FR 47408), FDA proposed to withdraw approval of the NDA's for certain topical anti-infective drug products, including those described below. The basis of the proposal was that the products lack substantial evidence of effectiveness for their labeled indications. In response to the notice, Burroughs Wellcome Co., Inc., requested a hearing. Burroughs Wellcome has since withdrawn its hearing request for the products described below. Accordingly, FDA is now withdrawing approval of those parts of the new drug applications which pertain to the following prescription drug products:

1. Neosporin Topical Powder (NDA 50-166) containing neomycin sulfate EQ 3.5 milligram (mg) base/gram (gm), bacitracin zinc 400 units, and polymyxin B sulfate 5,000 units; Burroughs Wellcome Co., Inc., 3030 Cornwallis Rd., Research Triangle Park, NC 27749.

2. Neosporin Aerosol (NDA 50-167) containing in each 90 gm aerosol spray neomycin sulfate EQ 70 mg base, bacitracin zinc 8,000 units, and polymyxin B sulfate 100,000 units; Burroughs Wellcome Co., Inc.

3. Neosporin-G Cream (NDA 50-176) containing neomycin sulfate EQ 3.5 mg base/gm, polymyxin B sulfate 10,000 units; and gramicidin .25 mg; Burroughs Wellcome Co., Inc.

Any drug product that is identical, related, or similar to the three products listed above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drugs and Biologics, 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 him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of

substantial evidence that the combination products will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 50–166 that provide for Neosporin Topical Powder containing neomycin sulfate, those parts of NDA 50–167 that provide for Neosporin Aerosol containing neomycin sulfate, and those parts of NDA 50–176 that provide for Neosporin-G Cream containing gramicidin, and all the amendments and supplements for those products, is withdrawn effective September 19, 1985. Shipment in interstate commerce of the products above, or any identical, related, or similar product that is not the subject of an approved new drug application, will then be unlawful.

Dated: August 14, 1985.

**Paul Parkman,**

*Acting Director, Center for Drugs and Biologics.*

[FR Doc. 85–19803 Filed 8–19–85; 8:45 am]

BILLING CODE 4160–01–M

## Advisory Committee; Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meeting: The following advisory committee meeting is announced:

### Radiologic Devices Panel

*Date, time, and place.* September 30, 9 a.m., Rm. 416, 12720 Twinbrook Parkway, Rockville, MD.

*Type of meeting and contact person.* Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 4:30 p.m.; Robert Phillips, Center for Devices and Radiological Health (HFZ–430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7514.

*General function of the committee.* The committee reviews and evaluate available data on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 23, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss premarket approval applications for magnetic resonance imaging devices.

*Closed committee deliberations.* The committee may discuss trade secret or confidential commercial information relevant to premarket approval applications for magnetic resonance imaging devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separate portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings. These procedures (21 CFR 10.206) are primarily intended to expedite media access to FDA's public proceedings, including hearings before a public advisory committee conducted pursuant to Part 14 of the agency's regulations. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the presentation of participants at a public hearing.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA–305), Rm. 4–62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Firday.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94–409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include

the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marked drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: August 14, 1985.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 85-19801 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-01-M

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[Docket No. 83D-0282]

## Freedom of Information Summaries for NADA's; Availability of Revised Guidelines

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the revised Freedom of Information Summary Guidelines for NADA's prepared by the Center for Veterinary Medicine (CVM). The revised guidelines describe information required for public release upon approval of an NADA or supplemental NADA, and they reflect consideration of those comments received in response to publication of a notice of availability of the draft revised guidelines.

**ADDRESS:** The revised guidelines, the August 1983 draft of the revised guidelines, comments, and related materials are available for public examination at, and requests for single copies of the revised guidelines may be submitted to, the Docket Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Frank G. Pugliese, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

**SUPPLEMENTARY INFORMATION:** The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be maketed in interstate commerce. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations which show that the drug is safe and effective for use. Section 514.11 of the animal drug regulations (21 CFR 514.11) addresses the confidentiality of data and information in an NADA and provides for the availability for public disclosure of a summary of safety and effectiveness data and information after approval of an NADA and publication in the **Federal Register.** The guidelines advise NADA sponsors on the preparation of such a summary of safety and effectiveness data, generally known as a freedom of information (FOI) summary.

On May 26, 1976 (41 FR 21498), FDA published a notice announcing the availability of guidelines concerning the preparation of a freedom of information summary for NADA's. Based on a review of summaries prepared under the 1976 guidelines, FDA concluded that the 1976 guidelines were not sufficiently detailed to enable drug sponsors to prepare uniformly adequate summaries. Therefore, the agency revised the guidelines to provide more detail, and announced the availability of the draft revised guidelines for review and public comment in the **Federal Register** of August 19, 1983 (48 FR 37711). In response to the publication of the notice, several comments were received. CVM prepared the revised FOI guidelines after considering these comments. The revised guidelines, the comments, and a summary of CVM's review of the comments are available for public examination at, and requests for single copies of the guidelines may be sent to, the Dockets Management Branch (address above).

FOI summaries initially submitted to CVM after September 19, 1985 should be prepared in accordance with the revised guidelines; summaries submitted before September 19, 1985 for applications not yet approved will be reviewed individually. CVM will determine whether changes are necessary and, if so, whether the changes will be made by CVM or the sponsor. CVM will attempt to avoid any unnecessary delay in the approval of applications that might be caused by revision in the FOI summaries.

The introduction to the guidelines states that the guidelines are to be applied flexibly, to account for differences between applications in the kinds and amounts of data appropriately submitted. Moreover, as stated below, CVM will consider at any time additional comments on the content of the guidelines. Nevertheless, the revised guidelines represent the agency's interpretation of the information that is needed to comply with both the spirit of the Freedom of Information Act and the letter of the agency's regulation (§ 514.11). The revised guidelines specify a procedure for resolution of differences between CVM and a sponsor as to the content of individual summaries. Although § 514.11 places responsibility on sponsors for submission of an FOI summary, the agency has ultimate responsibility for the content of the summary.

Interested persons may, at any time, submit additional written comments on the revised guidelines to the Dockets Management Branch. Such comments will be considered in determining if further revisions are required. Respondents should submit two copies (except that individuals may submit single copies) identified with Docket No. 83D-0282. Comments and all related materials may be seen in the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

This notice and the revised guidelines are issued under 21 CFR 10.90 and 514.11.

Dated: August 14, 1985.

**Mervin H. Shumate,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 85-19804 Filed 8-19-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[IN FEIS 85-27]

### Lower Gila South Proposed Resource Management Plan/Final Environmental Impact Statement, Phoenix District, Arizona; Availability

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of Proposed Resource Management Plan/Final Environmental Impact Statement.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and section 202(f) of the Federal Land Policy and Management Act of 1976, a Proposed Resource Management Plan/Final Environmental Impact Statement (RMP/EIS) has been prepared for the Lower Gila South Planning Area.

The Proposed RMP/Final EIS addresses future management options for approximately 2,009,000 acres of public lands in southwestern Arizona. Of this total 621,931 acres in 12 Wilderness Study Areas (WSA's) are analyzed as suitable or non-suitable for wilderness designation. The Lower Gila South Planning Area includes portions of La Paz, Maricopa, Pima, Pinal and Yuma Counties, Arizona.

The document describes the proposed resource managment plan and contains written and oral comments received during the public review period and responses to those comments.

A thirty-day public review period will end September 23, 1985. During that period any portion of the plan, with the exception of the wilderness issue, may be protected. Protest statements shall contain the following information:

—The name, mailing address, telephone number and interest of the person filing the protest;
—A statement of the issue or issues being protested;
—A statement of the part or parts of the plan being protested;
—A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the record; and
—A concise statement explaining why the State Director's decision is believed to be wrong.

All protests should be sent to: Director (202), Bureau of Land Management, U.S. Department of the Interior, 18th and C Streets, NW, Washington, D.C. 20240. Protests must be received no later than the close of the thirty-day public review period.

**FOR FURTHER INFORMATION CONTACT:** William Childress, Lower Gila Resource Area Manager, Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027. (602) 863-6711.

Copies of the document are available for review at the following locations:

Office of Public Affairs, Interior Building, Bureau of Land Management, 18th and C Streets, NW, Washington, D.C. 20240.

Bureau of Land Management, Arizona State Office, 3707 N. 7th Street, Phoenix, Arizona 85014.

Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Dated: August 12, 1985

**Marlyn V. Jones,**

*District Manager.*

[FR Doc. 85-19810 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-32-M

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[I-21547]

### Realty Action; Exchange of Public Land in Jerome County for Private Land Within Blaine County, ID

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, Exchange of public land in Jerome County for private land within Blaine County, Idaho, I-21547.

**DATE:** Comments should be submitted to the Shoshone District Office, Bureau of Land Management, P.O. Box 2B, Shoshone, Idaho, 83352 by September 23, 1985.

**SUMMARY:** The purpose of the exchange is to acquire the non-Federal grazing land to improve the manageability of the public lands for livestock and wildlife habitat. The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with Blaine County and Jerome County Commissioners and Idaho Department of Fish & Game. The public interest will be well served by making the exchange.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

**Jerome County, Idaho**

T. 9 S., R. 17 E., B.M.,
Sec. 14, S½NW¼, S½;
Sec. 15, S½N½, S½;
Sec. 20, E½NE¼, N½SE¼;
Sec. 21, NE¼NE¼, W½E½, W½;
Sec. 22, E½NE¼NE¼, E½W½NE¼NE¼, E½SE¼NE¼, E½W½SE¼NE¼, E½W½W½SE¼NE¼, W½, E½SE¼, SW¼SE¼;
Sec. 28, N½NE¼, NE¼NW¼.
Containing 2,185.00 acres.

In exchange for these lands, the Federal Government will acquire non-Federal lands from George Arkoosh, described below:

**Blaine County, Idaho**

T. N., R. 18 E., B.M.
Sec. 2, E½SE¼, tax lot 3453, also the SW¼SE¼ except for a parcel of land described as follows:
Commencing at the Center South ⅛ Corner of said section 2, which point is also the NW Corner of SW¼SE¼, and also is the REAL POINT OF BEGINNING;
Thence South 740 feet ± along the West Boundary of said SW¼SE¼, to the foothills on the Southeast Edge of Quigley Canyon;
Thence North 48° East, 543.09 feet ±;
Thence North 10° East, 362.41 feet ±, to the North Boundary of said NW¼SE¼, and also to the foothills on the Southeast Edge of Quigley Canyon;
Thence West 470 feet ±, along the North Boundary of said SW¼SE¼, to the point of beginning, containing 5.46 acres more or less.
Sec. 10, SE¼SE¼, tax lot 3457;
Sec. 11, NE¼, SE¼NW¼, S½SW¼, NE¼SW¼, N½SE¼, tax lots 3451, 3455, 3456;
Sec. 17, lot 1, SE¼NE¼, SE¼SW¼, S½SE¼, NE¼SE¼;
Sec. 19, a parcel of land lying within Government lot 4 being more particularly described as follows:
Commencing at the Section Corner common to section 19, 24, 25, and 30, which is the REAL POINT OF BEGINNING;
Thence N 0°16'33" E, 1322.41 feet to a ⅝" bar marking the South ⅛ corner common to sections 19 and 24;
Thence S 89°45'57" E, 897.80 feet to a ⅝" bar on the westerly boundary of Croy Creek Road;
Thence S 30°04'43" W, 1524.41 feet along the westerly boundary of Croy Creek Road to a ⅝" bar;
Thence N 89°50'16" W, 140.15 feet to the point of beginning, containing 15.75 acres more or less.
Sec. 20, lot 1, NE¼, E½NW¼, SW¼NW¼;
Sec. 24, S½;
Sec. 25, NE¼, NE¼NW¼, tax lots 5900, 5901, 5902, 5903;
Sec. 36, tax lots 3862, 3863, 3866.

**Blaine County, Idaho**

T. 2 N., R. 19 E., B.M.,
Sec. 4, N½SW¼, W½SE¼, SE¼SE¼;
Sec. 5, SE¼;
Sec. 7, S½SE¼;
Sec. 8, W½NE¼, S½SW¼, SE¼;
Sec. 9, N½NE¼, SW¼NE¼, W½, NW¼SE¼;
Sec. 16, N½NE¼, NW¼, W½SW¼;
Sec. 17, W½E½, W½;

Sec. 18, E½E½, NW¼NE¼, SE¼SW¼; SW¼SE¼;
Sec. 19, lots 5 & 7, W½NE¼, SE¼NW¼, NE¼SW¼, tax lots 3883, 3884, 3886, 3887, 3889, 3891, 3892, 3894;
Sec. 20, W½NW¼, NW¼SW¼;
Sec. 30, tax lots 3868, 3870, 3871, 3873, 3875, 3876, 3878, 3880, 3881.

**Blaine County, Idaho**

T. 3 N., R. 18 E., B.M.,
Sec. 35, SW¼NE¼, N½SE¼, SW¼SE¼.

**Blaine County, Idaho**

T. 3 N., R. 19 E., B.M.,
Sec. 20, S½NE¼, SW¼SW¼, SE¼;
Sec. 21, W½NE¼, SE¼NE¼, NW¼NW¼, S½NW¼, SW¼;
Sec. 27, S½SW¼, W½SE¼;
Sec. 28, S½SE¼;
Sec. 34, NW¼NE¼, N½NW¼.
Containing 6,001.84 acres.

The value of the lands to be exchanged is approximately equal, and the acreage will be adjusted or money will be used to equalize the values upon completion of the final appraisal of the lands.

There will be a reservation for geothermal and oil and gas to the Federal government on the public lands with no other mineral reservations on either the offered private land or selected public lands.

The patent when issued will contain the following reservations and conditions to the United States:

1. A right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945;

2. All Geothermal and Oil & Gas shall be reserved to the United States, as required by section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

3. All valid existing rights and reservations of record on the date of patenting.

The publication of this notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed, and shall be returned to the application.

**ADDRESS:** Detailed information concerning the exchange, including the environmental analysis and the record of public discussions, is available for review at the Shoshone District Office, 400 West F Street, Shoshone, Idaho, or by calling Ervin Cowley at (208) 886-2206.

**SUPPLEMENTARY INFORMATION:** For a period of 45 days from the date of this notice, interested parties may submit comments to the Shoshone District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of Interior.

Dated: August 9, 1985.

**Jon Idso,**

*Acting District Manager.*

[FR Doc. 85-19811 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-GG-M

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**[CA 17125]**

## Exchange of Public and Private Lands in Shasta County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, Exchange of Public and Private Land in Shasta County, California.

**SUMMARY:** The following described public land has been determined to be suitable for disposal by exchange under section 206 of the Act of October 21, 1976 (90 Stat. 2756; 43 U.S.C. 1716):

T. 32 N., R. 5 W., Mount Diablo Meridian,
Sec. 31, Lots 24, 25, 26 and 28.
Containing 16.93 acres.

In exchange for these lands, the United States will acquire the following described lands from Bessie Drumm, P.O. Box 1778, Redding, California 96099:

T. 35 N., R. 5 W., Mount Diablo Meridian,
Sec. 20, NE1/4.
(Containing 160.0 acres)

The purpose of this exchange is to acquire the non-Federal land within the boundaries of the Shasta-Trinity National Forest which has high public value for watershed management of Shasta Lake. Acquisition is consistent with the Forest Land Adjustment Plan. The public interest will be served by completing the exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be in accordance with regulations cited in § 2201.3 of Title 43, Code of Federal Regulations. Appraisal values will be available prior to consummation of exchange at the BLM Area Office, Redding, California.

Lands to be tranferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

2. In accordance with Executive Order 11988 of May 24, 1977, and Shasta County Zoning Ordinance Code Sections 4353 and 5354, the patentee and her successors and assigns shall undertake no construction activities within 100 feet of Middle Creek which are not in compliance with Shasta County Floodplain Zoning criteria in effect at the time such construction is undertaken.

Publication of this notice in the **Federal Register** segregates the public land from operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of a patent or two years from the date of publication, whichever occurs first.

Detailed information concerning the exchange, including the Land Report, environmental assessment and the record of non-Federal participation, is available for review at the Redding Resource Area Office, 355 Hemsted Drive, Redding, California 96002.

**DATE:** Comments may be submitted for a period of 45 days from the date of first publication of this notice in the **Federal Register.Q02**

**ADDRESS:** Comments should be sent to: Area Manager, Redding Resource Area, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of Interior.

**FOR FUTHER INFORMATION CONTACT:** Robert J. Bainbridge, (916) 246-5325.

Dated: August 6, 1985.

**Robert C. Korfhage,**

*Acting Redding Area Manager.*

[FR Doc. 85-19835 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-40-M

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**[OEPR Document No. FES 85-28]**

## Yuma District Fiscal Resource Management Plan and Environmental Impact Statement; Yuma District, AZ; Availability

**AGENCY:** Bureau of Land Management (BLM), Interior.

**ACTION:** Notice of availability of final Resource Management Plan-

Environmental Impact Statement and announcement of protest period.

**SUMMARY:** Pursuant to section 102(2)[c] of the National Environmental Policy Act of 1969 and section 202(f) of the Federal Land Policy and Management Act of 1976, a final Resource Management Plan-Environmental Impact Statement (RMP–EIS) has been prepared for the BLM Yuma District. The final RMP–EIS addresses future management options for approximately 1,192,000 acres of Federal lands along the lower Colorado River in southwestern Arizona and southeastern California. Counties within the planning area include Yuma, La Paz, and Mohave in Arizona, and Riverside, San Bernardino, and Imperial in California.

**DATE:** A 30-day public review period will end September 23, 1985. During that period, any portion of the plan may be protested as outlined in 43 CFR 1610.5–2. Protests should be sent to: Director, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

**SUPPLEMENTARY INFORMATION:** The final RMP–EIS describes the proposed resource management plan and contains written and oral comments received during the 90-day public review period for the draft, BLM's responses to the comments, and changes which were made as a result of public comment. The document focuses primarily on resolving six public land management issues including: wildlife habitat management, special management areas for protection of important natural and cultural resources, grazing use of public lands, land ownership adjustments, location of rights-of-way for utility corridors and communication sites, and recreation use and management on public lands.

The wilderness issues, which appeared in the draft RMP–EIS, has been deleted as a planning issue in this final RMP–EIS and will be addressed in a separate environmental document to be prepared for the Yuma District wilderness study areas (WSAs) and a number of other BLM-administered WSAs in Arizona. The final RMP–EIS does not make any recommendations concerning the suitability of WSAs studied in the draft for wilderness designation.

Six alternatives are described and analyzed in the RMP–EIS, including the BLM's Preferred Alternative. Alternative A, the "No Action" alternative, represents a continuation of present management direction. The other four alternatives (Alternatives B through E) provide a full range of management options from emphasis on resource production to emphasis on resource protection. A description of the affected environment and an analysis of the environmental impacts of the alternatives are included in the final RMP–EIS.

At the end of the 30-day protest period, the RMP (excluding any portions under protest) will become final. Approval will be withheld on any portion of the plan under protest until final action has been completed on such protest. Approval of the RMP will be documented in a concise record of decision which will be made available to the public.

*Public Participation:* A copy of the final RMP–EIS will be sent to all individuals, agencies, and groups who have expressed interest in the Yuma District planning process. In addition, a limited number of copies of the final RMP–EIS are available upon request from the Yuma District Office, 3150 Winsor Avenue, P.O. Box 5680, Yuma, Arizona 85364. Public reading copies may be reviewed at public libraries in the Yuma District planning area and at the following locations:

BLM, Office of Public Affairs, Interior Building, 18th and C Streets, NW., Washington, DC 20240;

BLM, Arizona State Office, 3707 North 7th Street, Phoenix, Arizona 85019, (602) 241–5504;

BLM, Havasu Resource Area Office, 3819 Sweetwater Avenue, Lake Havasu City, Arizona 86403, (602) 855–8017.

**FOR FURTHER INFORMATION CONTACT:** A. Dennis Turowski, RMP–EIS Team Leader, BLM Yuma District Office, P.O. Box 5680, Yuma, Arizona 85364, (602) 726–6300.

Dated: August 14, 1985.

**J. Darwin Snell,**

*District Manager.*

[FR Doc. 85–19836 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-32-M

## Elko District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92–163 that a meeting of the Elko District Grazing Board will be held on September 20, 1985. The meeting will begin at 10:00 A.M. at the conference room of the Bureau of Land Management Office at 3900 East Idaho Street, Elko, Nevada.

The agenda for the meeting will include:

1. Range improvement Projects for FY 86.

2. Update of FY 85 Range Improvement Projects.

3. Review of Allotment Management Plans.

4. Update on Monitoring and Range Condition Inventory.

5. Update on the RMP–EIS Progress for Wells and Elko Resource Areas.

6. Update on other District Issues.

7. Public Comments—1:00 P.M.

The meeting in open to the public. Interested persons may make oral statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 East Idaho Street, Elko, Nevada 89801 by September 13, 1985. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

**Merle Good,**

*Acting District Manager.*

[FR Doc. 85–19884 Filed 8–19–85; 8:45 am]

BILLING CODE 4310-HC-M

[OR 5435 (WA)]

## Washington; Proposed Patent of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Washington State Parks and Recreation Commission has submitted application to patent the following described land on John's Island, San Juan County, Washington, for public recreation purposes compatible with retention of the land's scenery and natural characteristics:

**Willamette Meridian, Washington**

T. 37 N., R. 4 W.,
Sec. 25, Lot 1.
Encompassing 4.30 acres.

The land is primarily valuable for public recreational uses and retention of it's scenery and natural condition.

Patenting of land to Washington State will serve important public objectives by providing public recreation compatible with retention of the land in a natural condition.

**DATES:** For a period of thirty days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, East 4217 Main Avenue, Spokane, Washington 99202. Additional

information concerning this proposal is available for review at the above office.

Any adverse comments will be evaluated by the State Director, who may vacate or modify this action and issue a final determination. In the absence of any action by the State Director, this action will become the final decision of this Department.

Joseph K. Buesing,

*District Manager.*

[FR Doc. 85-19656 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-33-M

## Alaska Native Claims Selection; Sealaska Corp.

*Correction*

In FR Doc. 85-18965 beginning on page 32323 in the issue of Friday, August 9, 1985, make the following correction: In the third column, in Serial No. AA-10533, in the land description, "T. 253" should read "T. 25".

BILLING CODE 1505-01-M

## [W-0304138, W-71414, W-71891, W-71889, W-71893, W-71894]

## Proposed Continuation of Withdrawals; Wyoming

*Correction*

In FR Doc. 85-18907 beginning on page 32322 in the issue of Friday, August 9, 1985, make the following correction:

On page 32322, in the third column, in the fifth line under "T. 26 N., R. 84 W.," "E½S¼," should read "E½SW¼,".

BILLING CODE 1505-01-M

## Minerals Management Service

## Outer Continental Shelf; Certification Verification Agent; Cessation of 2-Year Certification Period

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of Cessation of 2-Year Certification Period for Certified Verification Agent.

**SUMMARY:** Outer Continental Shelf (OCS) Order No. 8 requires the use of approved Certified Verification Agents (CVA) in design, fabrication, and installation of all new fixed or bottom-founded platforms or other structures on OCS leases subject to the Platform Verification Program. The receipt of applications from prospective CVA firms and individuals began in January 1980. However, after 5 years of operation, it is apparent that the services of only a small percentage of the numerously approved CVA's are being contracted for by lessees proposing new platforms.

Furthermore, the Minerals Management Service (MMS) has experienced a problem in the precertification of CVA's in that some firms have not been diligent in reporting personnel changes in their organizations. Monitoring of such changes by MMS is difficult when considering the large number of precertified CVA's and the present length of the certification period (2 years). Also, some firms elect to supplement their staffs with outside consultants on a job-by-job basis. This further complicates MMS's monitoring procedures.

In view of the above, MMS has concluded that as of September 19, 1985, certification of CVA's for periods of 2 years, as outlined in the "Operating Procedures For The OCS Platform Verification Program," will no longer be carried out. This change shall apply to all OCS Regions. Further, as of that date, all certifications presently in effect shall become null and void. The OCS Order No. 8 presently requires that a lessee submit design, fabrication, and installation verification plans and that such plans shall "include a short summary which nominates the CVA, states the qualifications of the CVA, describes how the lessee intends to use the CVA. . . ." Subsequent to September 19, 1985, CVA qualifications will be reviewed at the time of plan submittal by the lessee, and resulting CVA certification shall be valid only for the duration of that project. In submitting the CVA qualifications, the lessee shall include resumes of only those CVA personnel who will be assigned to the project in question. This change will eliminate the need for MMS to maintain voluminous files of unnecessary CVA documentation. Further, it will make possible easier and more effective MMS monitoring of pertinent CVA personnel changes from one project to another. Finally, it will ensure that all prospective CVA's have an equal opportunity to provide CVA-related services to lessees.

With the exception of this change, the provisions of the document entitled "Operating Procedures For The OCS Platform Verification Program," dated October 1979, shall remain in effect.

**EFFECTIVE DATE:** September 19, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mr. Felix Dyhrkopp; Minerals Management Service; Gulf of Mexico OCS Region; P.O. Box 7944; Metairie, LA 70010; telephone (FTS) 680-9893 or (504) 838-0893.

Dated: August 7, 1985.

John B. Rigg,

*Associate Director for Offshore Minerals Management.*

[FR Doc. 85-19813 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-MR-M

## Outer Continental Shelf; Development Operations Coordination Document; Anadarko Production Co.

**AGENCY:** Minerals Management Service.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Anadarko Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4421, Block 78, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Intracoastal City and New Iberia, Louisiana.

**DATE:** The subject DOCD was deemed submitted on August 5, 1985. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, *Attention OCS Plans*, Post Office Box 44396, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS

Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 7, 1985.

**John L. Rankin,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 85-19809 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### History Committee, Statue of Liberty-Ellis Island Centennial Commission; Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice announces a forthcoming meeting of the History Committee of the Statue of Liberty-Ellis Island Centennial Commission. The Committee will review its purpose in relation to the Statue of Liberty-Ellis Island restoration project, and will discuss the Committee's suggestions and initiatives that will commemorate the hundredth anniversaries of the Statue of Liberty (1986) and Ellis Island (1992).

**DATE:** September 6, 1985, 9 a.m. to 4:30 p.m.

**ADDRESS:** The Statue of Liberty-Ellis Island Foundation, Inc., 101 Park Avenue, Suite 1205, New York, New York 10178.

**FOR FURTHER INFORMATION CONTACT:** Herbert S. Cables, Jr., Regional Director, National Park Service, 15 State Street, Boston, MA 02109.

Dated: August 7, 1985.

**Herbert S. Cables, Jr.,**

*Regional Director, North Atlantic Region.*

[FR Doc. 85-19881 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-70-M

### National Register of Historic Places; Arizona, et al.; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 10, 1985. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the signficance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 4, 1985.

**Carol D. Shull,**

*Chief of Registration, National Register.*

ARIZONA

**Maricopa County**

Phoenix, *Pay'n Takit #25 (Phoenix Commercial MRA)*, 1753—1755 W. Van Buren

CALIFORNIA

**Los Angeles County**

Pasadena, *Fenyes Estate*, 470 W. Walnut St. & 160 N. Orange Grove Blvd.
Redondo Beach, *Sweetser Residence*, 417 E. Beryl St.

CONNECTICUT

**New Haven County**

Northford vicinity, *Sol's Path Historic District*, 1775—1801 Middletown Ave.

DELAWARE

**New Castle County**

Middletown vicinity, *Armstrong-Walker House (Rebuilding St. Georges Hundred 1850—1880 TR)*,, DE 71
Middletown vicinity, *Belleview (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 428
Middletown vicinity, *Choptank-Upon-The-Hill (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 435
Middletown vicinity, *Holton, S., Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 435
Middletown vicinity, *Maple Grove Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 299
Middletown vicinity, *Okolona (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 429
Middletown vicinity, *Rosedale (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 437
Middletown vicinity, *Weston (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Off DE 71
Middletown, *Choptank (Rebuilding St. Georges Hundred 1850—1880 TR)*,, Rt. 435
Middletown, *Fields Heirs (Rebuilding St. Georges Hundred 1850—1880 TR)*, Off DE 71
Mt. Pleasant vicinity, *Eliason, A., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 896
Mt. Pleasant vicinity, *Idalia Manor (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 13
Mt. Pleasant vicinity, *Woodside (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 435
Odessa vicinity, *Elm Grange (Rebuilding St. Georges Hundred 1850—1880 TR)*, US 13
Odessa vicinity, *Fairview (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 412
Odessa vicinity, *Gordon, J. M., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 44
Odessa vicinity, *Higgins, S., Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 423
Odessa vicinity, *McWhorter House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 412
Odessa vicinity, *Misty Vale (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 423
Odessa vicinity, *Mondamon Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 2
Odessa vicinity, *Old Ford Diary (Rebuilding St. Georges Hundred 1850—1880 TR)*, US 13
Odessa vicinity, *Retirement Farm (Rebuilding St. Georges Hundred 1850—1880 TR)*, US 13
Odessa vicinity, *Riverdale (Rebuilding St. Georges Hundred 1850—1880 TR)*, Off Bay View & Silver Run Rds.
Odessa vicinity, *Vandegrift, J., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, Rt. 44
Odessa vicinity, *Williams, J.K., House (Rebuilding St. Georges Hundred 1850—1880 TR)*, DE 4
Odessa, *Vail, A.M., House (Rebuilding St. Georges Hundred 1850-1880 TR)*, Rt. 299
Port Penn vicinity, *Cleaver House (Rebuilding St. Georges Hundred 1850-1880 TR)*, Off Biddle's Corner Rd.

**Sussex County**

Georgetown, *Foucett, Peter S., House*, W. Laurel St.
Georgetown, *Georgetown Coal Gasification Plant*, N. Railroad Ave.
Georgetown, *Sipple, Thomas, House*, N. Bedford & New Sts.
Millsboro, *Perry-Shockley House*, 219 Washington St.

GEORGIA

**Banks County**

Homer, *Homer Historic District*, Along Main St. & Silver Shoals Rd.

**Bartow County**

Cartersville, *Jones, Sam, Memorial United Methodist Church*, 100 W. Church St.

**Dawson County**

Dawsonville, *Old Dawson County Jail (County Jails of the Georgia Mountains Area TR)*, HW 53

**Floyd County**

Rome, *Thankful Baptist Church*, 935 Spiderwebb Dr.

**Franklin County**

Royston, *Royston Commercial Historic District*, Along Church and Railroad Sts.

**Fulton County**

East Point, *East Point Industrial District*, Roughly bounded by Martin & Taylor Sts., Norman Berry Dr. & RR tracks

**Greene County**

Union Point vicinity, *Printup, Peter W., Plantation*, GA 44

**Hall County**

Clermont, *Clermont Residential Historic District*, Main, Harris, Martin, and Railroad Sts.

Gainesville, *Green Street-Brenau Historic District*, Roughly on Green, Candler, Park, Brenau, Boulevard & Prior Sts., Green St. Circle, City Park & Brenau College Campus

Gainesville, *Old Hall County Jail (County Jails of the Georgia Mountains Area TR)*, Bradford St.

**Hart County**

Bowersville, *Bowersville Historic District*, East & West Main Sts.

Hartwell, *Hart County Jail (County Jails of the Georgia Mountains Area TR)*, Johnson St.

**Henry County**

McDonough, *Globe Hotel*, 20 Jonesboro St.

**Lumpkin County**

Dahlonega, *Old Lumpkin County Jail (County Jails of the Georgia Mountains Area TR)*, Clarksville St.

**Richmond County**

Augusta, *Laney-Walker North Historic District*, Bounded by D'Antignac, 7th, Twiggs, Phillips & Harrison Sts., Walton Way & Laney-Walker Blvd.

**Sumter County**

Sumter, *Webb Family Farms*, US 19

**Towns County**

Hiawassee, *Old Towns County Jail (County Jails of the Georgia Mountains Area TR)*, Courthouse Square

**Union County**

Blairsville, *Old Union County Jail (County Jails of the Georgia Mountains Area TR)*, *Blue Ridge Rd.*

**White County**

Cleveland, *Old White County Jail (County Jails of the Georgia Mountains Area TR)*, Main St.

**KANSAS**

**Brown County**

Hiawatha, *Hiawatha Memorial Auditorium*, 611 Utah St.

**Kingman County**

Kingman, *Kingman County Courthouse*, 120 Spruce St.

**Sedgwick County**

Wichita, Fairmount Cottage, 1717 Fairmount Ave.

**Sherman County**

Goodland, *Goodland City Library*, 120 W. 12th St.

**Wyandotte County**

Kansas City, *Fire Station No. 9*, 2 S. 14th St.

Kansas City, *Scottish Rite Temple*, 803 N. 7th St.

Kansas City, *Soldiers and Sailors Memorial Building*, 600 N. 7th St.

**MARYLAND**

**Anne Arundel County**

Davidsonville vicinity, *OLIVER'S GIFT (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, 3473 Ranger Rd.

**Baltimore (Independent City)**

*Bachrach, David, House*, 2406–2408 Linden Ave.

**Dorchester County**

Cambridge, PATRICIA (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR), 903 Roslyn Ave.

**Kent County**

Chestertown vicinity, ISLAND IMAGE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR), Walnut Point Rd.

Chestertown vicinity, *SILVER HILL (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Quaker Neck Landing

Chestertown, *BERNICE J. (Skipjack)*, Town Dock

**Montgomery County**

Rockville, *Montgomery County Courthouse Historic District*, Courthouse Sq. and S. Washington St.

**Queen Anne's County**

Kingstown vicinity, *MYSTERY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Round Top Rd.

**Talbot County**

Oxford vicinity, *BILLIE P. HALL (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Evergreen Rd.

Oxford vicinity, S. C. DOBSON (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR), Peach Blossom Rd.

Sherwood, *SANDY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Sherwood Rd.

St. Michaels vicinity, *ISLAND BIRD (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Miles River Yacht Club

St. Michaels vicinity, *ISLAND BLOSSOM (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Miles River Yacht Club

St. Michaels vicinity, *JAY DEE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Miles River Yacht Club

St. Michaels vicinity, *NODDY (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Deepwater Point Rd.

St. Michaels, *EDMEE S. (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Mill St.

St. Michaels, *ISLAND LARK (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Carpenter St.

St. Michaels, *MAGIC (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, St. Michaels Marina

St. Michaels, *PERSISTENCE (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, St. Michaels Marina

St. Michaels, *ROVER (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, St. Michaels Marina

Witman vicinity, *FLYING CLOUD (log canoe) (Chesapeake Bay Sailing Log Canoe Fleet TR)*, Magee Rd.

**MASSACHUSETTS**

**Berkshire County**

Adams, *Summer Street Historic District*, Crandall, Center, Eas, Liberty, Orchard and Summer Sts.

**Bristol County**

Dartmouth, *Padanaram Village Historic District*, Elm, Water, Middle, High, Pleasant, Prospect, Hill, School, Fremont, and Bridge Sts.

Dartmouth, *Russells Mills Village Historic District*, Russells Mills, Rock O' Dundee, Slades Corner, Horseneck and Fisher Rds.

