

3-6-86
Vol. 51 No. 44
Pages 7733-7912

Federal Register

Thursday
March 6, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, St. Louis, MO, Denver, CO, and Dallas, TX, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure

General Accounting Office

Air Pollution Control

Environmental Protection Agency

Animal Drugs

Food and Drug Administration

Aviation Safety

Federal Aviation Administration

Bridges

Coast Guard

Buses

Urban Mass Transportation Administration

Electric Power

Reclamation Bureau

Freedom of Information

Agriculture Department

Government Procurement

Defense Department

Hazardous Waste

Environmental Protection Agency

Loan Programs—Housing and Community Development

Veterans Administration

Marine Safety

Coast Guard

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

Selected Subjects

Maritime Carriers

Maritime Administration

Marketing Agreements

Agricultural Marketing Service

Milk Marketing Orders

Agricultural Marketing Service

Navigation (Water)

Coast Guard

Nuclear Power Plants and Reactors

Nuclear Regulatory Commission

Radio

Federal Communications Commission

Radio Broadcasting

Federal Communications Commission

Reporting and Recordkeeping Requirements

Economic Analysis Bureau

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

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ST. LOUIS, MO

WHEN: March 11; 9 am.
WHERE: Room 1612,
 Federal Building,
 1520 Market Street,
 St. Louis, MO.
CALL: Dolores O'Guin,
 St. Louis Federal
 Information Center,
 314-425-4109,
 for reservations.

WASHINGTON, DC

WHEN: March 20;
 9 am and 1 pm.
 (identical sessions)
WHERE: Office of the
 Federal Register,
 First Floor
 Conference Room,
 1100 L Street NW,
 Washington, DC
CALL: Ruth Reedy,
 202-523-5239,
 for reservations.

DENVER, CO

WHEN: March 24; 9 am.
WHERE: Room 239,
 Federal Building,
 1961 Stout Street,
 Denver, CO.
CALL: Elizabeth Stout,
 Denver Federal
 Information Center,
 303-236-7181,
 for reservations.

DALLAS, TX

WHEN: April 23; 1:30 pm.
WHERE: Room 7A23,
 Earl Cabell
 Federal Building,
 1100 Commerce St
 Dallas, TX.
CALL: local numbers:
 Ft. Worth 817-334-3624
 Dallas 214-767-8585
 Houston 713-229-2552
 Austin 512-472-5494
 San Antonio 512-224-4471
 for reservations.

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Title 3—

Proclamation 5446 of March 4, 1986

The President

Women's History Week, 1986

By the President of the United States of America

A Proclamation

Women have contributed mightily to the growth of the United States and the success of the American experiment with democracy. Today, women of every race and ethnic background, whether single or married, with children or other dependents, continue to play leading roles in the enrichment of our Nation. They are contributing substantially to the growth of the economy and the development of our educational, political, commercial, judicial, and social systems. And they continue to sustain those family values so essential to the health of the Nation.

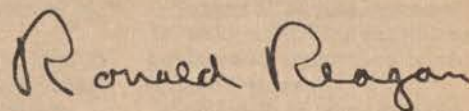
Women are making significant achievements in government and the private sector that will enhance employment opportunities for all Americans. As obstacles to full equality of opportunity are overcome, more and more women are successfully occupying an ever greater variety of demanding and rewarding careers. At the same time, women make an incomparable contribution as mothers and homemakers, whose vision, love, and example will shape the destiny of our country in the years to come.

It is appropriate that all Americans recognize the outstanding achievements of women and celebrate their unique and immense contributions to our Nation and its well-being.

The Congress, by House Joint Resolution 499, has designated the week beginning March 2, 1986, as "Women's History Week" and authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning March 2, 1986, as Women's History Week, and I call upon the people of the United States to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of March, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.



PROCLAMATION NO. 1000

WILSON'S HISTORY, 1900

THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

WHEREAS the President of the United States is authorized by the Constitution to see that the laws are faithfully executed and to take care that the offices of the Government are properly organized and conducted; and

WHEREAS the President is authorized by the Constitution to see that the laws are faithfully executed and to take care that the offices of the Government are properly organized and conducted; and

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WHEREAS the President is authorized by the Constitution to see that the laws are faithfully executed and to take care that the offices of the Government are properly organized and conducted; and

James Wilson

Rules and Regulations

Federal Register

Vol. 51, No. 44

Thursday, March 6, 1986

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

GENERAL ACCOUNTING OFFICE

4 CFR Part 28

General Accounting Office Personnel Appeals Board—Procedures

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: This rule amends the Board's regulations (1) to clarify, simplify and expedite the investigations by the Board General Counsel, (2) to remove the General Counsel from cases involving only attorney's fee issues, (3) to reflect a recent Board decision that expands the basis for reconsideration by the full Board of a Presiding Member's decision, (4) to reflect a recent Board decision that established criteria for vacating a Board-ordered stay of a personnel action, and (5) to provide more details on the procedures the Board General Counsel is to follow in corrective action proceedings.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Carl D. Moore, General Counsel, PAB, (202) 275-1663.

SUPPLEMENTARY INFORMATION: In the spirit of keeping the length of the Board's rules to a minimum, the Board has added § 28.1(d) to notify the parties that in any procedural matters not covered by these rules, the Board will be guided, but not controlled, by the Federal Rules of Civil Procedure.

Under the Board's regulatory scheme, an employee is required to file an action with the Board's General Counsel. After investigation by the General Counsel, the employee must file again with the Board in order to pursue the matter. The prior regulations referred to both the initial filing with the General Counsel and the ultimate filing with the Board, as a "petition for review." This led to some confusion. Thus, § 28.3(b) and (c) have

been added to rename the filing with the General Counsel as a "charge" and to rename the individual who files such a charge from "petitioner" to "charging party." The renaming required amendments to §§ 28.11, 28.17, 28.47 and 28.83.

The Board also amended the rules by adding §§ 28.11(a)(2) and 28.45(c). These provisions provide, respectively, that non-EEO class allegations must be filed as a "charge" with the Board General Counsel and that EEO class allegations must be filed directly with the Board as a "petition for review." The difference in treatment is based on the EEO complaint procedure. An EEO class complaint goes through the agency complaint process before coming to the Board. The agency process involves a hearing and requires that the class be represented by competent counsel. The subsequent review by the Board is intended to be primarily a review of the record; although the Board retains the discretion to order a hearing to gather more evidence should circumstances so warrant. Since counsel is already involved on behalf of the class in EEO class actions and since the Board's review is primarily appellate in nature, the Board determined that it would constitute an unwarranted expenditure of government funds and unduly delay an already extended process to require the Board General Counsel to review the record and make determinations as to whether to assume responsibility for the class action.

On the other hand, allegations raising non-EEO class issues (e.g., agency practices that are alleged to constitute a pattern of prohibited personnel practices affecting a substantial number of employees) come before the Board without prior administrative processing. Thus, the role of the General Counsel would be the same in these cases as in an individual case.

Section 28.11(e) has been amended to provide that the Board General Counsel will not participate in cases that are limited to requests for attorney's fees. As in the case of EEO class actions, the Board determines that it was unnecessary for the General Counsel to become involved as lead counsel when, by definition, counsel was already deeply involved in the case.

The provisions for the Board General Counsel investigative procedures were modified in three ways. First, the

requirement that GAO formally respond to a charge was eliminated. While the General Counsel is required to serve the agency with a copy of the charge, the General Counsel's investigation is to begin without delay. Second, § 28.17(e) states that when the General Counsel participates in a case, the General Counsel shall be lead counsel. Third, a new subsection (f) at § 28.17 provides that when the General Counsel is not involved in a case, the General Counsel may, nevertheless, request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

In referring to time limits, the rules in a few places used the phrase "calendar days." Since the term "days" was already defined as "calendar days" at § 28.3(c) (28.3(e) as amended herein), use of the term "calendar" in other portions of the rules was redundant. Therefore, the term "calendar" was deleted from other portions of the rules.

The Board amended § 28.7 placing a limit of 60 pages on pleadings and attachments to pleadings and requiring that all submissions to the Board be on standard letter-size paper.

Provisions appearing at §§ 28.11(e) and (f), 28.13 and 28.15 that dealt with filing and responding to "petitions for review" were incorporated into the provisions that deal with petitions to the Board at §§ 28.19(a), 28.18(e), 28.19(c) and 28.19(b), respectively.

Section 28.19(b)(1) is a new provision in the rules which is intended to ensure that, whenever defenses become reasonably known to the agency, they are raised in a timely fashion. It is not intended to preclude the agency from raising defenses during the process that were not reasonably known at the time the petition for review was filed.

Section 28.21 was amended by adding subsection (n). This subsection provides guidance for motions to correct the official transcript.

Section 28.25 was amended by adding paragraphs (c)(3) through (c)(5). These subsections include the statutory bases upon which the courts review the decisions of the Board as bases for reconsideration by the full Board of a Hearing Officer's decision.

The Board amended § 28.25(c) requiring that a motion to reopen and reconsider include "all supporting material" and that, after the responding

party files a reply, additional responsive pleadings may be filed only with the approval of the Board.

List of Subjects in 4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations.

PART 28—[AMENDED]

Accordingly, 4 CFR Part 28 is amended as follows:

1. The authority citation for Part 28 continues to read as follows:

Authority: 31 U.S.C. 753

2. The table of contents is amended by adding a new section to Subpart A immediately below "28.3 General definitions" as follows:

Sec.
28.4 Time limits.