Fall River, *Bernard's Folly (Fall River MRA)*, 535–537, 547–549, 553–555 N. Main St.

**Essex County**

Peabody, *Sutton Block*, 76–78 Main St.

**Middlesex County**

Chelmsford, *Hutchins, Oliver, House*, 79 Elm St.

Malden, *Converse Memorial Building*, 36 Salem St.

**Suffolk County**

Boston, *138–142 Portland Street*, 138–142 Portland St.

**MINNESOTA**

**Grant County**

Elbow Lake, *Grant County Courthouse*, Second St. and Central Ave.

**Itasca County**

Calumet vicinity, *Hill Annex Mine*, Off US 169

**Morrison County**

Little Falls, *Churchill, O. A., Store*, 55 Bay St.

Little Falls, *Northern Pacific Railway Depot*, 200 1st St. Northwest

Little Falls, *Pine Tree Lumber Company Office Building*, 735 1st St. Northeast

Little Falls, *Weyerhaeuser, Charles A., and Musser, Richard Drew, Houses*, Highland Ave.

Pierz, *St. Joseph's Church*, Main St.

Randall vicinity, *Clough Town Hall*, CR 10

**Olmsted County**

Rochester, *Pill Hill Residential Historic District*, Roughly 7th, 8th, 9th, & 10th Aves. SW between 3rd & 8th Sts. SW

**Saint Louis County**

Duluth, *DeWitt-Seitz Building*, 394 Lake Ave. South

**Swift County**

Benson vicinity, *Uytendale, Christian F., Farmstead*, Off CR 25

**Todd County**

Browerville, *Kahlert Mercantile Store*, Main St.

Browerville, *St. Joseph's Catholic Church, Rectory and School*, Main St. between 7th & 8th Sts.
Grey Eagle, *Grey Eagle Village Hall*, Spruce and Woodman St.
Long Prairie, *Bank of Long Prairie*, 262 Central Ave.
Long Prairie, *Hotel Reichert*, 20 Third St. North
Long Prairie, *Todd County Courthouse, Sheriff's House and Jail*, 215 1st Ave. South

MISSISSIPPI

**Jackson County**

Applestreet Site (22Ja530)

NEVADA

**Carson City (Independent City)**

*Leport-Toupin House*, 503 E. Telegraph St.

**Washoe County**

Reno, *McKinley Park School*, Riverside Dr. and Keystone Ave.
Washoe Valley, *Cliff, Walter, Ranch District*, 7635 Old HW 395

NEW JERSEY

**Bergen County**

Manwah, *Dutch Reformed Church at Romopock*, Island Rd. at W. Ramapo Ave.

**Hudson County**

Jersey City, *Pohlmann's Hall*, 154 Ogden Ave.

**Middlesex County**

Metuchen, *Ayers-Allen House*, 16 Durham Ave.

**Monmouth County**

West Long Branch, *MacGregor-Tallman House*, 407 Monmouth Rd.

**Morris County**

Ledgewood, *Cary Station*, 239 Emmans Rd.

**Ocean County**

Island Heights, *MARY ANN (catboat) (Barnegat Bay Class A racing catboats 1922–1925 TR)*,
Ocean Gate, *SPY (catboat) (Barnegat Bay Class A racing catboats 1922–1925 TR)*,
West Mantoloking, *LOTUS (catboat) (Barnegat Bay Class A racing catboots 1922–1925 TR)*,

**Somerset County**

Blawenburg, *Reformed Dutch Church of Blawenburg*, 424 CR 518

NEW YORK

**Genesee County**

Village of Bergen, *Lake Street Historic District*, 10 & 12 S. Lake St. & 11–27 N. Lake St.

**Monroe County**

Adams Basin, *Adams-Ryan House*, 425 Washington St.

**New York County**

New York, *Saint Mark's Historic District (Boundary Increase)*, E. 9th, 10th & N. Sts. & S. side of Stuyvesant Sts.

**Westchester County**

Somers, *Crane, Gerard, House*, Old Croton Falls Rd.

PENNSYLVANIA

**Allegheny**

Aspinwall, *Sauer Buildings Historic District*, 607–717 Center Ave.
Pittsburgh, *Fourth Avenue Historic District*, Fourth Ave. and Wood St.
Pittsburgh, *Osterling, Fredrick J., Office and Studio*, 228 Isabella St.

**Beaver County**

Beaver Falls, *Carnegie Falls-Beaver Falls*, 1301 7th Ave.

**Berks County**

Kutztown, *Deisher, H. K., Knitting Mill*, 56 Noble St.

**Chester County**

E. Bradford Twp., *Hance House and Barn (West Branch Brandywine Creek MRA)*, Rt. 842
Londonderry Twp., *Ferron, John; House (West Branch Brandywine Creek MRA)*, St. Malachi Rd.
Londonderry Twp., *Ross, Moses, House (West Branch Brandywine Creek MRA)*, Doe Run Valley
Londonderry Twp., *St Malachi Church (West Branch Brandywine Creek MRA)*, St. Malachi Rd.
Newlin & E. Marlborough Twps., *Green Valley Historic District (West Branch Brandywine Creek MRA)*, Green Valley Rd.
Newlin Twp., *Embreeville Historic District (West Branch Brandywine Creek MRA)*, Rt. 162
Newlin Twp., *Hayes Homestead (West Branch Brandywine Creek MRA)*, Rt. 162 and Harvey's Bridge Rd.
Newlin Twp., *Hayes Mill House (West Branch Brandywine Creek MRA)*, Star Gazer Rd.
Newlin Twp., *Hayes, Jacob, House (West Branch Brandywine Creek MRA)*, Rt. 162
Newlin Twp., *House at Upper Laurel Iron Works (West Branch Brandywine Creek MRA)*, McCorkel's Rock Rd.
Newlin Twp., *Indian Deep Farm (West Branch Brandywine Creek MRA)*, Glenhall and Groundhog College Rds.
Newlin Twp., *Mountain Meadow Farm (West Branch Brandywine Creek MRA)*, Harvey's Bridge Rd.
Newlin Twp., *Spruce Grove School House (West Branch Brandywine Creek MRA)*, Brandywine Creek Rd.
Newlin Twp., *Worker's House at Lower Laurel Iron Works (West Branch Brandywine Creek MRA)*, Creek Rd.
Newlin Twp., *Young, Joseph, House (West Branch Brandywine Creek MRA)*, Creek Rd.
Newlin, Pocopson & W. Bradford Twps., *Northbrook Historic District (West Branch Brandywine Creek MRA)*, Northbrook, Indian Hannah & Bragg Hill Rds.
Pocopson & West Bradford Twps. *Trimbleville Historic District (West Branch Brandywine Creek MRA)*, Northbrook, Broad Run, and Camp Linden Rds.
Pocopson Twp., *Wilkinson House (West Branch Brandywine Creek MRA)*, Rt. 842
W. Bradford Twp., *Baily Farm (West Branch Brandywine Creek MRA)*, Strasburg and Broad Rds.
W. Bradford Twp., *Como Farm (West Branch Brandywine Creek MRA)*, Broad Run Rd.
W. Marlborough Twp., *Doe Run Village Historic District (West Branch Brandywine Creek MRA)*, Highland Dairy DuPont & Chapel Rds. and Rts. 82 & 841
W. Marlborough Twp., *Hoopes, Cyrus, House & Barn (West Branch Brandywine Creek MRA)*, Springdell Rd.
W. Marlborough Twp., *House at Springdell (West Branch Brandywine Creek MRA)*, Rt. 841

**Clinton County**

Woolrich vicinity, *Rich-McCormick Woolen Factory*, Little Plum Run Rd.

**Columbia County**

Berwick, *Jackson Mansion and Carriage House*, 344 Market St.

**Delaware County**

Media vicinity, *Old Rose Tree Tavern (Proposed Move)*, Rose Tree and Providence Rds.

**Lehigh County**

Allentown, *Gauff-Roth House*, 427—443 Auburn St.

**Luzerne County**

Wilkes-Barre, *River Street Historic District*, Franklin, River, W. River, W. Jackson, W. Union, W.
Market, W. Northampton, W. South and W. Ross Sts. & Barnum Pl.

**Montomery County**

Pottstown, *Old Pottstown Historic District*, Roughly bounded by South, Race, Bailey, Adams, Lincoln, Beech, and Manatawny Sts.

**Philadelphia County**

Philadelphia, *Regent-Rennoc Court*, 5100 blk. Regent St. & 1311—1327 S. 52nd St.
Philadelphia, *Ruan, John, House*, 4278—4280 Griscom St.
Philadelphia, *St. Peter's Episcopal Church of Germantown*, 6000 Wayne Ave.
Philadelphia, *Suburban Station Building*, 1617 John F. Kennedy Blvd.

**Washington County**

Taylorstown, *Taylorstown Historic District*, Main St.

RHODE ISLAND

**Washington County**

South Kingstown, *Shadow Farm*, Kingstown Rd.
Westerly, *Watch Hill Historic District*, Roughly bounded by Breen, Watch Hill, & E. Hill Rds, Block
Island Sound, Little Narragansett Bay & Pawtucket River

TENNESSEE

**Giles County**

Pulaski, *West Pulaski Historic District*, Roughly bounded by S. First, S. Third, Rose, Madison and Jefferson Sts.

WISCONSIN

**Cippewa County**

Cippewa Falls, *Sheely House*, 236 W. River St.

**Grant County**

Lancaster, *Arthur, L. J., House*, 210 N. Jefferson St.

**Walworth County**

Delavan, *Allyn, A. H., House*, 511 E. Walworth Ave.

[FR Doc. 85-19879 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-70-M

## Bureau of Reclamation

### Westlands Water District Long-Term Drainage Disposal Project; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) and §1506.2 of the Council on Environmental Quality Regulations, the Bureau of Reclamation, Department of the Interior, in cooperation with the Westlands Water District (WWD), intends to prepare a joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) addressing the impacts of various alternatives to provide a long-term solution to dispose of approximately 6,500–10,000 acre-feet of subsurface agricultural drainage water originating within the WWD. This action is necessary because, on March 15, 1985, the Secretary of the Interior announced his decision to initiate the process of closing Kesterson Reservoir, Merced County, as a disposal facility for agricultural drainage. Subsequently, on April 3, 1985, the Department of the Interior and WWD entered into an agreement which requires the cessation of agricultural drainage water discharge into the San Luis Drain north of Bass Avenue and into the Kesterson Reservoir by June 30, 1986.

The Bureau's proposed action is to enter into an agreement, and to issue an entitlement, to allow WWD to use the San Luis Drain between Bass Avenue and its southern terminus in Fresno County, California. WWD proposes to use this portion of the drain to transport subsurface agricultural drainage water to a site in the northeastern portion of WWD approximately 10 miles south of the town of Mendota, California. WWD proposes to use the site for long-term storage of the drainage water and the evaporation/treatment of that drainage water. WWD also proposes to construct at this site approximately 3,500 acres of evaporation ponds. Blending, reverse osmosis, and other alternatives for drainage water management will also be evaluated in the EIR/EIS.

The joint EIR/EIS will address the potential impacts of the Bureau entering into an agreement to let WWD use the San Luis Drain south of Bass Avenue, and alternatives to this agreement. It will also address impacts of WWD's long-term alternatives for management and disposal of subsurface agricultural drainage water.

Other environmental review and consultation requirements will be met concurrently with the NEPA process. These include applicable requirements of the Clean Water Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Endangered Species Act, and Executive Orders 11988 and 11990 regarding floodplains and wetlands.

WWD has held two scoping meetings on the WWD long-term project to gather public and agency input on April 26, 1985, in Sacramento, California, and May 2, 1985, in Fresno, California. Participants at these meetings identified several concerns, including the possibility of adverse health effects on waterfowl, and groundwater and surface water contamination. The Bureau of Reclamation is inviting further public input at this time regarding significant issues, potential environmental effects, alternatives, and other information related to the proposed Bureau action. Those persons wishing to provide further input should do so in writing by August 30, 1985, to the Bureau of Reclamation at the address provided below.

Written comments should be directed to, and further information may be obtained from, the Office of Environmental Quality, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825–1898. The Bureau contacts for this joint EIR/EIS are Roderick Hall (916) 978–5130 and Susan Hoffman (916) 978–5063.

Dated: August 15, 1985.

**Clifford I. Barrett,**

*Acting Commissioner.*

[FR Doc. 85-19839 Filed 8-19-85; 8:45 am]

BILLING CODE 4310-9-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

## Agency for International Development

### Meeting; Voluntary Foreign Aid Advisory Committee

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA) on *Promoting Longterm Development in Africa*, which will be held September 18–20, 1985, at the Hyatt Regency Hotel, 1001 Broadway, Oakland, CA 94607, Telephone: (415) 895–1234.

*Wednesday, September 18, 1985:* 3:00–7:00 p.m.—Conference Registration.

*Thursday; September 19, 1985:* 8:00 a.m.—Registration. 8:45 a.m.—Welcoming Remarks: E. Morgan Williams, Chairman, ACVFA. 9:00–12:00 noon *Session I: Strategic Planning.* How can AID and PVOs better coordinate their strategic planning for longterm development in Africa? 12:00 noon–1:30 p.m.—Lunch. 1:30–3:00 p.m.—*Session II: Development and Disaster Preparedness: A Strategy for the Future.* What lessons have AID and PVOs learned about emergency preparedness and management from the current crisis, and what is being done to prepare Africa for the next drought and famine? 3:30–5:00 p.m.—*Session III: Development Education.* How can we channel the outpouring of support for humanitarian aid to Africa into support for longterm development?

*Friday, September 20, 1985:* 9:00 a.m.—*Advisory Committee Business Session:* Review of September meeting; Discussion of December 5–6, 1985 meeting: *Population and Development* (Washington, DC); New Business. 12:00 noon—Meeting Adjournment.

The meeting is open to the public. Any interested person may attend, request to appear before, or file statements with the Advisory Committee. Written statements should be filed prior to the meeting and should be available in twenty five (25) copies. AID representatives will be at the meeting.

Participants are reponsible for making hotel reservations and payment directly to the Hyatt Regency Hotel, but *Pre-Registration for Meeting Through Advisory Committee Headquarters is Requested.* Pre-registration and hotel reservation forms are available at the ACVFA. Please call (703) 235–2708 or 3336, or write the Advisory Committee on Voluntary Foreign Aid, Room 227, SA–8, Agency for International Development, Washington, D.C. 20523.

Dated: August 7, 1985.

**Julia Chang Bloch,**

*Assistant Administrator, Bureau for Food for Peace and Voluntary Assistance.*

[FR Doc. 85-19808 Filed 8-19-85; 8:45 am]

BILLING CODE 6116-01-M

## DEPARTMENT OF JUSTICE

### Proposed Consent Decree in Action To Enforce the Clean Air Act; Philadelphia

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on August 6, 1985, a proposed consent decree in *United States* v. *City of Philadelphia*, Civil Action No. 85-4566 was lodged with the United States District Court for the Eastern District of Pennsylvania.

The proposed consent decree provides for compliance with the Clean Air Act. The decree prohibits any City automobile fleet operator or repair service operator from removing or tampering with emission control equipment. The City is required to pay a $20,000 penalty, to undertake a comprehensive training, inspection and maintenance program and to bring all tampered vehicles into compliance (the City completed this requirement in January 1984).

The Department of Justice will recieve for a period of thirty (30 days from the date of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *City of Philadelphia*, D.J. No. 90-5-2-1-776.)

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 3310 U.S. Courthouse, 601 Market Street, Independence Mall West, Philadelphia, Pennsylvania 19106; and the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107; and the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

**F. Henry Habicht II,**

*Assistant Attorney General Land, and Natural Resources Division.*

[FR Doc. 85-19857 Filed 8-19-85; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Proposed Consent Decree Pursuant to the Clean Water Act; Regan, James L., et al.

In accordance with Department policy, 28 CFR 50.7, a notice is hereby given that on July 26, 1985, a proposed Consent Decree in *United States* v. *James L. Regan and John E. Regan*, Civil Action No. F84-0013 was lodged with the United States District Court for the District of Alaska.

The proposed Consent Decree requires the defendants to comply with section 301 of the Clean Water Act and refrain from all discharges of pollutants without the authorization of a National Pollutant Discharge Elimination System (NPDES) permit. The decree imposes stipulated penalties of $7,500.00 a day on the defendants for any failures on their part to either obtain appropriate NPDES permits or to remain in compliance with the provisions of those permits due to failure to install, operate, or maintain pollution control facilities. The decree also provides for the payment of a civil penalty by the defendants in the amount of $5,000.00, $2,000.00 of which to be paid within thirty days of the entry of the decree and the balance of $3,000.00 to be paid prior to August 25, 1985. With the exception of penalty obligations, the decree terminates two years after its entry date.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washngton, D.C. 20530, and should refer to *United States* v. *James L. Regan and John Regan*, D.J. No. 90-5-1-6-354.

The proposed Consent Decree may be examined at the office of the United States Attorney, Federal Building & U.S. Courthouse, 701 C Street, Room C-252, Mail Box 9, Anchorage, Alaska 99513; The Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please refer to the case and decree and enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

**F. Henry Habicht II,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 85-19858 Filed 8-19-85; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Forms Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

#### List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small businesses or organization are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

**Comments and Questions**

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N 1301, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

**Collection of Information in Current Rules**

Occupational Safety and Health Administration
Service Station Inventory Records for Flammable Liquids Tanks
OSHA 203
Recordkeeping
State or local governments; businesses or other for profit; federal agencies or employees; small businesses or organizations
11,133 respondents; 2,371,329 hours; 0 forms

Requires the maintenance and reconcilliation of inventory records for Class I liquid storage tanks to detect under ground leaks to avoid fires and explosions.

Occupational Safety and Health Administration
Records of Inspection of Critical Components on Cranes
OSHA 206,210
Recordkeeping
Businesses or other for profit; small businesses or organizations
660,000 responses; 330,000 hours; 0 forms
OSHA requires a record of periodic thorough inspection of overhead and gantry cranes and mobile cranes. The inspections are to determine the condition of hooks, hoist chains and brakes to prevent injury to employees due to component failure during use.

Occupational Safety and Health Administration
Records of Inspection of Idle Ropes on Cranes and Derricks
OSHA 208, 212A, 214
Recordkeeping
Businesses or other for profit; small businsses or organizations
6,800 responses; 3,400 hours; 0 forms
OSHA requires a record of periodic thorough inspection of idle ropes on overhead and gantry cranes, mobile cranes, and derricks. The inspections are to determine the condition of the wire ropes to prevent injury to employees due to rope failure during use.

Record of Inspection and Maintenance of Presses
OSHA 215, 216, 217, 218
Recordkeeping
State or local governments; businesses or other for profit; small businesses or organizations
1,517,240 hours, 0 forms
In order to ensure workplace safety it is the responsibility of the employer to establish and follow a program of regular inspections of power presses and forging machines. The parts, equipment and safeguards must be in a safe operating condition. The employer shall maintain records of these inspections and the maintenance work performed.

Signed at Washington, D.C. this 15th day of August, 1985.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 85–19890 Filed 8–19–85; 8:45 am]

BILLING CODE 4510–26–M

## Bureau of Labor Statistics

### Business Research Advisory Council; Committee on Occupational Safety and Health Statistics; Meeting and Agenda

The fall meeting of the Occupational Safety and Health Statistics Committee of the Business Research Advisory Council will be held at 1 p.m., September 26, 1985, in Room N–3437 A and B of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The agenda for the meeting is as follows:

1. Recordkeeping Guidelines
2. Other Business

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Janice D. Murphey, Liaison, BRAC, on Area Code (202) 523–1347.

Signed at Washington, D.C., this 9th day of August 1985.

**Janet L. Norwood,**

*Commissioner of Labor Statistics.*

[FR Doc. 85–19888 Filed 8–19–85; 8:45 am]

BILLING CODE 4510–24–M

## Employment and Training Administration

### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Northern Heel Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 5, 1985–August 9, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–15,947; Northern Heel Corp., Lewiston, ME*
*TA–W–15,836; Dorchester Refining Co., Mount Pleasant, TX*
*TA–W–15,931; D & F Shirt Co., Salisbury, MO*

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

*TA–W–15,831; LTV Steel Co., Cleveland East, Cleveland, OH*

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

*TA-W-15,812; Amerada Hess Corp., Purvis Refinery Accounting Dept., Purvis, MS*

Separations from the subject firm were due to the transfer of functions to another domestic facility.

*TA-W-15,937; United Merchants and Manufacturers, Inc., Bath Mill Div., Bath, SC*

An integrated operation, none of the company's owned production facilities are certified for Trade Adjustment Assistance. Customer survey of plant's parent division found no imports of the relevant product line.

**Affirmative Determinations**

*TA-W-15,854; Rob Roy, Inc., Cambridge, MD*

A certification was issued covering all workers of the firm separated on or after February 15, 1984.

*TA-W-15,820; Texaco, Inc., Lawrenceville, IL*

A certification was issued covering all workers of the firm separated on or after March 11, 1984.

*TA-W-15,821; Tultex, Inc., Marion, NC*

A certification was issued covering all workers of the firm separated on or after September 15, 1984 and before December 30, 1984.

*TA-W-15,835; American Accessories, Inc., Rutledge, TN*

A certification was issued covering all workers of the firm separated on or after March 6, 1984.

I hereby certify that the aforementioned determinations were issued during the period August 5, 1985–August 9, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, D.C., during normal business hours or will be mailed to persons who write to the above address.

Dated: August 13, 1985.

**Glenn M. Zech,**

*Acting Director, Office of Trade Adjustment Assistance.*

[FR Doc. 85-19889 Filed 8-19-85; 8:45 am]

BILLING CODE 4510-30-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Senior Executive Service (SES) Performance Review Board; Members

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of members of the Performance Review Board for the National Archives and Records Administration.

**FOR FURTHER INFORMATION CONTACT:** Claudine J. Weiher, Assistant Archivist for Management and Administration, National Archives and Records Administration (NA), 8th and Pennsylvania Ave., NW., Washington, DC 20408.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial performance ratings for Senior Executive Service members, and make recommendations to the appointing authority on senior executive performance.

The Members of the Performance Review Board for the National Archives and Records Administration are: James W. Moore, Assistant Archivist for Records Administration; David F. Peterson, Assistant Archivist for Federal Records Centers; John E. Byrne, Director, Office of the Federal Register.

Dated: August 13, 1985.

**Frank G. Burke,**

*Acting Archivist of the United States.*

[FR Doc. 85-19806 Filed 8-19-85; 8:45 am]

BILLING CODE 7515-01-M

## NATIONAL COMMISSION ON AGRICULTURAL TRADE AND EXPORT POLICY

### Notice of Meeting

August 15, 1985.

The National Commission on Agricultural Trade and Export Policy will hold its next meeting at 9 a.m. on September 13, 1985, at the Holiday Inn-Fresno Airport, Fresno, California.

The meeting is open to the public. Individuals or organizations interested in appearing before the Commission to discuss "Export Expansion of High Value Agricultural Products" should contact the Commission staff at (202) 488-1961.

**Kenneth L. Bader,**

*Chairman.*

[FR Doc. 85-19816 Filed 8-19-85; 8:45 am]

BILLING CODE 3410-05-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Humanities Panel Meetings

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: September 5-6, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in the field of History submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

Date: September 12-13, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications in the fields of Social Sciences submitted to the Project Reserach category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

Date: September 13, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 430
Program: This meeting will review applications submitted to the Office of Preservation for projects beginning after January 1986.

Date: September 19-20, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review applications submitted to the Humanities, Science and Technology category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

Date: September 26-27, 1985
Time: 8:30 a.m. to 5:00 p.m.
Room: 315
Program: This meeting will review literature and fine arts applications submitted to the Project Research category, Basic Research Program, Division of Research Programs, for projects beginning after January 1, 1986.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1)

Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasioin of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786–0322.

**Stephen J. McCleary,**

*Advisory Committee Management Officer.*

[FR Doc. 85–19882 Filed 8–19–85; 8:45 am]

BILLING CODE 7536–01–M

### Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Multi-Music Presenters Section) of the National Council on the Arts will be held on September 4–5, from 9:00 a.m.–6:00 p.m. and on September 6, from 9:00 a.m.–5:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on September 6, from 2:00–4:00 p.m. to discuss guidelines and policy review.

The remaining sessions of this meeting on September 4 and 5, from 9:00 a.m.–6:00 p.m. and on September 6, from 9:00 a.m.–1:00 p.m. and from 4:00–5:00 p.m. are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: August 14, 1985.

**John H. Clark,**

*Director, Council and Panel Operations, National Endowment for the Arts.*

[FR Doc. 85–19841 Filed 8–19–85; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### Abnormal Occurrences for First Quarter CY 1985; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents were determined to be abnormal occurrences using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). These abnormal occurrences are described below, together with the remedial actions taken. These events are also being included in NUREG–0090, Vol. 8, No. 1 ("Report to Congress on Abnormal Occurrences: January–March, 1985"). This report will be available in the NRC's Public Document Room 1717 H Street NW., Washington, D.C. about three weeks after the publication date of this **Federal Register** Notice.

#### Nuclear Power Plants

*Premature Criticality During Startup*

Example I.D. 1 of the abnormal occurrence criteria notes that an accidental criticality can be considered an abnormal occurrence. (For a reactor, an "accidental criticality" can be defined as a criticality which is achieved when the approach to criticality is not being properly controlled by the plant operators.)

*Date and Place.*—On February 28, 1985, during a plant startup at about 1:30 p.m., the Virgil C. Summer Nuclear Station Unit 1 experienced an unanticipated transient which resulted in a high flux positive rate trip (automatic shutdown). The plant, which is operated by South Carolina Electric and Gas Company (the licensee), utilizes a Westinghouse-designed pressurized water reactor. The plant is located in Fairfield County, South Carolina.

*Nature and Probable Consequences.*—During a nuclear power plant startup, control rods are withdrawn in a predetermined sequence to achieve criticality. In order to avoid rapid increases in power, three barriers of defense are used, i.e., personnel performance, procedural control, and reactor instrumentation to automatically scram (trip) the reactor. For the February 28, 1985, event, the first two barriers failed. Consequently, attaining criticality was not recognized and rod withdrawal was continued until the startup rate approached, by later estimates, 16 to 17 decades per minute (dpm).

At about six percent power, a reactor trip occurred on the high flux positive rate trip. The plant responded as designed to the reactor protection system actuation. The positive rate trip is derived from an increase of five percent of rated thermal power (RTP) within a two-second period. The limiting safety system setting is 6.3 percent of rated thermal power increase in two seconds. To obtain a positive rate trip during startup requires a reactivity insertion rate much greater than usually encountered. Since this was an uncommon occurrence, NRC Region II management directed that a special inspection be conducted of the circumstances associated with the event.

Both the licensee's and the NRC's investigations concluded that the event was caused by both personnel error and procedure deficiencies as discussed below in the sequence leading up to the positive rate trip.

Prior to a startup, a critical control rod bank position is estimated. This is done by first calculating reference critical data (RCD) to determine samarium and xenon reactivity effects. This data is then used to calculate estimated critical conditions (ECC). Poison concentrations and reactivities are corrected for buildup and decay from shutdown to the estimated time of criticality. Changes in control rod positions, boron concentration, and temperature are also taken into consideration. The calculation is considered acceptable by the licensee if the actual critical rod position is within 50 steps of predicted, otherwise an investigation of the cause of the error is required.

The reactor startup on February 28, 1985, at about 1:30 p.m. was preceded by a startup that same day at 6:30 a.m. The reactor was critical for approximately three hours prior to shutdown. The RCD was based on data taken for the brief period of criticality rather than data for equilibrium conditions from the previous

power history. Therefore, when the ECC was calculated for the reactor startup at 1:30 p.m., the incorrect values of reactivity worth of poisons in the core were used. Additionally, the value used for control rod worth in the ECC calculation was based on middle of life (MOL) rod worth curves instead of beginning of life (BOL) rod worth curves. The station curve book provides rod worth curves for three times during core life: beginning, middle, and end of life. The reactor was between BOL and MOL in Cycle 2 at the time of the event, and the BOL curve would have more accurately reflected rod worth. These two factors contributed to the miscalculation of the estimated critical condition by 128 control rod steps. The ECC predicted criticality at 168 steps on the Bank D control rods, while the actual critical rod height was later determined to be at 40 steps on Bank D.

Under the direct supervision of the shift supervisor, the control rods were withdrawn by an operator trainee with no previous reactor or simulator experience at this facility in withdrawing rods. The shift supervisor, believing the reactor would go critical at about 168 steps on Bank D, instructed the trainee to withdraw the bank to 100 steps. This position, had the ECC been correctly calculated, would have left the reactor subcritical, even allowing for the 50 step margin of error discussed previously.

However, the trainee was not adequately instructed in the need to anticipate criticality any time rods were being withdrawn or to closely monitor the available instrumentation for indication of criticality. Neither did the shift supervisor provide the necessary attentiveness or monitoring himself. Consequently, attaining criticality at 40 steps on Bank D was not recognized and rod withdrawal was continued until the reactor scrammed on the high flux positive rate trip. This occurred when Bank D reached 76 steps.

Two other license operators were on duty in the control room at the time. The operator at the controls was engaged in other startup-related activities on another part of the control board. The control room supervisor, a licensed senior operator, was at his assigned station, which afforded a good overview of the control room; however, his view of instrumentation important to this event was blocked by the shift supervisor and the trainee.

The actual safety consequences of the event were minimal. It is estimated that even if the positive rate trip had not occurred (failure of instrumentation or failure of the rods to scram), power in the core for Bank D at 76 steps would have peaked at about 32% RTP due to the Doppler effect. In addition, if rod motion for Bank D had continued to 100 steps (the shift supervisor's instructions to the trainee), and a positive rate trip had not occurred, the power peak is estimated to be about 43% RTP (again due to the Doppler effect).

However, the event is significant because it represented an unnecessary challenge to the reactor protection system, and because the reactor was not being properly controlled during plant startup.

*Cause or Causes.*—The cause was primarily due to the failure of the shift supervisor (who was responsible for the trainee's actions) to be fully aware of plant status, to closely monitor instrumentation and to anticipate criticality whenever rods were being withdrawn as required by station procedures.

Contributing to, but not justifying the failure to monitor and anticipate criticality, was a calculated estimated critical position which was in error by more than 125 rod steps. The error in estimated critical position resulted, primarily, from procedural inadequacies.

*Actions Taken To Prevent Recurrence*

*Licensee.*—The shift supervisor was removed from duty until the licensee completed an evaluation of the event, its causes, and the supervisor's capability to continue licensed operator duties. The supervisor was given formal counseling for failure to maintain an awareness of plant conditions during reactor startup. The supervisor resumed licensed operator duties on March 13, 1985.

Since there were deficiencies in the methods of estimating critical rod position for reactor startups, procedures used for the calculation of ECCs were revised to provide improved guidance for data usage and limitations for determination of core conditions for reactor startups. The station control rod curve book was also revised to clearly label burnup dependent curves with the appropriate burnup windows. This will provide a more accurate means of selecting the appropriate curves for ECC calculations.

*NRC.*—As mentioned previously, an inspector from NRC Region II performed a special inspection from March 4–8, 1985, of the circumstances associated with the event. The inspection consisted of selected examinations of procedures and representative records, interviews with licensee personnel and observation of activities in progress.

As a result of the inspection, two violations of NRC requirements were identified: (1) Failure of the shift supervisor to closely monitor instrumentation and anticipate criticality whenever rods were being withdrawn, and (2) inadequate procedures to estimate critical rod position within reasonable limits when the reactor was operated on an intermittent schedule at varying power levels. A notice of these violations, together with the inspection report, were forwarded to the licensee on April 3, 1985.

**Other NRC Licensees**

(Industrial Radiographers, Medical Institutions, Industrial Users, etc.)

*Diagnostic Medical Misadministration*

The general abnormal occurrence criteria note that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

*Date and Place.*—On January 7, 1985, a representative of St. Luke's Hospitals, Chesterfield, Missouri, reported to the NRC Region III that on December 19, 1984, a female patient received a radioactive material other than that prescribed for a scheduled diagnostic medical test. As a result, the patient's thyroid received a therapeutic dose in the range of 6,500 to 9,000 rads.

*Nature and Probable Consequences.*—The office of the patient's physician telephoned the hospital's Outpatient Radiology Department to schedule the patient for mammograms and a radioactive "iodine scan." What the physician intended, and for which he prepared a requisition, was a radioactive 'thyroid scan." In the licensee's normal terminology, a radioactive "iodine scan" is a whole body scan performed with 5 millicuries of iodine-131. A radioactive "thyroid scan," in the licensee's terminology, is routinely performed using radioactive technetium-99m pertechnetate.

The patient reported to the Outpatient Radiology Department on December 19, 1984, and received the mammographic examination. Then, even though the physician's written requisition had not yet arrived at the hospital, a technologist gave her an iodine-131 capsule. Dispensing the capsule without a requisition was contrary to the Department's rules. The patient was told to return the following day for the scanning procedure.

On December 20, 1984, a technologist, other than the one who dispensed the iodine-131 capsule, performed the scanning and the patient was discharged. Meanwhile, the physician's requisition arrived at the hospital.

Subsequently, the two technologists met to perform the necessary paperwork

functions. At the time, the technologist saw the physician's requisition and realized that the patient had received the wrong radioactive material. The technologist immediately reported the incident to the nuclear radiologist who informed the patient's physician, as required by NRC regulations.

The calculated radiation exposure to the thyroid from the 5 millicurie iodine-131 dosage would be in the range of 6,500 to 9,000 rads, compared to about a 200 millirad dose that would be expected from the normal technetium-99m pertechnetate diagnostic dosage of 100 microcuries.

The patient did not exhibit any apparent immediate injury. However, an NRC medical consultant, after considering the circumstances of the misadministration, has concluded that the patient has a perhaps 50% chance of developing hypothyroidism in the future. This possible decrease in thyroid function, however, is not life threatening. The patient's age (54 years) was to her advantage since the amount of iodine-131 absorbed by the thyroid during such testing generally decreases with age. The consequences of such an incident would likely have been more serious for a patient who was younger and/or pregnant.

*Cause or Causes.*—The licensee reported that the misadministration was caused by the technologist, contrary to the Department's rules, dispensing the iodine-131 capsule without a written requisition specifying the drug or the dosage.

*Actions Taken To Prevent Recurrence*

*Licensee.*—The licensee's Radiation Sefety Committee held a special meeting to discuss the incident and means of preventing recurrence. Based on this meeting, the licensee distributed a memorandum to all radiology physicians and technologists reiterating the existing rule that no medical study can be performed in the department, nor can any radioactive pharmaceutical be administered, without the proper written requisition signed by the physician.

*NRC.*—NRC Region III conducted a special inspection at the licensee's facility to review the circumstances surrounding the misadministration. No violations of NRC requirements were identified in the inspection, and the licensee's corrective action and retraining activities were considered satisfactory. In addition, as discussed previously, NRC Region III discussed the event with an NRC consultant.

*Diagnostic Medical Misadministration*

The general abnormal occurrence criteria note that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

*Date and Place.*—On March 11, 1985, a representative of Tolfree Memorial Hospital of West Branch, Michigan, reported that a patient had received a diagnostic radiation exposure on March 7, 1985, that was approximately 10 times the intended exposure.

*Nature and Probable Consequences.*—On March 7, 1985, the patient who had a history of possible substernal thyroid received a diagnostic thyroid test using radioactive iodine-131, which is the standard radioactive substance used for such testing. Instead of the normal amount of 100 microcuries, however, the patient was administered 1,000 microcuries. A microcurie, which is one millionth of a curie, is a standard measure of radioactivity.

Although the radiation dose to the thyroid was significantly larger than the intended amount, the licensee reported that no biological harm would be expected because of the patient's age (70 years). (The percentage of iodine-131 uptake generally decreases with age.) An NRC medical consultant also considered the circumstances of the case, and concluded that the medical effects, if any, would be minimal. The patient's physician was informed of the misadministration, as required by NRC regulations.

*Cause or Causes.*—The licensee reported that the misadministration occurred because of the relatively low frequency that tests of this nature are administered by the hospital. In addition, there was some question about the proper iodine-131 dosage. The causes of the misadministration will be examined further in an upcoming NRC inspection.

*Actions Taken To Prevent Recurrence*

*Licensee.*—The licensee has revised its procedures to include a listing of the standard dosages for all types of thyroid examinations. The procedural changes will require that the dosages be checked against this standard before they are administered.

*NRC.*—Region III conducted a special inspection at the licensee's facility to review the circumstances surrounding the misadministration. The procedural changes adopted by the hospital were found to be satisfactory. No violations of NRC requirements were identified in the inspection. In addition, as discussed previously, NRC Region III discussed the event with an NRC medical consultant.

*Unlawful Possession Of Radioactive Material*

The general abnormal occurrence criteria note that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

*Date and Place.*—On March 26, 1985, John C. Haynes, doing business as John C. Haynes Company ("the licensee"), Newark, Ohio, was arrested by agents of the Federal Bureau of Investigation on charges of illegal possession and use of radioactive material and for making false statements to the NRC.

On April 5, 1985, the NRC issued an Order to the licensee requiring him to provide access to his laboratory facility for cleanup and removal of radioactively contaminated equipment. Subsequent to the cleanup, the license is to be revoked.

*Nature and Probable Consequences.*—As stated in the April 5, 1985, Order, licensee is the holder of a by-product material license which currently authorizes the licensee to possess americium–241 for storage only. During the 1970's, the licensee's facility was used to irradiate diamonds and other gemstones using unsealed americium–241 for the purpose of inducing color changes. At one time the licensee possessed up to 25 curies of americium–241 and 2 curies of cerium–144. Subsequently, the licensee advised NRC that all radioactive material was properly disposed of at an authorized disposal facility with the exception of a small residual amount in the form of contamination of the licensee's laboratory facility. The laboratory occupied a portion of a residence in a rural area about 10 miles from Newark, Ohio. During 1981, the license was modified to limit activities to *storage* only of about 150 millicuries of americium–241 in the form of residual contamination.

During 1984, a Show Cause Order was issued to the licensee requiring him to submit a decontamination plan for his facility. He responded that he was financially unable to undertake the cleanup. During February of 1985, NRC Region III received an allegation that Mr. Haynes still had significant quantities of americium–241 in his possession and was continuing to use the americium to color gems in apparent violation of his license. On March 26, 1985, Mr. Haynes was arrested and a team of FBI and NRC personnel confiscated a quantity of americium in loose powder form—estimated to be 2 to 4 curies—at Mr. Haynes' laboratory facility. Teams of FBI and NRC personnel also visited four other

locations where additional quantities of americium might have been stored or where additional information might be obtained. A larger quantity of americium—perhaps 10 curies—was seized at one of these locations. The confiscated americium and four diamonds with some minor surface contamination were transported to Mound Laboratories, a Department of Energy facility in Miamisburg, Ohio. A Department of Energy radiological assistance team provided technical assistance at the laboratory site and in handling the confiscated americium.

Surveys of areas surrounding the laboratory, and analyses of soil and water samples, showed no evidence of any offsite contamination. Onsite surveys disclosed soil contamination in an area where waste incineration occurred in the past and also at several other locations, principally in the area of waste water tanks for the laboratory. The living quarters portion of the residence (outside the laboratory)—which was occupied until late March 1985—showed no evidence of contamination in the areas accessible to the residents. Radiation surveys of the laboratory area itself identified extensive contamination of the laboratory facility and equipment.

Americium-241 is hazardous in powder form if it becomes airborne and is inhaled by an individual. Lodged in the body, the americium may cause cancer over a long period of time. The principal hazard outside the laboratory would be the spread of americium through fire, vandalism, or other means. Such dispersion of americium could represent a significant health hazard outside the house, but the hazard would diminish substantially with distance.

A U.S. magistrate released Mr. Haynes from custody on his own recognizance, with the condition that he not go to the laboratory facility. On May 7, 1985, the U.S. District Court dismissed the charges against Mr. Haynes because a preliminary hearing was not conducted within 30 days as required by law. Dismissal of the charges also lifted the court's prohibition of Mr. Haynes from going to the facility. Since the facility was still extensively contaminated and remained a safety hazard, the NRC considered it necessary to prevent unauthorized individuals from entering the controlled areas; such unauthorized entry could result in interference with decontamination activities, spread of contamination, and unnecessary radiation exposures.

Therefore, on May 10, 1985, the NRC issued an immediately effective Order to the licensee which prohibited access to him, as well as other individuals, from the controlled areas unless the prior approval of the NRC Region III Regional Administrator or his designee is obtained.

*Actions Taken To Prevent Recurrence*

*NRC.*—The NRC and the U.S. Environmental Protection Agency (EPA) have initiated a cleanup of areas of significant contamination in the laboratory and contaminated areas outside the facility. The cleanup is being financed by up to $150,000 from the EPA's Superfund. The cleanup is being financed by up to $150,000 from the EPA's Superfund. The cleanup, which began in mid-April 1985, is being performed by personnel from Oak Ridge Associated Universities and Battelle Memorial Institute. NRC inspectors have been monitoring the cleanup effort. The State of Ohio Disaster Services Agency has been monitoring the unrestricted areas offsite.

Once the facility is decontaminated to levels suitable for unrestricted use, Mr. Haynes' NRC license is to be revoked under the April 5, 1985, Order.

Dated in Washington, D.C. this 13th day of August, 1985.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 85-19866 Filed 8-19-85; 8:45 am]

BILLING CODE 7590-01-M

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## Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, FC 410-4 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Guide for the Preparation of Applications for Nuclear Pharmacy Licenses" and is intended for Division 10, "General." It is being developed to provide guidance in conformance with the revised NRC Form 313 for preparing applications for nuclear pharmacy licenses.

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, by October 31, 1985.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with: (1) Items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 13th day of August 1985.

For the Nuclear Regulatory Commission.

**Robert B. Minogue,**

*Office of Nuclear Regulatory Research.*

[FR Doc. 85-19869 Filed 8-19-85 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-409]**

## Dairyland Power Cooperative; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirement of 10 CFR 50.71(e)(3)(ii) to the Dairyland Power Cooperative (DPC) (the licensee) for the La Crosse Boiling Water Reactor

(LACBWR), located at the licensee's site in Vernon County, Wisconsin.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed action would grant an exemption from the requirements of 10 CFR 50.71(e)(3)(ii) to submit an updated Final Safety Analysis Report (FSAR) for the La Crosse Boiling Water reactor within 24 months of receipt of a letter notifying the licensee that the systematic evaluation program has been completed. By letter dated July 20, 1983, the staff informed DPC that the systematic evaluation program had been completed for LACBWR and that, pursuant to 10 CFR 50.71(e)(3), the licensee was required to file an updated FSAR. By letter dated July 12, 1985, the licensee requested an exemption to defer submittal of the update FSAR for 60 days. The deferral of submittal of the updated FSAR is the proposed action being considered by the staff.

*The Need for Proposed Action*

The final report, "Integrated Plant Safety Assessment, Systematic Evaluation Program" for the LACBWR, NUREG-0827, had several open items that required further evaluation and plant modifications. The licensee's July 12, 1985 letter states that these changes required the full-time utilization of LACBWR's small engineering staff and that the majority of the design changes were completed during the refueling outage in March-April 1985. Since that time, the LACBWR staff has been engaged in conducting the engineering review of the updated FSAR. The licensee indicated that it needs an additional 60 days to complete the activities associated with submitting the updated FSAR.

*Environmental Impacts of Proposed Actions*

The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents or occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commisison has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative to the exemption would be to require an earlier date for submittal of the updated FSAR. Such an action would not enhance the protection of the environment.

*Alternative Use of Resources*

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the La Crosse Boiling Water Reactor.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated July 12, 1985. This letter is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601

Dated at Bethesda, Maryland, this 14th day of August 1985.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Acting Assistant Director for Safety Assessment, Division of Licensing, Office of Nuclear Reactor Regulation.*

[FR No. 85-19867 Filed 8-19-85; 8:45 am]

BILLING CODE 7590-01-M

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## Advisory Committee on Reactor Safeguards; Subcommittee River Bend Station; Meeting

The ACRS Subcommittee on River Bend Station will hold a meeting on September 11, 1985, Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 11, 1985—10:30 a.m. until the conclusion of business

The Subcommittee will continue its review of Gulf States Utilities Company's application for an operating license for River Bend.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Georgia Power Company, NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr. Richard Savio (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: August 15, 1985.

**Morton W. Libarkin,**

*Assistant Executive Director for Project Review.*

[FR Doc. 85-19868 Filed 8-19-85; 8:45 am]

BILLING CODE 7590-01-M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35-23794; 70-6273]**

## Blackhawk Coal Co. and Indiana & Michigan Electric Co.; Proposed Purchase and Sale of Coal by Coal Mining Subsidiary Subject to Market Price Cap

August 14, 1985.

Indiana & Michigan Electric Company ("I&M"), 2101 Spy Run Avenue, Fort

Wayne, Indiana 46801, an electric utility subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, and Blackhawk Coal Company ("Blackhawk"), c/o American Electric Power Service Corporation, 161 West Main Street, Lancaster, Ohio 43130, a coal mining subsidiary of I&M, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to sections 12(b), 12(c), 12(f) and 13(b) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 42, 45, 86, 87, 90, 91, and 92 promulgated thereunder.

By order dated August 7, 1980 (HCAR No. 21672) as modified by order dated September 30, 1980 (HCAR No. 21672A), and by order dated October 19, 1981 (HCAR No. 22237), I&M was authorized to transfer to Blackhawk its interest in certain coal mines located in Carbon County, Utah and in reserves, leases, options, equipment and rights related thereto, and to make additional investments in Blackhawk (all such assets collectively referred to as the "Mines"), on terms and conditions set forth in said orders.

All of the coal produced by Blackhawk through its operator, Price River Coal Company ("Price"), a subsidiary of I&M, has been sold to I&M or to such affiliate or nonaffiliate of I&M as I&M has directed. In return for I&M's right to receive all of the coal produced by Blackhawk from the Mines, in Agreement between I&M and Blackhawk, dated January 1, 1982 ("Coal Supply Agreement"), I&M pays Blackhawk such amount as, when added to amounts received by Blackhawk from all other sources, is at least sufficient to enable Blackhawk to pay when due all of its operating and other expenses as specified in the Agreement.

Effective on April 1, 1979, the date of commercial operation of Mine Nos. 3 and 5 of the Mines, I&M began to impute investment carrying charges to the current commercial coal production on the "Plant in Service" assets, which at that time aggregated approximately $141,000,000. Since September 1, 1980, carrying charges on the Plant in Service assets, which as of December 31, 1984 aggregated approximately $157,000,000, have been included in the cost of coal sold to I&M. Depreciation of mining equipment in service and amortization have been associated directly with tonnages produced.

Since 1978, coal produced from the Mines has been burned in I&M's Tanners Creek Plant Units 1–3 ("TC 1–3"), and, since 1979, the energy produced by burning this coal has been sold almost exclusively in wholesale transactions subject to the jurisdiction of the FERC. It is stated that, during the past few years, the anticipated demand for energy from TC 1–3 has decreased for several reasons including (i) a nationwide reduction in the growth of the demand for energy and (ii) the increasingly competitive wholesale energy market.

It is stated that, as an outgrowth of a Federal Power Commission [predecessor of FERC] investigation commenced in 1975 concerning, among other things, the reasonableness and prudence of the coal purchasing policies and practices of the American Electric Power System companies ("AEP"), the FERC in June 1981 ordered a hearing relating to the procurement of coal from the Mines in light of the possible availability of coal from other sources ("FERC Litigation"). It is stated that the FERC Staff claimed (i) that after March 1979 I&M paid excessive prices for coal from the Mines; (ii) that I&M overstated its cost of coal by virture of its treatment of tax benefits related to certain mine development costs; and (iii) that the future charges for coal from the Mines should be limited to a "market price."

It is further stated that, on January 9, 1985, I&M and associate companies and the FERC Staff executed a Settlement Agreement ("Settlement Agreement") whereby, subject to certain conditions, the FERC Litigation was settled and dismissed on the bases of the terms and conditions set forth therein, the most salient of which are as follows: (i) $21,000,000 will be refunded to certain wholesale purchasers of energy from I&M and associate companies; (ii) Blackhawk may purchase from unaffiliated companies coal to be sold to I&M and burned in TC 1–3; (iii) I&M will record (in FERC Account 151) its cost of all coal purchased from Blackhawk in an amount not to exceed a market price cap imposed pursuant to the Settlement Agreement ("Market Price Cap"); and (iv) I&M and Blackhawk will, within certain limits use the amount by which the prise I&M pays Blockhawk for coal produced from the Mines or purchased from third parties (which amount may not be greater than the Market Price Cap) exceeds Blackhawk's cost of such coal, to amortize a portion of the investment in the Mines.

It is stated that the Settlement Agreement was approved by the FERC on May 20, 1985 and that it resolves all issues pertaining to the FERC Litigation. However, it is conditioned upon the approval by this Commission of those of the herein described transactions over which this Commission has jurisdiction. The Settlement Agreement is effective on the later of (i) 15 days after the order issued by the FERC approving the settlement becomes a final nonappealable order; or (ii) the issuance of an order of this Commission approving the transactions over which it has jurisdiction (the later of which is the "Effective Date"). The Settlement Agreement provides, however, that if a petition for review of the order of this Commission is filed, the Effective Date shall be suspended until the petition is resolved in a manner which permits implementation of all of the provisions of the Settlement Agreement; and further provides that, if final nonappealable orders of the FERC and of this Commission are not issued on or before December 31, 1985, American Electric Power Service Corporation ("Service Corp."), a service company subsidiary of American Electric Power Company, Inc., may, at its sole option, terminate the Settlement Agreement at any time after December 31, 1985.

The Market Price Cap, as of June 30, 1984, has been fixed in the Settlement Agreement at 246.464 cents per million Btu. The Market Price Cap is to be adjusted on a quarterly basis on the first day of January, April, July and October by multiplying the Market Price Cap as of June 30, 1984 by the applicable Adjustment Factor. The Adjustment Factor for each calendar quarter will equal the ratio of the Quarterly Index to the Base Index, provided, however, that the Adjustment Factor will not be less than .9. The Base Index has been determined in the Settlement Agreement to be 226.501 cents per million Btu. The Quarterly Index, with respect to the calendar quarter for which the Adjustment Factor is being determined, will be the weighted average cost in cents per million Btu of Compliance Bituminous Coal, as defined in the Settlement Agreement, during the second preceding calendar quarter.

It is further contemplated, pursuant to the Settlement Agreement, that Blackhawk will enter into contracts and other agreements for the purchase of low-sulfur bituminous coal from unaffiliated companies. In connection with these contracts or agreements, I&M may issue such guaranties of the performance of Blackhawk as are necessary and appropriate. While it is intended that substantially all of the coal purchased by Blackhawk will be sold to I&M to be burned in TC 1–3, it is recognized that it may be necessary, in order to obtain commercially acceptable coal supply arrangements, for Blackhawk to enter into contracts or agreements for the purchase of amounts of coal which may exceed the coal requirements of TC 1–3, in which case it

is contemplated that the rights to some or all of such coal will be assigned by Blackhawk, as directed by I&M, to other AEP plants.

It is further contemplated by the terms of the Settlement Agreement that I&M and Blackhawk will, to the extent feasible, amortize a portion of the investment in that part of the Mines which is located west of the Price River, together with existing surface facilities located east of the Price River for processing, handling and shipping coal (collectively referred to in the Settlement Agreement as the "Western Reserves"). The Settlement Agreement provides that the amount by which the price I&M pays Blackhawk for coal purchased from third parties (which may not be greater than the Market Price Cap) exceeds Blackhawk's cost of such coal F.O.B Tanners Creek ("Gross Margin") will be used to amortize part of the investment in the Western Reserves (which amortization program is hereafter referred to as the "Amortization"), subject to the following limits: (a) The right to collect the Gross Margin and the right to the Amortization will terminate (i) at the end of 12 years from the Effective Date of the Settlement Agreement, (ii) at such time as the total Gross Margin shall equal $75,000,000 or (iii) at such time as the sum of the total Gross Margin recorded, and the price at which all or a part of the Western Reserves have been sold, equals $208,500,000, whichever of (i), (ii) or (iii) shall first occur; and (b) the Amortization for any year shall not exceed the Gross Margin associated with the delivery to TC 1–3 of one million tons of coal per year.

To implement the Settlement Agreement, I&M and Blackhawk will amend the Coal Supply Agreement so as to give I&M, in addition to its right to receive all of the coal produced from the Mines, the right to receive all of the coal purchased by Blackhawk from unaffiliated companies. In return for these rights, I&M will pay Blackhawk such amount as, when added to amounts received by Blackhawk from all other sources, is at least sufficient to enable Blackhawk to pay when due all of its operating and other expenses. The Settlement Agreement contemplates that, for these purposes, Blackhawk's expenses will include the Gross Margin subject to the limits herein described. However, the amount which I&M will record in its FERC Account 151 relating to purchases by I&M of coal from Blackhawk will be limited to the Market Price Cap established in the Settlement Agreement. The Settlement Agreement provides that costs in excess of the Market Price Cap, and shutdown or standby costs, if any, of the Mines, will be recorded in FERC Account 426.5 (other Deductions).

The Settlement Agreement provides that any coal produced in the Mines and delivered to any generating unit owned by any subsidiary or associate company of AEP, including TC 1–3, shall be subject to the Market Price Cap, and that any Coal transferred from Blackhawk to any subsidiary or associate company of AEP, other than I&M for use at TC1–3, shall not include in its price any amount reflecting the Amortization established by the Settlement Agreement. The Settlement Agreement also provides that, in the event that all or a portion of the Mines is sold and any subsidiary or associate company of AEP thereafter purchases coal produced from such Mines, the cost of such coal recorded for wholesale ratemaking purposes will not exceed the Market Price Cap.

To the extent that Blackhawk recovers its investment in the manner specified above, it is proposed that Blackhawk will, subject to the applicable state regulations, redeem and retire its Common Stock issued to I&M and prepay notes issued to I&M so as to maintain a debt/equity ratio of I&M for the prior year. It is also contemplated that Blackhawk will prepay in order the notes issued to I&M with the highest interest costs per annum and at the same time provide for the payment when due of the notes issued to I&M. It is contemplated that such adjustments to Blackhawk's capitalization be made on a quarterly basis.

As a part of the Settlement Agreement, Service Corp. has agreed to file with the FERC annual reports which provide a description of the actions taken pursuant to the Settlement Agreement and to permit the FERC Staff to audit the financial records of Blackhawk or its successor, if any.

Interested persons wishing to comment or request a hearing should submit their views in writing by September 9, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85–19821 Filed 8–19–85; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 35–23796; 70–7144]**

## The Connecticut Light and Power Co. and Western Massachusetts Electric Co.; Proposed Pollution Control Financing and Exception From Competitive Bidding

August 14, 1985.

The Connecticut Light and Power Company ("CL&P"), Seldon Street, Berlin, Connecticut 06037, and Western Massachusetts Electric Company ("WMECO"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, electric utility subsidiaries (the "Companies") of Northeast Utilities, a registered holding company, have filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50(a)(5) promulgated thereunder.

The proposed transactions relate to the financing of each Company's portion of the cost of acquiring, constructing, and installing certain pollution control and/or sewage or solid waste disposal facilities (the "Facilities") at and/or adjacent to the Millstone 3 nuclear-electric generating station, located in the Town of Waterford, Connecticut. CL&P and WMECO own 52.6115 percent and 12.2385 percent, respectively, of that portion of the Facilities located at Millstone 3 and 81 percent and 19 percent, respectively, of that portion, if any, located adjacent to Millstone 3. The Connecticut Development Authority (the "Issuer") intends to issue pollution control revenue bonds (the "Bonds") in the principal amount of not more than $65,000,000 for CL&P and $15,000,000 for WMECO, $80,000,000 in total. The Bonds will be issued under separate CL&P and WMECO Indentures of Trust (the "Indentures") each between the Issuer and a trustee (the "Trustee"). Pursuant to Loan Agreements between each of CL&P and WMECO and the Issuer (the "Loan Agreement"), the Issuer will loan to CL&P and WMECO the proceeds of the Bonds. CL&P and WMECO will agree to make payments corresponding to the amount needed to pay the principal of, premium, if any, and interest on the Bonds as they become

due. The obligations of each of the Companies to repay its loan will be evidenced by a promissory note (the "Notes"). The proceeds of the Bonds will be deposited with the Trustee. From funds established under the Indentures, each of the Companies will draw the proceeds of the Bonds to pay, or to reimburse itself for, its portion of the cost of acquiring, constructing, and installing the Facilities.

The Bonds will be issued with variable interest rates as floating rate demand bonds and will mature in not more than thirty years from the date of issuance, subject to certain conditions. At the option of the Companies, the interest rates on the Bonds may be converted to a fixed interest rate upon 45 days' notice. The various interest rates on the Bonds, fees, and other charges are described in the declaration. The interest rate on the Bonds will, in no event, exceed 20% per annum. As of June 30, 1985, the interest rates on the floating rate demand bonds issued by the Issuer in August 1984 and March 1985 to provide financing for CL&P and WMECO for other pollution control projects at and adjacent to Millstone 3 were 4.5 percent and 4.5 percent, respectively, for CL&P and 4.5 percent and 4.625 percent, respectively, for WMECO.

Pursuant to the terms of each of the Indentures, each Bondholder will have the option of tendering any even multiple of $100,000 principal amount of the Bonds for purchase upon at least seven days' prior notice. The Remarketing Agent, upon receiving notice of a Bondholder's intention to present its Bonds for purchase, is obligated to use its best efforts to secure other purchasers of Bonds. If the Remarketing Agent is unsuccessful, the Trustee may draw upon an irrevocable letter of credit to be issued by Westpac Banking Corporation for the funds required to pay the tendering Bondholder. The interest rate with respect to the letter of credit will be the prime rate plus 1%. So long as the letters of credit remain outstanding, CL&P and WMECO would each be obligated to pay the Bank a letter of credit commission at a rate of .50 of one percent per annum for years one through five and .55 of one percent per annum for years six through ten. Following conversion to a fixed interest rate, Bondholders will no longer have the right to tender their Bonds for repurchase.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 9, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85-19822 Filed 8-19-85; 8:45 am]

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**[Release No. 35-23795; 70-7145]**

## Louisiana Power & Light Co.; Proposal to Issue and Sell $200 Million Debentures

August 14, 1985.

Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Louisiana 70174, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, have filed a declaration pursuant to Sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

On May 17, 1985, LP&L filed requests with the Louisiana Public Service Commission ("LPSC") and the Council of the City of New Orleans (which regulates the Company's retail electric rates in the 15th Ward of the City of New Orleans) for retail rate increases to reflect the costs associated with the anticipated in-service status of Unit No. 3 of LP&L's nuclear Waterford Steam Electric Generating Station ("Waterford 3") and Unit No. 1 of Middle South Energy, Inc.'s ("MSE") Grand Gulf Nuclear Generating Station ("Grand Gulf 1"). Waterford 3 is scheduled for commercial operation in August 1985, and Grand Gulf 1 was placed in commercial operation on July 1, 1985. With respect to Grand Gulf 1, LP&L is obligated under the terms of a unit power sales agreement with MSE to purchase capacity and energy from that unit and to make payments to MSE for such capacity and energy. Payments to MSE under that agreement are required to be made for the period from and after July 1, 1985, with payments due in mid-August 1985 and continuing monthly thereafter. LP&L estimates that, based upon the estimated $3.3 billion installed cost of MSE's share of Grand Gulf 1 and the Federal Energy Regulatory Commission's ("FERC") allocation to LP&L of 14% of MSE's share of the capacity of Grand Gulf 1, its monthly payment obligation to MSE, during 1985, will approximate $12 million. However, the payment of such amount will be partially offset by the crediting to LP&L over the next 18 months of advance payments previously made by LP&L to MSE pursuant to a power purchase advance payment agreement.

On July 30, 1985, the LPSC rejected LP&L's aforesaid application for increased retail rates to cover the costs associated with the in-service status of Waterford 3 and Grand Gulf 1. On August 1, 1985, LP&L filed a complaint in the United States District Court for the Middle District of Louisiana ("Court") seeking preliminary and permanent injunctions against the Commissioners of the LPSC enjoining them from denying LP&L recovery as operating expenses of the costs associated with the capacity and energy from Grand Gulf 1 allocated to LP&L pursuant to the opinion and order of the FERC dated June 13, 1985 (Opinion No. 234; Docket Nos. ER82-616-000 and ER82-483-000). On August 12, 1985 the Court dismissed the complaint for lack of subject matter jurisdiction.

Pending the possible receipt of retail rate relief, LP&L will be required to marshall all available cash resources in order to continue to meet its current obligations and will be required, at this critical juncture, to raise from external sources, to the extent feasible, capital to meet its 1985 requirements for cash.

To this end, LP&L states it has undertaken a thorough reexamination of the balance of its 1985 construction program in order to reduce cash outlays for construction projects to the maximum extent possible, has instituted stringent internal cost control measures so as to reduce operating expenses wherever possible, and will be required, in light of its continuing current obligations (including those in relation to MSE), to consider reducing or eliminating, for a time, the future payment of cash dividends upon its common stock.

With respect to LP&L's efforts to raise capital from external sources, in May and June 1985 LP&L issued and sold to MSU an aggregate of 15,152,000 additional shares of its common stock for $100,000,000 (HCAR No. 23603,

February 14, 1985). In addition, LP&L has effected short-term borrowings during 1985 to provide a substantial portion of its cash requirements. At July 31, 1985, LP&L's short-term borrowings aggregated $229.7 million, leaving LP&L with only $45.3 million of additional unused borrowing capability (HCAR Nos. 23191, December 30, 1983 and 23632, March 15, 1985). Finally, LP&L had hoped to obtain the proceeds of $105,000,000 principal amount of pollution control revenue bonds issued and sold in December 1984, which proceeds are being retained in a cash collateral security account until certain conditions are satisfied, including certain conditions with respect to Waterford 3 (HCAR No. 23547, December 28, 1984). However, in light of the recent action of the LPSC, LP&L cannot be assured that such proceeds will be made available to LP&L.

Although LP&L believes that the courts will ultimately award LP&L the necessary amount of retail rate relief, LP&L must be able to obtain substantial additional funds from external sources by no later than October 1985 if it is to remain solvent. In view of its already extended short-term debt position and the previously consummated sales to Middle South of additional common stock, LP&L believes that it is imperative that it now be permitted to issue and sell some form of senior security.

LP&L's ability, however, to issue senior securities in the form of first mortgage bonds and preferred stock is limited by the terms of LP&L's corporate instruments. LP&L's Mortgage and Deed of Trust, dated as April 1, 1944, as supplemented ("Mortgage"), provides that additional first mortgage bonds may not be issued (except for the purpose of refunding maturing first mortgage bonds and certain other purposes) unless the adjusted net earnings of LP&L (as defined in the Mortgage) for 12 consecutive months out of the 15 months immediately preceding the issuance of the additional first mortgage bonds shall have been at least twice the amount of the annual interest requirements on all first mortgage bonds at the time outstanding, including the additional first mortgage bonds. At June 30, 1985, LP&L's Mortgage earnings coverage, calculated as above provided, was only 1.72, and (subject to the limited exceptions noted) LP&L is currently precluded by the Mortgage from issuing additional first mortgage bonds.

Under the terms of LP&L's Restated Articles of Incorporation, as amended ("Articles of Incorporation"), LP&L may not, without the consent of the holders of at least a majority of LP&L's preferred stock then outstanding, issue additional shares of preferred stock unless the gross income of LP&L (as defined in the Articles of Incorporation) for 12 consecutive months out of the 15 months immediately preceding the issuance of the additional shares shall have been at least one and one-half times the sum of the annual interest charges on all interest-bearing indebtedness of LP&L and the annual dividend requirements on all outstanding shares of preferred stock, including the additional shares being issued. At June 30, 1985, LP&L's Articles of Incorporation earnings coverage, calculated as provided above, was only 1.52, and LP&L is currently able to issue only a nominal amount of additional shares of preferred stock; however, issuance of additional debt as herein proposed will necessarily reduce the ratio. Moreover, in view of the July 30, 1985 decision by the LPSC denying LP&L any retail rate relief and the delay likely to be experienced in obtaining retail rate relief through the courts, LP&L does not anticipate that its earnings will increase such that it will be permitted, under the Mortgage and Articles of Incorporation, to issue during 1985 a significant amount of additional first mortgage bonds or preferred stock.

Accordingly, LP&L proposes to issue and sell in one or more issues from time to time through December 31, 1985 not to exceed $200,000,000 aggregate principal amount of debentures and/or notes ("Debentures"). The Debentures may be unsecured or secured by a second lien upon assets of LP&L, depending on market requirements. LP&L states that the issuance and sale of the Debentures is critical in order for LP&L to meet its requirements for funds from external sources for 1985.

The Debentures, which may be issued under an indenture or indentures, will be sold at such price(s), will bear interest at such rate(s), which may be adjustable, and mature on such date(s), which in certain cases may be in excess of ten years, as will be determined at the time of sale. Each issue of Debentures may include provisions for optional redemption prior to maturity, and may include certain restrictions on optional redemption for a given number of years. The Debentures of a particular issue may also include provisions for a sinking, purchase or other analogous fund designed to retire a certain percentage of the principal amount of such issue at stated intervals prior to maturity. Information with respect to the price(s) to be paid to LP&L, interest rate(s), maturity(ies), redemption provisions and restriction (if any) on redemption and sinking, purchase or analogous fund provisions (if any) with respect to each issue of Debentures will be supplied by amendment.

LP&L expects, based upon its assessment of the current market for Debentures, that Debentures would be sold to the public, in conjunction with any public offering thereof, in minimum denominations of $25,000. LP&L requests, pursuant to paragraph (a)(5) of Rule 50, that the Commission exempt the proposed issuance and sale of the Debentures from the competitive bidding requirements of Rule 50. Because of LP&L's earnings coverage problems, the lack of an existing market for debentures or notes issued by LP&L, and investor concern over the LP&L's regulatory environment and financial condition, LP&L believes that the Debentures will be difficult to market to the public. LP&L states that a public offering of Debentures would require an advance marketing effort on the part of underwriters (which would not be possible under competitive bidding procedures) and, even with such an advance marketing effort, a public offering of one or more issues of Debentures may not be as advantageous as a private placement of such Debentures. Consequently, the interests of LP&L, its investors and consumers require that LP&L have the flexibility to sell the Debentures by means of negotiated public offering and/or private placement with institutional investors in order to secure the advantages of an advance marketing effort and/or the best available terms. In light of these circumstances, the Commission authorizes LP&L to enter into negotiations with underwriters.

To make the findings under section 7(d) of the Act necessary to permit this declaration to become effective, the Commission must find, among other things, that LP&L will have, or is reasonably likely to have, sufficient earnings to service the debt sought to be issued. The Commission also must find that the securities to be issued are reasonably adapted to the financial structure of LP&L and the other companies in the Middle South system as well. The Commission further must find that the terms and conditions of such securities are not detrimental to the public interest or the interests of investors or consumers. Based on the record presently before it, the Commission has serious reservation about its ability to make such findings. The Commission therefore requests all interested persons, including state regulatory authorities with jurisdiction over the rates charged by operating companies in the Middle South system,

to address these issues in comments submitted on the instant declaration.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should sumbit their views in writing by September 9, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85-19823 Filed 8-19-85; 8:45 am]

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**[Release No. 34-22325; SR-BSE-85-4]**

## Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Boston Stock Exchange, Inc. ("BSE") submitted on June 7, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, to amend Chapter II (Dealings on the Exchange—Execution Guarantee") to increase the execution guarantee applicable to agency orders from 1,299 shares to 2,500 shares, in the 100 most actively traded stocks ("MATS issues") as measured by share volume reported through the consolidated transaction reporting system.[1] In addition, a dealer specialist may voluntarily offer any stock in which he is registered to be designated a MATS issue. The BSE also has provided for the possibility that in certain markets for particular issues, the application of a 2,500 share guarantee may be harmful to the dealer-specialist. In these cases, the dealer-specialist may petition for exemption from the execution guarantee (not applicable to the 1,299 share guarantee), and such exemption will be granted by the Market Performance Committee only for good cause.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22135, June 11, 1985) and by publication in the **Federal Register** (50 FR 25505, June 19, 1985). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: August 13, 1985.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85-19824 Filed 7-19-85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-22327; File No. SR-NYSE-85-26]**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Enhancement to Order Size Eligibility for SuperDOT System and Modification to Reference Price Assigned to SuperDOT Orders

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(b)(1), notice is hereby given that on the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organizaiton. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of enhancements in the order size to the Exchange's SuperDOT System and a change in the reference price which is assigned to market orders entered through the SuperDOT System.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discuss any comments it received on the proposed rule change. The text of these statements may be examined at the placed specified in Item IV below and is set forth in sections (A), (B), and (C) below.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

The purpose of the proposed rule change regarding the increase in order size for orders eligible for transmission through the SuperDOT system is to enable larger-size orders to obtain efficient and timely executions. Additionally, the Exchange proposes to change the reference price which is assigned to each market order entered through SuperDOT to a price based on the New York Stock Exchange ("NYSE") quotation at the time the SuperDOT order is printed on the Floor.

The proposed rule change consists essentially of the following:

(i) Raising order size eligibility in the Designated Order Turnaround (DOT) System (hereinafter referred to as "SuperDOT") from 1,099 shares to 3,099 shares.

(ii) Providing that marketable limit orders up to 3,099 shares be treated as market orders for purposes of the SuperDOT System rules and procedures.

(iii) Extending the Exchange's policy on the specialist not charging a commission on SuperDOT market orders and marketable limit orders to such orders up to 3,099 shares. (The specialist may continue to charge a commission on SuperDOT market orders to sell short and marketable limit orders to sell short.)

(iv) Providing that system-generated reports for SuperDOT market orders and

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[1] The BSE has provided that designation of MATS issues will be made quarterly, based upon figures provided by the Consolidated Tape Association for the preceding quarter. Notice of the designation shall be given the BSE membership on a quarterly basis. In addition, the Exchange publishes a guide to all issues traded on the BSE and MATS issues will be designated as such in the guide. *See* letter from Michael R. Lindburg, Vice President and General Counsel, BSE to Michael Cavalier, Branch Chief, Exchange Regulation, dated August 7, 1985.

marketable limit orders whenever the specialist fails to report an execution within a predetermined time period shall be extended to all such orders up to 3,099 shares.