3. The table of contents for Subpart B is revised to read to follow:

Subpart B—Procedures

- 28.5 Informal procedural advice.
 - 28.7 Procedures—general.
 - 28.9 Notice of appeal rights.
 - 28.11 Filing a charge with the General Counsel.
 - 28.17 General Counsel procedures.
 - 28.18 Filing a petition for review with the Board.
 - 28.19 Board procedures—pre-hearing.
 - 28.21 Board procedures—formal hearings.
 - 28.23 Burden and degree of proof.
 - 28.25 Board procedures—decisions and orders.
 - 28.27 Board procedures—judicial review.
4. In the table of contents the headings for Subpart D and for §§ 28.45 through 28.49 are revised to read as follows:

Subpart D—Special Procedures—Equal Employment Opportunity (EEO) Cases

- 28.45 Class actions in EEO cases.
- 28.47 Individual charges in EEO cases.
- 28.49 Petitions for review to the Board in EEO cases.

5. In the table of contents, the headings for Subpart G and for § 28.103 are revised to read as follows:

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

- Sec.
- 28.103 Corrective action proceedings.

6. Section 28.1 is amended by adding paragraph (d) which reads as follows:

§ 28.1 Purpose and scope.

(d) In considering any procedural matter not specifically addressed in these rules, the Board will be guided, but

not controlled, by the Federal Rules of Civil Procedure.

7. Section 28.3 is revised to read as follows:

§ 28.3 General definitions.

In this part—

(a) "Board" means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751.

(b) "Charge" means any request filed with the PAB General Counsel on any matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

(c) "Charging Party" means any person filing a charge with the General Counsel for investigation.

(d) "Comptroller General" means the Comptroller General of the United States.

(e) "Days" means calendar days.

(f) "GAO" means the General Accounting Office.

(g) "General Counsel" means the General Counsel of the General Accounting Office Personnel Appeals Board, as provided for under 31 U.S.C. 752.

(h) "Hearing Officer" means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction. A Hearing Officer may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing.

(i) "Person" means an employee or applicant for employment, a labor organization or the GAO.

(j) "Petition" means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

(k) "Petitioner" means any person filing a petition for Board consideration.

8. Subpart A is amended by adding § 28.4 to read as follows:

§ 28.4 Time limits.

(a) To compute the number of days for filing under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing shall be included in the computation. When the last day falls on a Saturday, Sunday or federal government holiday, then the filing deadline will be the next regular federal government workday.

(b) The Board may waive the time limits in these rules for good cause shown.

9. Subpart B is revised to read as follows:

Subpart B—Procedures

§ 28.5 Informal procedural advice.

(a) Charging parties or prospective charging parties may seek informal advice on all aspects of the Board's procedures by contacting the General Counsel.

(b) Informal procedural advice will be supplied within the limits of available time and staff.

§ 28.7 Procedures—general.

(a) The procedures described in this subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent subparts to which they are particularly applicable.

(b) All pleadings and attachments thereto shall not exceed 60 pages. The Board may waive this limitation for good cause shown. Pleadings filed with the Board shall be on standard letter-size paper (8½ X 11).

§ 28.9 Notice of appeal rights.

The GAO shall be responsible for ensuring that employees are regularly advised of their appeal rights to the Board and that employees who are the object of an adverse action are, at the time of the action, adequately advised of their appeal rights to the Board.

§ 28.11 Filing a charge with the General Counsel.

(a) *Who may file.* (1) Any GAO employee or applicant for employment claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code.

(2) *Non-EEO class actions.* One or more employees or applicants for employment may file a charge as representatives of a class of employees or applicants for employment in any matter within the Board's jurisdiction. See § 28.45 for EEO class actions.

(b) *When to file.* (1) Charges relating to adverse actions based on conduct or performance must be filed within 20 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 20 days after the effective date of the action or 20 days after the charging party knew or should have known of the action.

(3) Charges relating to adverse actions or performance-based actions (paragraph (b)(1) of this section) or other personnel actions (paragraph (b)(2) of this section) that also raise an allegation of prohibited discrimination must be

filed in accordance with paragraph (b)(4) of this section.

(4) Charges relating to discrimination complaints may be filed any time after 80 days have passed since the filing of a formal complaint of discrimination with GAO, except that, when GAO has issued a final agency decision, the charge must be filed within 20 days from receipt by the charging party of the final agency decision.

(5) Charges relating to continuing violations may be filed at any time.

(c) *How to file.* Charges may be filed at the Office of the General Counsel (Academy Building, 717—5th Street, NW, Washington, D.C.) or by mail addressed to the General Counsel, Personnel Appeals Board, Academy Building, General Accounting Office, Washington, D.C. 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the General Counsel.

(d) *What to file.* The charging party should include in any charge the following information:

(1) Name of the charging party or a clear description of the group or class of persons on whose behalf the charge is being filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the General Counsel review;

(3) The actions being complained about, including dates, reasons given, and internal appeals taken;

(4) Charging party's reasons for believing the actions to be improper;

(5) Remedies sought by the charging party;

(6) Name and address of the representative, if any, who will act for the charging party in any further stages of the matter; and

(7) Signature of the charging party or the charging party's representative.

(e) When attorney's fees are the only issue before the General Counsel, the General Counsel shall transmit the charge to the Board for processing under § 28.19 through § 28.25 as a petition for review. The General Counsel shall not participate in the case pursuant to § 28.17(d).

§ 28.17 General Counsel procedures.

(a) The General Counsel shall serve the agency with the charge, investigate the matters raised in a charge, refine the issues where appropriate, and attempt settlement of all matters at issue.

(b) The General Counsel's investigation may include gathering information from GAO and interviewing and taking statements from witnesses. Employees of GAO who are requested by the General Counsel to participate in

any investigation under these Rules shall be on official time.

(c) Following the investigation, the General Counsel shall provide the charging party with a Right to Appeal Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d) If, following the investigation, the General Counsel determines that there is not reasonable evidence to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code have been violated, then the General Counsel shall not represent the charging party. If the General Counsel determines that there is reasonable evidence to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code have been violated, then the General Counsel shall represent the charging party, unless the charging party elects not to be represented by the General Counsel. Any charging party may represent himself/herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of a private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

§ 28.18 Filing a petition for review with the Board.

(a) *Who may file.* Any GAO employee or applicant for employment who has received a Right to Appeal Letter from the General Counsel and who is claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code.

(b) *When to file.* Petitions for review must be filed within 20 days after receipt by the petitioner of the Right to Appeal Letter from the General Counsel.

(c) *How to file.* Petitions may be filed at the Office of the Board (Academy Building, 717—5th Street, NW, Washington, D.C.) or by mail addressed to the Personnel Appeals Board,

Academy Building, General Accounting Office, Washington, D.C. 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petitioner should include in any petition for review the following information:

(1) Name of the petitioner of a clear description of the group or class of persons on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for actions the petitioner wishes to have the Board review;

(3) The actions being complained about, including dates, reasons given, and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper;

(5) Remedies sought by the petitioner;

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter;

(7) Whether a hearing is requested; and

(8) Signature of the petitioner or petitioner's representative.

(e) *Non-EEO class actions.* One or more employees may file a petition for review as representatives of a class of employees in any matter within the Board's jurisdiction. The Hearing Officer shall hear the case as a class action if he/she finds a class action will be the most efficient and fair way to adjudicate the appeal and will adequately protect the interests of all the parties. See § 28.45 for EEO class actions.

§ 28.19 Board procedures—pre-hearing.

(a) *Service on respondent.* Upon receipt of a petition for review, the Board shall serve a copy on the respondent.

(b) *Response by GAO.* Within 20 days after receiving a copy of a petition for review, the GAO shall file a response containing at least the following:

(1) A statement of the GAO position with respect to each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition, and any other defenses to the petition, and

(2) Designation of, and signature by, the GAO representative authorized to act for GAO in the matter.

(c) *Amendments to petitions.* The Board at its discretion may allow amendments to a petition as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations.

(d) All motions of the parties shall be filed with the Hearing Officer assigned

by the Board after receipt of the petition, and copies shall be served simultaneously upon the other parties to the petition. Responses in opposition to such motions must be filed with the Hearing Officer and served simultaneously upon the other parties to the petition within 20 days of receipt of the motion, unless the Hearing Officer requires a shorter response time. A certificate of service will be filed with all pleadings showing service by mail or personal delivery of the pleadings to the other parties. Additional responsive pleadings may be filed only with the approval of the Hearing Officer.

(e) Requests for discovery may be served upon a party following the filing of a petition for review. Objections to any or all portions of a request must be served within 10 days of receipt of the request. Otherwise, compliance with the request shall be made within 20 days of receipt. If the parties are unable to agree as to the scope of discovery, the Hearing Officer shall, upon the filing of a motion to compel, rule on such questions, having in mind the need to provide a full and fair consideration of the relevant and material facts of the case. Appropriate safeguards for the confidentiality of information discovery may be imposed by the Hearing Officer.

(f) The Board shall order a hearing on its own motion or at the request of either party. Absent a request for a hearing, the Board may issue a decision and order based upon the written submissions of the parties and, where it deems necessary, on oral argument called for the purpose of eliciting further views.

(g) Where the General Counsel under § 28.17(a) transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

§ 28.21 Board procedures—formal hearings.

(a) Where two or more parties have filed petitions containing identical or similar issues, the Board may, following appropriate notice to the parties and opportunity for comment by the parties, consolidate such petitions for hearing purposes.