(v) Changing the reference price which is assigned to each market order entered through the SuperDOT system to a price based on the New York Stock Exchange ("NYSE") quotation at the time the SuperDOT order is printed on the Floor rather than basing the reference price on the NYSE last sale as at present.

(vi) Amending Rule 123A.47 to provide that the specialist's "½ point error guarantee" shall be applicable to SuperDOT market orders "of a size as the Exchange shall from time to time determine". At this time, the Exchange has determined that the "½ point error guarantee" shall be applicable to SuperDOT market orders and marketable limit orders up to 1,099 shares.

*Increase in Order Size Eligibility.* The exchange proposes that the size of orders eligible for transmission to the Floor via the SuperDOT system be increased from the present 1,099 shares to 3,099 shares. The Exchange is also proposing that marketable limit orders (i.e., limit orders that are immediately executable because the price (as reflected by the current bid or offer) of the subject security at the time the orders are received by the LMT System is equal to or better than the limit price specified on the order) up to 3,099 shares be handled in the same manner as SuperDOT market orders, and be subject to all SuperDOT trading rules and procedures. This proposed enhancement will accommodate the needs of member firms to obtain efficient executions of large-size orders in a timely and reliable fashion. The new order size parameter will be implemented in two stages, i.e. initially firms will be allowed to enter SuperDOT market orders up to 2,099 shares and over several months, the order size eligibility will be increased to 3,099 shares.

Ever since SuperDOT was first introduced, the Exchange has been concerned that order-size eligibility be gradually expanded in response to evolutionary trends toward larger-size orders. Thus, order-size eligibility has been raised in stages from 199 shares to 599 shares to its present 1,099 shares. The Exchange notes that the average trade size today is already in excess of the 1,099 share parameter presently in use; in 1984 the average trade size was 1,781 shares, and for the first quarter of 1985 the average trade size was 1,860. Thus, the Exchange believes that the proposed raising of order eligibility to 3,099 shares for SuperDOT market and marketable limit orders is an appropriate response that this time to current trends toward increasing order size.

*Commissions on SuperDOT Market and Marketable Limit Orders.* The Exchange proposes to extend the policy that the specialist not charge a commission for executing SuperDOT market orders and marketable limit orders up to 3,099 shares. The "no commission" policy promotes the purposes of section 11A(a)(1)(c)(i), which calls for "economically efficient execution of securities transactions." As noted in SR–NYSE–84–21, SuperDOT market orders to sell short and marketable limit orders to sell short require a degree of service by the specialist greater than that called for in executing simple buy or sell orders. Thus, the Exchange's "no commission" policy does not apply to SuperDOT market orders to sell short and marketable limit orders to sell short.

*System-Generated Reports When Specialist Fails to Report Execution.* The Exchange introduced the concept of system-generated reporting to the SuperDOT system in SR–NYSE–83–20, which provided that reports are generated whenever the specialist fails to report an execution or a "stop" once five minutes have elapsed after such order reaches the Floor. Subsequently, the time parameter for system-generated reports was reduced to a minimum of two minutes, although in actual practice the Exchange utilizes a "timer" of three minutes. The concept has also been extended to marketable limit orders.

The rule change proposed herein would extend the concept of system-generated reports when the specialist fails to report an execution within a predetermined time period to SuperDOT market orders and marketable limit orders up to 3,099 shares. System-generated reporting is designed to ensure that all SuperDOT market orders and marketable limit orders are responded to on a timely basis.

The Exchange notes that the so-called "SuperDOT turnaround time" has been steadily decreasing. According to Exchange statistics for 1984, 94.4% of all SuperDOT orders were responded to (i.e., they received an execution or "stop" report) within two minutes of the receipt of such orders on the Floor. The actual percentage of such orders affected by system-generating reporting is only 1–2% since, as noted above, the Exchange presently utilizes a "timer" of three minutes.

*Change in Reference Price for SuperDOT Market Orders.* Besides extending the concept of system-generated reports to all SuperDOT market orders up to 3,099 shares, the Exchange proposes to change the reference price which is used as the basis for system-generated reports of such orders if the specialist fails to report an execution within the predetermined times period. The Exchange proposes to change the basis for the reference price to the New York Stock Exchange ("NYSE") quotation in the security named in the order at the time the SuperDOT order is printed on the Floor. Presently, the reference price is based on the last NYSE sale just prior to the order being delivered to the Floor by the system. Under the proposed change, at the expiration of the "timer", SuperDOT market orders would be priced and reported by the system at the bid/offer, as appropriate, on the Exchange at the time the order is printed on the Floor.

The Exchange notes that presently, marketable limit orders up to 1,099 shares which are entered into the Limit Order ("LMT") System are assigned the prevailing NYSE quotation at the time the order is printed on the Floor as reference price. In addition, as to those stocks eligible for the Exchange's Immediate Reporting Service, the reference price for both market, and marketable limit orders is the NYSE bid/offer, as the case may be, at the time the order is printed on the Floor. Thus, the rule change proposed herein will provide that in any case where a report is generated through the SuperDOT and LMT Systems, the reference price assigned will be uniformly based on the prevailing NYSE quotation.

The Exchange believes that the use of the NYSE quotation as a reference price will more closely approximate execution prices normally received through the auction process. In addition, the proposal eliminates the disparity between reference prices used in Exchange systems, thereby providing that all orders in which the system-generating reporting feature is applicable will have a uniform-pricing algorithm.

*Features Not Extended to New Order Size Parameter.* Finally, it is significant to note that three other enhancements to the SuperDOT system presented in SR–NYSE–84–21 shall *not* be applicable to SuperDOT market or marketable limit orders over 1,099 shares: (1) single-price execution and (2) eligibility for the Exchange's "Immediate Reporting Service", and (3) the specialist's guarantee of execution prices he reports on SuperDOT market orders and

marketable limit orders, up to ½ point, or codified in Exchange Rule 123A.47, which currently provides that the "½ point error guarantee" will apply to SuperDOT market orders and to limit orders "of a size as the Exchange from time to time determines". At this time, the Exchange has determined that the "½ point guarantee" share be applicable to SuperDOT orders up to 1,099 shares only.

(2) Statutory Basis

The enhancements proposed herein are designed to facilitate transactions involving orders on the Exchange and to provide for efficient clearance and settlement of these transactions. Implementation of these enhancements will be consistent with those provisions of the Securities Exchange Act of 1934 (the "Act") which encourage use of new data processing and communications techniques, economically efficient execution of securities transactions, and more efficient market operations. It will also advance the prompt and accurate clearance and settlement of securities transactions. See sections 11A(a)(1) and 17A(a)(1).

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed enhancements will promote competition by enabling the Exchange to compete more effectively for order flow with other exchanges which utilize automated order delivery and execution systems.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange received a written comment on the proposed rule change from the Alliance of Floor Brokers (AFB). The AFB raised four objections to the proposal:

(i) It may result in possible market structure problems;

(ii) It may accelerate a shift toward dealer markets and an erosion of valued auction market protections;

(iii) It may result in a widening of quotas and a commensurate deterioration in the quality of markets; and

(iv) There may be a public perception of professional advantage and market manipulation.

The AFB also alluded to some differences of opinion on the merits of the proposed rule change by two Exchange committees that considered this matter. The Exchange notes that, to the extent any differences of opinion surfaced, they dealt largely with the appropriateness of the order-size eligibility criterion, as a number of order-size eligibility criteria in excess of 3,099 shares were considered and ultimately rejected.

As to the specific concerns raised by the AFB, the Exchange responds as follows:

*Market Structure.* The Exchange does not believe the proposed rule changes will have any adverse impact on market structure. If anything, they will strengthen the efficiency of the current market structure by responding to the interest expressed by members and member firms in timely, cost-effective executions of their orders.

*Shift toward Dealer Markets/Erosion of Auction Market Protections.* The Exchange notes that the proposed rule changes simply facilitate the automated routing of larger-size orders to the specialist's post. The specialists still must expose each order to the Trading Crowd, and afford each order the opportunity to interact with buying/selling interest present at that time in the marketplace. The specialist remains fully subject to the so-called "affirmative" and "negative" obligations, which strictly limit his trading as a dealer to the needs of the market. In addition, Exchange Rule 91 permits a customer who has traded with the specialist acting as both agent and prinicpal on a trade to reject the trade.

Thus, the Exchange does not believe that the proposed rule changes will accelerate any trend toward a dealer market, or undermine in any way the protections of the Exchange's traditional auction market.

*Widening of Quotes/Deterioration in Market Quality.* The Exchange does not believe that the automated routing to the specialist's post of orders up to 3,099 shares will necessarily result in any widening of quotas and deterioration in the quality of the Exchange's market in any of its listed stocks. The Exchange will, however, carefully monitor the impact of the proposed rule changes on market quality. As noted above, the Exchange intends to raise the SuperDOT order-size eligibility criterion to 2,099 shares initially. If, after several months experience with this criterion, there does not appear to be any adverse impact on market quality, the Exchange intends to raise the order-size eligibility criterion to 3,099 shares.

*Professional Advantage/Market Manipulation.* The Exchange does not believe that market professionals have any advantage over public customers in the use of the SuperDOT order routing facility, or that the SuperDOT facility lends itself in any way to market manipulation. The Exchange believes that SuperDOT efficiencies have well-served the needs of public customers, and that the proposed rule changes will further enhance the attractiveness of the SuperDOT system for such customers. In any event, the Exchange notes that its audit trial requirements mandate that member firms indicate when they are trading for their own accounts, so that the Exchange will be readily able to detect any unusual proprietary trading activity through the SuperDOT system.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act. The Exchange believes that the SuperDOT enhancements proposed herein will benefit member organizations by providing more rapid, efficient and cost-effective executions and reports through the Exchange's systems. The changes will also enhance the Exchange's ability to compete with automated order delivery and execution systems on other exchanges. Subject to the approval of the Commission, the Exchange is ready to begin the operation of the proposed changes during this summer. In view of the anticipated benefits of the changes as noted above, and the fact that all preliminary work necessary to implement them is completed, the Exchange requests the Commission find good cause to approve the proposed rule changes on an accelerated basis.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit data, views and arguments concerning the foregoing. In particular, the Commission requests comment on the proposed change in the reference price for SuperDOT market orders. The

NYSE proposed to change the reference price at which orders will be executed if not executed by the specialist within three minutes of receipt from the NYSE last sale prior to the order reaching the floor to the NYSE quotation in the security at the time the SuperDOT order is printed on the NYSE floor. The Commission notes that every other exchange system in which executions occur on a derivative or automated basis, including the NYSE's R4 [1] and "Immediate Reporting" Services,[2] the Pacific Stock Exchange's SCOREX system, the Midwest Stock Exchange's MAX system, and the Philadelphia Stock Exchange's PACE system, provide executions based on the best bid and offer of all market centers included in the Intermarket Trading System ("ITS/BBO").[3]

The Commission recognizes that at present executions would occur in the SuperDOT system only after the order has been held by the specialist for three minutes. The NYSE states that only 1–2% of SuperDOT orders are executed automatically after the expiration of three minutes. Nonetheless, the Commission notes that the NYSE is presently authorized to lower the time period before automatic execution to two minutes without further Commission approval 5.6% of all SuperDOT orders were executed after two minutes had expired. Accordingly, the Commission requests comment whether use by the NYSE of its own quote for this execution purpose is consistent with the standards of the Act, including protection of investors and the development of a national market system.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 10, 1985.

Dated: August 13, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85–19825 Filed 8–19–85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 35–23797; 70–7146]**

## Georgia Power Co.; Proposed Acquisition of Coal Hopper Railroad Cars

August 15, 1985.

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric utility subsidiary of The Southern Company, a registered holding company, has filed an application with this Commission pursuant to sections 9(a) and 10 of the Public Utility Holding Company Act of 1935 ("Act").

Georgia proposes to acquire, by lease or purchase, up to an aggregate of 600 aluminum coal hopper railroad cars during the period prior to December 31, 1986, for use in transporting coal by unit train to coalfired generating plants owned and/or operated by Georgia. Georgia's acquisition of these coal cars will be in such numbers, within the overall limit, at such times and by use of such means as Georgia shall then determine to be necessary or appropriate for proper and economic provision of coal to such plants. The proposal includes coal cars which may be acquired in the future for the replacement of damaged or otherwise retired coal cars for which approval has been requested in this application. Georgia contemplates that the cars which it acquires pursuant to this application will not be held for sublease; however, in the event any of such cars should be subleased, Georgia would account for the proceeds therefrom as a credit against recognized and related coal car expense.

The price per car is expected to be between $43,000 and $46,000, or between $25.8 million and $27.6 million in the aggregate, if the cars are purchased. Qualified proposals to manufacture the aluminum cars have been received from three vendors. Georgia will request bids from approximately 15 non-affiliated equipment leasing companies concerning the acquisition of these cars by leveraged operating lease, the term of which would be between 15 to 25 years with the lessor being entitled for tax purposes to claim depreciation and any available investment tax credit. Georgia would be responsible for maintenance, upkeep, and taxes (other than income taxes imposed on the lessor). Based on current market conditions and the current federal income tax code, Georgia anticipates the semi-annual lease rate (payable in arrears) to be between 4.75% and 5.5%. In addition, Georgia may own the cars for less than 90 days in the process of leasing them as allowed by Internal Revenue Code Section 48(b)(2). Georgia has not yet determined that leasing is the most advantageous method presently available to it for acquisition of these cars and may elect to purchase the cars.

The application and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 10, 1985, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the applicant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application, as filed or as it may be amended, may be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85–19874 Filed 8–19–85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 40–14674; File No. 812–6077]**

## Prudential-Bache Global Fund, Inc., et al.; Application for Amended Order Relating to Waiver and Reduction of Contingent Deferred Sales Charge

August 15, 1985.

Notice is hereby given that Prudential-Bache Global Fund, Inc. and Prudential-Bache Government Plus Fund Inc., both open-end, diversified, management investment companies registered under the Investment Company Act of 1940 ("Act") and Prudential-Bache Securities

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[1] *See* Securities Exchange Act Release No. 20350 (November 4, 1983).

[2] *See* Securities Exchange Act Release No. 21197 (August 2, 1984).

[3] The NYSE's Immediate Reporting Service only provides automatic executions when the NYSE quotes equals the ITS best quote *and* the quote spread is ⅛.

Inc. ("Prudential-Bache", collectively, "Applicants"), each at One Seaport Plaza, New York, NY 10292, filed an application on July 16, 1985, pursuant to section 6(c) of the Act, for an order amending an existing exemptive order of the Commission, dated July 1, 1985 (Investment Company Act Release No. 14615). The existing order exempts the Funds, and any other existing or future registered mutual fund for which Prudential-Bache serves as manager or administrator, and distributor, and which is sold substantially on the same basis as the Funds (collectively, "Exempted Funds"), from the provisions of section 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the assessment (and waiver and reduction in certain cases) of a contingent deferred sales charge ("CDSL") on certain redemptions of their shares. The amended order would grant an additional exemption from section 22(d) of the Act to permit the waiver and reduction of such CDSL under the circumstances described below. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the relevant statutory provisions.

According to the application, the existing exemptive order permits the Exempted Funds to: (i) Impose a CDSL redemptions of their shares, as described in the existing order, (ii) waive such CDSL on redemptions following the death or disability of a stockholder and on redemptions upon certain distributions by qualified retirement plans, and (iii) reduce the CDSL for redemptions by a stockholder who has purchased more than a stated minimum of shares of any one Exempted Fund. Applicants now seek to amend the existing order to permit stockholders of the Exempted Funds to aggregate purchases of shares of one or more specified Exempted Funds for purposes of determining the applicability of any such reduced CDSL. For example, if an Exempted Fund offers a reduced CDSL upon redemption of shares by a stockholder who has purchased more than one million dollars in shares of that Exempted Fund, purchases by that stockholder of shares of one or more additional specified Exempted Funds would be counted in determining whether the one million dollars threshold has been reached.

In addition, Applicants propose to consider the following affiliated stockholders of the Exempted Funds as one for purposes of determining the availability of the reduced CDSL: (i) An individual, his or her spouse, and his or her children under the age of 21, purchasing securities for his, her or their account; (ii) any organized group of persons which has been in existence for more than six months and has some purpose other than the purchase of redeemable securities of registered investment companies at a discount; (iii) a corporation, partnership or trust; other corporations, partnerships or trusts controlling, controlled by or under common control therewith; and any employee benefit plan or plans covering employees of one or more of such affiliated entities; (iv) a corporation, partnership or trust together with any natural persons controlling such corporation, partnership or trust; and (v) one or more trusts established by the same grantor. Finally, Applicants propose to waive the CDSL on redemptions of shares of an Exempted Fund which were purchased through reinvestment of dividends or distributions of other specified Exempted Funds.

Applicants assert that the proposed waiver and reduction of the CDSL based upon the aggregation and dividend reinvestment privileges described above are fair and equitable and in the best interests of the stockholdres of the Exempted Funds. Applicants represent that selling effort and expense is reduced for sales of Exempted Fund shares to purchasers who are already stockholdres of another Prudential-Bache Mutual Fund, and to purchasers who are affiliated with existing stockholdres. Applicants further represent that no selling effort or expense is involved in the case of Exempted Fund shares purchased through reinvestment of the dividends and distributions from other Exempted Funds.

Applicants submit that, notwithstanding that the CDSL is assessed upon redemption rather than purchase, it should nonetheless be construed as a sales load within the meaning of section 2(a)(35) of the Act. Applicants represent that the Exempted Funds' proposed waiver and reduction of the CDSL on the basis of such aggregation or dividend reinvestment privileges will comply with the provisions of Rule 22d–1 under the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85–19875 Filed 8–19–85; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34–22329; SR–NYSE–85–23]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

August 14, 1985.

The New York Stock Exchange, Inc. ("NYSE") submitted on June 17, 1985, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to modify the NYSE's definition of the term "sales sheet" as applicable to the NYSE's rules governing its publication of transactions and corrections to transaction reports. That definition is set forth as Supplementary Material in paragraphs 2128A and 2128B of the NYSE rule book (the "Supplementary Material" originally referred to former NYSE Rule 125 which was rescinded in 1975). The proposed change would re-define the term "sales sheet" to mean "the list of transactions published by the New York Stock exchange or its authorized agents," and would substitute that definition for "the list of transactions published by Francis Emory Fitch, Inc.," which is the existing definition.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 22186, June 28, 1985) and by publication in the **Federal Register** (50 FR 27880, July 8, 1985). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange and, in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 85-19876 Filed 8-19-85; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[License No. 06/06-5176]**

### Surrender of License; Edict Investment

Notice is hereby given that Edict Investment Corp. (Edict) has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Edict was licensed by the Small Business Administration on March 20, 1975.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on August 12, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: August 14, 1985.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 85-19845 Filed 8-19-85; 8:45 am]

BILLING CODE 8025-01-M

**[License No. 02/02-0407]**

### Equities Capital Co., Inc.; License Surrender

Notice is hereby given that Equities Capital Co., Inc., 890 West End Avenue, New York, New York 10025, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Equities Capital Co., Inc. was licensed by the Small Business Administration on October 22, 1980.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender of the license was accepted on July 31, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 12, 1985.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 85-19846 Filed 8-19-85; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Petition No. 85-2W; Notice 2]**

### Transportation of Natural and Other Gas by Pipeline: Grant of Waiver; Transcontinental Gas Pipe Line Corp.

Transcontinental Gas Pipe Line Corporation (Transco) has petitioned the Materials Transportation Bureau (MTB) for a waiver from compliance with the requirements of 49 CFR 192.553(d) to permit the maximum allowable operating pressure (MAOP) of seven pipeline segments located in Somerset and Morris Counties, New Jersey (totaling eight and seven-tenths (8.7) miles) to be increased to 800 psig from the current 722 psig. These segments, which are in location Class 3, are part of a pipeline designated by Transco as the 36-inch Caldwell Lateral which is approximately 22.83 miles in length (MP 1789.53 to 1812.36). There is a need to increase the operating pressure of this pipeline segment to 800 psig due to anticipated swings in Transco's customers' delivery volume requirements. Transco estimates that replacement of the 8.7 miles of 36-inch pipeline involved would cost $13,000,000 if the waiver is not granted.

In response to this petition, MTB issued a notice of a petition for waiver inviting interested persons to comment (50 FR 26652, June 27, 1985). In this notice MTB explained why it was considering granting Transco a waiver from § 192.553(d) to permit uprating to an MAOP of 800 psig. Transco could then qualify the pipeline in the 8.7 miles of Class 3 Locations for the desired 800 psig MAOP by confirming this MAOP for class 3 areas with a 90 percent SMYS hydrostatic test as permitted by § 192.611(c), assuring an equivalent level of pipeline safety. Transco stated in the petition that it will hydrostatically test the entire subject pipeline to over 90 percent SMYS.

Comments were received from three pipeline operators and one industry organization in response to the invitation to comment. All comments supported the granting of the waiver. The commenters indicated that, under the conditions faced by the petitioner, there would not be any reduction in public safety and a waiver is the most logical course of action.

In consideration of the foregoing, MTB by this order finds that compliance with § 192.553(d) is unnecessary for the reasons set forth in Notice 1, and that the requested waiver would not be inconsistent with pipeline safety. Accordingly, effective immediately, Transcontinental Gas Pipe Corporation is granted a waiver from compliance with § 192.553(d) regarding the seven Class 3 segments described above for the purpose of uprating to 800 psig.

(49 U.S.C. 1672; 49 CFR Part 1.53(a); Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on August 15, 1985.

**Richard L. Beam,**

*Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.*

[FR Doc. 85-19828 Filed 8-19-85; 8:45 am]

BILLING CODE 4910-60-M

### National Hazardous Materials Transportation Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. 1), notice is hereby given of a meeting of the National Hazardous Materials Transportation Advisory Committee (NHMTAC) on September 10 and 11, 1985, at 9:00 a.m. in Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

The purpose of the meeting is to receive and to discuss the reports on the findings and/or recommendations of the Committee's three working groups and to take action on these findings. The working groups are organized around the three areas of prevention, information exchange, and emergency response, which the Committee had previously determined to be issues of priority concern.

Attendance is open to the public but limited to the space available. Members of the public may present written statements to the Committee before or after any meeting of the Committee. Such statements should be sent to: National Hazardous Materials Transportation Advisory Committee, ATTN: Ms. Cecy Ivie, Materials Transportation Bureau (DMT-60), Room 8432, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Dated: August 19, 1985.

**Sherwood C. Chu,**

*Associate Director for Regulatory Planning and Analysis, Materials Transportation Bureau.*

[FR Doc. 85-19906 Filed 8-20-85; 8:45 am]

BILLING CODE 4910-60-M

## UNITED STATES INFORMATION AGENCY

### Reporting and Information Collection Requirement Under OMB Review

**AGENCY:** United States Information Agency.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval and to publish a notice in the **Federal Register** notifying the public that such a submission has been made. USIA is requesting approval of a form letter that will be used to collect data on the audience size and reactions to Radio Marti programming to Cuba.

**DATE:** Comments must be received by September 20, 1935.

Copies: Copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

**FOR FURTHER INFORMATION CONTACT:** Agency Clearance Officer, Charles N. Canestro, United States Information Agency, M/M, 301 Fourth Street SW., Washington, DC 20547, telephone (202) 485-8676. And OMB review: Michael Weinstein, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, telephone (202) 395-4814.

**SUPPLEMENTARY INFORMATION:** Title: "Radio Marti Audience Response Mailer". This form letter will be circulated to Cuban exiles living in the Miami area to elicit information about the reception of Radio Marti in Cuba, and audience reaction to its programming style and content.

Dated: August 16, 1935.

**Charles N. Canestro,**

*Federal Register Liaison.*

[FR Doc. 85-19837 Filed 8-19-85; 8:45 am]

BILLING CODE 8230-01-M

### Grants Program for Private Not-for-Profit organizations; in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a progam of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The primary purpose of the program is to enhance the achievement of the Agency's international public diplomacy goals and objectives by stimulating and encouraging increased private sector commitment, activity and resources. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-075, entitled "A Grants Program for Private Organizatons," expiration date January 31, 1987.

The United States Information Agency is interested in working cooperatively with private sector organizations and is requesting proposals (deadline October 11, 1985) for the following program:

#### USIA Young Journalist Exchange with FRG

*Summary*

USIA plans to support an exchange program for young journalists from the United States and the Federal Republic of Germany. The program will involve a 21-day visit by 15 Americans to the FRG and a similar visit by 15 Germans to the U.S. Americans will have seminars and briefings in Bonn and Berlin, as well as individual "internships" at German newspapers or broadcasting organizatons. ("Internship" is used for lack of an adequate term to describe an arrangement whereby the American journalist will visit a German counterpart at the latter's news organization in the FRG and accompany him as he goes about his work.) Germans will have similar programs in Washington and another U.S. city, as well as internships at the same news organizations for which the Americans have been recruited. The programs, beginning with the American visit to the FRG, will take place early in 1986.

*Background*

USIA and its represenatives in Bonn worked with private sector organizations in the United States and the Federal Republic of Germany in the fall of 1984 on an exchange program involving young journalists from the U.S. and FRG. A key element in the exchange was its reciprocity: American and German news organizations were matched for the internship phase. The exchange was considered very successful in helping the young journalists gain a better understanding of each others' countries, including the policies of their respective governments and the workings of their respective news media.

*Program Description*

The 21-day programs should take place in early 1986, beginning with the American visit to the FRG. Prior to that time, the U.S. grantee organization will be responsible for recruiting 15 American young journalists (generally under 40 but with no absolute age restriction) from the print, radio and television media. Recruiting should include a reasonable element of competition, but considerable emphasis will be placed on the willingness of the journalist's employer to host a German in the second phase of the exchange. Thus, the task of recruiting American journalists will be closely tied to that of arranging for internships for the Germans. Fluency in German is not required but would be highly desirable. It is assumed that the grantee will contact the 15 news organizations involved in the 1984 exchange to see if they want to participate again. the grantee will work with USIA to arrange a Washington briefing for the American journalists prior to their departure for the FRG.

The progrm in the FRG will be the responsibility of the U.S. Information Service (USIS) Bonn and a German cosponsor, probably the Konrad Adenauer Foundation. The Americans will spend somewhat more than a week in Bonn, a week on individual internships at German news organizations, and somewhat less than a week in Berlin. During the interships the Americans will be paired as much as possible with the German journalists they will later host in the U.S. To the extent languge ability and other factors permit, they will work alongside their German counterparts in the daily operations of the news organizaton. The time in Bonn and Berlin will be spent on briefings by government and political figures (from all significant FRG parties) and meetings with prominent journalists, U.S. and other NATO officials, and others with specialized knowledge about the FRG and Europe generally. It will be the responsibility of the U.S grantee organization to collect brif written reports from the Americans on their FRG experiences and forward them to USIA. (Newspaper articles or broadcast tapes or transcripts, accompanied by an informative letter, could fulfill this requirement.)

The 15 German journalists will be chosen by the FRG cosponsor. They will be expected to speak English a well enough so that no interpreters are required. The U.S. grantee will arrange travel for the 15 Germans roundtrip from Frankfurt to the U.S. (APEX fare on an American carrier), as well as within the U.S. It will organize for the Germans a seminar on American political, social, cultural and other themes, and arrange attendance at cultural events and home hospitality in the city where the grantee organization is located. This should last somewhat less than a week. The National Council of International Visitors (NCIV) network can help with home hospitality.

The grantee will work with USIA to arrange a day or two of briefings with government officials, national journalists and others in Washington. (The U.S. program can begin with the Washington briefings if this is more feasible logistically.) Then the grantee will arrange for each German to travel to a news organization for a two-week internship, where he or she will work alongside the American counterpart from the first phase of the exchange. (The U.S. internships can no longer because the Germans will speak English and thus require less personal attention.) The grantee should arrange with the host news organization and the NCIV network, where feasible, for as much home hospitality as possible in each case. The grantee will arrange for the Germans to reassemble in Washington (or another city if more convenient) for a final debriefing session before their return to the FRG.

Finally, the grantee will follow up with the news organizations and German journalists to evaluate the success of the program and report the results to USIA.

*Funding*

USIA is most interested in working with organizations that show promise for innovation and cost-effective programming. Organizations also must demonstrate a potential for designing programs that will have a lasting impact on their participants.

Competition for USIA funding is keen. Final selection is based not only on cost-effectiveness, institutional in-kind contributions, and minimal overhead, but also on the substantive nature of the program and professional capability to carry it through to a successful conclusion.

Costs may include, but are not necessarily limited to, the following:

Roundtrip airfare from Frankfurt to the U.S. (American carrier) and U.S. travel for 15 Germans to include the city where the grantee organization is located, Washington, and the cities where the individual internships will take place. It should be assumed that participants will be selected early enough to take advantage of advance purchase savings.

Per diem for 15 Germans for 21 days at an average of $75 per day. (The maximum allowable per diem for international visitors is $100, but homestays during part of the visit should make it possible for the $75 average to be maintained.)

Transportation and per diem ($75 per day maximum) for project staff travel to Washington, honoraria and other costs associated with seminars, costs of cultural events for participants.

Adminstration, including project staff salaries and fringe benefits, telephone and postage, office supplies, and indirect costs as a percentage of direct administrative costs.

To be eligible for consideration, organizations *must* forward their proposals for receipt at USIA by COB October 11, 1985.

Because of the competitive nature of this solicitation, guidance in proposal development from the Office of Private Sector Programs (E/P) will be restricted to technical issues (202–485–7326).

Office of Private Sector Programs, Bureau of Educational and Cultural Affairs (ATTN: Initiative Programs), United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547

Dated: August 15, 1985.

**Robert Francis Smith,**

*Director, Office of Private Sector Program.*

[FR Doc. 85–19838 Filed 8–19–85; 8:45 am]

BILLING CODE 8230–01–M

# Sunshine Act Meetings

Federal Register
Vol. 50, No. 161
Tuesday, August 20, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 11:00 a.m., Monday, August 26, 1985.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 16, 1985.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 85-19965 Filed 8-16-85; 3:49 pm]

BILLING CODE 6210-01-M

2

**PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL**

**AGENCY:** Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

**STATUS:** Open. The Council also will hold an executive session to discuss pending litigation.

**TIME AND DATE:** 10:00 a.m., August 28-29, 1985.

**PLACE:** North Shore Resort Hotel, North Shore Plaza, Coeur d'Alene, Idaho.

**MATTERS TO BE CONSIDERED:**

- Public Comment on Issue Paper on Salmon and Steelhead Productivity Analysis.
- Public Comment on Issue Paper on Strategies for Investments in Salmon and Steelhead Production.
- Public Comment on Issue Paper on Resident Fish Substitutions for Salmon and Steelhead losses.
- Status Report on the Columbia River Basin Fish and Wildlife Program Goals Process.
- Council Business.

Public comment will follow each item.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bess Wong, (503) 222-5161, or toll-free 1-800-222-3355 (Montana, Idaho or Washington) or 1-800-452-2324.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 85-19902 Filed 8-16-85; 10:41 am]

BILLING CODE 0000-00-M

federal register

Tuesday
August 20, 1985

Part II

# Environmental Protection Agency

40 CFR Part 131

Water Quality Standards for Surface Waters of the State of Idaho; Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 131**

**[OW-FRL-2764-6]**

## Water Quality Standards for Surface Waters of the State of Idaho

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** On July 15, 1980, the Regional Administrator for Region X of the Environmental Protection Agency (EPA) approved water quality standards adopted by the State of Idaho except for four provisions. The disapproved sections included: (1) Dissolved oxygen concentrations immediately downstream from impoundments, (2) the ammonia concentrations generally applied to Idaho's coldwater Biota and Salmonid spawning waters, (3) the specific ammonia concentration for Indian Creek, and (4) the exemption of dams and hydroelectric generating facilities from the State's antidegradation statements. The Agency is today proposing rules to bring the Idaho water quality standards into compliance with the Clean Water Act.

**DATES:** All written comments received on or before November 18, 1985 will be considered in the preparation of the final rule. EPA will hold public hearings on September 24, 25, and 26. For times and locations please see **ADDRESSES.**

**ADDRESSES:** Written comments should be submitted to David Sabock, Criteria and Standards Division (WH-585), EPA, Washington, DC 20460. EPA will hold public hearings on September 24, 1985, 7:30 P.M., Boise State University, Big Four Room, 1910 Canyon Springs Inn, 1357 Blue Lakes Boulevard, North Twin Falls, Idaho; September 25, 1985, 7:30 P.M., Idaho State University, Salmon River Suite, Student Union Building, Pocatello, Idaho; and September 26, 1985, 7:30 P.M., Coeur d'Alene City Hall, Coeur d'Alene, Idaho.

**FOR FURTHER INFORMATION CONTACT:** David Sabock, (202) 245-3042.

**SUPPLEMENTARY INFORMATION:** Section 303(c) (33 U.S.C. 1313(c)) of the Clean Water Act, (66 Stat 816) (33 U.S.C. 1251 *et seq.*), (the Act) establishes the requirements for State water quality standards review and revision. This section provides that, at least once every three years, each State shall hold public hearings for the purpose of reviewing water quality standards and, as appropriate, modifying and adopting standards. Whenever a State revises its water quality standards or adopts new standards, such standards must be submitted to EPA. If EPA determines that a standard is not consistent with the applicable requirements of the Act, EPA must notify the State and specify changes necessary to meet the requirements of the Act. If such changes are not adopted by the State within 90 days after the date of notification, EPA is required to promulgate water quality standards for the State consistent with the Act. Section 303(c) also provides EPA the authority to promulgate water quality standards in any case where necessary to bring state water quality standards into compliance with the Clean Water Act. Such action can be taken outside of the approval-disapproval process described above. EPA's action today begins this promulgation process. All public comments and further information submitted by the State of Idaho will be considered in formulating final regulations. EPA encourages Idaho to revise its standards during this proceeding to make them consistent with the Act. EPA will withdraw any rules promulgated once Idaho makes its regulation consistent with the Clean Water Act.

EPA's Water Quality Standards Regulation provides opportunity for the State to develop site-specific criteria in lieu of adopting the Agency's National Recommendations. During the discussions on Idaho's Water Quality Standards it was suggested that a site-specific dissolved oxygen criterion analysis downstream from American Falls Dam may be appropriate. However, no study plan or other details have been transmitted to EPA for review. EPA's action today proposes a dissolved oxygen criterion consistent with its best information on the requirements of fish and other aquatic life. If during the comment period a study outline for American Falls Dam is placed into the record of this proposed rulemaking as a firm State commitment, and EPA agrees that the plan has a reasonable chance of demonstrating a criterion different from that proposed today, then EPA would defer the effective date of any final promulgation of federal dissolved oxygen criteria applicable downstream from American Falls Dam. However, the Agency would condition that deference on the Idaho Power Company maintaining dissolved oxygen concentrations substantially consistent with today's proposed rulemaking during the period of study. (A cursory review by EPA of monitoring data from 1982-84 at American Falls Dam indicates that Idaho Power Company maintained an average above 6 mg/l and never violated a 4 mg/l minimum dissolved oxygen concentrations.) EPA specifically seeks public comment on the scope of such a study.

### A. Background

The Idaho Department of Health and Welfare (IDHW) held public hearings on October 4 and December 27, 1979, to receive comments on proposed revisions to the Idaho water quality standards. After extensive public involvement, revised standards were adopted by the Board of Health and Welfare on January 9, 1980.

EPA's concerns with the revised standards were provided to IDHW. Additional public involvement and debate occurred during the Legislature's consideration of the water quality standards. The Legislature subsequently adopted the revised standards and instructed IDHW staff to cease negotiations with EPA on the issues of concern. The revised standards were then submitted to EPA on May 19, 1980. A copy of the "Public Record of Adoption Process" was included in that submittal.

On July 15, 1980, the Regional Administrator, Region X, notified the Director of IDHW that all but four elements of the "Revised Water Quality Standards and Wastewater Treatment Requirements" were approved. The notification stated that judgment was being withheld on the following revisions:

(1) Section 1-2276: The general downgrading of the dissolved oxygen standard to a 5.0 mg/1, 4-hour arithmetic mean criterion for waters below dams and reservoirs.

(2) Section 1-2279: The assignment of a 1.0 mg/1 un-ionized ammonia criterion for lower Indian Creek (below Nampa).

(3) Sections 1-2250.04(e) and 1-2250.05(e): A criterion which permits up to 0.04 mg/1 un-ionized ammonia (30-day arithmetic mean) for coldwater biota and salmonid spawning waters.

(4) Section 1-2300.1: The exemption of dams from Idaho's antidegradation policy.

On August 18, 1980, the EPA Regional Administrator, Region X, notified the Director of IDHW that the above four standards were disapproved. The notification also contained a brief explanation for each of the four disapprovals. The Director of IDHW responded to this action on September 4, 1980, by giving notice to EPA that neither the IDHW nor the Board of Health and Welfare planned to propose any changes to the four provisions disapproved by EPA. Included in this response was an explanation of the

State's position on each of the four provisions.

**B. Statutory Basis for Today's Proposal**

Under the Clean Water Act a water quality standard for a particular water body consists of two parts: a designated "use" for which the water body is to be protected (such as "agriculture," "recreation," or "fish and wildlife") and numerical pollutant concentrations or narrative criteria which will support that use. A more detailed discussion of water quality standards is presented in the Water Quality Standards Regulation (40 CFR Part 131) and the EPA guidance document, "*Water Quality Standards Handbook*".

Establishing the "use" component of a water quality standard for a given water body involves judgment as to what use is attainable, given the goals of the Act and the water body's use and value for various purposes. The Act and EPA's regulations state that water quality standards shall be established taking into consideration the water's use and value for various purposes such as public water supply, propagation of fish and wildlife, recreation, industry, agriculture, and navigation (Section 303(c)(2); 40 CFR 131.10(a)).

The criteria describe the chemical, physical, and biological characteristics needed to attain and protect a designated use. The criteria are founded on scientific considerations only.

Section 303(c) of the Act requires that State water quality standards ". . . protect the public health and welfare, enhance the quality of water and serve the purposes of this Act." The purpose of water quality standards, as with other sections of the Act, is to achieve, wherever attainable, ". . . water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water . . ." (Section 101(a)(2)).

*Relationship of Standards to Effluent Limitations*

In order to ensure attainment of a water quality standard, it may be necessary to implement that standard (whether State adopted or Federally promulgated) through effluent limits that must be met by individual point source dischargers. The procedure followed by EPA to establish specific effluent limits for reissuance of National Pollutant Discharge Elimination System (NPDES) permits involves a number of steps. The first of these is completion of a water quality survey and determination of the allowable pollutant loading to a defined portion of a receiving water (e.g., a stream segment) by mathematical modeling. The load which will allow water quality standards criteria to be met is allocated among the dischargers (wasteload allocation (WLA)). These allocated loads will form the basis of specific NPDES permit discharge limitations if minimum technology-based limitations will not ensure compliance with the applicable criteria.

Revision of water quality standards during the term of a permit may cause the reevaluation of permit effluent limits prior to the permit reissuance. Evaluation of the adequacy of effluent limits may result in deciding that (1) the limits are adequate, (2) the effluent limits require change, or (3) there is a need for further detailed evaluation. Water quality modeling associated with WLAs is also used in determining the attainability of different water quality standards for specific stream segments.

**C. Proposed Actions**

EPA proposes to replace with more restrictive requirements each of the four areas of Idaho water quality standards which were disapproved on August 18, 1980. These proposed requirements include: (1) Replacing the State dissolved oxygen criterion downstream from dams with a dissolved oxygen criterion that will protect the designated uses of these waters, (2) partially replacing the State's ammonia criteria for warm water, cold water, and salmonid spawning uses with EPA's recommended un-ionized ammonia criterion, (3) replacing the State's ammonia criterion of 1.0 mg/l for Indian Creek with the EPA recommended ammonia criterion, and (4) deleting the categorical exemptions for dams from the antidegradation rule. EPA did not disapprove Idaho's warm water ammonia criterion in 1980. The Agency is none the less proposing to partially supersede that criterion in this action. The technical reasons for this action are explained in C.2. EPA has authority to take this action under section 303(c)(4) of the Clean Water Act (33 U.S.C. 1313(c)(4)). However, EPA's information indicates that no discharges would be immediately adversely impacted if this proposal were to become final. A more detailed discussion of these proposed actions follows:

*1. Dissolved Oxygen (DO)*

a. State Adopted Criterion

The Idaho State criterion which EPA has disapproved and is proposing to supersede is as follows:

Section 1-2276 DISSOLVED OXYGEN STANDARD FOR WATER DISCHARGED FROM DAMS, RESERVOIRS, AND HYDROELECTRIC FACILITIES

.01 *Waiver for Specific Time Period.* During the period beginning on May 15 and ending on October 15, annually, water discharged from dams, reservoirs, and hydroelectric facilities shall not be subject to the provisions of Manual § 1-2250.03(a), 1-2250.04(a), or 1-2250.05(a).[1]

.02 *Minimum Requirements.* During the time period specified in Manual § 1-2276.01, water discharged from dams, reservoirs, and hydroelectric facilities shall contain not less than 5.0 mg/l dissolved oxygen based on the average of at least four consecutive measurements taken within any sixty minute period. For compliance purposes, water containing less than 5.0 mg/l dissolved oxygen, (hourly average as defined herein) for four or more consecutive hours, shall be considered in violation of the provisions of this section.

.03 *Point of Measurement.* For the purpose of determining compliance with Manual § 1-2276.02, the dissolved oxygen shall be measured at a single location in the river downstream from the hydroelectric facilities. Such location shall be as close to the facilities as practical to obtain a representative measurement, but in all cases shall be sufficient distance downstream to allow thorough mixing of reaerated waters, spilled bypass waters, and other waters that have passed through the facility.

b. Basis of EPA Disapproval

EPA's disapproval of this dissolved oxygen criterion for waters downstream from dams is based on the conclusion that it does not protect the designated uses of the affected waters.

During the State hearings on the proposed amendments to the standards, conflicting technical arguments were presented. Testimony was strongly divergent, both for and against lowering the dissolved oxygen criterion for waters downstream from dams, reservoirs, and hydroelectric generating facilities. However, the State provided no explanation of how a less restrictive dissolved oxygen criterion would ensure adequate protection for the designated uses of the affected waters, which are cold water biota and salmonid spawning.

It is important to note that salmonid fishes inhabit water immediately downstream from impoundments throughout the State. Moreover, many of

[1] Sections 1-2250.03(a), 1-2250.04(a) and 1-2250.05(a) establish dissolved oxygen concentrations for warm water biota, cold water biota and salmonid spawning waters, respectively.

these waters are presently salmonid spawning areas. As a family, salmonids are recognized as being among the biota most sensitive to reductions of dissolved oxygen, with larvae development being the most oxygen-sensitive stage of life for salmonids. This fact is widely supported by published dissolved oxygen research on salmonids. Idaho recognized this fact for all salmonid spawning waters, except those immediately downstream from dams and reservoirs, by adopting a salmonid spawning dissolved oxygen criterion that is more restrictive than the dissolved oxygen criterion for any other water use classification in the State. Yet, Section 1–2276 allows dissolved oxygen concentrations in waters downstream from dams, reservoirs, and hydroelectric generating facilities from mid-May to mid-October, to be less stringent than that which the State recognizes as necessary for the general protection of more dissolved oxygen tolerant biota. The needs of salmonids in waters downstream from dams are no different than the needs of salmonids in any other waters. As explained below under justification for proposal, a 5.0 mg/l average concentration in the water column is inadequate to protect salmonid fish.

In addition to the actual criterion, EPA's analysis of Idaho's dissolved oxygen criterion in Section 1–2276 disclosed a number of unacceptable elements. These include (1) a reduction of dissolved oxygen requirements during the warmest months of the year when fish's oxygen needs are the greatest, (2) a single average number for a criterion that provides no minimum protective limit, and (3) complex and confusing sampling requirements.

Biologically, the period of May 15 to October 15 is a dangerous period to allow lower dissolved oxygen concentrations because warmer waters increase the dissolved oxygen needs for aquatic organisms. In addition, the greatest fish growth potential occurs during this time, and migration, spawning, and incubation of both salmonid and non-salmonid fish occur during this period. Sound biological reasons exist to maximize rather than minimize the dissolved oxygen supply during this period.

Because Idaho's criterion is a single number (5 mg/l) based on an average, EPA disapproved the dissolved oxygen requirement in 1–2276.02 as unacceptable for any body of water. Averages do not constitute adequate standards because they allow extreme excursions to lethal levels. For example, the Idaho standard would allow the dissolved oxygen concentrations to fall to 0 mg/l, killing or displacing most organisms, and yet still be in compliance with the standard. Additionally, at least 16 consecutive dissolved oxygen analyses would be required at approximately 15-minute intervals to comply with the monitoring procedure outlined in the standard. The monitoring scheme appears unnecessarily complex, even for a standard based upon an average concentration.

c. Contents of Proposed Rule

EPA proposes to supersede Idaho's dissolved oxygen requirements in 1–2276.02 for waters in Idaho that are discharged from dams, reservoirs, and hydroelectric facilities. The EPA proposed rule is from a draft dissolved oxygen criterion document. This document will be described more fully in the next section of this preamble.

d. Basis for Proposed Rule

EPA has recently proposed a revision to its dissolved oxygen criterion under authority of Section 304(a) of the Clean Water Act, a Notice of Availability of which was published in the **Federal Register** (50 FR 15634, April 19, 1985). It is anticipated that following incorportion of relevant public comments, a replacement for the existing dissolved oxygen criterion contained in *Quality Criteria for Water* (1976) will be adopted by EPA.

This revised criterion is being used in this proceeding by the Agency because of its incorporation of a substantial amount of new information on salmonid fish available since the 1976 criterion was published. Because the issue in Idaho involves salmonid fish, this information is necessary for making a decision based on the latest scientific information available. EPA solicits comments on all aspects of this proposed rulemaking but would specifically ask the public to comment particularly on the dissolved oxygen recommendation as to the degree of protection it allows for aquatic life in Idaho's waters.

EPA hereby incorporates into the administrative record of this proceeding this draft dissolved oxygen criterion document. Timely comments received on the draft criterion document will also be considered in the administrative record for Idaho. The criterion table in proposed § 131.34 is different from the one in the criterion document only in the minimum concentration allowed (i.e., absolute minimum of 4.0 mg/l) for both coldwater and warmwater aquatic life, and in the deletion of a 7-day mean minimum for warmwater aquatic life. These changes are justified by EPA on the basis that the locations where the Idaho proposal would apply are different from that assumed in the proposed national dissolved oxygen criterion document. The national criterion assumed a condition typical of streams approaching critical conditions by a slow recession in daily flows concomitant with increasing temperatures. This situation allows aquatic life to adjust to adverse water quality or to leave the area. Conversely, in areas downstream from impoundments, especially those used for peaking hydropower, water quality changes can occur very quickly. Aquatic life are unable to acclimate to such rapid changes which may result in acute and chronic effects at higher absolute concentrations than recommended in the proposed national criterion document.

An additional reason justifying the higher minimum dissolved oxygen concentration for warm water biota is the way Idaho defines coldwater and warmwater biota. Coldwater biota are defined as those species with optimum growth at less than 18 °C (§ 1–2100.3) and warmwater biota are those species with optimum growth at greater than 18 °C (§ 1–2100.04). EPA is concerned with protecting oxygen-sensitive "cool water" species like small mouth bass which are classified warmwater biota under the State's definition. These cool water species have oxygen requirements similar to salmonids. Therefore, EPA believes more stringent warmwater dissolved oxygen criteria are justified.

These criteria represent dissolved oxygen concentrations which EPA believes provide a reasonable and adequate degree of protection for freshwater aquatic life. The criteria document also contains guidance on compliance with these criteria. Of utmost importance is the achieving of the criteria for early life stages.

The dissolved oxygen needs of developing salmonid embryos and larvae in spawning gravel are of particular concern. First, these early stages of salmonid development are the most sensitive to reduced dissolved oxygen concentrations. Second, the dissolved oxygen concentration in the interstitial waters of spawning gravel is likely to be significantly lower than that in the water column above. Third, the embryo and larvae stages of salmonid fish live down in the gravel. Such dissolved oxygen reductions result from the oxygen demand of developing fish and other organisms present as well as organic material in the gravel. The difficulty of maintaining high dissolved oxygen concentrations in the spawning

gravel is compounded by siltation which slows the flow of water through the gravel.

EPA's criteria document concludes that dissolved oxygen in the intergravel environment is generally 3 mg/l less than in the overlying water. In order to provide embryos and larvae with sufficient oxygen, the overlying water should contain 3 mg/l more dissolved oxygen than necessary in the gravel.

2. *Un-ionized Ammonia*

a. State Adopted Standard

The Idaho criteria which EPA is proposing to supersede are as follows:

Section 1–2250 WATER QUALITY STANDARDS FOR USE CLASSIFICATIONS

.03 *Warm Water Biota.* Waters designated for warm water biota are to exhibit the following characteristics:

* * * (e) Mean concentration of un-ionized ammonia at a level of 0.05 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period.

.04 *Cold Water Biota.* Water designated for cold water biota are to exhibit the following characteristics:

* * * (e) Mean concentration of un-ionized ammonia at a level of 0.04 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period if water quality characteristics are near optimal for the protected use. In all other cases, the mean concentration of un-ionized ammonia is to be 0.02 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period.

.05 *Salmonid Spawning.* Waters designated for salmonid spawning are to exhibit the following characteristics during the spawning and incubation periods for the particular species inhabiting those waters:

* * * (e) Mean concentration of un-ionized ammonia at a level of 0.04 mg/l or less as based on a minimum of five (5) samples taken over a thirty (30) day period if water quality characteristics are near optimal for the protected use. In all other cases, the mean concentration of un-ionized ammonia is to be 0.02 mg/l or less as based on a minimum of five (5) samples to be taken over a thirty (30) day period.

Section 1–2279 INDIAN CREEK—BELOW SUGAR AVENUE, NAMPA—SWB 282—UN-IONIZED AMMONIA. Un-ionized ammonia shall not exceed 1.0 mg/l in that segment of Indian Creek from below Sugar Avenue to the Boise River.

b. Basis of EPA Disapproval

EPA's disapproval of the State's ammonia criteria for cold water biota, salmonid spawning, and Indian Creek is based on our conclusion that these criteria do not necessarily protect the designted uses of the affected waters. As background, it is important to note that, prior to January 1980, Idaho did not have an official water quality criterion for un-ionized ammonia. However, through a general toxic chemical regulation, a maximum ammonia level of 0.02 mg/l was recognized as appropriate. This action level was more restrictive than the criteria adopted by the State in 1980 which permits up to 0.04 mg/l un-ionized ammonia in receiving waters.

During the State-held public hearings, little testimony was received on adopting un-ionized ammonia criteria. However, the majority of the statements made regarding ammonia were in favor of retaining the 0.02 mg/l limitation.

In addition to the actual ammonia concentration, EPA's analysis of the State's ammonia criteria at Sections 1–2250.04(e) and .05(e) disclosed additional unacceptable aspects.

The proposal to allow higher ammonia concentrations in waters where "water quality characteristics are near optimal for the protected use" creates several problems.

The phrase "water quality characteristics" could include a multitude of parameters such as temperature, dissolved oxygen, pH, suspended solids, pesticides, metals, and organic chemicals. The State-adopted criterion does not specify what characteristics are intended to be included.

The term "optimal" is not defined. Presumably, the optimum concentration of pesticides and most organic chemicals is zero. However, the maximum concentrations that may still be considered near optimal are not discussed. Compounding this problem are the undefined optimal levels for other toxic constituents such as metals, some of which are essential micronutrients, or suspended solids, which can hinder insect respiration, erode fish gills, and yet bind otherwise toxic pollutants and remove them from solutions.

In an even simpler context, ranges of temperature, dissolved oxygen concentration, and pH values to be considered optimum are not defined.

In general, ammonia and other toxic materials are tolerated better by aquatic life under conditions where other stresses are absent. However, because it is impossible to prove that all other stresses are absent or that other water quality characteristics are near optimal, the lower ammonia criterion seemingly must always be used. Therefore, the more lenient ammonia criteria are inappropriate. However, because provision for its application was included in the criterion EPA must assume that the State intended the less restrictive criterion to be applicable to at least some waters.

Another problem with the disapproved criteria is its reliance on mean concentrations. Criteria based on mean concentrations are often deceptive and depend greatly upon the range of the various individual observations. For example, the EPA-disapproved criterion of 0.04 mg/l is based on a minimum of five samples taken over a 30-day period (the minimum sample spacing is not specified, but daily grab samples seem reasonable). At one extreme, four samples of 0.05 mg/l and one of 0.02 mg/l would violate the criterion (presumably the four samples of 0.05 mg/l could be only minutes apart). At the other extreme, six samples could be 0.00 mg/l and one 0.25 mg/l and not be in violation, even though 0.25 mg/l could be acutely lethal.

c. Contents of Proposed Rule

EPA proposes that its national criteria recommendations for un-ionized ammonia be promulgated to supersede Idaho's criteria for salmonid spawning (§ 2250.05(e)), cold water biota (§ 1–2250.04(e)) and warmwater biota (§ 2250.03(e)). Even though the warmwater biota criterion was not disapproved by EPA, the proposed rule includes warmwater biota because the Agency's criteria document shows that at temperatures less than 20°C there is no scientific basis for criteria artificially separated according to biota temperature preference. Thus, some warm water biota are as sensitive to ammonia as salmonids at temperatures less than 20°C. EPA is making this proposal in order to eliminate the artificial separation of warm water and cold water biota in Idaho's ammonia criteria and thereby bring the Idaho water quality standards into compliance with the Clean Water Act.

Because the levels of un-ionized ammonia consistent with protecting freshwater aquatic life vary depending on the temperature and pH of the water, the proposal does not establish a single number, but rather incorporates equations, from EPA's ammonia criteria document, from which appropriate criteria can be calculated.

These equations provide for a maximum one-hour average

concentration, and a 4-day average concentration. The national proposal further provides that these concentrations should not be exceeded more frequently than once every 3 years. For the convenience of the State and the public, we have also included tables which show the criteria calculated using the equations for a number of specific temperature /pH combinations. EPA's one hour criterion is to prevent against acute toxicity. It would apply under all conditions and would limit single sample values.

Because Idaho's criterion is a monthly average, it is comparable to EPA's 4-day criteria recommendations in that chronic toxicity is of concern. However, for certain conditions of temperature and pH, EPA's chronic criteria yield concentrations less stringent than Idaho's criteria. Under section 510 of the Clean Water Act, these more stringent criteria have precedence over Federal requirements. Therefore, any concentrations calculated from EPA's equations for 4-day toxicity (or taken from the tables for chronic toxicity) that are less stringent than the appropriate State criterion, do not supersede the State criterion.

Because Idaho does not have acute criteria for ammonia, the EPA proposal protecting against acute toxicity would apply under all conditions.

d. Basis for Proposed Rule

Since our disapproval letter to the State, EPA has finalized an updated criteria recommendation for ammonia pursuant to section 304(a)(1) of the Clean Water Act (50 FR 30784, July 29, 1985). EPA's ammonia criteria development document summarizes the available data on ammonia toxicity available at this time.

EPA's criteria document, is hereby incorporated into the administrative record of this proceeding. EPA evaluated Idaho's ammonia criteria in light of this new recommendation.

EPA's criteria document contains a two-tiered criterion applicable to fisheries with and without salmonid fish[2]. The chronic criteria are presented as a 4-day average. To protect against acute toxicity the document presents a value which is not to be exceeded by an average over a 1-hour period.

Both the State and EPA's criteria are based on unionized ammonia, the most toxic form.

However, EPA's criterion recognizes that the toxicity of un-ionized ammonia changes with changes in pH.

The criterion also recognizes the counteracting effects of the increased toxicity of un-ionized ammonia as temperature decreases versus the reduction in the amount of un-ionized ammonia available chemically at low temperatures.

Therefore, because it takes into account pH and temperature effects and the Idaho criterion does not, EPA's criterion becomes more restrictive at low pH's when compared to Idaho's 0.02 mg/l criterion. Moreover, EPA's acute criterion recognizes that higher concentrations can be tolerated by aquatic life for short time periods without irreversible effects. However, the averaging period is short to avoid slug releases that will damage aquatic life.

EPA's criterion recommends that these criteria should not be exceeded more frequently than once every 3 years. However, because the criterion takes into account exceedances caused by flow variation and variations in waste discharge concentrations, it is not equivalent to applying the criterion at the 4-day average low flow with a recurrence frequency of once in 3 years (4Q3). EPA's interim estimate (without the use of real time simulation models) is that the at all flow rates equal to or greater than the average calculated concentrations from EPA's formulas apply 7-consecutive-day low flow with a recurrence frequency of once in 10 years. However, if the State can show in a particular situation, that only a single discharge is involved, that no other inputs of ammonia or toxic pollutants are present to exacerbate ammonia toxicity, and that a stable stream flow hydrology exists, then the State may use another less stringent low flow following the approval of the Regional Administrator.[3]

Also, in the final national criteria recommendation there are limitations with respect to the temperature and pH values for which the criteria apply. These limitations cover the normal range of temperature and pH contained in water quality standards. However, in cases where these limits are exceeded, these equations must be extrapolated or, at the State's option, it must perform a site-specific recalculation consistent with EPA methods.

In summary, EPA's ammonia criterion accounts for both chronic and acute toxicity, and it explicitly takes into account the effects of pH and temperature on toxicity on waters with and without salmonid fish. Idaho's criterion, as discussed previously, does not account for these variables.

*3. Antidegradation*

a. State Adopted Criterion

The Idaho State provision which EPA has disapproved and is proposing to make more stringent is as follows:

Section 1–2300 RESTRICTIONS ON DISCHARGES AND ON ACTIVITIES WHICH AFFECT WATER QUALITY

01. *Point Source Discharges to Special Resource Waters and Their Tributaries.* Except for dams and hydro-electric generation facilities, no new point source can discharge, and no existing point source can increase its discharge above the design capacity of the existing wastewater treatment facility to any water designated as special resource water or to the tributary of or the upstream segment of a special resource water, if pollutants significant to the designated uses contained in that discharge can or will result in a reduction of the ambient water quality of the receiving special resource water as measured immediately below the applicable mixing zone.

Idaho concurrently deleted Section III.D. (1973 Idaho Water Quality Standards) from its standards. These actions substantially weakened antidegradation provisions of the State's water quality standards.

b. Basis for EPA Disapproval

EPA originally disapproved the general exemption given to dams and hydroelectric generating facilities which allowed them to increase their discharges, and cause a reduction in water quality. This exemption violated EPA's Federal Regulations (40 CFR 35.1550 (1983 Edition)) which provided that:

(1) Existing stream uses must always be maintained and protected; (2) high quality water that exceeds the criteria for "fishable/swimmable" water may be degraded only after public participation and intergovernmental coordination demonstrate that the degradation is needed to accommodate necessary and justifiable economic or social development; and (3) no degradation will be allowed in Outstanding National Resource Waters. The regulation also

[2] The difference occurs at temperatures greater than 20°C for the 1-hour average criteria: The criteria for salmonids are capped at 20°C and do not increase at higher temperatures; non-salmonid fish waters are capped at 25°C. The available data indicate that non-salmonid fish are more tolerant of ammonia for short periods at temperatures greater than 20°C. Similarly, for the 4-day criteria, the salmonid fish waters are capped at 15°C and the non-salmonid fish waters are capped at 20°C.

[3] Technical Support Document for Water Quality-Based Toxics Control, U.S. EPA, Office of Water, July 1985.

required the antidegradation policy to apply to all pollutant sources.

The new federal regulations (40 CFR 131.12) governing antidegradation require the same basic provisions described above. Some changes in wording corrected confusing or ambiguous statements in old regulations.

At the same time that the State of Idaho legislature adopted Section 1–2300.01 (1980), they also deleted Section III.D. from their water quality standards. Without this section, the Idaho standards do not include an antidegradation policy that protects all waters from all pollution sources. Even apart from the dams problem discussed above, Section 1–2300.01 is not equivalent of the required antidegradation policy. EPA is concerned about the defects in Idaho's antidegradation policy and has notified the State by letter of these deficiencies. The Agency is hopeful that in a reasonable period of time the state will amend its standards to comply with EPA's requirements.

c. Contents of Proposed Rule

EPA proposes to remove the exemption of dams from Section 1–230.01 by deleting the first clause of Section 1–2300.01.

**D. Effect of Applying Proposed Standard Including Economic Impacts**

As noted above, identification of criteria adequate to protect the designated use is based on scientific and technical considerations, not economic ones. However, if achieving particular criteria would cause substantial and widespread economic and social impact, such a consequence would provide a basis for Idaho to re-examine the attainability of the designated use itself for individual water bodies or segments. Therefore, EPA performed an economic assessment of the costs. The following section describes the assessment, including the necessary assumptions and data limitations. Based on this assessment, it appears to the Agency that the standards being proposed will not result in substantial and widespread economic and social impact. However, this does not foreclose the State from conducting a detailed study of its own. If based on such study, Idaho finds that the standards are not economically attainable in particular water bodies and segments, i.e., that they would cause substantial and widespread impact, it may follow the procedure set out in § 131.10 for removing the designated use for those water bodies.

*1. Dissolved Oxygen*

The key economic concern regarding attaining of dissolved oxygen standards for water below dams is with American Falls Dam. When the Federal Energy Regulatory Commission re-licensed Idaho Power Company's American Falls generating stations in 1975, it included a provision that State water quality standards be maintained in water downstream from the dam. The water quality standards then in effect required the company to maintain a minimum dissolved oxygen concentration of 6 mg/l. (In 1980, the Idaho legislature lowered the dissolved oxygen criterion to 5 mg/l average.) The present proposal would raise the water quality criterion to the cold water biota criterion. Thus, the cost of complying with the earlier criterion provides an indication of the cost of attaining the proposed criterion.

In particular, because of delays between the Legislature's action in February 1980, and revision of operating procedures at the dam, operations in the summers of 1979 and 1980 were aimed at meeting the 6 mg/l minimum dissolved oxygen criterion; the compliance cost in those years provides an outside estimate of what it would have cost to meet the *proposed* criterion. During the summer of 1979, water was spilled from the reservoir, bypassing the turbines, in order to maintain the required dissolved oxygen concentrations. EPA estimated revenue losses to Idaho Power Company as a result of spilling to be $100,000 to $150,000 of which about 28 percent was paid by residential customers. These losses resulted in increased service charges estimated to be 13 to 19 cents per residential customer for 1979.

In 1980, Idaho Power used recently installed aeration units, rather than spilling, to maintain the required minimum dissolved oxygen concentrations. Operating 43 days between July 14 and August 29, total costs were calculated to be about $55,000, or about 3½ cents per residential customer for this time period. Moreover, hydrology for the upper Snake River showed 1980 to be one of the lowest flow years of the last two decades, a condition which results in decreased dissolved oxygen concentrations. For purposes of assessing the possible economic consequences of this proposed action, EPA constructed a hypothetical situation which includes the need to aerate as well as the need to spill. We assumed low stream flows combined with high temperatures such that maintaining 6.5 mg/l concentrations of dissolved oxygen during the summer months would require twice the aeration costs needed in 1980 plus spilling to the extent needed in 1979. Even in this highly improbable case, costs would be less than about 45 cents (1980 dollars) per residential customer for the theoretical summer. EPA judged this economic impact to be minor. The economic analysis is in the administrative record.

In previous hearings on Idaho water quality standards, there was no indication of other sites where there would be difficulty in meeting the DO standard proposed here. Hence, EPA believes that the cost associated with meeting the standard will be exerted principally, if not exclusively, at the American Falls site. However, EPA solicits information on any other dam that would be affected by the proposed standard.

*2. Un-ionized Ammonia*

EPA review of records from 44 ambient monitoring stations in the State and the State 305(b) water quality assessment indicate that ammonia toxicity is not a major problem in the State. For example, approximately 100 out of 16,000 observations exceeded 0.02 mg/l un-ionized ammonia. Many of those exceedances are the result of nonpoint sources. It is estimated that the proposed standard would have little effect on point sources. However, it is possible that some point sources will have to treat ammonia as a result of this proposed action. EPA analyzed data from two facilities that have been the focus of economic controversy regarding the ammonia standards. These are the City of Nampa facility, whose effluent is released to Indian Creek, and the Lander Street sewage plant in Boise, which discharges to the Boise River. In both cases, instream data collected monthly below the plants over the last two years show that the streams have in fact been in compliance with EPA's proposed criterion on every sampling date and, hence, the plants are not expected to incur additional costs.

EPA is not aware of any other point sources which would be required to install technology beyond that required by categorical standards in order to meet the proposed ammonia criterion. The Agency solicits information on any stream segments in which the proposed standards are not being met and on any other dischargers or nonpoint sources that could be adversely affected by control requirements based on the standard.

*3. Antidegradation*

The antidegradation provision is required by the water quality standard

regulation (40 CFR 131.12). If a prospective new source or alteration of an existing discharge would lower the water quality downstream from impoundments, this provision requires the State to evaluate whether such a change violates its antidegradation requirements. Since this evaluation is required on a case-by-case basis, EPA has made no effort to forecast the outcome of individual cases that may arise, and the possible impacts.

### E. Executive Order 12291

Executive order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million a year or more or have certain other economic impacts. This regulation is not a major rule because its annualized cost, as discussed above, is significantly less than $100 million and it meets none of the other criteria specified in section 1(b) of the Executive Order. Also, as required by Executive Order 12291, this proposed rule has been reviewed by the Office of Management and Budget.

### F. Public Hearings

The Agency plans to hold 4 public hearings at the times, places, and locations listed above. Both oral and written comments will be accepted at the hearing. The hearing officer reserves the right to fix reasonable limits on the time allowed for oral presentations.

Registration to present oral statements will be accepted immediately prior to each hearing. The comment period on this proposed rulemaking will be kept open for at least 30 days after the public hearing. Moreover, the hearing record will be kept open at least 45 days after a Notice of Availability of the final ammonia criteria guidance is published in the **Federal Register.**

### G. Availability of the Record

The entire administrative record concerning the Idaho water quality standards (including the criteria documents perpared by EPA and noted herein) described in this preamble is available for public inspection and copying at the Environmental Protection Agency, Region X Office, Water Division, 1200 Sixth Avenue, Seattle, Washington 98101, during normal business hours of 8:00 a.m. to 4:30 p.m. The proposed water quality standards for Idaho and supporting technical information are available for inspection and copying at the U.S. EPA Headquarters in the Criteria and Standards Division (WH-585), Room 2818, 401 M Street, Southwest, Washington, DC 20460, during normal business hours of 8:00 a.m. to 4:30 p.m., and at the Boise, Coeur d'Alene, and Pocatello public libraries.

### H. Regulatory Flexibility Act Requirements

Under section 605 of the Regulatory Flexibility Act, 5 U.S.C. § 601 et. seq., the Administrator is required to certify that this regulation will not have a significant economic impact on a substantial number of small entities. I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

### List of Subjects in 40 CFR Part 131

Water pollution control, Intergovernmental relations, Administrative practices and procedures, Reporting and record keeping.

Dated: July 31, 1985.

**Lee M. Thomas,**

*Administrator.*

For the reasons set out in the preamble, Part 131, Subpart D, of Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

**Authority:** Section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)).

2. By adding a new § 131.34 to read as follows:

### § 131.34 Idaho.

(a) Section 1–2276 of the Idaho Water Quality Standards adopted by the State on January 9, 1980, is null and void and the following will supersede it: Dissolved oxygen criterion for waters downstream from dams, reservoirs, and hydroelectric facilities.

(1) *Minimum requirements:* The dissolved oxygen criteria for Idaho's aquatic life uses are listed in the following table.

WATER QUALITY CRITERIA FOR AMBIENT DISSOLVED OXYGEN CONCENTRATION

| | Coldwater criteria | | Warmwater criteria | |
|---|---|---|---|---|
| | Early life stages [1, 2] | Other life stages | Early life stages [2] | Other life stages |
| 30 day mean | [3]NA | 6.5 | NA | 5.5 |
| 7 day mean | 9.5 (6.5) | NA | 6.0 | NA |
| 7 day mean minimum | NA | 5.0 | NA | NA |
| 1 day minimum [4] | 8.0 (5.0) | [4]4.0 | 5.0 | [4]4.0 |

[1] These are water column concentrations recommended to achieve the required *intergravel* dissolved oxygen concentrations shown in parentheses. The 3 mg/l differential is discussed in the criteria document. For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

[2] Includes all embryonic and larval stages and all juvenile forms to 30 days following hatching.

[3] NA (not applicable).

[4] No measurements less than this concentration.

(2) *Applicability.* This criterion will apply to all waters downstream from dams, reservoirs, and hydroelectric facilities where warm water biota, cold water biota, and/or salmonid spawning uses, respectively are designated and/or existing uses. This criterion applies to the length of stream immediately downstream from dams, reservoirs, and hydroelectric facilities which is affected by the low dissolved oxygen concentration of waters passing through the facilities. Idaho water quality criteria (§ 1–2250) apply downstream of the point where natural reaeration would achieve the state standards in the absence of point or nonpoint source loading of oxygen-demanding materials, or where the reaeration of oxygen-depleted waters from hypolimnetic water releases would occur.

(b) Subsections 1–2250–03(e), 1–2250–04(e) and 1–2250–05(e) of the Idaho Water Quality Standards as adopted by the State on January 9, 1980, are partially superseded. The unionized ammonia criteria to prevent acute and chronic ammonia toxicity in waters designated for warm water biota, cold water biota, and/or salmonid spawning are from the following equations or tables for un-ionized ammonia or (total ammonia, if from the tables).