(b) Where a petitioner has filed two or more petitions, the Board may, following appropriate notice to the parties and opportunity for comment by the parties, join these petitions for purposes of conducting the hearing.

(c) A formal hearing on a petition may be conducted:

(1) Before the Board as a whole, in which case the Chair shall preside;

(2) Before one of its members chosen by the Board to be the Hearing Officer;

(3) Before a panel of two or more Board members chosen by the Board, one of whom shall preside; or

(4) Before a qualified Hearing Officer chosen by the Board for the purpose.

(d) The Board shall issue a notice to all parties specifying the date, time and place of the scheduled hearing. In no case shall the hearing be held earlier than 15 days after the notice is issued, unless all parties agree to an earlier date.

(e) Upon request by the Board, the GAO shall provide appropriate space to hold the hearing.

(f) The Hearing Record shall be prepared and maintained under the supervision of the Hearing Officer. It shall include exhibits, motions, and other material submitted by the parties and accepted by the Hearing Officer. It may also, at the election of the Hearing Officer, include the transcript of the hearing. This Record shall constitute the sole official record of the proceeding. Copies of all or portions of the Record shall be provided to the petitioner and the respondent upon request; other parties may be furnished a copy, at their request and at their own expense, or they may examine a copy at a time and place set by the Board.

(g) Generally, hearings shall be closed to the public unless the petitioner requests the Hearing Officer to order the hearing or part of the hearing to be open. However, the Hearing Officer may, for good cause shown, close any or all portions of the hearing, over the petitioner's objections, stating the reason therefor on the Record.

(h) Although the rules of evidence shall not apply, the Hearing Officer shall conduct the hearing so as to ensure that all relevant and material facts are placed into the Record and all parties are given full opportunity to present their evidence on the issues.

(i) The Hearing Officer shall conduct the hearing in a manner designed best to achieve a balance of fairness, justice and equity in terms of the objectives of Subchapter IV of Chapter 7 of Title 31, United States Code and the proper interests of the parties; he/she shall have the authority needed to function effectively, including, but not restricted to, authorizing the taking of depositions, ruling on admissibility of evidence, issuing subpoenas, requiring briefs, and administering oaths.

(j) The Hearing Officer shall rule on all questions of procedure and conduct raised at the hearing following appropriate administrative procedures consistent with 5 U.S.C. 7701 and 7702. Objections to rulings of the Hearing Officer, with reasons therefor, shall be part of the Record; however, the hearing

shall proceed as ordered by the Hearing Officer.

(k) Upon application to the Hearing Officer, any party affected by matters at issue in any petition may be given, at the discretion of the Hearing Officer, the status of an intervenor in all formal proceedings relating to the petition. As such, any intervenor shall have the right to participate in the hearing and to be notified, as is the petitioner, of all Board actions respecting the processing of the case. However, intervenors shall pay any costs related to their participation in the processing of the petition.

(l) The costs involved in the appearance of witnesses in any Board hearing shall be allocated as follows:

(1) Persons employed by the GAO shall, upon request by the Hearing Officer to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a Board hearing shall, at the request of the Hearing Officer and with the approval of the employing agency, be in official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraphs (l)(3) and (m) of this section.

(3) The fees and expenses of other persons called to testify at a Board hearing shall, in the first instance, be paid by the party requesting their appearance, subject to a subsequent decision otherwise in accordance with paragraph (m) of this section.

(m) Within 20 days after receipt of a notice of final decision by the Board, the petitioner may submit a request for the award of reasonable attorney's fees and costs. GAO may file a response to the request within 20 days after its receipt. Motions of the parties shall be filed in accordance with § 28.19(d) of these regulations. Rulings of the Board on attorney's fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The Board's decision on attorney's fees and costs shall be a final decision, in accordance with § 28.27.

(n) Corrections to the official transcript will be permitted upon motion. Motions for correction must be submitted within 20 days of the receipt of the transcript. Corrections of the official transcript will be permitted thereafter only in compelling and extraordinary circumstances and only

upon approval of the Hearing Officer. The Hearing Officer or the Board may at any time on its own motion order the correction of the official transcript.

§ 28.23 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) It is a performance-based action and is supported by substantial evidence; or

(2) It is brought under any other provision of law, rule or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence.

(b) Notwithstanding paragraph (a) of this section, the agency's decision may not be sustained if the petitioner—

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 4 CFR 2.5; or

(3) Shows that the decision was not in accordance with law.

(c) In any other appeal to the Board, the petitioner shall have the responsibility of presenting the evidence in support of the appeal and shall have the burden of proving the allegations of the appeal by a preponderance of the evidence.

§ 28.25 Board procedures—decisions and orders.

(a) Where a Hearing Officer who is not a Board member conducts a hearing, the Hearing Officer shall transmit to the parties and the Board a Report of Findings of Fact and Recommendations. Based upon this Report, a member or panel of members of the Board shall issue a decision. The decision shall contain the date upon which the decision will become final, which will be at least 30 days from issuance. The decision shall become final on that date unless a party files a motion to reopen and reconsider within 30 days from issuance of the decision or unless the Board reopens on its own motion.

(b) Where a Board member or panel of Board members hears a case, a decision shall be issued to the Board and to the parties. The decision shall contain the date upon which the decision will become final, which will be at least 30 days from issuance. The decision shall become final on that date unless a party files a motion to reopen and reconsider within 30 days from issuance of the decision or unless the board reopens on its own motion.

(c) A motion to reopen and reconsider may be filed at the Office of the Board or by mail. When filed by mail, the

postmark shall be the date of filing. The party filing the motion to reopen and reconsider shall serve a copy of the motion on other parties. The motion to reopen and reconsider shall include all supporting material and shall set forth objections to the decision, with references to applicable laws or regulations, and with specific reference to the Record. The responding party shall have 20 days from receipt of the motion to file any reply. Additional responsive pleadings may be filed only with the approval of the Board. The Board may grant a motion to reopen and reconsider when it is established that:

(1) New material evidence is available that, despite due diligence, was not available when the Record was closed;

(2) The decision of the Hearing Officer is based on an erroneous interpretation of statute or regulation;

(3) The decision is arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

(4) The decision is not made consistent with required procedures; or

(5) The decision is unsupported by substantial evidence.

(d) If the Board reopens a case, the subsequent decision of the Board shall be final.

(e) Where the full Board initially hears a case, the subsequent decision shall be final and appealable under § 28.27.

(f) A person required to take any action under the terms of a Board decision or order shall carry out its terms promptly, and shall, within 30 days after the decision or order becomes final, provide the Board with a compliance report specifying:

(1) The manner in which the provisions of the decision or order have been complied with;

(2) The reasons any provisions have not yet been fully complied with; and

(3) The steps being taken to ensure full compliance. A copy of the report shall be served on all parties to the proceeding.

(g) The Administrative Officer of the Board shall take all necessary action to ascertain compliance with the final decision of the Board. If the Administrative Officer finds non-compliance, he/she shall undertake efforts to obtain compliance. If the Administrative Officer is unable to obtain satisfactory agency compliance with the final order, he/she shall report to the Board.

(h) Any person may petition the Board for enforcement of a final decision. The petition shall specifically set forth the reasons why the petitioner believes there is non-compliance.

(i) Upon receipt of a non-compliance report from its Administrative Officer or

of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance.

(j) Following a show cause proceeding, the Board may seek judicial enforcement of its decision or order.

§ 28.27 Board procedures—judicial review.

(a) Appeals other than discrimination complaints. A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), and (7) may be appealed to the United States Court of Appeals for the Circuit in which the petitioner resides or to the United States Court of Appeals for the District of Columbia within 30 days after the date the petitioner receives notice from the Board of the final decision.

(b) Judicial review of discrimination complaints. The provisions for review of discrimination complaints are provided in § 28.51.

(c) The Board may designate the General Counsel or any other qualified individual to represent it in any judicial appeals from its decisions taken in accordance with 31 U.S.C. 755.

10. The heading of Subpart D is revised to read as follows:

Subpart D—Special Procedures—Equal Employment Opportunity (EEO) Cases

11. Sections 28.45 through 28.51 are revised to read as follows:

§ 28.45 Class actions in EEO cases.

(a) Prior to invoking the Board's procedures in a case alleging prohibited discrimination on behalf of a class of GAO employees or applicants for employment, a complaint must first be filed with GAO in accordance with GAO Order 2713.2.

(b) A petition for review of GAO's disposition of any EEO class complaint may be submitted to the Board when:

(1) GAO issues a determination rejecting or canceling the class complaint;

(2) GAO issues a determination accepting the class action, but with modifications that are not satisfactory to the agent of the class;

(3) A period of more than 180 days has elapsed since the formal class complaint was filed and the GAO has not issued a final decision; or

(4) The complaint has been resolved by a GAO decision that, in whole or in part, has not satisfied the agent for the class.

(c) In class actions in EEO cases, no charge shall be filed or investigated by the General Counsel prior to filing a

petition for review with the Board. However, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

(d) The parties shall not have a right to a hearing on a petition for review in class actions under this section. Upon a showing of good cause as to why an evidentiary hearing is necessary, the Board may order such a hearing. Alternatively, the Board may, after a review of the administrative record and on its own motion, order a hearing for the purpose of gathering additional evidence. If no hearing is ordered, the Board's decision shall be based upon a review of the administrative record developed in the GAO class complaint process.

§ 28.47 Individual charges in EEO cases.