(1) To protect Idaho's warmwater biota, coldwater biota and salmonid spawning categories, the criteria for ammonia (in mg/liter un-ionized $NH_3$) are:

(i) The one-hour average concentration of un-ionized ammonia (in mg/1 $NH_3$) does not exceed the numerical value given by 0.52/FT/FPH/2, where:

$FT = 10^{0.03(20-TCAP)}$; $TCAP < T < 30°$ C

$FT = 10^{0.03(20-T)}$; $0°C < T < TCAP$

FPH =; $8 < pH < 9$

$FPH = 1 + 10^{7.4-pH/1.25}$; $6.5 pH < 8$

TCAP = 20° C; Salmonids or other sensitive coldwater species present

TCAP = 25°C; Salmonids and other sensitive coldwater species absent

(ii) The 4-day average concentration of un-ionized ammonia (in mg/1 $NH_3$) does not exceed the numerical value given by 0.80/FT/FPH/RATIO, where FT and FPH are as above and:

Ratio = 16; $7.7 < pH < 9$

$Ratio = 24 \times 10^{7.7-pH} / 1 + 10^{7.4-pH}$; $6.5 < pH < 7.7$

TCAP = 15° C; Salmonids or other sensitive coldwater species present

TCAP = 20° C; Salmonids and other sensitive coldwater species absent

(iii) Un-ionized ammonia concentrations for pH range from 6.5 to 9.0 and a temperature range from 0°C to 30°C are provided in the following tables. Total ammonia concentrations equivalent to each un-ionized ammonia concentrations are also provided in these tables. In the event that conditions at a site are outside the range shown for the formulas, then the State at its option, may perform a site-specific analysis to determine an appropriate ammonia criterion or calculate a value as one-half of the concentrations calculated by extrapolating the appropriate EPA formula to the site's pH and temperature condition.

(iv) The un-ionized ammonia concentrations shown on the tables do not have a consistent number of significant digits. Because EPA expected the tabular values to be interpolated to other conditions not explicitly shown on the table, the tabular values have variable significant digits so that such interpolations will yield accurate results. The final criteria value should be rounded to 2 significant digits.

(2) *Applicability.* (i) Because the formulas in paragraph b.1. are nonlinear in pH and temperature, the criterion should be the average of separate evaluations of the formula reflective of the fluctuations of flow, pH and temperature within the averaging period; it is not appropriate in general to simply apply the formula to average pH, temperature and flow.

(1) 1-Hour Average Concentrations for Ammonia*

| pH | 0 C | 5 C | 10 C | 15 C | 20 C | 25 C | 30 C |
|---|---|---|---|---|---|---|---|
| A. Salmonids or other sensitive coldwater species present: | | | | | | | |
| | Un-ionized Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 0.0091 | 0.0129 | 0.0182 | 0.026 | 0.036 | 0.036 | 0.036 |
| 6.75 | 0.0149 | 0.021 | 0.030 | 0.042 | 0.059 | 0.059 | 0.059 |
| 7.00 | 0.023 | 0.033 | 0.046 | 0.066 | 0.093 | 0.093 | 0.093 |
| 7.25 | 0.034 | 0.048 | 0.068 | 0.095 | 0.135 | 0.135 | 0.135 |
| 7.50 | 0.045 | 0.064 | 0.091 | 0.128 | 0.181 | 0.181 | 0.181 |
| 7.75 | 0.056 | 0.080 | 0.113 | 0.159 | 0.22 | 0.22 | 0.22 |
| 8.00 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.26 | 0.26 |
| 8.25 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.26 | 0.26 |
| 8.50 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.26 | 0.26 |
| 8.75 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.26 | 0.26 |
| 9.00 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.26 | 0.26 |
| | Total Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 35 | 33 | 31 | 30 | 29 | 20 | 14.3 |
| 6.75 | 32 | 30 | 28 | 27 | 27 | 18.8 | 13.2 |
| 7.00 | 28 | 26 | 25 | 24 | 23 | 16.4 | 11.6 |
| 7.25 | 23 | 22 | 20 | 19.7 | 19.2 | 13.4 | 9.5 |
| 7.50 | 17.4 | 16.3 | 15.5 | 14.9 | 14.6 | 10.2 | 7.3 |
| 7.75 | 12.2 | 11.4 | 10.9 | 10.5 | 10.3 | 7.2 | 5.2 |
| 8.00 | 8.0 | 7.5 | 7.1 | 6.9 | 6.8 | 4.8 | 3.5 |
| 8.25 | 4.5 | 4.2 | 4.1 | 4.0 | 3.9 | 2.8 | 2.1 |
| 8.50 | 2.6 | 2.4 | 2.3 | 2.3 | 2.3 | 1.71 | 1.28 |
| 8.75 | 1.47 | 1.40 | 1.37 | 1.38 | 1.42 | 1.07 | 0.83 |
| 9.00 | 0.86 | 0.83 | 0.83 | 0.86 | 0.91 | 0.72 | 0.58 |
| B. Salmonids and other sensitive coldwater species absent: | | | | | | | |
| | Un-ionized Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 0.0091 | 0.0129 | 0.0182 | 0.026 | 0.036 | 0.051 | 0.051 |
| 6.75 | 0.0149 | 0.021 | 0.030 | 0.042 | 0.059 | 0.084 | 0.084 |
| 7.00 | 0.023 | 0.033 | 0.046 | 0.066 | 0.093 | 0.131 | 0.131 |
| 7.25 | 0.034 | 0.048 | 0.068 | 0.095 | 0.135 | 0.190 | 0.190 |
| 7.50 | 0.045 | 0.064 | 0.091 | 0.128 | 0.181 | 0.26 | 0.26 |
| 7.75 | 0.056 | 0.080 | 0.113 | 0.159 | 0.22 | 0.32 | 0.32 |
| 8.00 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.37 | 0.37 |
| 8.25 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.37 | 0.37 |
| 8.50 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.37 | 0.37 |
| 8.75 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.37 | 0.37 |
| 9.00 | 0.065 | 0.092 | 0.130 | 0.184 | 0.26 | 0.37 | 0.37 |
| | Total Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 35 | 33 | 31 | 30 | 29 | 29 | 20 |
| 6.75 | 32 | 30 | 28 | 27 | 27 | 26 | 18.8 |
| 7.00 | 28 | 26 | 25 | 24 | 23 | 23 | 16.4 |
| 7.25 | 23 | 22 | 20 | 19.7 | 19.2 | 19.0 | 13.5 |
| 7.50 | 17.4 | 16.3 | 15.5 | 14.9 | 14.6 | 14.5 | 10.3 |
| 7.75 | 12.2 | 11.4 | 10.9 | 10.5 | 10.3 | 10.2 | 7.3 |
| 8.00 | 8.0 | 7.5 | 7.1 | 6.9 | 6.8 | 6.8 | 4.9 |
| 8.25 | 4.5 | 4.2 | 4.1 | 4.0 | 3.9 | 4.0 | 2.9 |
| 8.50 | 2.6 | 2.4 | 2.3 | 2.3 | 2.3 | 2.4 | 1.81 |
| 8.75 | 1.47 | 1.40 | 1.37 | 1.38 | 1.42 | 1.52 | 1.18 |
| 9.00 | 0.86 | 0.83 | 0.83 | 0.86 | 0.91 | 1.01 | 0.82 |

*To convert these values to mg/liter N, multiply by 0.822.

(2) 4-Day Average Concentrations for Ammonia*

| pH | 0 C | 5 C | 10 C | 15 C | 20 C | 25 C | 30 C |
|---|---|---|---|---|---|---|---|
| A. Salmonids or other sensitive coldwater species present: | | | | | | | |
| | Un-ionized Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 0.0007 | 0.0009 | 0.0013 | 0.0019 | 0.0019 | 0.0019 | 0.0019 |
| 6.75 | 0.0012 | 0.0017 | 0.0023 | 0.0033 | 0.0033 | 0.0033 | 0.0033 |
| 7.00 | 0.0021 | 0.0029 | 0.0042 | 0.0059 | 0.0059 | 0.0059 | 0.0059 |
| 7.25 | 0.0037 | 0.0052 | 0.0074 | 0.0105 | 0.0105 | 0.0105 | 0.0105 |
| 7.50 | 0.0066 | 0.0093 | 0.0132 | 0.0186 | 0.0186 | 0.0186 | 0.0186 |
| 7.75 | 0.0109 | 0.0153 | 0.022 | 0.031 | 0.031 | 0.031 | 0.031 |
| 8.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |

(2) 4-DAY AVERAGE CONCENTRATIONS FOR AMMONIA*—Continued

| pH | 0 C | 5 C | 10 C | 15 C | 20 C | 25 C | 30 C |
|---|---|---|---|---|---|---|---|
| 8.25 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.50 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 8.75 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| 9.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.035 | 0.035 | 0.035 |
| | Total Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 2.5 | 2.4 | 2.2 | 2.2 | 1.49 | 1.04 | 0.73 |
| 6.75 | 2.5 | 2.4 | 2.2 | 2.2 | 1.49 | 1.04 | 0.73 |
| 7.00 | 2.5 | 2.4 | 2.2 | 2.2 | 1.49 | 1.04 | 0.74 |
| 7.25 | 2.5 | 2.4 | 2.2 | 2.2 | 1.50 | 1.04 | 0.74 |
| 7.50 | 2.5 | 2.4 | 2.2 | 2.2 | 1.50 | 1.05 | 0.74 |
| 7.75 | 2.3 | 2.2 | 2.1 | 2.0 | 1.40 | 0.99 | 0.71 |
| 8.00 | 1.53 | 1.44 | 1.37 | 1.33 | 0.93 | 0.66 | 0.47 |
| 8.25 | 0.87 | 0.82 | 0.78 | 0.76 | 0.54 | 0.39 | 0.28 |
| 8.50 | 0.49 | 0.47 | 0.45 | 0.44 | 0.32 | 0.23 | 0.17 |
| 8.75 | 0.28 | 0.27 | 0.26 | 0.27 | 0.19 | 0.15 | 0.11 |
| 9.00 | 0.16 | 0.16 | 0.16 | 0.16 | 0.13 | 0.10 | 0.08 |
| B. Salmonids or other sensitive coldwater species absent: | | | | | | | |
| | Un-ionized Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 0.0007 | 0.0009 | 0.0013 | 0.0019 | 0.0026 | 0.0026 | 0.0026 |
| 6.75 | 0.0012 | 0.0017 | 0.0023 | 0.0033 | 0.0047 | 0.0047 | 0.0047 |
| 7.00 | 0.0021 | 0.0029 | 0.0042 | 0.0059 | 0.0083 | 0.0083 | 0.0083 |
| 7.25 | 0.0037 | 0.0052 | 0.0074 | 0.0105 | 0.0148 | 0.0148 | 0.0148 |
| 7.50 | 0.0066 | 0.0093 | 0.0132 | 0.0186 | 0.026 | 0.026 | 0.026 |
| 7.75 | 0.0109 | 0.0153 | 0.022 | 0.031 | 0.043 | 0.043 | 0.043 |
| 8.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 8.25 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 8.50 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 8.75 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| 9.00 | 0.0126 | 0.0177 | 0.025 | 0.035 | 0.050 | 0.050 | 0.050 |
| | Total Ammonia (mg/liter $NH_3$) | | | | | | |
| 6.50 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.46 | 1.03 |
| 6.75 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.47 | 1.04 |
| 7.00 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.47 | 1.04 |
| 7.25 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.48 | 1.05 |
| 7.50 | 2.5 | 2.4 | 2.2 | 2.2 | 2.1 | 1.49 | 1.06 |
| 7.75 | 2.3 | 2.2 | 2.1 | 2.0 | 1.98 | 1.39 | 1.00 |
| 8.00 | 1.53 | 1.44 | 1.37 | 1.33 | 1.31 | 0.93 | 0.67 |
| 8.25 | 0.87 | 0.82 | 0.78 | 0.76 | 0.76 | 0.54 | 0.40 |
| 8.50 | 0.49 | 0.47 | 0.45 | 0.44 | 0.45 | 0.33 | 0.25 |
| 8.75 | 0.28 | 0.27 | 0.26 | 0.27 | 0.27 | 0.21 | 0.16 |
| 9.00 | 0.16 | 0.16 | 0.16 | 0.16 | 0.17 | 0.14 | 0.11 |

*To convert these values to mg/liter N, multiply by by 0.822.

(ii) If the concentration calculated by this method for the 4-day average ammonia concentration yields a concentration less stringent than the applicable State criterion, then the State criterion applies.

(iii) The calculated concentration from the formulas in paragraph b.2 apply at all flow rates equal to or greater than the average 7-consecutive-day low flow with a recurrence frequency of once in 10 years, unless the State justifies using another less stringent low flow, and such justification is approved by the Regional Administrator.

(c) The exemption of dams and hydroelectric generating facilities from the Idaho antidegradation requirements is superseded. Therefore, the following from § 1–2300.01 of the Idaho Water Quality Standards adopted by the State on January 9, 1980, is null and void:

Except as noted in Manual Section 1–2300.07 and for dams and hydro-electric generating facilities,

(1) Where the quality of the waters exceed levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless Idaho finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Idaho continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality Idaho shall assure water quality adequate to protect existing uses fully. Further, Idaho shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(2) Where high quality waters constitute an outstanding National resource, such as waters of National and State parks and wildlife refuges, waters designated in Idaho's water quality standards as special resource waters of the State, and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

(3) In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with section 316 of the Clean Water Act.

[FR Doc. 85–19715 Filed 8–19–85; 8:45 am]
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federal register

Tuesday
August 20, 1985

Part III

# Department of Health and Human Services

## Food and Drug Administration

21 CFR Parts 1000 and 1040
Laser Products; Amendments to Performance Standard; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Parts 1000 and 1040**

**[Docket No. 80N-0364]**

## Laser Products; Amendments to Performance Standard

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the performance standard for laser products to widen the wavelength range that defines laser radiation, to establish a new "Class IIIa" laser product, and to add new reporting and recordkeeping requirements for sales of original equipment manufacturer (OEM) components. The amendments relax the current performance requirements for safety interlocks, viewing optics, remote control connectors, emission delay, key controls, and beam attenuators. Also, the amendments simplify and make clear the protective housing requirements for any laser product, the definitions for "human access," and the existing laser product classes. Additionally, FDA is modifying the requirements for certain radiation measurement parameters, scanning failure safeguards, manual reset mechanisms, and emission indicators on certain laser products. FDA's experience in administering the laser product standard has shown the need to implement these changes.

**DATES:** Effective September 19, 1985. See "Effective Dates" under SUPPLEMENTARY INFORMATION for further discussion.

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**SUPPLEMENTARY INFORMATION:**

### Background

The performance standards for laser products (21 CFR Part 1040.10 and 1040.11) were established by FDA under the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.) (the RCHSA). The standards became effective on August 2, 1976. In the **Federal Register** of November 28, 1978 (43 FR 55387), FDA amended the standards to make clear several provisions. These changes solved major problems that had arisen in the implementation of the standards. As FDA gained further experience in administering the laser standards, however, the agency determined that further amendments would be appropriate. For this reason, on November 7, 1980 (45 FR 74374), FDA published in the **Federal Register** a notice of intent to propose additional amendments to the standards. In the **Federal Register** of November 30, 1983 (48 FR 54164), FDA issued a proposed rule that the agency believed responded to comments received on the 1980 notice of intent. The proposal described the amendments being considered, and provided 60 days, until January 30, 1984, for interested persons to submit written data, views, or arguments concerning the proposed amendments and any associated potential environmental and economic impact.

### Comments on the Proposed Rule

In response to the 1983 proposal, FDA received written comments from several manufacturers of electronic products, trade associations representing manufacturers of electronic products, and a private consultant. The comments, nearly without exception, supported FDA's intent to amend the standards, and the majority of the comments suggested revisions to improve or to clarify the proposed amendments. The following is a summary of the substantive comments received on the proposal and the agency's responses to the comments.

*General Comments*

1. A comment urged FDA to exempt from both §§ 1040.10 and 1040.11 laser products that are classified in Class II or lower and that are used as positioning devices in medical equipment. The comment argued that laser positioning devices are used under carefully controlled conditions and that, based on the conditions of use, there is no potential for injury to humans from laser products classified in Class II or lower.

FDA disagrees with the comment. The level of laser radiation emitted from a laser product at which eye damage from chronic exposure is possible has served as the basis for classification of such an electronic product into Class II since FDA first proposed to establish the performance standard (see 38 FR 34084; December 10, 1973). (The classification system referred to in this rule is that established by FDA in the performance standard for laser products under the RCHSA, not the statutory classification scheme under the Medical Device Amendments (21 U.S.C. 360c).) The comment did not provide any data to show that FDA's definition of Class II is inappropriate or that eye damage from chronic exposure to a laser positioning device could not occur. Laser products are classified on the basis of the highest level of laser radiation to which human access is possible. Further, classification of a laser product is not dependent upon mechanisms of aversion to laser radiation that humans may have or upon use patterns for the product, except as these have an impact upon human access.

FDA notes that the amended standard imposes minimal requirements on Class II laser products, i.e., (1) a beam attenuator (shutter), (2) a laser radiation emission indicator (pilot light), (3) requirements for a listing on the caution warning logotype of the maximum output of laser radiation and of the emitted wavelength, (4) a noninterlocked protective-housing label (for service), and (5) an aperture label. FDA notes further that the agency has concluded that certain Class II laser products, i.e., those used for relative positioning of the human body in a clinical environment, may be excluded from the requirement for an aperture label (see paragraph 23 of this preamble). In addition, under § 1040.10(f)(6)(ii), FDA's Center for Devices and Radiological Health (CDRH) may, upon written application by the manufacturer, approve alternate means to accomplish the radiation protection provided by the beam attenuator that would otherwise be required to be incorporated into any Class II or higher laser product. The remaining requirements discussed above impose negligible costs or complexity to a laser product that is used for the purpose described in the comment and are appropriate to the hazard involved. Even fewer requirements apply to such a device classified in a class lower than Class II.

2. A comment stated that laser diodes should not be subject to the standard. The comment argued that laser diodes differ significantly from lasers in that the radiation emitted from laser diodes diffuses rapidly with distance and is typically differentiated from those laser devices with highly collimated beams.

FDA disagrees with the comment. The primary characteristic of lasers is that they behave as intense, virtual point-sources of optical radiation. Even if the radiation pattern diverges from the exit port of the laser, the radiation can be focused to a spot that is limited primarily by diffraction effects and imperfections in the optical path. Laser diodes exhibit these properties.

FDA notes that, in the preamble to the proposal (48 FR 54168), the agency

responded in detail to earlier comments that recommended that FDA reduce the requirements of the standard applicable to laser diodes. The present comment does not provide any new information or, indeed, any data on which to base a substantive change in the requirements.

3. A comment noted that, when a certified laser product is incorporated into another electronic product, e.g., the gantry for computed tomography (CT) x-ray equipment, FDA considers the combination to be a laser product and requires certification of the combination. The comment argued that this requirement is unnecessary, unduly burdensome, and without precedent with respect to other devices regulated by FDA. The comment claimed that a laser product that has been certified and includes the appropriate warnings and labels should not have to be certified again simply because it is included within another device.

FDA advises that, contrary to the comment's belief, the performance standard for laser products applies only to that portion of an electronic product that uses laser radiation.

A laser product with certain intended functions that has been certified needs to be reevaluated with regard to radiation safety when the product is incorporated into another product or when the intended functions are changed. A laser product is a product whose only intended function is to produce laser radiation. However, the laser product may be incorporated into equipment to perform a different function, e.g., to produce to light show, to align earth-moving equipment, to examine the retina of the human eye, to read bar codes in a grocery, or, as would be the case in the example mentioned by the comment, to align patients in a CT x-ray system. In any of these events, the change of function requires reconsideration of the radiation safety. Also, the incorporation of a laser product into another electronic product as a component may make required performance features and labels of the laser product inaccessible to the user or may otherwise adversely affect conformance of the product to the laser standard. Indeed, if, as in the example mentioned by the comment, the laser is incorporated into another electronic product, this may have an impact on the safety of the incorporating product and adversely affect conformance of that product to the standard to which it had been certified to comply.

For these reasons, FDA concludes that it is neither unnecessary nor unduly burdensome to require the combination to be certified. Further, FDA points out that the modification of a previously certified laser product can be construed as "manufacturing" under the RCHSA (see § 1040.10(i)). Other standards under the RCHSA require recertification of a product following modification (see e.g., 21 CFR 1020.40(d)). Accordingly, the requirement to which the comment objects has precedent.

*Applicability*

4. One comment urged FDA to regard sales records for manufacturers of OEM components subject to § 1040.10(a)(3)(ii) as company proprietary information protected from public disclosure.

FDA advises that records obtained by the agency are subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) (FOIA) and to Part 20 of FDA's public information regulations (21 CFR Part 20). Certain information, including trade secrets and commercial or financial information, that is privileged or confidential is protected from disclosure under the FOIA and Part 20 (see § 20.61). FDA considers sales records generally to be exempt from disclosure.

*Definitions*

5. A comment suggested that the proposed definition of a Class IIIa laser product in § 1040.10(b)(8) specifically include the upper limit of 5 milliwatts (mW) radiant power by stating "from 1 mW through 5 mW."

FDA disagrees with the suggestion. The classification of a Class IIIa laser product is more complex than the comment implies because of human interaction with light. For example, over emission durations of less than or equal to $3.8 \times 10^{-4}$ seconds, a Class IIIa laser product may exceed a power of 5 mW (see Table III–A) while a Class II laser product may exceed a power of 1 mW over emission durations less than $2.5 \times 10^{-1}$ seconds (see Table II).

6. FDA proposed to revise the definition of "human access" in current § 1040.10(b)(12) (§ 1040.10(b)(15) in the final rule) to state: " 'Human access' means the capacity to intercept laser or collateral radiation by any part of the human body. For laser products that contain Class IIIb or IV levels of laser radiation, 'human access' also means access to laser radiation reflected by any single introduced flat surface from the interior of the product through any opening in the product."

Several comments objected to the proposed definition, arguing that the phrase "access to laser radiation reflected by any single introduced flat surface from the interior of the product through any opening in the product" is confusing and ambiguous. The comments noted particularly that the agency did not specify (1) the size or nature of the "introduced" flat surface, or (2) the method of introducing the "flat surface" into a laser product, or (3) whether windows or viewports would be considered an "opening."

FDA agrees that the proposed definition may have been unclear. FDA advises that the phrase "introduced flat surface" denotes a concept rather than a real object. The concept should be applied by calculating the quantity of radiation that could be reflected from a flat reflective surface through any real opening in the protective housing, e.g., wire grids, a single hole, or louvers. The reflective surface should be large enough to intercept the entire laser beam and reflect all of the laser radiation impinging on the surface. Factors which would have to be considered in making such calculations include the laser radiation level at the reflective surface, the laser beam divergence, the size of the opening in the protective housing, the distance between the flat surface and the opening, and the geometrical relationship between the flat surface and the opening.

The agency did not intend the word "opening" in the definition to apply to solid transparent material. Thus, a window or viewport would not be considered an "opening" for the purpose of determining human access to reflected laser radiation if the window or viewport consists of solid transparent material, e.g., a pane of glass, that cannot be removed during operation of the product to create a real opening.

To make clear its intent, FDA has further revised the second sentence of § 1040.10(b)(15) in the final rule to state: "For laser products that contain Class IIIb or IV levels of laser radiation, 'human access' also means access to laser radiation that can be reflected directly by any single introduced flat surface from the interior of the product through any opening in the protective housing of the product." (See also paragraph 9 of this preamble.)

7. Several comments argued that the proposed definition of "human access" in § 1040.10(b)(15) is unnecessarily restrictive. The comments alleged that the probability of an object getting into or being left inside a laser is remote and that, even if it were to happen, an "introduced" object would most likely not have a "flat surface" so that any reflections though openings would not be hazardous. Some comments suggested that FDA modify the proposed definition and limit the "introduced" object to one which would result from

mislocation or misalignment of a surface in the interior of the product.

FDA disagrees. The protective housing should be designed to minimize the possibility of unintended hazardous laser radiation being reflected through openings in the housing. Such reflections could occur as a result of (1) the accidental inserting of objects through protective housing openings, (2) the misalignment or mislocation of an internal part or portion of the laser product, or (3) the leaving of tools or other objects within a product by service or maintenance personnel. It is prudent to assume that such objects or conditions would result primarily in specular rather than diffuse reflection. Indeed, a flat surface would not represent a worst-case condition because it would not collect and focus the reflected radiation, as might, for example, an object with a concave surface.

8. Some comments on proposed § 1040.10(b)(15) suggested that the agency should quality the term "opening" in the definition of human access to specify that only those openings greater than 1 millimeter (mm) in diameter would be considered to allow human access and to specify that a straight object up to 10 centimeters (cm) long which could be introduced through such an opening in the product would be used as a surface for detecting reflected radiation.

The agency disagrees with the suggestions. Implementation of these suggestions would not provide any public health benefit. Indeed, as noted in the preamble to the 1978 final rule setting forth the current definition of "human access" (November 28, 1978; 43 FR 55387 at 55388), a test object of specified diameter was included in the performance standard for microwave ovens in § 1030.10 (21 CFR 1030.10) and was found unsatisfactory. Products could be designed to meet the literal requirements of this criterion, although many common household objects could be used to circumvent its intent. The same principle applies with respect to this final rule in that specifying a minimum size for the protective housing opening or a maximum length for a reflective surface would defeat the benefits of the revised definition of human access without any increase in protection of the public health.

9. Several comments on proposed § 1040.10(b)(15) questioned whether secondary reflections would need to be considered when determining access to "reflected" laser radiation. Other comments urged the agency to limit "reflected" radiation to primary or direct reflection.

FDA advises that it intended the proposed definition to apply only to single reflections through a physical opening in the protective housing of the product, not to multiple reflections or reflections through solid transparent material. As discussed in paragraph 6 of this preamble, the agency is revising the final rule to make clear its intent.

10. On its own initiative, FDA is modifying the definition of the term "laser" in final § 1040.10(b)(19) to provide for a 1 year effective date for extension of the wavelength range while maintaining the present wavelength range of the standard until the extension becomes effective.

*Accessible Emission Limits*

11. Two comments noted that the heading in proposed Table II–A (§ 1040.10(d)) which stated "Class IIa Accessible Emission Limits are Identical to Class I Accessible Emission Limits Except" is unclear. The comments proposed that FDA add to the heading the phrase "Under the Following Special Conditions."

FDA agrees that the proposed headings for new Tables II–A, II, and III–A may have been unclear. To make clear the content of these tables, the agency is revising each of them by adding to the proposed heading the phrase "within the following range of wavelengths and emission durations."

*Tests for Determination of Compliance*

12. Three comments on proposed § 1040.10(e)(4) noted that the use of a 50 mm diameter aperture stop to measure scanned laser radiation under the conditions stated in the provision is a new requirement. These comments point out that, in the preamble to the proposal, the agency stated that it intended to delay for 1 year the effective date of new requirements to provide manufacturers time to comply. Proposed § 1040.10(e)(4) was not included in the list of amendments to be delayed. The comments urged FDA to delay the effective date of § 1040.10(e)(4) to be consistent with the effective date for other "new" requirements.

FDA agrees and is amending the effective date provisions accordingly. Also, FDA has concluded that proposed § 1040.10(e)(4) is unnecessary and in the final rule has combined the requirements of proposed § 1040.10(e)(4) with paragraph (e)(3) and has eliminated paragraph (e)(4).

*Performance Requirements*

13. A comment on the proposed amendments to § 1040.10(f)(1) suggested that there should not be any constraints on the materials used as protective housing for a laser product provided the materials are appropriate and provided human access to laser radiation is prevented during operation.

Section 1040.10(f)(1) does not designate materials that are to be used for laser product housing. As FDA stated in the preamble to the proposal (see 48 FR 54165), the provisions of § 1040.10(f)(1) are intended to convey clearly a fundamental principle of the laser standard: protective housing is required to prevent human access to a level of laser radiation and to collateral radiation that exceed the radiation limits specified for Class I laser products when human access is not necessary for the laser product to perform its intended function. When human access to a level of laser radiation that exceeds the limits of Class I is necessary, the level of radiation may not, under the standard, exceed the limits of the lowest class necessary for the product to perform its intended functions. The suitability of materials used to meet the protective housing requirement of the standard is judged on the basis of the appropriateness of the materials in the context of product use and function. Such materials should be adequate to ensure that the housing will comply with the standard throughout the useful life of the product, taking into account foreseeable user abuse. The agency concludes that the comment does not warrant any change or revision in final § 1040.10(f)(1).

14. A comment requested clarification of proposed § 1040.10(f)(5)(iii) with respect to the laser radiation emission indicators required to be provided on each separately housed laser and operation control of a laser system. The comment asserted that the preamble suggested that the laser always should incorporate an emission indicator and the operation control should incorporate one if the distance between the two components is greater than 2 meters, whereas proposed § 1040.10(f)(5)(iii) appeared to provide that the indicator may be located on either the laser or the control when they are within the 2-meter limit.

FDA advises that § 1040.10(f)(5)(iii), in the final rule, requires manufacturers to include an emission indicator on each laser and on each operation control if the laser or the operation control can be operated at a distance of greater than 2 meters from any separately housed portion of the laser product incorporating an emission indicator.

Section 1040.10(f)(5) provides that any laser system that is classified as a Class II or higher laser product shall incorporate at least one emission

indicator that gives an appropriate visible or audible signal of laser radiation. Section 1040.10(f)(5)(iii) currently requires that, if the laser and its energy source, e.g., the power supply (where the operation controls usually are found), are capable of being separated by more than 2 meters, an emission indicator is to be provided on the laser and on the energy source; a laser system whose laser and energy source are not capable of being so separated is required to incorporate only one emission indicator. The agency has found, however, that the operation controls, e.g., a key control, manual reset mechanism, beam attenuator, variable intensity control, or speed control (see 48 FR 54167), may be housed separately from the energy source as well as from the laser, in which event, a single indicator may not provide adequate indication of emission both at the source of the radiation and at the means for controlling the radiation. For this reason, FDA has concluded that the energy source may not always be the appropriate location for an emission indicator. Accordingly, FDA has revised final § 1040.10(f)(5)(iii) to require that the indicator be included on the laser and on each operation control that is separated by a distance of more than 2 meters from any separately housed portion of the laser product incorporating an emission indicator. FDA is deferring for 1 year the effective date of this more restrictive requirement to allow manufacturers adequate time to comply with it.

15. A comment urged that FDA further revise § 1040.10(f)(5)(iii) to allow use of a cordless remote control device which does not have an emission indicator, provided the remote control device can function only where there is an unobstructed (visual) path between the remote control and the laser console. The comment contends that the emission indicator located on the laser console to comply with § 1040.10(f)(5)(i) or (ii) would always be visible to the operator by the requirement that there be a direct line of sight for the remote control to operate. The comment noted that it would be difficult to incorporate an emission indicator in the control.

FDA disagrees with the comment. The agency believes that it would not be possible to ensure that the remote control device could function only when the operator could see an emission indicator on the laser console. The agency also believes that it would be possible to design a remote control device in such a way that it would be a true remote control and comply with the standard. FDA advises, however, that, if a manufacturer can design a remote control system that will ensure that the operator can see the emission indicator on the laser console, the manufacturer may, upon request, be granted a variance from § 1040.10(f)(5)(iii) under the provisions of § 1010.4 of the regulations (21 CFR 1010.4).

16. A comment on the proposed revision of § 1040.10(f)(6) noted that there are now Class II and Class III helium-neon laser systems whose design does not preclude using the energy source switch as an alternate to the beam attenuator required by § 1040.10(f)(6). The switch is used as an effective means of limiting human access to laser and collateral radiation. The comment argued that it is unnecessarily burdensome on manufacturers of such laser systems to have to prepare and submit to CDRH applications requesting CDRH to approve alternate means to accomplish the radiation protection provided by the beam attenuator and that it also is an inefficient use of CDRH's time to have to review and approve such applications. The comment recommended that FDA revise proposed § 1040.10(f)(6)(i) to allow the use of electrical power switches to meet the beam attenuator requirement for Class II and Class III helium-neon laser systems and that the agency delete proposed § 1040.10(f)(6)(ii).

FDA declines to grant a general exemption from § 1040.10(f)(6) to allow Class II and Class III helium-neon laser systems to use electrical power switches in lieu of a beam attenuator. FDA recognizes that use of a beam attenuator may be unnecessary for some laser systems. FDA also is aware, however, that many types of laser systems, including Class II and Class III helium-neon laser systems, need to maintain a steady emission output and may require a long recovery time if the main electrical power to the laser product is interrupted. The operator may not turn off the laser product when it is not needed or while making intrabeam adjustments or corrections. When such a situation occurs, unsafe conditions may result if the product does not have a beam attenuator.

FDA points out that proposed § 1040.10(f)(6)(ii) was intended to give the agency the flexibility to exempt a manufacturer from the requirement to include a beam attenuator in the laser system when, through a simplified application process, the manufacturer shows that including a beam attenuator is unnecessary to maintain operator safety. FDA does not regard the review of and action on these applications to be an inefficient use of the agency's time.

17. Three comments on proposed § 1040.10(f)(9)(ii) objected to the phrase "the accessible emission limits of Class IIIa scanned laser radiation * * *" on the ground that the phrase implies that the laser product standard contains a table which specifies accessible emission limits for Class IIIa scanned laser radiation, whereas the standard does not include such a table.

As stated in the preamble to the proposal (see 48 FR 54168), FDA intended proposed § 1040.10(f)(9)(ii) to require multimode Class IIIb and Class IV laser products to be equipped with a scanning safeguard if the class of the scanned laser radiation would exceed the accessible emission limits for Class IIIa as a result of scan failure. The agency did not intend to suggest that the standard includes a table for Class IIIa scanned laser radiation. FDA has revised final § 1040.10(f)(9)(ii) to make clear its intent. (See also paragraph 18 of this preamble.)

18. Several comments complained that proposed § 1040.10(f)(9)(ii) would require that Class IIIb and IV laser products that emit scanned laser radiation incorporate a scanning safeguard even if the class of the scanned laser radiation is the same as the class of the product and does not exceed the class of the product upon scan failure. Other comments questioned the need for a scanning safeguard for Class IIIb and IV products which have both a scanning mode and a stationary mode of operation (dual-mode products) because the products would be classified while in the stationary mode of operation. Such products would have all the performance features, labels, and warnings appropriate for the class of the product, according to the comments. The comments also pointed out that the emission level of the scanned laser radiation might be in the same class as the emission level when the dual-mode product is not scanning. Another comment stated that a dual-mode product which has a maximum emission of 5 mW should not be required to have a scanning safeguard to be consistent with other proposed changes providing relief for products which emit visible laser radiation up to 5 mW.

The agency intended to require a scanning safeguard when, upon scan failure, the class of the product would be exceeded. There is also a need in some cases for a scanning safeguard for Class IIIb or Class IV laser products even when the product does not emit accessible laser radiation in excess of

the limits of the product's class upon scan failure. The final rule has been revised to require these safeguards. A laser product user would be expected to be aware that a dual-mode product is safer when used in the scanning mode of operation than during the stationary mode of operation if the class of scanned laser radiation is lower than the class of the product. Therefore, a user might be lulled into a false sense of security. A scanning safeguard is necessary to prevent potential injury from sudden unexpected exposure to Class IIIb or Class IV levels of laser radiation upon scan failure. The final rule, like the proposed amendment, does not require a scanning safeguard for Class I, IIa, II, or IIIa laser products which would not emit laser radiation in excess of the accessible emission limits of the class of the product as a result of scan failure.