(a) Prior to invoking the Board's procedures in a case alleging prohibited discrimination, a complaint must first be filed with GAO in accordance with GAO Order 2713.2.

(b) A charge relating to GAO's disposition of any individual EEO complaint may be submitted to the General Counsel when:

(1) The complaint or a portion thereof has been rejected by the GAO; or

(2) A period of more than 80 days has elapsed since the complaint was filed, and the GAO has not issued a final decision; or

(3) The complaint has been resolved by a GAO decision which, in whole or in part, has not satisfied the complainant.

(c) Where a charging party wishes to file a combination of claims, only a portion of which involve discrimination, the charging party must first file a complaint in the agency EEO complaint process. Where a complaint filed in the agency EEO complaint process relates to non-EEO issues that are within the Board's jurisdiction in addition to EEO-related allegations, the subsequent charge filed with the General Counsel under paragraph (b) of this section shall be considered a timely appeal of the non-EEO issues.

(d) A charge filed with the General Counsel under the provisions of this subpart shall state the issue briefly, and shall spell out clearly the reason the charging party believes the action of the GAO to be contrary to the law.

(e) The charging party shall file the charge with the General Counsel in accordance with § 28.11. The General Counsel shall investigate the charge in accordance with § 28.17.

§ 28.49 Petitions for review to the Board in EEO cases.

(a) The provisions of § 28.18 through § 28.25, inclusive, shall govern the Board's procedures in processing petitions filed under this subpart.

(b) Remedial action provided in Board orders in these cases may include:

(1) Provision for offers of employment, re-employment or promotion, with or without back pay, when the Board decides such action is required to make whole the individual found to have been discriminated against.

(2) Notification to all GAO employees of the action ordered to be taken to expunge the effect of the discrimination;

(3) Correction of GAO personnel records, as necessary, to reflect the purpose of the Board order; and,

(4) Any other action the Board believes proper to correct the effect of the discrimination found to have occurred.

§ 28.51 Civil action—discrimination complaints.

(a) An employee or applicant alleging violations of 42 U.S.C. 2000e-16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court after 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO.

(b) An employee or applicant alleging violations of 42 U.S.C. 2000e-16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court after 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(c) An employee or applicant alleging discrimination based upon a handicapping condition (29 U.S.C. 791, 794a—Rehabilitation Act), or age discrimination (29 U.S.C. 631, 633a—Age Discrimination in Employment Act), or salary inequity due to sex (29 U.S.C. 206d—Equal Pay Act provisions of the Fair Labor Standards Act) need not exhaust administrative appeals to GAO or to the Board before filing suit in the Federal District Court. 12. Section 28.83 is revised to read as follows:

§ 28.83 Unfair labor practices—Board procedures.

(a) Unfair labor practices are defined at GAO Order 2711.1 dated October 1, 1980. An allegation that a provision of GAO Order 2711.1 is inconsistent with Chapter 71 of Title 5, United States Code, and thereby denies to an employee or labor organization rights

comparable to those granted by Chapter 71 of Title 5, United States Code, may also be raised under the unfair labor practice procedure.

(b) An allegation that unfair labor practices have been committed shall be subject to the procedures appearing in Subpart B for the filing of charges, investigation by the General Counsel, and the Board's disposition, except as set forth in paragraph (c) of this section.

(c) No petition for review may be filed based on any alleged unfair labor practice which occurred or was discovered more than 6 months before the filing of an unfair labor practice charge with the charged party, as provided in paragraph 14b of GAO Order 2711.1, or more than 9 months before the filing of a charge with the General Counsel.

13. The heading for Subpart G is revised to read as follows:

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

14. Section 28.103 is revised to read as follows:

§ 28.103 Corrective action proceedings.

(a) When information comes to the attention of the General Counsel suggesting that a prohibited personnel practice may have occurred, exists or is to be taken, the General Counsel shall investigate the matter to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken.

(b) If the General Counsel terminates any investigation under this section which is not also the subject of a charge, the General Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated, a written statement notifying the person of the termination of the investigation and the reasons therefore.

(c) If the General Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken which requires corrective action and which is not also the subject of a charge, the General Counsel shall report the determination together with any findings or recommendations to the GAO.

(d) If, after a reasonable period, GAO has not taken the corrective action recommended, the General Counsel may file a petition for review with the Board. Such petition for review shall be processed in accordance with §§ 28.19 through 28.25.

§ 28.107 [Amended]

15. Section 28.107 is amended by adding paragraph (d) to read as follows:

(d) In the event that a stay is ordered pending adjudication of the merits of a personnel action, the Presiding Member may vacate the stay if, after hearing the evidence presented by both sides on the factual allegations which formed the basis for granting the stay, the Presiding Member determines that the agency did not commit a prohibited personnel practice.

Ira F. Jaffe,

Chairman, Personnel Appeals Board.

[FR Doc. 86-4574 Filed 3-5-86; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 981**

Handling of Almonds Grown in California; Revision of Salable, Reserve, and Export Percentages for the 1985-86 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises the salable and reserve percentages for marketable California almonds received by handlers during the 1985-86 crop year, which began July 1, 1985. The salable percentage is increased from 80 percent to 85 percent, and the reserve percentage is correspondingly decreased from 20 percent to 15 percent. This action is taken under the marketing order for almonds grown in California to promote orderly marketing conditions.

EFFECTIVE DATES: July 1, 1985 through June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 475-3919.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 50 handlers of almonds are subject to regulation under the marketing order for almonds grown in California during the course of the current season and the great majority of this group may be classified as small entities. While regulations issued during a season impose some costs on affected handlers and the number of such firms may be substantial, the added burden on small entities, if present at all, is not significant.

It has been determined that a situation exists which warrants publication of this final rule without prior opportunity for public comment. This action relaxes restrictions on handlers by allowing them to ship additional almonds to salable outlets and should be taken promptly to ensure a sufficient quantity of almonds for normal domestic and export needs and maintain the current momentum of sales. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of public rulemaking and other public procedures with respect to this final action are impracticable and contrary to the public interest.

It also is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553). The marketing order for California almonds requires that revised salable, reserve, and export percentages established for a particular crop year apply to all marketable almonds received by handlers from the beginning of that year. The 1985-86 crop year began July 1, 1985.

The authority to establish salable and reserve percentages is pursuant to § 981.47 of the marketing agreement and Order No. 981, both as amended (7 CFR 981), regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). Section 981.48 of the order provides for an increase in the salable percentage by the Secretary upon findings of fact that

the quantity of salable almonds is not sufficient to satisfy trade demand and desirable carryover requirements for the crop year.

On September 4, 1985, a final rule was published in the *Federal Register* (50 FR 35768) establishing salable, reserve, and export percentages of 80 percent, 20 percent, and 0 percent, respectively, for the 1985-86 crop year. That action was based on a unanimous recommendation of the Almond Board of California, which works with USDA in administering the order, at its July 25, 1985, meeting.

On January 28, 1986, the board met to review the salable and reserve percentages established for the 1985-86 crop year and the supply and demand estimates from which those percentages were derived. Pursuant to § 981.48 of the order, the Board recommended an increase in the salable percentage to 85 percent and a corresponding decrease in the reserve percentage to 15 percent. In arriving at this recommendation, the Board noted that the current estimate of 1985 production is down 37.6 million pounds from its July 25, 1985, estimate to 457.4 million pounds. The Board's current estimate of loss and exempt almonds is down 3.0 million pounds to 22.0 million pounds. The Board increased its estimate of export trade demand by 75.0 million pounds to 325.0 million pounds. The Board also decreased the quantity of almonds deemed desirable to be carried out on June 30, 1986, from 204.0 million pounds to 122.6 million pounds to reflect the smaller crop and increased trade demand. Therefore, an increase in the salable percentage is necessary to ensure that ample supplies of almonds are available to meet 1985-86 trade demand needs.

The estimates used by the Board in recommending the revised salable and reserve percentages are tabulated below. The Board's July 25, 1985, estimates are shown as a basis of comparison.

MARKETING POLICY ESTIMATES—1985 CROP
(Kernel Weight Basis)

	Million pounds	
	Initial estimate (7/25/85)	Revised estimate (1/28/86)
Estimated production:		
1. 1985 production.....	495.0	457.4
2. Loss and exempt.....	25.0	22.0
3. Marketable production.....	470.0	435.4
Estimated trade demand:		
4. Domestic.....	150.0	150.0
5. Export.....	250.0	325.0
6. Total.....	400.0	475.0
Inventory adjustment:		
7. Carryin 7/1/85.....	228.0	227.5

MARKETING POLICY ESTIMATES—1985 CROP—
Continued
(Kernel Weight Basis)

	Million pounds	
	Initial estimate (7/25/85)	Revised estimate (1/28/86)
8. Desirable carryover 6/30/86	204.0	122.6
9. Adjustment	(24.0)	(104.9)
Salable/reserve:		
10. Adjusted trade demand (6 plus 9)	376.0	370.1
11. Reserve (3 minus 10)	94.0	65.3
12. Salable % (10 ÷ 3 × 100)	180	185
13. Reserve % (100% minus 12)	120	115

¹ Percent.

The reserve of 15 percent (65.3 million pounds) must be withheld by handlers from normal domestic and export outlets to meet their reserve obligations. The Board has allocated 43.5 million pounds of these almonds for use chiefly in almond butter and school lunch projects and other outlets designed to develop new long-term uses and markets for almonds. Allocated reserve almonds also could be disposed of in other noncompetitive outlets as specified in § 981.66(c) of the order or as approved by the Board.