19. A comment on proposed § 1040.10(f)(9) stated that a projector designed to operate in a scanning mode with an operator present should not be required to have a scanning safeguard if the emitted radiation is not directed to the audience or to other persons.

FDA does not agree that an operator of a scanning laser-light projector is an adequate substitute for a scanning safeguard because an operator may not be able to react to a scan failure quickly enough to prevent an injury. Further, it is not possible for the manufacturer of a laser-light projector to ensure that the projector will not be used without an operator or that scanning radiation will not be directed to an audience or other persons. Scanning laser-light projectors are in widespread use and generally are unique at each facility where installed. They present the greatest potential of any electronic product for unintended exposure of the public to hazardous levels of laser radiation. The agency advises, however, that, as provided by § 1010.4, a manufacturer may be granted, upon request, a variance from the requirements of § 1040.10(f)(9) if the manufacturer can show that the product utilizes alternate means for providing radiation safety or protection equal to or greater than that provided by a scanning safeguard.

20. Three comments on proposed § 1040.10(f)(10) noted that the new requirement provides that each "Class IV laser system" is to be equipped with a manual reset mechanism, whereas other pertinent provisions of the standard apply to each laser system classified as a "Class IV laser product." The comments suggested that, as worded, proposed § 1040.10(f)(10) could require a Class IV laser imbedded in a Class I laser product to be equipped with a manual reset mechanism. They urged that § 1040.10 should be revised to be consistent with other parts of the standard.

FDA accepts the proposed change. The agency notes that § 1040.10(c)(2) provides that the manner in which a laser system incorporated into a laser product is subject to the requirements of the standard depends on whether the system is removable from the product; if so, and if it is capable, without modification, of producing laser radiation when removed, the system itself is a laser product and is classified on the basis of accessible emission of laser radiation when so removed. Conversely, if the system is not removable, it is not separately subject to the standard.

21. One comment from a manufacturer objected to proposed § 1040.10(f)(10). The comment stated that all of its Class IV laser systems require a normal 10-second emission delay before restart following a 5-second power loss and argued that additional precautions, i.e., a manual reset mechanism, should not be necessary.

FDA disagrees with the comment. Class IV levels of laser radiation are an acute hazard to the skin and eyes from direct and scattered radiation. Indeed, as stated in the preamble to the proposal, laser radiation from Class IV laser products can cause permanent damage to the human eye over short emission durations. FDA believes that the laser product operator needs to be protected from the hazard associated with the unexpected resumption of radiation emission from such high-powered laser products following interruption of operation (see 48 FR 54167). The provisions of § 1040.10(f)(10) ensure that Class IV laser products will not automatically restart following a power outage. A purposeful action on the part of an operator should be required. Class IV laser products are too dangerous to rely solely on an emission delay to ensure safety of use in the event of product restart following a power outage. FDA is deferring for 1 year the effective date of this more restrictive requirement to allow manufacturers adequate time to comply with it.

*Labeling requirements*

22. Five comments noted that, on December 31, 1981, CDRH issued a policy statement allowing the use of the phrase "laser light" in lieu of the words "laser radiation" as variously required by § 1040.10(g) to be included in laser product warning labels, provided that all laser radiation in excess of the accessible emission limits of Class I is within the visible wavelength range of 400 to 710 nanometers. The comments requested that this alternate wording be incorporated into the final rule.

FDA agrees with the suggestion and has added new § 1040.10(g)(8)(iii) to the final rule to provide that, where the radiation emitted by a laser product is visible laser radiation only, the phrase "laser light" may replace the phrase "laser radiation" in any warning statement required by § 1040.10(g) to be included on the product.

23. A comment on the provisions of § 1040.10(g)(5) states that the warning labels FDA requires to be placed by the apertures of certain Class II laser products can cause significant anxiety for patients. The comment suggested that the standard explicitly provide for alternative wording on the aperture labels required by § 1040.10(g)(5) (i), (ii), and (iii) for Class II laser products that are not medical laser products but that are used in a clinical environment, e.g., a positioning device used with medical equipment. The comment noted that providing suitable alternate wording for aperture labels would obviate the need for a separate exemption for each such use of a Class II laser.

The comment, in the general sense, raised the important issue of laser products subject to the RCHSA used in conjunction with medical devices subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) (the act). Certain laser products are used together with medical devices during diagnostic, surgical, or therapeutic procedures involving humans, e.g., to align other laser radiation, or to align patients in x-ray or nuclear magnetic resonance devices. Laser products for such uses have been considered to be alignment laser products subject to § 1040.11(b) rather than medical laser products subject to the provisions of § 1040.11(a) because they do not conform to the current definition of a medical laser product in § 1040.10(b)(22) (§ 1040.10(b)(26) in the final rule). Accordingly, such products have been required to bear the applicable aperture warning label specified in § 1040.10(g)(5) (i), (ii), or (iii).

FDA has reevaluated the scope of the definition of "medical laser product" as well as the appropriateness of the aperture warning labels on laser products used in conjunction with medical devices. The agency recognizes that persons being prepared for laser irradiation, or x-ray or nuclear magnetic resonance devices, are likely under stress and that the aperture warning labels included on laser products used

for relative positioning of the human body may unduly add to these persons' anxiety.

For all these reasons, the agency concludes that laser products used in medical devices for the purpose of relative positioning of the human body should be considered medical laser products exempt from the requirements of § 1040.10(g)(5) (i), (ii), or (iii). FDA is revising the definition of "medical laser product" in the final rule accordingly.

FDA advises that, under the revised definition, a laser product that is intended for relative positioning of the human body for other than medical purposes, e.g., on an entertainment stage, would not be a medical device. Thus, it would be beyond the scope of the definition of "medical laser product" and would remain subject to the requirements of § 1040.10(g)(5). Similarly, a diagnostic device that is intended for use in a clinical laboratory and that achieves its principal intended purpose through laser irradiation, e.g., a blood cell counter, would not be intended for in vivo laser irradiation of the human body. Thus, it would be beyond the scope of the definition and would remain subject to § 1040.10(g)(5).

As discussed in paragraph 26 of this preamble, FDA, on its own initiative, is also revising § 1040.11(a)(1) to exempt, under certain conditions, medical laser products used for relative positioning applications from the requirement to incorporate a means for measurement of the level of laser radiation. Neither of the two amendments regarding positioning laser products will impose added burdens on laser product manufacturers.

24. A comment objected to § 1040.10(h)(2)(i), which requires that manufacturers include in catalogs, specification sheets, and descriptive brochures for each laser product that they manufacture, a reproduction of the class designation and warnings required by § 1040.10(g) to be included in the labeling for the product. The comment noted that certified laser products have labels attached directly to the product to warn operators and service people of potential hazards. The comment argued that redundant labeling on unattached printed materials in no way contributes to the safety of any laser product and is, therefore, inappropriate.

The agency disagrees with the comment. Section 1040.10(h)(2)(i) is intended to ensure that the potential purchaser of a laser product is fully informed of the characteristics of the product at the time the person considers purchasing it. A person who acquires a laser product should not be faced with any unknowns with regard to the radiation safety of the product. Because of the great variety of laser products marketed in the United States, the potential purchaser needs the information required by § 1040.10(h)(2)(i) to make informed decisions about the safety of the product and to establish a radiation safety program in preparation for the use of the laser product.

*Specific Purpose Laser Products*

25. Section 1040.11(a)(1) of the standard currently requires that each Class III or Class IV medical laser product incorporate a means to measure the level of laser radiation with a measurement error of no more than ±20 percent. One comment suggested that FDA provide relief from this requirement for Class IIIa medical lasers on the ground that the requirement is unnecessarily restrictive for such products.

FDA disagrees with the suggestion. The comment did not provide any information, data, or arguments to support its contention that the requirements of § 1040.11(a)(1) are unnecessarily restrictive. Indeed, it is not clear whether the comment objected to providing any means to measure emitted radiation from a Class IIIa medical laser product or to the tolerance on the accuracy of the measurement that FDA allows a manufacturer. Therefore, FDA cannot evaluate the rationale behind the comment.

As stated in footnote 4 to § 1040.10(b)(8), Class IIIa levels of laser radiation are, depending upon the irradiance, an acute intrabeam viewing hazard or a chronic viewing hazard. They are an acute viewing hazard if viewed directly with optical instruments. Medical laser products create a unique potential for human exposure to hazardous laser radiation. The intent of § 1040.11(a)(1) is to ensure accurate knowledge of the radiant power or energy which is intended for irradiation of the human body. Without such knowledge, day-to-day reproducibility in patient irradiations would not be possible (see the preamble to the reproposal to establish the laser products performance standard (39 FR 32094 at 32097; September 4, 1974)). At the time FDA issued the reproposed standard, the agency concluded that the measurement and the measurement accuracy required by § 1040.11(a)(1) for medical laser products were necessary to protect the public health and to assess adequately the radiation levels intentionally applied to humans (see 39 FR 32097). FDA has not seen any evidence that those conclusions were incorrect or that the requirements of § 1040.11(a)(1) are unnecessarily restrictive when applied to Class IIIa products as defined in the final rule.

The agency notes that, if the measurement requirement in § 1040.11(a)(1) is not appropriate for a medical laser product otherwise subject to the regulation, or if any of the other criteria under § 1010.4(a) for a variance are met, the manufacturer of the product may be granted, upon request, a variance from the requirement.

26. On January 19, 1984, CDRH issued a policy statement allowing use of a fixed-level laser aiming beam in nonophthalmic medical laser products that do not incorporate a means to measure the level of the aiming beam, provided the aiming beam does not exceed a power level of 5 mW. On its own initiative, FDA is revising § 1040.11(a)(1) of the final rule to incorporate this policy into the standard. FDA also has decided to extend this exemption to variable-level aiming beams for these products provided the aiming beams do not exceed 5 mW. The agency believes that users will adjust variable-level aiming beams to a level that allows adequate visibility independently of measured level. See paragraph 23 of this preamble for a related comment.

27. A comment on proposed § 1040.11(c) requested relief from the need for manufacturers and producers of laser light shows to obtain a variance from the special requirements for demonstration laser products when the light show uses lasers that do not exceed a power level of 5 mW. The comment argued that the safety requirements for these lasers are significantly different from those of high-powered lasers.

FDA has reevaluated the applicability of the § 1040.11(c) to laser light shows and the current requirement that demonstration laser products may not permit human access to laser radiation in excess of the accessible emission limits of Class II. The agency conludes that, because it is relaxing the requirements for other Class IIIa laser products which emit visible laser radiation, relaxation for demonstration laser products also is warranted. For this reason, FDA is revising § 1040.11(c) in the final rule to provide for Class IIIa demonstration laser products. The agency advises, however, that instructions for assembly, operation, and maintenance need to include warnings to avoid possible exposure to laser and collateral radiation in excess of the limits of Class I. Such warnings should be based on the laser safety

concepts contained in laser light show variances issued by FDA.

**Effective Dates**

The final rule will become effective in two steps. The requirements of the final rule that make the current performance standard for laser products more restrictive will become effective August 20, 1986 to allow manufacturers adequate time to comply. These portions of the final rule are: § 1040.10(a)(3) regarding OEM component sales; that portion of § 1040.10(b)(19) which extends the applicable wavelength range of a "laser"; that portion of § 1040.10(e)(3)(i) regarding use of a 50-mm aperture stop to determine compliance of laser products using scanned laser radiation; that portion of § 1040.10(f)(5)(iii) requiring that operation controls have a laser radiation emission indicator; and § 1040.10(f)(10) requiring Class IV laser products to be equipped with a manual reset mechanism. FDA finds that, for good cause shown, all other amendments to the final rule will take effect September 19, 1985. FDA has determined that an early effective date is justified because these amendments clarify the performance standard or remove unnecessarily restrictive requirements without endangering public health or safety. A majority of the persons submitting written comments on the proposal urged FDA to issue the amendments as soon as possible. The agency does not object to manufacturers complying with the entire amended standard on or after September 19, 1985, provided that the manufacturer specifies on the certification label that the product complies with the amended standard and provided that the manufacturer complies with recordkeeping and reporting requirements of 21 CFR Part 1002.

**Economic Assessment**

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. FDA has not received any new information or comments that would alter its previous determination.

In Accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency certified that there would not be a significant impact on a substantial number of small entities from this rule. FDA has not received any new information or comments that would alter its previous determination.

**Paperwork Reduction Act of 1980**

Section 1040.10(a)(3) of this final rule contains information collection requirements that were submitted for review and approval to the Director of the Office of Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910–0176.

**List of Subjects**

*21 CFR Part 1000*

Electronic products, Radiation protection, Recommendations, X-rays.

*21 CFR Part 1040*

Electronic products, HID lamps, Lasers, Medical devices, Radiation protection, Standards, Sunlamps.

Therefore, under the Public Health Service Act, as amended by the Radiation Control for Health and Safety Act of 1968, Parts 1000 and 1040 are amended as follows:

## PART 1000—GENERAL

1. The authority citation for Part 1000 is revised to read as follows:

**Authority:** Secs. 354–360F, 82 Stat. 1173–1186 as amended (42 U.S.C. 263b–263n); 21 CFR 5.10.

2. Part 1000 is amended by adding new § 1000.1, to read as follows:

**§ 1000.1 General.**

References in this Subchapter J to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

## PART 1040—PERFORMANCE STANDARDS FOR LIGHT-EMITTING PRODUCTS

3. The authority citation for Part 1040 is revised to read as follows:

**Authority:** Secs. 358, 360A, 82 Stat. 1177–1179, 1182 (42 U.S.C. 263f, 263i); 21 CFR 5.10.

4. Part 1040 is amended by revising §§ 1040.10 and 1040.11 to read as follows:

**§ 1040.10 Laser products.**

(a) *Applicability.* The provisions of this section and § 1040.11, as amended, are applicable as specified to all laser products manufactured or assembled after August 1, 1976, except when:

(1) Such a laser product is either sold to a manufacturer of an electronic product for use as a component (or replacement) in such electronic product, or

(2) Sold by or for a manufacturer of an electronic product for use as a component (or replacement) in such electronic product, provided that such laser product:

(i) Is accompanied by a general warning notice that adequate instructions for the safe installation of the laser product are provided in servicing information available from the complete laser product manufacturer under paragraph (h)(2)(ii) of this section, and should be followed,

(ii) Is labeled with a statement that it is designated for use solely as a component of such electronic product and therefore does not comply with the appropriate requirements of this section and § 1040.11 for complete laser products, and

(iii) Is not a removable laser system as described in paragraph (c)(2) of this section; and

(3) The manufacturer of such a laser product, if manufactured after August 20, 1986:

(i) Registers, and provides a listing by type of such laser products manufactured that includes the product name, model number and laser medium or emitted wavelength(s). The registration and listing shall include the name and address of the manufacturer and shall be submitted to the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, 5600 Fishers Lane, Rockville, MD 20857.

(ii) Maintains and allows access to any sales, shipping, or distribution records that identify the purchaser of such a laser product by name and address, the product by type, the number of units sold, and the date of sale (shipment). These records shall be maintained and made available as specified in § 1002.31.

(Information collection requirements approved by the Office of Management and Budget under control number 0910–0176.)

(b) *Definitions.* As used in this section and § 1040.11, the following definitions apply:

(1) "Accessible emission level" means the magnitude of accessible laser or collateral radiation of a specific wavelength and emission duration at a particular point as measured according to paragraph (e) of this section. Accessible laser or collateral radiation is radiation to which human access is possible, as defined in paragraph (b)(12), (15), and (22) of this section.

(2) "Accessible emission limit" means the maximum accessible emission level permitted within a particular class as

set forth in paragraphs (c), (d), and (e) of this section.

(3) "Aperture" means any opening in the protective housing or other enclosure of a laser product through which laser or collateral radiation is emitted, thereby allowing human access to such radiation.

(4) "Aperture stop" means an opening serving to limit the size and to define the shape of the area over which radiation is measured.

(5) "Class I laser product" means any laser product that does not permit access during the operation to levels of laser radiation in excess of the accessible emission limits contained in Table I of paragraph (d) of this section.[1]

(6) "Class IIa laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table I, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table II–A of paragraph (d) of this section.[2]

(7) "Class II laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table II–A, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table II of paragraph (d) of this section.[3]

(8) "Class IIIa laser product" means any laser product that permits human access during operation to levels of visible laser radiation in excess of the accessible emission limits contained in Table II, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–A of paragraph (d) of this section.[4]

(9) "Class IIIb laser product" means any laser product that permits human access during operation to levels of laser radiation in excess of the accessible emission limits of Table III–A, but does not permit human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–B of paragraph (d) of this section.[5]

(10) "Class III laser product" means any Class IIIa or Class IIIb laser product.

(11) "Class IV laser product" means any laser that permits human access during operation to levels of laser radiation in excess of the accessible emission limits contained in Table III–B of paragraph (d) of this section.[6]

(12) "Collateral radiation" means any electronic product radiation, except laser radiation, emitted by a laser product as a result of the operation of the laser(s) or any component of the laser product that is physically necessary for the operation of the laser(s).

(13) "Demonstration laser product" means any laser product manufactured, designed, intended, or promoted for purposes of demonstration, entertainment, advertising display, or artistic composition. The term "demonstration laser product" does not apply to laser products which are not manufactured, designed, intended, or promoted for such purposes, even though they may be used for those purposes or are intended to demonstrate other applications.

(14) "Emission duration" means the temporal duration of a pulse, a series of pulses, or continuous operation, expressed in seconds, during which human access to laser or collateral radiation could be permitted as a result of operation, maintenance, or service of a laser product.

(15) "Human access" means the capacity to intercept laser or collateral radiation by any part of the human body. For laser products that contain Class IIIb or IV levels of laser radiation, "human access" also means access to laser radiation that can be reflected directly by any single introduced flat surface from the interior of the product through any opening in the protective housing of the product.

(16) "Integrated radiance" means radiant energy per unit area of a radiating surface per unit solid angle of emission, expressed in joules per square centimeter per steradian ($Jcm^{-2}sr^{-1}$).

(17) "Invisible radiation" means laser or collateral radiation having wavelengths of equal to or greater than 180 nm but less than or equal to 400 nm or greater than 710 nm but less than or equal to $1.0 \times 10^6$ nm (1 millimeter).

(18) "Irradiance" means the time-averaged radiant power incident on an element of a surface divided by the area of that element, expressed in watts per square centimeter ($W\ cm^{-2}$).

(19) "Laser" means any device that can be made to produce or amplify electromagnetic radiation at wavelenghts greater than 250 nm but less than or equal to 13,000 nm or, after August 20, 1986, at wavelengths equal to or greater than 180 nm but less than or equal to $1.0X10^6$ nm primarily by the process of controlled stimulated emission.

(20) "Laser energy source" means any device intended for use in conjunction with a laser to supply energy for the operation of the laser. General energy sources such as electrical supply mains or batteries shall not be considered to constitute laser energy sources.

(21) "Laser product" means any manufactured product or assemblage of components which constitutes, incorporates, or is intended to incorporate a laser or laser system. A laser or laser system that is intended for use as a component of an electronic product shall itself be considered a laser product.

(22) "Laser radiation" means all electromagnetic radiation emitted by a laser product within the spectral range specified in paragraph (b)(19) of this section that is produced as a result of controlled stimulated emission or that is detectable with radiation so produced through the appropriate aperture stop and within the appropriate solid angle of acceptance, as specified in paragraph (e) of this section.

(23) "Laser system" means a laser in combination with an appropriate laser energy source with or without additional incorporated components. See paragraph (c)(2) of this section for an explanation of the term "removable laser system."

(24) "Maintenance" means performance of those adjustments or procedures specified in user information provided by the manufacturer with the laser product which are to be performed by the user for the purpose of assuring the intended performance of the product. It does not include operation or service as defined in paragraph (b) (27) and (38) of this section.

(25) "Maximum output" means the maximum radiant power and, where applicable, the maximum radiant energy per pulse of accessible laser radiation emitted by a laser product during operation, as determined under paragraph (e) of this section.

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[1] Class I levels of laser radiation are not considered to be hazardous.

[2] Class IIa levels of laser radiation are not considered to be hazardous if viewed for any period of time less than or equal to $1 \times 10^3$ seconds but are considered to be a chronic viewing hazard for any period of time greater than $1 \times 10^3$ seconds.

[3] Class II levels of laser radiation are considered to be a chronic viewing hazard.

[4] Class IIIa levels of laser radiation are considered to be, depending upon the irradiance, either an acute intrabeam viewing hazard or chronic viewing hazard, and an acute viewing hazard if viewed directly with optical instruments.

[5] Class IIIb levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct radiation.

[6] Class IV levels of laser radiation are considered to be an acute hazard to the skin and eyes from direct and scattered radiation.

(26) "Medical laser product" means any laser product which is a medical device as defined in 21 U.S.C. 321(h) and is manufactured, designed, intended or promoted for in vivo laser irradiation of any part of the human body for the purpose of: (i) Diagnosis, surgery, or therapy; or (ii) relative positioning of the human body.

(27) "Operation" means the performance of the laser product over the full range of its functions. It does not include maintenance or service as defined in paragraph (b) (24) and (38) of this section.

(28) "Protective housing" means those portions of a laser product which are designed to prevent human access to laser or collateral radiation in excess of the prescribed accessible emission limits under conditions specified in this section and in § 1040.11.

(29) "Pulse duration" means the time increment measured between the half-peak-power points at the leading and trailing edges of a pulse.

(30) "Radiance" means time-averaged radiant power per unit area of a radiating surface per unit solid angle of emission, expressed in watts per square centimeter per steradian ($W\ cm^{-2}sr^{-1}$).

(31) "Radiant energy" means energy emitted, transferred or received in the form of radiation, expressed in joules (J).

(32) "Radiant exposure" means the radiant energy incident on an element of a surface divided by the area of the element, expressed in joules per square centimeter ($Jcm^{-2}$)

(33) "Radiant power" means time-averaged power emitted, transferred or received in the form of radiation, expressed in watts (W).

(34) "Remote interlock connector" means an electrical connector which permits the connection of external remote interlocks.

(35) "Safety interlock" means a device associated with the protective housing of a laser product to prevent human access to excessive radiation in accordance with paragraph (f)(2) of this section.

(36) "Sampling interval" means the time interval during which the level of accessible laser or collateral radiation is sampled by a measurement process. The magnitude of the sampling interval in units of seconds is represented by the symbol ($t$).

(37) "Scanned laser radiation" means laser radiation having a time-varying direction, origin or pattern of propagation with respect to a stationary frame of reference.

(38) "Service" means the performance of those procedures or adjustments described in the manufacturer's service instructions which may affect any aspect of the product's performance for which this section and § 1040.11 have applicable requirements. It does not include maintenance or operation as defined in paragraph (b) (24) and (27) of this section.

(39) "Surveying, leveling, or alignment laser product" means a laser product manufactured, designed, intended or promoted for one or more of the following uses:

(i) Determining and delineating the form, extent, or position of a point, body, or area by taking angular measurement.

(ii) Positioning or adjusting parts in proper relation to one another.

(iii) Defining a plane, level, elevation, or straight line.

(40) "Visible radiation" means laser or collateral radiation having wavelengths of greater than 400 nm but less than or equal to 710 nm.

(41) "Warning logotype" means a logotype as illustrated in either Figure 1 or Figure 2 of paragraph (g) of this section.

(42) "Wavelength" means the propagation wavelength in air of electromagnetic radiation.

(c) *Classification of laser products*—(1) *All laser products.* Each laser product shall be classified in Class I, IIa, II, IIIa, IIIb, or IV in accordance with definitions set forth in paragraphs (b) (5) through (11) of this section. The product classification shall be based on the highest accessible emission level(s) of laser radiation to which human access is possible during operation in accordance with paragraphs (d), (e), and (f)(1) of this section.

(2) *Removable laser systems.* Any laser system that is incorporated into a laser product subject to the requirements of this section and that is capable, without modification, of producing laser radiation when removed from such laser product, shall itself be considered a laser product and shall be separately subject to the applicable requirements in this subchapter for laser products of its class. It shall be classified on the basis of accessible emission of laser radiation when so removed.

(d) *Accessible emission limits.* Accessible emission limits for laser radiation in each class are specified in Tables I, II–A, II, III–A, and III–B of this paragraph. The factors, $k_1$ and $k_2$ vary with wavelength and emission duration. These factors are given in Table IV of this paragraph, with selected numerical values in Table V of this paragraph. Accessible emission limits for collateral radiation are specified in Table VI of this paragraph.

**Notes applicable to Tables I, II–A, II, III–A and III–B:**

(1) The factors $k_1$ and $k_2$ are wavelength-dependent correction factors determined from Table IV.

(2) The variable $t$ in the expressions of emission limits is the magnitude of the sampling interval in units of seconds.

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TABLE I

CLASS I ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

| Wavelength (nanometers) | Emission duration (seconds) | Class I-Accessible emission limits (value) | (unit) | (quantity)** |
|---|---|---|---|---|
| ≥180 but ≤400 | ≤3.0 X $10^{4}$ | 2.4 X $10^{-5}k_1k_2$* | Joules(J)* | radiant energy |
| | >3.0 X $10^{4}$ | 8.0 X $10^{-10}k_1k_2$* | Watts(W)* | radiant power |
| >400 but ≤1400 | >1.0 X $10^{-9}$ to 2.0 X $10^{-5}$ | 2.0 X $10^{-7}k_1k_2$ | J | radiant energy |
| | >2.0 X $10^{-5}$ to 1.0 X $10^{1}$ | 7.0 X $10^{-4}k_1k_2t^{3/4}$ | J | radiant energy |
| | >1.0 X $10^{1}$ to 1.0 X $10^{4}$ | 3.9 X $10^{-3}k_1k_2$ | J | radiant energy |
| | >1.0 X $10^{4}$ | 3.9 X $10^{-7}k_1k_2$ | W | radiant power |
| | and also (See paragraph (d)(4) of this section) | | | |
| | >1.0 X $10^{-9}$ to 1.0 X $10^{1}$ | $10k_1k_2t^{1/3}$ | $Jcm^{-2}sr^{-1}$ | integrated radiance |
| | >1.0 X $10^{1}$ to 1.0 X $10^{4}$ | $20k_1k_2$ | $Jcm^{-2}sr^{-1}$ | integrated radiance |
| | >1.0 X $10^{4}$ | 2.0 X $10^{-3}k_1k_2$ | $Wcm^{-2}sr^{-1}$ | radiance |
| >1400 but ≤2500 | >1.0 X $10^{-9}$ to 1.0 X $10^{-7}$ | 7.9 X $10^{-5}k_1k_2$ | J | radiant energy |
| | >1.0 X $10^{-7}$ to 1.0 X $10^{1}$ | 4.4 X $10^{-3}k_1k_2t^{1/4}$ | J | radiant energy |
| | >1.0 X $10^{1}$ | 7.9 X $10^{-4}k_1k_2$ | W | radiant power |
| >2500 but ≤1.0 X $10^{6}$ | >1.0 X $10^{-9}$ to 1.0 X $10^{-7}$ | 1.0 X $10^{-2}k_1k_2$ | $Jcm^{-2}$ | radiant exposure |
| | >1.0 X $10^{-7}$ to 1.0 X $10^{1}$ | 5.6 X $10^{-1}k_1k_2t^{1/4}$ | $Jcm^{-2}$ | radiant exposure |
| | >1.0 X $10^{1}$ | 1.0 X $10^{-1}k_1k_2t$ | $Jcm^{-2}$ | radiant exposure |

*Class I accessible emission limits for wavelengths equal to or greater than 180 nm but less than or equal to 400 nm shall not exceed the Class I accessible emission limits for the wavelengths greater than 1400 nm but less than or equal to 1.0 X $10^{6}$ nm with a $k_1$ and $k_2$ of 1.0 for comparable sampling intervals.

**Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE II-A

CLASS IIa ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

| CLASS IIa ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT WITHIN THE FOLLOWING RANGE OF WAVELENGTHS AND EMISSION DURATIONS: | | | | |
|---|---|---|---|---|
| Wavelength (nanometers) | Emission duration (seconds) | Class IIa-Accessible emission limits | | |
| | | (value) | (unit) | (quantity)* |
| >400 but ≤710 | $>1.0 \times 10^{3}$ | $3.9 \times 10^{-6}$ | W | radiant power |

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE II

CLASS II ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

| CLASS II ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT WITHIN THE FOLLOWING RANGE OF WAVELENGTHS AND EMISSION DURATIONS: | | | | |
|---|---|---|---|---|
| Wavelength (nanometers) | Emission duration (seconds) | Class II-Accessible emission limits | | |
| | | (value) | (unit) | (quantity)* |
| >400 but ≤710 | $>2.5 \times 10^{-1}$ | $1.0 \times 10^{-3}$ | W | radiant power |

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE III-A

CLASS IIIa ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

| CLASS IIIa ACCESSIBLE EMISSION LIMITS ARE IDENTICAL TO CLASS I ACCESSIBLE EMISSION LIMITS EXCEPT WITHIN THE FOLLOWING RANGE OF WAVELENGTHS AND EMISSION DURATIONS: | | | | |
|---|---|---|---|---|
| Wavelength (nanometers) | Emission duration (seconds) | Class IIIa-Accessible emission limits | | |
| | | (value) | (unit) | (quantity)* |
| >400 but ≤710 | >3.8 X $10^{-4}$ | 5.0 X $10^{-3}$ | W | radiant power |

*Measurement parameters and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE III-B

CLASS IIIb ACCESSIBLE EMISSION LIMITS FOR LASER RADIATION

| Wavelength (nanometers) | Emission duration (seconds) | Class IIIb-Accessible emission limits | | |
|---|---|---|---|---|
| | | (value) | (unit) | (quantity)* |
| ≥180 but ≤400 | ≤2.5 X $10^{-1}$ | 3.8 X $10^{-4}k_1k_2$ | J | radiant energy |
| | >2.5 X $10^{-1}$ | 1.5 X $10^{-3}k_1k_2$ | W | radiant power |
| >400 but ≤1400 | >1.0 X $10^{-9}$ to 2.5 X $10^{-1}$ | $10k_1k_2t^{1/3}$ to a maximum value of 10 | $Jcm^{-2}$ | radiant exposure |
| | | | $Jcm^{-2}$ | radiant exposure |
| | >2.5 X $10^{-1}$ | 5.0 X $10^{-1}$ | W | radiant power |
| >1400 but ≤1.0 X $10^6$ | >1.0 X $10^{-9}$ to 1.0 X $10^{1}$ | 10 | $Jcm^{-2}$ | radiant exposure |
| | >1.0 X $10^{1}$ | 5.0 X $10^{-1}$ | W | radiant power |

*Measurement parameter and test conditions shall be in accordance with paragraphs (d)(1), (2), (3), and (4), and (e) of this section.

TABLE IV

VALUES OF WAVELENGTH DEPENDENT CORRECTION FACTORS $k_1$ AND $k_2$

| Wavelength (nanometers) | $k_1$ | $k_2$ | | |
|---|---|---|---|---|
| 180 to 302.4 | 1.0 | 1.0 | | |
| > 302.4 to 315 | $10^{\left[\frac{\lambda - 302.4}{5}\right]}$ | 1.0 | | |
| > 315 to 400 | 330.0 | 1.0 | | |
| > 400 to 700 | 1.0 | 1.0 | | |
| > 700 to 800 | $10^{\left[\frac{\lambda - 700}{515}\right]}$ | if: $t \leq \frac{10100}{\lambda - 699}$ then: $k_2 = 1.0$ | if: $\frac{10100}{\lambda - 699} < t \leq 10^4$ then: $k_2 = \frac{t(\lambda - 699)}{10100}$ | if: $t > 10^4$ then: $k_2 = \frac{\lambda - 699}{1.01}$ |
| > 800 to 1060 | $10^{\left[\frac{\lambda - 700}{515}\right]}$ | if: $t \leq 100$ then: $k_2 = 1.0$ | if: $100 < t \leq 10^4$ then: $k_2 = \frac{t}{100}$ | if: $t > 10^4$ then: $k_2 = 100$ |
| > 1060 to 1400 | 5.0 | | | |
| > 1400 to 1535 | 1.0 | 1.0 | | |
| > 1535 to 1545 | $t \leq 10^{-7}$ $k_1 = 100.0$ | 1.0 | | |
| | $t > 10^{-7}$ $k_1 = 1.0$ | | | |
| > 1545 to $1.0 \times 10^6$ | 1.0 | 1.0 | | |

Note: The variables in the expressions are the magnitudes of the sampling interval(t), in units of seconds, and the wavelength ($\lambda$), in units of nanometers.

TABLE V

SELECTED NUMERICAL SOLUTIONS FOR $k_1$ AND $k_2$

| Wavelength (nanometers) | $k_1$ | $k_2$ | | | | |
|---|---|---|---|---|---|---|
| | | $t \leq 100$ | $t=300$ | $t=1000$ | $t=3000$ | $t \geq 10{,}000$ |
| 180 | 1.0 | 1.0 | | | | |
| 300 | 1.0 | | | | | |
| 302 | 1.0 | | | | | |
| 303 | 1.32 | | | | | |
| 304 | 2.09 | | | | | |
| 305 | 3.31 | | | | | |
| 306 | 5.25 | | | | | |
| 307 | 8.32 | | | | | |
| 308 | 13.2 | | | | | |
| 309 | 20.9 | | | | | |
| 310 | 33.1 | | | | | |
| 311 | 52.5 | | | | | |
| 312 | 83.2 | | | | | |
| 313 | 132.0 | | | | | |
| 314 | 209.0 | | | | | |
| 315 | 330.0 | | | | | |
| 400 | 330.0 | | | | | |
| 401 | 1.0 | | | | | |
| 500 | 1.0 | | | | | |
| 600 | 1.0 | | | | | |
| 700 | 1.0 | | | | | |
| 710 | 1.05 | 1 | 1 | 1.1 | 3.3 | 11.0 |
| 720 | 1.09 | 1 | 1 | 2.1 | 6.3 | 21.0 |
| 730 | 1.14 | 1 | 1 | 2.1 | 9.3 | 31.0 |
| 740 | 1.20 | 1 | 1.2 | 4.1 | 12.0 | 41.0 |
| 750 | 1.25 | 1 | 1.5 | 5.0 | 15.0 | 50.0 |
| 760 | 1.31 | 1 | 1.8 | 6.0 | 18.0 | 60.0 |
| 770 | 1.37 | 1 | 2.1 | 7.0 | 21.0 | 70.0 |
| 780 | 1.43 | 1 | 2.4 | 8.0 | 24.0 | 80.0 |
| 790 | 1.50 | 1 | 2.7 | 9.0 | 27.0 | 90.0 |
| 800 | 1.56 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 850 | 1.95 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 900 | 2.44 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 950 | 3.05 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 1000 | 3.82 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 1050 | 4.78 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 1060 | 5.00 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 1100 | 5.00 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 1400 | 5.00 | 1 | 3.0 | 10.0 | 30.0 | 100.0 |
| 1500 | 1.0 | 1.0 | | | | |
| 1540 | 100.0 * | | | | | |
| 1600 | 1.0 | | | | | |
| $1.0 \times 10^6$ | 1.0 | | | | | |

* The factor $k_1 = 100.0$ when $t \leq 10^{-7}$, and $k_1 = 1.0$ when $t > 10^{-7}$

Note: The variable (t) is the magnitude of the sampling interval in units of seconds.