The remaining portion of the reserve (21.7 million pounds) will be held as a contingency for allocation at a later date. All or part of these almonds could be released to salable markets to augment 1985-86 or 1986-87 salable supplies if it is later found that the quantity of salable almonds made available by this revision of the salable percentage is still insufficient to satisfy trade demand and desirable carryover requirements. The Board is required to make all recommendations to the Secretary to increase the salable percentage prior to May 15, 1986. Alternatively, the Board could use contingency reserve almonds to augment supplies for almond butter, school lunch, or other market development projects or dispose of these almonds in other noncompetitive outlets specified in § 981.66(c) of the order or as approved by the Board.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board, and other available information, it is further found that the revision of the salable and reserve percentages, as hereinafter set forth, will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, and California.

PART 981—[AMENDED]

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

2. Section 981.234 of Subpart—Salable, Reserve, and Export Percentages is revised to read as follows: (This subpart and section will not appear in the Code of Federal Regulations).

PART 981—ALMONDS GROWN IN CALIFORNIA

Subpart—Salable, Reserve, and Export Percentages

§ 981.234 Salable, reserve, and export percentages for almonds during the crop year beginning July 1, 1985.

The salable, reserve, and export percentages during the crop year beginning July 1, 1985, shall be 85 percent, 15 percent, and 0 percent, respectively.

Dated: February 28, 1986.
Joseph A. Gribbin,
Director, Fruit and Vegetable Division,
[FR Doc. 86-4927 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1124

[Docket No. AO-368-A14]

Milk in the Oregon-Washington Marketing Area; Order Amending Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This decision amends the Oregon-Washington milk order to enable handlers to pool producer milk that is surplus to the fluid (bottling) needs of the market without costly, inefficient and unnecessary handling and hauling of the milk. The changes reduce the amount of milk that supply plants must deliver to pool distributing plants in order to meet pool performance standards, eliminate some of the deliveries of individual producers' milk that are required to be made to pool plants if the remainder of the producers' milk is to be eligible to be diverted to nonpool plants, and increase the amount of a handler's supply of milk not needed for fluid use that may be moved from producers' farms directly to nonpool plants for manufacturing use.

Other amendments cause the fluid equivalent of nonfluid milk receipts used in Class II products to be allocated to

Class II use instead of to Class III, and provide that nonmember producers who are not paid under the Oregon State Quota plan may be paid directly by their handler rather than the the market administrator.

These amendments, which are based on industry proposals considered at a public hearing held in Portland, Oregon, on July 24, 1985, are necessary to reflect current marketing conditions and to assure orderly marketing in the Oregon-Washington marketing area. Cooperative associations representing more than the required two-thirds of the producers supplying milk for the market during the representative period of October 1985 have approved issuance of the amended order.

EFFECTIVE DATE: March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued July 3, 1985; published July 9, 1985 (50 FR 27972).

Recommended Decision: Issued November 20, 1985; published November 27, 1985 (50 FR 48776).

Final Decision: Issued February 11, 1986; published February 14, 1986 (51 FR 5531).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Oregon-Washington order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Oregon-Washington marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions

thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than March 1, 1986. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of this order are known to handlers. The recommended decision of the Deputy Administrator, Marketing Programs, was issued November 20, 1985 (50 FR 48776), and the decision of the Deputy Assistant Secretary containing all amendment provisions of this order was issued February 11, 1986 (51 FR 5531). The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective March 1, 1986, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order; and

(3) The issuance of the order amending the order is approved or

favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Part 1124

Milk marketing order, Milk, Dairy products.

Order Relative to Handling

It is therefore ordered. That on and after the effective date hereof, the handling of milk in the Oregon-Washington marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

PART 1124—MILK IN THE OREGON-WASHINGTON MARKETING AREA

1. The authority citation for 7 CFR Part 1124 continues to read as follows:

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

2. Section 1124.2 is revised to read as follows:

§ 1124.2 Dairy farmer for other markets.

"Dairy farmer for other markets" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority and from whose farm milk previously has been received at a pool plant, if during the month milk from the same farm that was produced in compliance with the inspection requirements of a duly constituted health authority is received at a nonpool plant (except an other order plant) as other than a diversion from a pool plant.

3. In § 1124.9, paragraph (b) the text preceding paragraph (b)(1) is revised to read as follows:

§ 1124.9 Pool plant.

(b) A supply plant from which not less than 40 percent is any month of September through November and not less than 30 percent in any other month, of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.11 (excluding milk received at such plant as diverted milk from another plant, which milk is classified in Class III under this order and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (except as filled milk) to a pool distributing plant or is a route disposition in the marketing

area of fluid products (except filled milk) processed and packaged at such plant; *Provided, That:*

4. In § 1124.11, paragraphs (a) and (b) are revised to read as follows:

§ 1124.11 Producer.

(a) A cooperative association may divert for its account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is received subsequently at a pool plant in the same month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk which the association or its agent causes to be delivered to pool plants, or diverted therefrom. No diversion limit shall apply during the months of May through August. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers if each association has filed such a request in writing with the market administrator on or before the first day of the month such agreement is effective. This request shall specify the basis for assigning any over-diverted milk to the producer members of each cooperative association according to a method approved by the market administrator.

(b) A handler in its capacity as the operator of a pool plant may divert for his account to a nonpool plant the milk of any producer whose milk has been received previously at a pool plant or is subsequently received at a pool plant in the same month, and who is not a member of a cooperative association which is diverting milk pursuant to paragraph (a) of this section during the month. The aggregate quantity diverted may not exceed 70 percent in the months of September, October, November, January and February, and 80 percent in the months of December, March and April, of the producer milk received at or diverted from such handler's pool plant(s) and for which the operator of such plant(s) is the handler during the month. No diversion limit shall apply during the months of May through August.

5. A new § 1124.33 is added to read as follows:

§ 1124.33 Reports of payments to producers.

On or before the 25th day after the end of the month, each handler paying

producers who have not authorized a cooperative association to receive payment for their milk, and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, shall report to the market administrator in detail and on forms prescribed by the market administrator as follows for each such producer:

(a) The producer's name, address and days of delivery;

(b) The total pounds of milk received from such producer, the average butterfat test thereof, and the pounds of butterfat contained in the producer's milk;

(c) The pounds of base and excess milk for each producer;

(d) The value of each producer's milk at the base and excess prices for the month;

(e) The nature and amount of any adjustments to and deductions from the payments due each producer; and

(f) The net amount of the payment made to each such producer for milk delivered during the month.

6. In § 1124.46, paragraphs (a)(4) and (5)(i) are revised to read as follows:

§ 1124.46 Allocation of skim milk and butterfat classified.

(a) * * *

(4)(i) With respect to a plant that was fully regulated in the preceding month under this or any other Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(a) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products in inventory at the beginning of the month; and

(b) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged cream in inventory at the beginning of the month;

(ii) Subtract from the pounds of skim milk in Class II, the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or cream) that is used to produce, or added to, any product specified in § 1124.41(b), but not in excess of the pounds of skim milk remaining in Class II;

(5) * * *

(i) Other source milk in a form other than that of a fluid milk product or cream that was not subtracted pursuant to paragraph (a)(4)(ii) of this section;

* * *

7. In § 1124.82, paragraphs (c) (1) and

(2) are revised and a new paragraph (c)(3) is added to read as follows:

§ 1124.82 Payments from the producer-settlement fund.

* * *

(c) * * *

(1) To each cooperative association authorized to receive payments due producers who market their milk through such cooperative association, and which is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the aggregate of the payments calculated pursuant to paragraph (a) of this section for all producers certified to the market administrator by such cooperative association as having authorized such cooperative association to receive such payments;

(2) To the Director, Milk Audit and Stabilization Division, Oregon State Department of Agriculture, for each producer and cooperative association for milk subject to the Oregon Base Plan pursuant to § 1124.68, the aggregate of the payments otherwise due such individual producers and cooperative associations pursuant to paragraph (b) and paragraph (c)(1) of this section; and

(3) To each handler who so requests, for milk received by the handler from producers who have not authorized a cooperative association to receive payment for their milk and whose milk is not subject to the Oregon Base Plan pursuant to § 1124.68, an amount equal to the sum of the individual payments otherwise due such producers pursuant to paragraph (a) of this section subject to the provisions of § 1124.86. The handler then shall pay the individual producers the amounts due them on or before the date specified in paragraph (b) of this section. Any handler who the market administrator determines is or was delinquent with respect to any payment obligation under this order shall not be eligible to participate in this payment arrangement until the handler has met all prescribed payment obligations for three consecutive months.

Effective date: March 1, 1986.

Signed at Washington, D.C., on: February 28, 1986.

Alan T. Tracy,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86-4928 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 50

Final Procedures and Standards on No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: Pursuant to Pub. L. 97-415, NRC is amending its regulations in final form (1) to provide procedures under which, before granting or denying an amendment, normally it would give notice of opportunity for a hearing on applications it receives to amend operating licenses for nuclear power reactors and testing facilities and prior notice and reasonable opportunity for public comment on proposed determinations about whether these amendments involve no significant hazards considerations, (2) to specify criteria for dispensing with such prior notice and reasonable opportunity for public comment for amendment requests where emergency situations exist and for shortening the comment period for amendment requests where exigent circumstances exist, and (3) to furnish procedures for consultation on these determinations with the State in which the facility involved is located. Amendment requests for research reactors and construction permits are handled case by case. These procedures normally provide the public and the States with prior notice of NRC's determinations involving no significant hazards considerations and with an opportunity to comment on its actions.

EFFECTIVE DATE: May 5, 1986.

ADDRESSES: Copies of comments received on the amendments and of the other documents described below may be examined, or copied for a fee, in the Commission's Public Document Room at 1717 H Street, NW., Washington, DC. Named document may be purchased from the U.S. Government Printing Office (GPO) by calling 202-275-2060 or by writing to the GPO, P.O. Box 37082, Washington, DC 20013-7082. They also may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-8690.

SUPPLEMENTARY INFORMATION:

Introduction

Pub. L. 97-415, signed on January 4, 1983, among other things, directed NRC to promulgate regulations which establish (a) standards for determining whether an amendment to an operating license involves no significant hazards consideration, (b) criteria for providing, or, in emergency situations, dispensing with, prior notice and public comment on any such determination, and (c) procedures for consulting with the State in which the facility involved is located on such a determination about an amendment request. See Conf. Rep. No. 97-884, 97th Cong., 2d Sess. (1982). The legislation also authorized NRC to issue and make immediately effective an amendment to a license, upon a determination that the amendment involves no significant hazards consideration (even though NRC has before it a request for a hearing by an interested person) and in advance of the holding and completion of any required hearing.

The two interim final rules published in the *Federal Register* on April 6, 1983 (48 FR 14864 and 48 FR 14873), responded to the statutory directive that NRC expeditiously promulgate regulations on the three items noted above. The first dealt with the standards themselves and the second with the notice and State consultation procedures. These regulations were issued as final, through in interim form, and comments have been considered on them.

The following discussion is divided into three parts. The first discusses the background for this final rule, including a discussion of the proposed rule on the standards published before passage of the legislation, as well as an overview of the interim final rules published after the legislation was enacted. See 45 FR 20491 (March 28, 1980). The second analyzes and responds to the public comments on the two interim final rules. And the third discusses the present practice and modification made to it by the final rule.

I. Background

A. Affected Legislation, Regulations and Procedures

When the Atomic Energy Act of 1954 (Act) was adopted in 1954, it contained no provision which required a public hearing on issuance of a construction permit or an operating license for a nuclear power reactor in the absence of a request from an interested person. In 1957, the Act was amended to require that mandatory hearings be held before issuance of both a construction permit and an operating license for power

reactors and certain other facilities. See Pub. L. 85-256 (71 Stat. 576) amending section 189a. of the Act.

The 1957 amendments to the Act were interpreted by the Commission as requiring a "mandatory hearing" before issuance of amendments to construction permits and operating licenses. See, e.g., Hearing Before the Subcommittee on Legislation, Joint Committee on Atomic Energy, 87th Cong., 2d Sess. (April 17, 1962), at 6. Partially in response to the administrative rigidity and cumbersome procedures which this interpretation forced upon the Commission (see, Joint Committee on Atomic Energy Staff Study, "Improving the AEC Regulatory Process", March 1961, pp. 49-50), section 189a. of the Act was amended in 1962 to eliminate the requirement for a mandatory public hearing except upon the application for a construction permit for a power or testing facility. As stated in the report of the Joint Committee on Atomic Energy which recommended the amendments:

Accordingly, this section will eliminate the requirements for a mandatory hearing, except upon the application for a construction permit for a power or testing facility. Under this plan, the issuance of amendments to such construction permits, and the issuance of operating licenses and amendments to operating licenses, would be only after a 30-day public notice and an offer of hearing. In the absence of a request for a hearing, issuance of an amendment to a construction permit, or issuance of an operating license, or an amendment to an operating license, would be possible without formal proceedings, but on the public record. It will also be possible for the Commission to dispense with the 30-day notice requirement where the application presents no significant hazards consideration. This criterion is presently being applied by the Commission under the terms of AEC Regulation 50.59. House Report No. 1966, 87th Cong., 2d Sess., p. 8.

Thus, according to the 1962 amendments, a mandatory public hearing would no longer be required before issuance of an amendment to a construction permit or operating license and a thirty-day prior public notice would be required only if the proposed amendment involved a "significant hazards consideration." In sum, section 189a. of the Act, as modified by the 1962 amendments, provided that upon thirty-days' notice published in the *Federal Register*, the Commission was permitted to issue an operating license, an amendment to an operating license, or an amendment to a construction permit, for a facility licensed under sections 103 or 104b. of the Act or for a testing facility licensed under section 104c., without a public hearing if no hearing was requested by an interested person. Section 189a. also permitted the

Commission to dispense with such thirty-days' notice and *Federal Register* publication for the issuance of an amendment to a construction permit or an amendment to an operating license upon a determination by it that the amendment involved no significant hazards consideration. These provisions were incorporated into the Commission's regulations, which were subsequently changed. See §§ 2.105, 2.106, 50.58 (a) and (b) and 50.91.

The Commission's regulations before promulgation of the two interim final rules provided for prior notice of an application for an amendment when a determination was made that there is a significant hazards consideration, and also provided an opportunity for interested members of the public to request a hearing. Hence, if a requested license amendment were found to involve a significant hazards consideration, the amendment would not be issued until after any required hearing were completed or after expiration of the notice period. In addition, § 50.58(b) further explained the Commission's hearing and notice procedures, as follows:

The Commission will hold a hearing after at least 30 days notice and publication once in the *Federal Register* on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22 or which is a testing facility. When a construction permit has been issued for such a facility following the holding of a public hearing and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30 days notice and publication once in the *Federal Register* or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30 days notice and publication once in the *Federal Register* of its intent to do so. If the Commission finds that no significant hazards consideration is presented by an application for an amendment to a construction permit or operating license, it may dispense with such notice and publication and may issue the amendment.

The Commission noted in its interim final rules that, after it has made its determination about whether a proposed license amendment does or does not present a significant hazards consideration, its hearing and attendant notice requirements come into play. Under its former rules, the Commission made its determination about whether it should provide an opportunity for a hearing before issuing an amendment together with its determination about whether it should issue a prior notice—

and the central factor in both determinations was the issue of "no significant hazards consideration." It had been argued that in practice this meant that the staff often decided the merits of an amendment together with the issue of whether it should give notice before or after it has issued the amendment. See 48 FR 14864, at 14865 (April 6, 1983). The argument arose, in part, because of some concern that the Act and the regulations did not define the term "significant hazards consideration" and did not establish criteria for determining when a proposed amendment involves "significant hazards considerations." Section 50.59 has, of course, all along set forth criteria for determining when a proposed change, test or experiment involves an "unreviewed safety question" but it was and is clear that not every such question involves a "significant hazards consideration."

The Commission's practice with regard to license amendments involving no significant hazards consideration (unless, as a matter of discretion, prior notice was given) was to issue the amendment and then publish in the *Federal Register* a "notice of issuance." See § 2.106. In such a case, interested members of the public who wished to object to the amendment and request a hearing could do so, but a request for a hearing did not, by itself, suspend the effectiveness of the amendment. Thus, both the notice and hearing, if one were requested, occurred after the amendment was issued.

It is important to bear in mind as one reads this background statement and the final regulations that there is no intrinsic safety significance to the "no significant hazards consideration" standard. Neither as a notice standard nor as a standard about when a hearing may be held does it have a substantive safety significance. Whether or not an action requires prior notice or a prior hearing, no license and no amendment may be issued unless the Commission concludes that it provides reasonable assurance that the public health and safety will not be endangered and that the action will not be inimical to the common defense and security or to the health and safety of the public. See, e.g., § 50.57(a). In short, the "no significant hazards consideration" standard is a procedural standard which governs whether an opportunity for a prior hearing must be provided before action is taken by the Commission, and, as discussed later, whether prior notice for public comment may be dispensed with in emergency situations or shortened in exigent circumstances.

B. The Sholly Decision and the New Legislation

The Commission's practice of not providing an opportunity for a prior hearing on a license amendment not involving significant hazards considerations was held to be improper in *Sholly v. NRC*, 651 F.2d 780 (1980), rehearing denied, 651 F.2d 792 (1981), vacated and remanded, 459 U.S. 1194 (1983), vacated, 706 F.2d 1229 (Table) (1983) (*Sholly*). In that case the U.S. Court of Appeals for the District of Columbia Circuit ruled that, under section 189a. of the Act, NRC must hold a hearing before issuing an amendment to an operating license for a nuclear power plant, if there has been a request for hearing (or an expression of interest in the subject matter of the proposed amendment which is sufficient to constitute a request for a hearing). A prior hearing, said the Court, is required even when NRC has made a finding that a proposed amendment involves no significant hazards consideration and has determined to dispense with prior notice in the *Federal Register*.

At the request of the Commission and the Department of Justice, the Supreme Court agreed to review the Court of Appeals' interpretation of section 189a. of the Act. On February 22, 1983, the Supreme Court vacated the Court of Appeals' opinion as moot and directed the Court of Appeals to reconsider the case in light of the new legislation. On April 4, 1983, the Court of Appeals, having considered the legislation, found that the portion of its opinion holding that a hearing requested under section 189a. of the Act must be held before a license amendment becomes effective would be moot as soon as NRC promulgated the regulations to which the legislation referred. The Court also found that NRC, of course, was still under a statutory mandate to hold a hearing after an amendment became effective, if requested to do so by an interested party. Appeal Nos. 80-1691, 80-1783, and 80-1784.