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TABLE VI

ACCESSIBLE EMISSION LIMITS FOR COLLATERAL

RADIATION FROM LASER PRODUCTS

1. Accessible emission limits for collateral radiation having wavelengths greater than 180 nanometers but less than or equal to $1.0 \times 10^6$ nanometers are identical to the accessible emission limits of Class I laser radiation, as determined from Tables I and IV in this paragraph.

i. In the wavelength range of less than or equal to 400 nanometers, for all emission durations;

ii. In the wavelength range of greater than 400 nanometers, for all emission durations less than or equal to $1 \times 10^3$ seconds and, when applicable under paragraph (f)(8) of this section, for all emission durations.

2. Accessible emission limit for collateral radiation within the x-ray range of wavelengths is 0.5 milliroentgen in an hour, averaged over a cross-section parallel to the external surface of the product, having an area of 10 square centimeters with no dimension greater than 5 centimeters.

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(1) *Beam of a single wavelength.* Laser or collateral radiation of a single wavelength exceeds the accessible emission limits of a class if its accessible emission level is greater than the accessible emission limit of that class within any of the ranges of emission duration specified in Tables I, II–A, II, III–A, and III–B of this paragraph.

(2) *Beam of multiple wavelengths in same range.* Laser or collateral radiation having two or more wavelengths within any one of the wavelength ranges specified in Tables I, II–A, II, III–A, and III–B of this paragraph exceeds the accessible emission limits of a class if the sum of the ratios of the accessible emission level to the corresponding accessible emission limit at each such wavelength is greater than unity for that combination of emission duration and wavelength distribution which results in the maximum sum.

(3) *Beam with multiple wavelengths in different ranges.* Laser or collateral radiation having wavelengths within two or more of the wavelength ranges specified in Tables I, II–A, II, III–A, and III–B of this paragraph exceeds the accessible emission limits of a class if it exceeds the applicable limits within any one of those wavelength ranges. This determination is made for each wavelength range in accordance with paragraph (d) (1) or (2) of this section.

(4) *Class I dual limits.* Laser or collateral radiation in the wavelength range of greater than 400 nm but less than or equal to 1.400 nm exceeds the accessible emission limits of Class I if it exceeds both:

(i) The Class I accessible emission limits for radiant energy within any range of emission duration specified in Table I of this paragraph, and

(ii) The Class I accessible emission limits for integrated radiance within any range of emission duration specified in Table I of this paragraph.

(e) *Tests for determination of compliance*—(1) *Tests for certification.* Tests on which certification under § 1010.2 is based shall account for all errors and statistical uncertainties in the measurement process. Because compliance with the standard is required for the useful life of a product such tests shall also account for increases in emission and degradation in radiation safety with age.

(2) *Test conditions.* Except as provided in § 1010.13, tests for compliance with each of the applicable requirements of this section and § 1040.11 shall be made during operation, maintenance, or sevice as appropriate:

(i) Under those conditions and procedures which maximize the accessible emission levels, including start-up, stabilized emission, and shut-down of the laser product; and

(ii) With all controls and adjustments listed in the operation, maintenance, and service instructions adjusted in combination to result in the maximum accessible emission level of radiation; and

(iii) At points in space to which human access is possible in the product configuration which is necessary to determine compliance with each requirement, e.g., if operation may require removal of portions of the protective housing and defeat of safety interlocks, measurements shall be made at points accessible in that product configuration; and

(iv) With the measuring instrument detector so positioned and so oriented with respect to the laser product as to result in the maximum detection of radiation by the instrument; and

(v) For a laser product other than a laser system, with the laser coupled to that type of laser energy source which is specified as compatible by the laser product manufacturer and which produces the maximum emission level of accessible radiation from that product.

(3) *Measurement parameters.* Accessible emission levels of laser and collateral radiation shall be based upon the following measurements as appropriate, or their equivalent:

(i) For laser products intended to be used in a locale where the emitted laser radiation is unlikely to be viewed with optical instruments, the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and within a circular solid angle of acceptance of $1 \times 10^{-3}$ steradian with collimating optics of 5 diopters or less. For scanned laser radiation, the direction of the solid angle of acceptance shall change as needed to maximize detectable radiation, with an angular speed of up to 5 radians/second. A 50 millimeter diameter aperture stop with the same collimating optics and acceptance angle stated above shall be used for all other laser products (except that a 7 millimeter diameter aperture stop shall be used in the measurement of scanned laser radiation emitted by laser products manufactured on or before August 20, 1986.

(ii) The irradiance (W $cm^{-2}$) or radiant exposure (J $cm^{-2}$ equivalent to the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and, for irradiance, within a circular solid angle of acceptance of $1 \times 10^{-3}$ steradian with collimating optics of 5 diopters or less, divided by the area of the aperture stop ($cm^{-2}$).

(iii) The radiance (W $cm^{-2}$ $sr^{-1}$) or integrated radiance (J $cm^{-2}$ $sr^{-1}$) equivalent to the radiant power (W) or radiant energy (J) detectable through a circular aperture stop having a diameter of 7 millimeters and within a circular solid angle of acceptance of $1 \times 10^{-5}$ steradian with collimating optics of 5 diopters or less, divided by that solid angle (sr) and by the area of the aperture stop ($cm^{-2}$).

(f) *Performance requirements*—(1) *Protective housing.* Each laser product shall have a protective housing that prevents human access during operation to laser and collateral radiation that exceed the limits of Class I and Table VI, respectively, wherever and whenever such human access is not necessary for the product to perform its intended function. Wherever and whenever human access to laser radiation levels that exceed the limits of Class I is necessary, these levels shall not exceed the limits of the lowest class necessary to perform the intended function(s) of the product.

(2) *Safety interlocks.* (i) Each laser product, regardless of its class, shall be provided with at least one safety interlock for each portion of the protective housing which is designed to be removed or displaced during operation or maintenance, if removal or displacement of the protective housing could permit, in the absence of such interlock(s), human access to laser or collateral radiation in excess of the accessible emission limit applicable under paragraph (f)(1) of this section.

(ii) Each required safety interlock, unless defeated, shall prevent such human access to laser and collateral radiation upon removal or displacement of such portion of the protective housing

(iii) Either multiple safety interlocks or a means to preclude removal or displacement of the interlocked portion of the protective housing shall be provided, if failure of a single interlock would allow;

(*a*) Human access to a level of laser radiation in excess of the accessible emission limits of Class IIIa, or

(*b*) Laser radiation in excess of the accessible emission limits of Class II to be emitted directly through the opening created by removal or displacement of the interlocked portion of the protective housing.

(iv) Laser products that incorporate safety interlocks designed to allow safety interlock defeat shall incorporate a means of visual or aural indication of interlock defeat. During interlock defeat, such indication shall be visible or

audible whenever the laser product is energized, with and without the associated portion of the protective housing removed or displaced.

(v) Replacement of a removed or displaced portion of the protective housing shall not be possible while required safety interlocks are defeated.

(3) *Remote interlock connector.* Each laser system classified as a Class IIIb or IV laser product shall incorporate a readily available remote interlock connector having an electrical potential difference of no greater than 130 root-mean-square volts between terminals. When the terminals of the connector are not electrically joined, human access to all laser and collateral radiation from the laser product in excess of the accessible emission limits of Class I and Table VI shall be prevented.

(4) *Key control.* Each laser system classified as a Class IIIb or IV laser product shall incorporate a key-actuated master control. The key shall be removable and the laser shall not be operable when the key is removed.

(5) *Laser radiation emission indicator.* (i) Each laser system classified as a Class II or IIIa laser product shall incorporate an emission indicator that provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I.

(ii) Each laser system classified as a Class IIIb or IV laser product shall incorporate an emission indicator which provides a visible or audible signal during emission of accessible laser radiation in excess of the accessible emission limits of Class I, and sufficiently prior to emission of such radiation to allow appropriate action to avoid exposure to the laser radiation.

(iii) For laser systems manufactured on or before August 20, 1986, if the laser and laser energy source are housed separately and can be operated at a separation distance of greater than 2 meters, both laser and laser energy source shall incorporate an emission indicator as required in accordance with paragraph (f)(5) (i) or (ii) of this section. For laser systems manufactured after August 26, 1986, each separately housed laser and operation control of a laser system that regulates the laser or collateral radiation emitted by a product during operation shall incorporate an emission indicator as required in accordance with paragraph (f)(5) (i) or (ii) of this section, if the laser or operation control can be operated at a separation distance greater than 2 meters from any other separately housed portion of the laser product incorporating an emission indicator.

(iv) Any visible signal required by paragraph (f)(5) (i) or (ii) of this section shall be clearly visible through protective eyewear designed specifically for the wavelength(s) of the emitted laser radiation.

(v) Emission indicators required by paragraph (f)(5) (i) or (ii) of this section shall be located so that viewing does not require human exposure to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(6) *Beam attenuator.* (i) Each laser system classified as a Class II, III, or IV laser product shall be provided with one or more permanently attached means, other than laser energy source switch(es), electrical supply main connectors, or the key-actuated master control, capable of preventing access by any part of the human body to all laser and collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(ii) If the configuration, design, or function of the laser product would make unnecessary compliance with the requirement in paragraph (f)(6)(i) of this section, the Director, Office of Compliance (HFZ-300), Center for Devices and Radiological Health, may, upon written application by the manufacturer, approve alternate means to accomplish the radiation protection provided by the beam attenuator.

(7) *Location of controls.* Each Class IIa, II, III, or IV laser product shall have operational and adjustment controls located so that human exposure to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI is unnecessary for operation or adjustment of such controls.

(8) *Viewing optics.* All viewing optics, viewports, and display screens incorporated into a laser product, regardless of its class, shall limit the levels of laser and collateral radiation accessible to the human eye by means of such viewing optics, viewports, or display screens during operation or maintenance to less than the accessible emission limits of Class I and Table VI. For any shutter or variable attenuator incorporated into such viewing optics, viewports, or display screens, a means shall be provided:

(i) To prevent access by the human eye to laser and collateral radiation in excess of the accessible emission limits of Class I and Table VI whenever the shutter is opened or the attenuator varied.

(ii) To preclude, upon failure of such means as required in paragraph (f)(8)(i) of this section, opening the shutter or varying the attenuator when access by the human eye is possible to laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI.

(9) *Scanning safeguard.* Laser products that emit accessible scanned laser radiation shall not, as a result of any failure causing a change in either scan velocity or amplitude, permit human access to laser radiation in excess of:

(i) The accessible emission limits of the class of the product, or

(ii) The accessible emission limits of the class of the scanned laser radiation if the product is Class IIIb or IV and the accessible emission limits of Class IIIa would be exceeded solely as result of such failure.

(10) *Manual reset mechanism.* Each laser system manufactured after August 26, 1986, and classified as a Class IV laser product shall be provided with a manual reset to enable resumption of laser radiation emission after interruption of emission caused by the use of a remote interlock or after an interruption of emission in excess of 5 seconds duration due to the unexpected loss of main electrical power.

(g) *Labeling requirements.* In addition to the requirements of §§ 1010.2 and 1010.3, each laser product shall be subject to the applicable labeling requirements of this paragraph.

(1) *Class IIa and II designations and warnings.* (i) Each Class IIa laser product shall have affixed a label bearing the following wording: "Class IIa Laser Product—Avoid Long-Term Viewing of Direct Laser Radiation."

(ii) Each Class II laser product shall have affixed a label bearing the warning logotype A (Figure 1 in this paragraph) and including the following wording:

[Position I on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM"; and

[Position 3 on the logotype]

"CLASS II LASER PRODUCT".

WARNING LOGOTYPE A

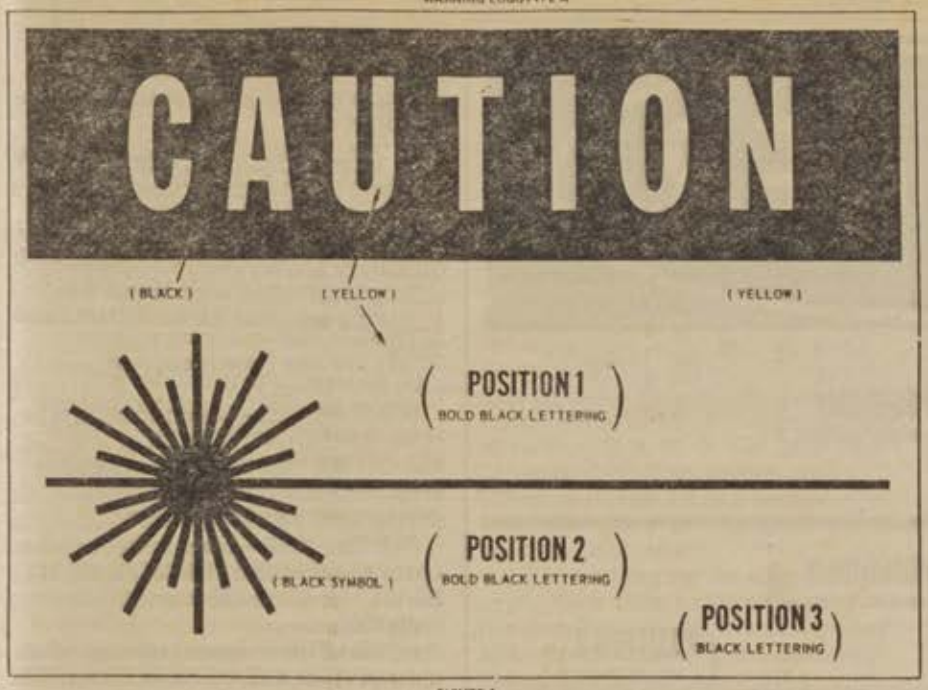


FIGURE 1

(2) *Class IIIa and IIIb designations and warnings.* (i) Each Class IIIa laser product with an irradiance less than or equal to $2.5\times10^{-3}$ W $cm^{-2}$ shall have affixed a label bearing the warning logotype A (Figure 1 of paragraph (g)(1)(ii) of this section) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS"; and,

[Position 3 on the logotype]

"CLASS IIIa LASER PRODUCT".

(ii) Each Class IIIa laser product with an irradiance greater than $2.5\times10^{-3}$ W $cm^{-2}$ shall have affixed a label bearing the warning logotype B (Figure 2 in this paragraph) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID DIRECT EYE EXPOSURE"; and,

[Position 3 on the logotype]

"CLASS IIIa LASER PRODUCT".

FIGURE 2

(iii) Each Class IIIb laser product shall have affixed a label bearing the warning logotype B (Figure 2 of paragraph (g)(2)(ii) of this section) and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID DIRECT EXPOSURE TO BEAM"; and,

[Position 3 on the logotype]

"CLASS IIIb LASER PRODUCT".

(3) *Class IV designation and warning.* Each Class IV laser product shall have affixed a label bearing the warning logotype B (Figure 2 of paragrah (g)(2)(ii) of this section), and including the following wording:

[Position 1 on the logotype]

"LASER RADIATION—AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION"; and,

[Position 3 on the logotype]

"CLASS IV LASER PRODUCT".

(4) *Radiation output information on warning logotype.* Each Class II, III, and IV laser product shall state in appropriate units, at position 2 on the required warning logotype, the maximum output of laser radiation, the pulse duration when appropriate, and the laser medium or emitted wavelength(s).

(5) *Aperture label.* Each laser product, except medical laser products and Class IIa laser products, shall have affixed, in close proximity to each aperture through which is emitted accessible laser or collateral radiation in excess of the accessible emission limits of Class I and Table VI of paragraph (d) of this section, a label(s) bearing the following wording as applicable.

(i) "AVOID EXPOSURE—Laser radiation is emitted from this aperture," if the radiation emitted through such aperture is laser radiation.

(ii) "AVOID EXPOSURE—Hazardous electromagnetic radiation is emitted from this aperture," if the radiation emitted through such aperture is collateral radiation described in Table VI, item 1.

(iii) "AVOID EXPOSURE—Hazardous x-rays are emitted from this aperture," if the radiation emitted through such aperture is collateral radiation described in Table VI, item 2.

(6) *Labels for noninterlocked protective housings.* For each laser product, labels shall be provided for each portion of the protective housing which has no safety interlock and which is designed to be displaced or removed during operation, maintenance, or service, and thereby could permit human access to laser or collateral radiation in excess of the limits of Class I and Table VI. Such labels shall be visible on the protective housing prior to displacement or removal of such portion of the protective housing and visible on the product in close proximity to the opening created by removal or displacement of such portion of the protective housing, and shall include the wording:

(i) "CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM." for Class II accessible laser radiation.

(ii) "CAUTION—Laser radiation when open. DO NOT STARE INTO BEAM OR VIEW DIRECTLY WITH OPTICAL INSTRUMENTS." for Class IIIa accessible laser radiation with an irradiance less than or equal to $2.5\times10^{-3}$ W $cm^{-2}$.

(iii) "DANGER—Laser radiation when open. AVOID DIRECT EYE EXPOSURE." for Class IIIa accessible laser radiation with an irradiance greater than $2.5\times10^{-3}$ W $cm^{-2}$.

(iv) "DANGER—Laser radiation when open. AVOID DIRECT EXPOSURE TO BEAM." for Class IIIb accessible laser radiation.

(v) "DANGER—Laser radiation when open. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION." for Class IV accessible laser radiation.

(vi) "CAUTION—Hazardous electromagnetic radiation when open." for collateral radiation in excess of the accessible emission limits in Table VI, item 1 of paragraph (d) of this section.

(vii) "CAUTION—Hazardous x-rays when open." for collateral radiation in excess of the accessible emission limits in Table VI, item 2 of paragraph (d) of this section.

(7) *Labels for defeatably interlocked protective housings.* For each laser product, labels shall be provided for each defeatably interlocked (as described in paragraph (f)(2)(iv) of this section) portion of the protective housing which is designed to be displaced or removed during operation, maintenance, or service, and which upon interlock defeat could permit human access to laser or collateral radiation in excess of the limits of Class I or Table VI. Such labels shall be visible on the product prior to and during interlock defeat and in close proximity to the opening created by the removal or displacement of such portion of the protective housing, and shall include the wording:

(i) "CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM." for Class II accessible laser radiation.

(ii) "CAUTION—Laser radiation when open and interlock defeated. DO NOT STARE INTO BEAM OR VIEW

DIRECTLY WITH OPTICAL INSTRUMENTS." for Class IIIa accessible laser radiation with an irradiance less than or equal to $2.5 \times 10^{-3}$ W $cm^{-2}$.

(iii) "DANGER—Laser radiation when open and interlock defeated. AVOID DIRECT EYE EXPOSURE." for Class IIIa accessible laser radiation when an irradiance greater than $2.5 \times 10^{-3}$ W $cm^{-2}$.

(iv) "DANGER—Laser radiation when open and interlock defeated. AVOID DIRECT EXPOSURE TO BEAM." for Class IIIb accessible laser radiation.

(v) "DANGER—Laser radiation when open and interlock defeated. AVOID EYE OR SKIN EXPOSURE TO DIRECT OR SCATTERED RADIATION." for Clas IV accessible laser radiation.

(vi) "CAUTION—Hazardous electromagnetic radiation when open and interlock defeated." for collateral radiation in excess of the accessible emission limits in Table VI. item 1 of paragraph (d) of this section.

(vii) "CAUTION—Hazardous x-rays when open and interlock defeated." for collateral radiation in excess of the accesible emission limits in Table VI. item 2 of paragraph (d) of this section.

(8) *Warning for visible and/or invisible radiation.* On the labels specified in this paragraph, if the laser or collateral radiation referred to is:

(i) Invisible radiation, the word "invisible" shall appropriately precede the word "radiation"; or

(ii) Visible and invisible radiation, the words "visible and invisible" or "visible and/or invisible" shall appropriately precede the word "radiation."

(iii) Visible laser radiation only, the phrase "laser light" may replace the phrase "laser radiation."

(9) *Positioning of labels.* All labels affixed to a laser product shall be positioned so as to make unnecessary, during reading, human exposure to laser radiation in excess of the accessible emission limits of Class I radiation or the limits of collateral radiation established to Table VI of paragraph (d) of this section.

(10 *Label specifications.* Labels required by this section and § 1040.11 shall be permanently affixed to, or inscribed on, the laser product, legible, and clearly visible during operation, maintenance, or service, as appropriate. If the size configuration, design, or function of the laser product would preclude compliance with the requirements for any required label or would render the required wording of such label inappropriate or ineffective, the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, on the Director's own initiative or upon written application by the manufacturer, may approve alternate means of providing such label(s) or alternate wording for such label(s) as applicable.

(h) *Informational requirements*—(1) *User information.* Manufacturers of laser products shall provide as an integral part of any user instruction or operation manual which is regularly supplied with the product, or, if not so supplied, shall cause to be provided with each laser product:

(i) Adequate instructions for assembly, operation, and maintenance, including clear warnings concerning precautions to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables I, II-A, III–A, III-B, and VI of paragraph (d) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and § 1040.11.

(ii) A statement of the magnitude, in appropriate units, of the pulse durations(s), maximum radiant power and, where applicable, the maximum radiant energy per pulse of the accessible laser radiation detectable in each direction in excess of the accessible emission limits in Table I of paragraph (d) of this section determined under paragraph (e) of this section.

(iii) Legible reproductions (color optional) of all labels and hazard warnings required by paragraph (g) of this section and § 1040.11 to be affixed to the laser product or provided with the laser product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1)(ii) or Figure 2 or paragragh (g)(2)(ii) of this section). The corresponding position of each label affixed to the product shall be indicated or, if provided with the product, a statement that such labels could not be affixed to the product but were supplied with the product and a statement of the form and manner in which they were supplied shall be provided.

(iv) A listing of all controls, adjustments, and procedures for operation and maintenance, including the warning "Caution—use of controls or adjustments or performance of procedures other than those specified herein may result in hazardous radiation exposure."

(v) In the case of laser products other than laser systems, a statment of the compatibility requirements for a laser energy source that will assure compliance of the laser product with this section and § 1040.11.

(vi) In the case of laser products classified with a 7 millimeter diameter aperture stop as provided in paragraph (e)(3)(i) of this section, if the use of a 50 millimeter diameter aperture stop would result in a higher clsssification of the product, the following warning shall be included in the user information: "CAUTION—The use of optical instruments with this product will increase eye hazard."

(2) *Purchasing and servicing information.* Manufacturers of laser products shall provide or cause to be provided:

(i) In all catalogs, specification sheets, and descriptive brochures pertaining to each laser product, a legible reproduction (color optional) of the class designation and warning required by paragraph (g) of this section to be affixed to that product, including the information required for positions 1, 2, and 3 of the applicable logotype (Figure 1 of paragraph (g)(1)(ii) or Figure 2 of paragraph (g)(2)(ii) of this section).

(ii) To servicing dealers and distributors and to others upon request at a cost not to exceed the cost of preparation and distribution, adequate instructions for service adjustments and service procedures for each laser product model, including clear warnings and precautions to be taken to avoid possible exposure to laser and collateral radiation in excess of the accessible emission limits in Tables I, II–A, II, III–A, III–B, and VI of paragraph (d) of this section, and a schedule of maintenance necessary to keep the product in compliance with this section and § 1040.11; and in all such service instructions, a listing of those controls and procedures that could be utilized by persons other than the manufacturers or the manufacturer's agents to increase accessible emission levels of radiation and a clear description of the location of displaceable portions of the protective housing that could allow human access to laser or collateral radiation in excess of the accessible emission limits in Tables I, II–A, II, III–A, III–B, and VI of paragraph (d) of this section. The instructions shall include protective procedures for service personnel to avoid exposure to levels of laser and collateral radiation known to be hazardous for each procedure or sequence of procedures to be accomplished, and legible reproductions (color optional) of required labels and hazard warnings.

(i) *Modification of a certified product.* The modification of a laser product, previously certified under § 1010.2, by any person engaged in the business of manufacturing, assembling, or modifying laser products shall be construed as manufacturing under the act if the

modification affects any aspect of the product's performance or intended function(s) for which this section and § 1040.11 have an applicable requirement. The manufacturer who performs such modification shall recertify and reidentify the product in accordance with the provisions of §§ 1010.2. and 1010.3.

**§ 1040.11 Specific purpose laser products.**

(a) *Medical laser products.* Each medical laser product shall comply with all of the applicable requirements of § 1040.10 for laser products of its class. In addition, the manufacturer shall:

(1) Incorporate in each Class III or IV medical laser product a means for the measurement of the level of that laser radiation intended for irradiation of the human body. Such means may have an error in measurement of no more than 20 percent when calibrated in accordance with paragraph (a)(2) of this section. Indication of the measurement shall be in International System Units. The requirements of this paragraph do not apply to any laser radiation that is all of the following:

(i) Of a level less than the accessible limits of Class IIIa; and

(ii) Used for relative positioning of the human body; and

(iii) Not used for irradiation of the human eye for ophthalmic purposes.

(2) Supply with each Class III or IV medical laser product instructions specifying a procedure and schedule for calibration of the measurement system required by paragraph (a)(1) of this section.

(3) Affix to each medical laser product, in close proximity to each aperture through which is emitted accessible laser radiation in excess of the accessible emission limits of Class I, a label bearing the wording: "Laser aperture."

(b) *Surveying, leveling, and alignment laser products.* Each surveying, leveling, or alignment laser product shall comply with all of the applicable requirements of § 1040.10 for a Class, I, IIa, II or IIIa laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class IIIa.

(c) *Demonstration laser products.* Each demonstration laser product shall comply with all of the applicable requirements of § 1040.10 for a Class I, IIa, II, or IIIa laser product and shall not permit human access to laser radiation in excess of the accessible emission limits of Class I and, if applicable, Class IIa, Class II, or Class IIIa.

Dated: July 12, 1985.

**Joseph P. Hile,**

*Associate Commissoner for Regulatory Affairs.*

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federal register

Tuesday
August 20, 1985

Part IV

# Department of Agriculture

Animal and Plant Health Inspection Service

9 CFR Part 92

Importation of Birds; Withdrawal of Proposed Rule

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 92

[Docket No. 85-089]

### Importation of Birds

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** A document published in the **Federal Register** on May 3, 1985, proposed to amend the regulations in 9 CFR Part 92 to establish provisions to allow birds originating in the United States and the offspring from such birds to be imported into the United States from an approved closed breeding facility, without quarantine in the United States, under specified conditions. This document withdraws the proposal. It appears that the adoption of the proposal would cause unacceptable risk of the introduction of communicable diseases of poultry into the United States.

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

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR Part 92 (referred to below as the regulations) contain provisions concerning the importation of birds into the United States. Section 92.11(e) of the regulations provides, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, or research birds imported from any part of the world shall be entered at certain ports and quarantined at a United States Department of Agriculture quarantine facility or at a privately-operated quarantine facility approved by the Deputy Administrator for Veterinary Services. The quarantine requirements were established to help ensure that birds imported into the United States are free from exotic Newcastle diseases, forms of avian influenza lethal to poultry, and other communicable diseases of poultry.

A document published in the **Federal Register** on May 3, 1985 (50 FR 18865-18869), proposed to amend the regulations by establishing provisions to allow birds originating in the United States and the offspring from such birds to be imported into the United States from an approved closed breeding facility, without quarantine in the United States, under specified conditions. This document withdraws the proposal.

The document of May 3, 1985, invited the submission of written comments on or before June 3, 1985. Also, a document published in the **Federal Register** on June 17, 1985, reopened the comment period until July 17, 1985.

Approximately 850 comments were received. Seven comments were in favor of the proposal. The remainder of the comments either opposed the proposal or expressed reservations concerning the proposal. The comments in opposition to the proposal raised many issues.

The comments included issues concerning supervision of a closed breeding facility. The proposed rule provided for a closed breeding facility to receive supervision from Veterinary Services personnel and a salaried veterinarian of the national veterinary services of the country in which the facility is located. In this regard, it was intended that Veterinary Services personnel would make periodic visits to the closed breeding facility. Further, the proposed rule provided for such salaried veterinarian to perform certain functions as needed, and otherwise to inspect the facility at least once each calendar week. Many of the commenters asserted that these provisions concerning supervision would not be adequate to ensure compliance with the proposed rule. Many of the commenters specifically asserted that such provisions would not be adequate to ensure that unauthorized birds would not be improperly entered into the facility.

Also, many of the commenters asserted that the proposed construction requirements for a closed breeding facility, such as allowing for open-air ventilation for buildings housing birds, would be inadequate to ensure that communicable diseases of poultry would not be spread to the facility through airborne transmission of disease producing organisms.

It has been determined that these comments have merit and provide a basis for withdrawing the proposal.

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

Done at Washington, D.C., this 16th day of August 1985.

**G.J. Fichtner,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 85-20047 Filed 8-19-85; 11:35 am]

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Tuesday
August 20, 1985

Part V

# Department of Energy

Energy Information Administration

Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas; Notice

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to the industrial users in the form of a surcharge. The statue requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prics and the high cost gas incremental pricing threshold which are to be effective September 1, 1985. These prices are based on the prices of alternative fuels.

**FOR FURTHER INFORMATION CONTACT:** Leroy Brown, Jr., Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, D.C. 20585, Telephone: (202) 252–6077.

#### Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative rule price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceilings for the State or the alternative fuel price ceilings for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

| State | Dollars per million BTU's |
|---|---|
| Alabama | $3.18 |
| Arizona [1] | 3.35 |
| Arkansas [1] | 3.13 |
| California | 3.28 |
| Colorado [2] | 3.32 |
| Connecticut [1] | 3.50 |
| Delaware [1] | 3.62 |
| Florida | 3.26 |
| Georgia [1] | 3.40 |
| Idaho [2] | 3.32 |
| Illinois | 3.49 |
| Indiana [1] | 3.53 |
| Iowa [1] | 3.42 |
| Kansas | 3.33 |
| Kentucky [1] | 3.53 |
| Louisiana | 3.06 |
| Maine [1] | 3.50 |
| Maryland | 3.52 |
| Massschusetts | 3.45 |
| Michigan [1] | 3.53 |
| Minnesota [1] | 3.42 |
| Mississippi [1] | 3.40 |
| Missouri [1] | 3.42 |
| Montana [2] | 3.32 |
| Nebraska [1] | 3.42 |
| Nevada [1] | 3.35 |
| New Hampshire [1] | 3.50 |
| New Jersey | 3.53 |
| New Mexico | 2.99 |
| New York [1] | 3.62 |
| North Carolina [1] | 3.40 |
| North Dakota [1] | 3.42 |
| Ohio | 3.35 |
| Oklahoma [1] | 3.13 |
| Oregon [1] | 3.35 |
| Pennsylvania | 3.57 |
| Rhode Island [1] | 3.50 |
| South Carolina | 3.37 |
| South Dakota [1] | 3.42 |
| Tennessee [1] | 3.40 |
| Texas [1] | 3.13 |
| Utah [2] | 3.32 |
| Vermont [1] | 3.50 |
| Virginia [1] | 3.40 |
| Washington [1] | 3.35 |
| West Virginia [1] | 3.53 |
| Wisconsin [1] | 3.53 |
| Wyoming [2] | 3.32 |

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

#### Section II—Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during June 1985 was $29.11 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, Section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective September 1, 1985, is $6.52 per million BTU's.

#### Section III—Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceilings. In addition, the FERC, by Order No. 181, issued on October 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

*A. Data Collected*

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of April 1985, May 1985, and June 1985.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

*B. Method Used To Determine Alternative Price Ceilings*

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective September 1, 1985, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3 months, April 1985, May 1985, and June 1985. Reported prices for sales in April 1985 were adjusted by the percent change in the nationwide volume-weighted average price from April 1985 to June 1985. Prices for May 1985 were similarly adjusted by the percent change in the nationwide volume-weighted average price from May 1985 to June 1985. The volume-weighted 3-month average of the adjusted April 1985 and May 1985, and the reported June 1985 prices were then computed for each State.

(2) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State or Local), and the military are excluded.

by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B.(2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of April 1985, May 1985, and June 1985. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United Stats. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending August 14, 1985, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of June 1985. A regional lag adjustment factor was similarly calculated for four regions. These are: one for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B.(3).

**Listing of States by Region**

States were grouped by the FERC to form eight distinct regions as follows:

| *Region A* | *Region B* |
|---|---|
| Connecticut | Delaware |
| Maine | Maryland |
| Massachusetts | New Jersey |
| New Hampshire | New York |
| Rhode Island | Pennsylvania |
| Vermont | |
| *Region C* | *Region D* |
| Alabama | Illinois |
| Florida | Indiana |
| Georgia | Kentucky |
| Mississippi | Michigan |
| North Carolina | Ohio |
| South Carolina | West Virginia |
| Tennessee | Wisconsin |
| Virginia | |
| *Region E* | *Region F* |
| Iowa | Arkansas |
| Kansas | Louisiana |
| Missouri | New Mexico |
| Minnesota | Oklahoma |
| Nebraska | Texas |
| North Dakota | |
| South Dakota | |
| *Region G* | *Region H* |
| Colorado | Arizona |
| Idaho | California |
| Montana | Nevada |
| Utah | Oregon |
| Wyoming | Washington |

Issued in Washington, D.C., August 16, 1985.

**L.A. Pettis,**

*Acting Deputy Administrator, Energy Information Administration.*

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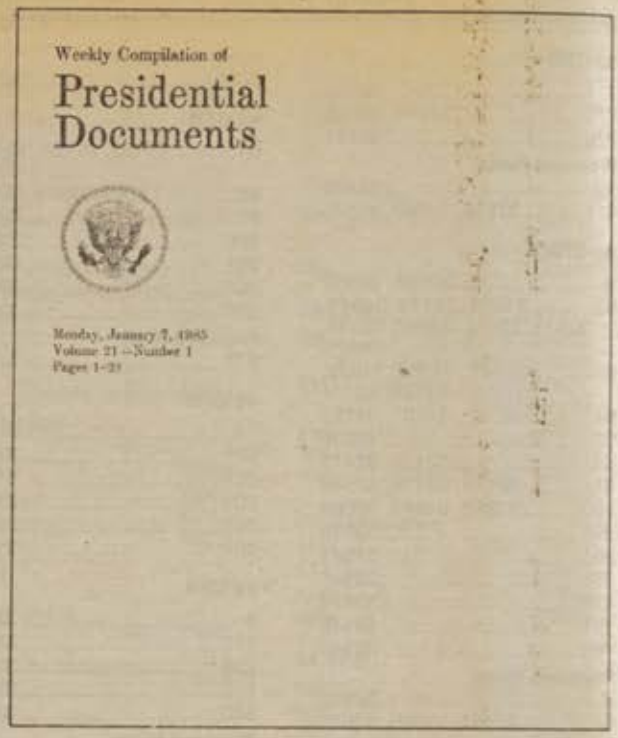


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