The Court of Appeals' decision did not involve and has no effect upon the Commission's authority to order immediately effective amendments without prior notice or hearing when the public health, safety, or interest so requires. See, Administrative Procedure Act, section 9(b), 5 U.S.C. 558(c); section 161 of the Atomic Energy Act, 42 U.S.C. 2201(c); 10 CFR 2.202(f) and 2.204. Similarly, the Court did not alter existing law with regard to the Commission's pleading requirements, which are designed to enable the Commission to determine whether a person requesting a hearing is, in fact,

an "interested person" within the meaning of section 189a.—that is, whether the person has demonstrated standing and identified one or more issues to be litigated. See, *BPI v. Atomic Energy Commission*, 502 F.2d 424, 428 (D.C. Cir. 1974), where the Court stated that, "Under its procedural regulations it is not unreasonable for the Commission to require that the prospective intervenor first specify the basis for his request for a hearing."

The Commission believed that legislation was needed to change the result reached by the Court in *Sholly* because of the implications of the requirement that the Commission grant a requested hearing before it could issue a license amendment involving no significant hazards consideration. It also believed that, since most requested license amendments involving no significant hazards consideration are routine in nature, prior hearings on such amendments could result in unnecessary disruption or delay in the operations of nuclear power plants by imposing regulatory burdens unrelated to significant safety matters. Subsequently, on March 11, 1981, the Commission submitted proposed legislation to Congress (introduced as S. 912) expressly authorizing the NRC to issue a license amendment before holding a hearing requested by an interested person, when it made a determination that no significant hazards consideration was involved in the amendment.

After the House and Senate conferees considered two similar bills, H.R. 2330 and S. 1207, they agreed on a unified version (see Conf. Rep. No. 97-884, 97th Cong., 2d. Sess. (1982)) and passed Pub. L. 97-415. Specifically, section 12(a) of that law amends section 189a. of the Act by adding the following with respect to license amendments involving no significant hazards considerations:

(2)(A) The Commission may issue and make immediately effective any amendment to an operating license, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. Such amendment may be issued and made immediately effective in advance of the holding and completion of any required hearing. In determining under this section whether such amendment involves no significant hazards consideration, the Commission shall consult with the State in which the facility involved is located. In all other respects such amendment shall meet the requirements of this Act.

(B) The Commission shall periodically (but not less frequently than once every thirty days) publish notice of any amendments

issued, or proposed to be issued, as provided in subparagraph (A). Each such notice shall include all amendments issued, or proposed to be issued, since the date of publication of the last such periodic notice. Such notice shall, with respect to each amendment or proposed amendment (i) identify the facility involved; and (ii) provide a brief description of such amendment. Nothing in this subsection shall be construed to delay the effective date of any amendment.

(C) The Commission shall, during the ninety-day period following the effective date of this paragraph, promulgate regulations establishing (i) standards for determining whether any amendment to an operating license involves no significant hazards consideration; (ii) criteria for providing or, in emergency situations, dispensing with prior notice and reasonable opportunity for public comment on any such determination, which criteria shall take into account the exigency of the need for the amendment involved; and (iii) procedures for consultation on any such determination with the State in which the facility involved is located.

Section 12(b) of that law specifies that:

(b) The authority of the Nuclear Regulatory Commission, under the provisions of the amendment made by subsection (a), to issue and to make immediately effective any amendment to an operating license shall take effect upon the promulgation by the Commission of the regulations required in such provisions.

Thus, as noted above, the legislation authorizes NRC to issue and make immediately effective an amendment to an operating license upon a determination that the amendment involves no significant hazards considerations, even though NRC has before it a request for a hearing from an interested person. In this regard, the Conference Report states:

The conference agreement maintains the requirement of the current section 189a. of the Atomic Energy Act that a hearing on the license amendment be held upon the request of any person whose interest may be affected. The agreement simply authorizes the Commission, in those cases where the amendment involved poses no significant hazards consideration, to issue the license amendment and allow it to take effect before this hearing is held or completed. The conferees intend that the Commission will use this authority carefully, applying it only to those license amendments which pose no significant hazards consideration. Conf. Rep. No. 97-884, 2d Sess., at 37 (1982).

And the Senate has stressed:

Its strong desire to preserve for the public a meaningful right to participate in decisions regarding the commercial use of nuclear power. Thus, the provision does not dispense with the requirement for a hearing, and the NRC, if requested [by an interested person], must conduct a hearing after the license amendment takes effect. See S. Rep. No. 97-113, 97th Cong., 1st Sess., at 14 (1981).

The public notice provision was explained by the Conference Report as follows:

The conferees note that the purpose of requiring prior notice and an opportunity for public comment before a license amendment may take effect, as provided in subsection (2)(C)(ii) for all but emergency situations, is to allow at least a minimum level of citizen input into the threshold question of whether the proposed license amendment involves significant health or safety issues. While this subsection of the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment, the conferees expect the content, placement and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments.

The requirement in subsection 2(C)(ii) that the Commission promulgate criteria for providing or dispensing with prior notice and public comment on a proposed determination that a license amendment involves no significant hazards consideration reflects the conferees' intent that, wherever practicable, the commission should publish prior notice of, and provide for prior public comment on, such a proposed determination.

In the context of subsection (2)(C)(ii), the conferees understand the term "emergency situations" to encompass only those rare cases in which immediate action is necessary to prevent the shutdown or derating of an operating commercial reactor. . . . The Commission's regulations should insure that the "Emergency situations" exception under section 12 of the conference agreement will not apply if the licensee has failed to apply for the license amendment in a timely fashion. In other words, the licensee should not be able to take advantage of the emergency itself. To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 38 (1982).

C. Basis for Interim Final Rule on Standards for Determining Whether an Amendment to an Operating License Involves No Significant Hazards Considerations and Examples of Amendments that Are Considered Likely or Not Likely to Involve Significant Hazards Considerations

Many of the comments on the interim final rules were the same or were similar to those on the proposed rule. To provide a convenient means for future reference, the comments and responses on the proposed rule and the petition for rulemaking are consolidated and repeated here with references to the earlier Federal Register citations. The comments received on the interim final rules are then discussed and the Commission's responses are provided.

1. Petition and Proposed Rule

General. The Commission's interim final rule on standards for determining whether an amendment involves no significant hazards consideration resulted from a notice of proposed rulemaking issued in response to a petition for rulemaking (PRM 50-17) submitted by letter to the Secretary of the Commission on May 7, 1976, by Mr. Robert Lowenstein. For the reasons discussed below, the petition was denied. See 48 FR 14867. However, the Commission published proposed standards, as intended by the petitioner, though not the standards requested. (PRM-50-17 was published for comment in the Federal Register on June 14, 1976 (41 FR 24006)). The staff's recommendations on this petition are in SECY/79-660 (December 13, 1979). The notice of proposed rulemaking was published in the Federal Register on March 28, 1980 (45 FR 20491). Note that the proposed rule was published before passage of the legislation and that the Congress was aware of this rule during passage of the legislation. The staff's recommendations first on a final rule and later on the interim final rules are in SECY-81-366, 81-366A, 83-16, 83-16A and 83-16B. (These documents are available for examination in the Commission's Public Document Room at 1717 H Street, NW, Washington, DC.)

In issuing the proposed rule, the Commission sought to define more precisely the standards for determining when an amendment application involved no significant hazards considerations. These standards would have applied to amendments to operating licenses, as requested by the petition for rulemaking, and also to construction permit amendments, to whatever extent considered appropriate. The Commission later decided that these standards should not be applied to amendments to construction permits, since such amendments are rare and normally would not be expected to involve a significant hazards consideration. It therefore modified the proposed rule accordingly. Additionally, the Commission stated in the interim final rules that it would review the extent to which and the way standards should be applied to research reactors. It also noted that meanwhile it would handle case-by-case any amendments requested for construction permits or for research reactors with respect to the issue of significant hazards considerations. (48 FR 14867.)

Before the proposed rule on standards was published, the Commission's staff was guided, in reaching its

determinations with respect to no significant hazards consideration, by standards very similar to those described in the proposed rule and in the interim final rules. In addition, the staff used a list of examples of amendments likely to involve, and not likely to involve, significant hazards considerations when the standards are applied. These examples were employed by the Commission in developing both the proposed rule and the interim final rules. The notice of proposed rulemaking contained standards proposed by the Commission to be incorporated into 10 CFR Part 50 and the statement of considerations contained examples of amendments to an operating license that are considered "likely" and "not likely" to involve a significant hazards consideration. The examples were samples of precedents with which the staff was familiar; they were representative of certain kinds of circumstances; however, they did not cover the entire range of possibilities; nor did they cover every facet of a particular situation. Therefore, it was clear that the standards themselves ultimately would have to govern determinations about whether or not proposed amendments involved significant hazards considerations.

The three standards proposed in the notice of proposed rulemaking were whether operation in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety. The interim final rules did not change these standards. They did, however, change the introductory phrase to make the standards easier to understand and to use.

As a result of the legislation, the Commission formulated separate notice and State consultation procedures that provide in all (except emergency) situations prior notice of amendment requests. The notices usually make a "proposed determination" about whether or not significant hazards considerations are involved in connection with an amendment and, therefore, whether or not to offer an opportunity for a hearing before an amendment is issued; if a hearing request is received, a final determination is made about whether or not significant hazards considerations are involved. The decision about whether or not to issue an amendment has continued to remain one that, as a

separate matter, is based on public health and safety.

2. Comments on Proposed Rule and Responses to these Comments

a. *General.* Nine persons submitted comments on the petition of rulemaking and nine persons submitted comments on the proposed amendments. One of the commenters stated that all three standards were unclear and useless in that they implied a level of detailed review of amendment applications far beyond what the staff normally performs. When it promulgated the interim final rule, the Commission stated in response to this comment that the standards have been and will continue to be useful in making the necessary reviews. 48 FR 14864, at 14867 (April 6, 1983). It added that the standards, when used along with the examples, will enable it to make the requisite decisions. *Id.* In this regard, it noted that Congress was more than aware of the Commission's standards and proposed their expeditious promulgation, quoting the Senate Report:

... the Committee notes that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards consideration. The Committee believes that the Commission should be able to build upon this past effort, and it expects the Commission to act expeditiously in promulgating the required standards within the time specified in section 301 [i.e., within 90 days after enactment]. S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981).

Similarly, the House noted:

The committee amendment provides the Commission with the authority to issue and make immediately effective amendments to licenses prior to the conduct or completion of any hearing required by section 189(a) when it determines that the amendment involves no significant hazards consideration. However, the authority of the Commission to do so is discretionary, and does not negate the requirement imposed by the Sholly decision that such a hearing, upon request, be subsequently held. *Moreover, the Committee's action is in light of the fact that the Commission has already issued for public comment rules including standards for determining whether an amendment involves no significant hazards considerations. The Commission also has a long line of case-by-case precedents under which it has established criteria for such determinations.* ... H. Rep. No. 97-22 (Part 2), 97th Cong., 1st Sess., at 26 (1981) (Emphasis added).

In regard to the second criterion in the proposed rule, a number of commenters recommended that the Commission establish a threshold level for accident consequences (for example, the limits in 10 CFR Part 100) to eliminate prior

notice for insignificant types of accidents. This comment was not accepted. The Commission stated that setting a threshold level for accident consequences could eliminate a group of amendments with respect to accidents which have not been previously evaluated or which, if previously evaluated, may turn out after further evaluation to have more severe consequences than previously evaluated. (48 FR 14868.)

The Commission explained that it is possible, for example that there may be a class of license amendments sought by a licensee which, while designed to improve or increase safety may, on balance, involve a significant hazards consideration because it results in operation of a reactor with a reduced safety margin due to other factors or problems (i.e., the net effect is a reduction in safety of some significance). *Id.* Such a class of amendments typically is also proposed by a licensee as an interim or final resolution of some significant safety issue that was not raised or resolved before issuance of the operating license—and, based on an evaluation of the new safety issue, they may result in a reduction of a safety margin believed to have been present when the license was issued. In this instance, the presence of the new safety issue in the review of the proposed amendment, at least arguably, could prevent a finding of no significant hazards consideration, even though the issue ultimately would be satisfactorily resolved by the issuance of the amendment.

Accordingly, the Commission added a new example (vii) to the list of examples considered likely to involve a significant hazards consideration. *Id.* See section I(C)(1)(d) below.

When the Senate Committee on Environment and Public Works was considering the legislation described above, it commented upon the Commission's proposed rule before reporting S. 1207:

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pool. S. Rep. No. 97-113, 97th Cong., 1st Sess., at 15 (1981).

The Commission agreed with the Committee "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration" and it tried "to develop and promulgate standards that, to the maximum extent practicable, draw a clear distinction between license amendments that involve a significant hazards consideration and those that involve no significant hazards consideration." (48 FR 14868.) (Reracking is discussed in section II(C)(2)(b) and II(D), *infra*.) The Commission stated that the standards coupled with examples used as guidelines help draw as clear a distinction as practicable. It decided not to include the examples in the text of the interim final rules in addition to the original standards, but, rather, to keep them as *guidelines* under the standards for use by the Office of Nuclear Reactor Regulation. *Id.*

In promulgating the interim final rules, the Commission also noted to licensees that when they consider license amendments outside the examples, it may need additional time for its determination on no significant hazards considerations, and that they should factor this information into their schedules for developing and implementing such changes to facility design and operation. *Id.*

The Commission stated that the interim final rules thus went a long way toward meeting the intent of the legislation, quoting the Conference Report:

The conferees also expect the Commission, in promulgating the regulations required by the new subsection (2)(C)(i) of section 189a. of the Atomic Energy Act, to establish standards that to the extent practicable draw a clear distinction between license amendments that involve a significant hazards consideration and those amendments that involve no such consideration. These standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment. Rather, they should only require the staff to identify those issues and determine whether they involve significant health, safety or environmental considerations. These standards should be capable of being applied with ease and certainty, and should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37 (1982). *Id.*

The Commission stated that it had attempted to draft standards that are as useful as possible, that it had tried to formulate examples that will help in the application of the standards, and that the standards in the interim final rules were the product of a long deliberative

process. (48 FR 14868.) (As will be recalled, standards were submitted by a petition for rulemaking in 1976 for the Commission's consideration.) The Commission then explained with respect to the interim final rules that the standards and examples were as clear and certain as the Commission could make them, noting the Conference Report admonition that the standards and examples "should ensure that the NRC staff does not resolve doubtful or borderline cases with a finding of no significant hazards consideration." *Id.* The Commission repeats this admonition to the staff in the response to comments in section II(C) below.

With respect to the Conference Committee's statement, quoted above, that the "standards should not require the NRC staff to prejudge the merits of the issues raised by a proposed license amendment," the Commission recalled that it was its general practice to make a decision about whether to issue a notice before or after issuance of an amendment together with a decision about whether to provide a hearing before or after issuance of the amendment; thus, occasionally, the issue of prior versus post notice was seen by some as including a judgment on the merits of issuance of an amendment. *Id.* For instance, a commenter on the proposed rule suggested that application of the criteria with respect to prior notice in many instances will necessarily require the resolution of substantial factual questions which largely overlap the issues which bear on the merits of the license amendment. *Id.*, at 14868-69. The implication of the comment was that the Commission at the prior notice stage could lock itself into a decision on the merits. Conversely, the commenter stated that the staff, in using the no significant hazards consideration standards, was reluctant to give prior notice of amendments because its determination about the notice might be viewed as constituting a negative connotation on the merits.

The Commission noted in response that the legislation had mooted these comments by requiring separation of (1) the criteria used for providing or dispensing with public notice and comment on determinations about no significant hazards considerations from (2) the standards used to make a determination about whether or not to have a prior hearing if one is requested. *Id.*, at 14869. The Commission explained that under the two interim final rules, the Commission's criteria for public notice and comment had been separated from its standards on the determination about no significant hazards

considerations. *Id.* It noted, in fact, that under the interim final rule involving the standards it would normally provide prior notice (for public comment and an opportunity for a hearing) for each operating license amendment request. It also stated that use of these standards and examples would help it reach sound decisions about the issues of significant versus no significant hazards considerations, and that their use would not prejudice the safety merits of a decision about whether to issue a license amendment. *Id.* Rather, it explained, the standards and the examples were merely screening devices for a decision about whether to hold a hearing before as opposed to after an amendment is issued and could not be said to prejudice the Commission's final public health and safety decision to issue or deny the amendment request. *Id.* As explained above, that decision has remained a separate one, based on separate public health and safety findings.

b. *Reracking of Spent Fuel Pools.* Before issuance of the two interim final rules, the Commission provided prior notice and opportunity for prior hearing on requests for amendments involving reracking of spent fuel pools. When the interim final rule on standards was published, the Commission explained that it was not prepared to say that reracking of a spent fuel storage pool will necessarily involve a significant hazards consideration. It stated, nevertheless, as shown by the legislative history of Pub. L. 97-415, specifically of section 12(a), that Congress was aware of the Commission's practice, noting that members of both Houses stated, before passage of that law, that they expected that this practice would continue. *Id.* The report on the Senate side has been quoted above; the discussion in the House is found at 127 Cong. Record at H 8156, Nov. 5, 1981.

The Commission decided not to include reracking in the list of examples that are considered likely to involve a significant hazard consideration, because a significant hazards consideration finding is a technical matter which has been assigned to the Commission. However, in view of the expressions of Congressional understanding, the Commission stated that it felt that the matter deserved further study. Accordingly, it instructed the staff to prepare a report on this matter, and stated that it would revisit this part of the rule upon receipt and review of the staff's report. *Id.* The report is described in detail in section II(D) below.

In the interim final rule on standards, the Commission stated that while it is awaiting its staff's report, it would make findings case by case on the question of no significant hazards consideration for each reracking application, giving full consideration to the technical circumstances of the case, using the standards in § 50.92 of the rule. *Id.* It also stated that it did not intend to make a no significant hazards consideration finding for reracking based on unproven technology. It added, however, that, where reracking technology has been well developed and demonstrated and where the Commission determines on a technical basis that reracking involves no significant hazards, the Commission should not be precluded from making such a finding. And it noted that, if it determines that a particular reracking involves significant hazards considerations, it would provide an opportunity for a prior hearing. *Id.*

The Commission also noted that under section 134 of the Nuclear Waste Policy Act of 1982, an interested party may request a "hybrid" hearing in connection with reracking, and may participate in such a hearing, if one is held. It stated that it would publish in the near future a Federal Register notice describing this type of hearing with respect to expansions of spent fuel storage capacity and other matters concerning spent fuel. *Id.* That notice can be found at 50 FR 41662 (October 15, 1985).

c. Amendments Involving Irreversible Consequences. Congress expressed some concern about amendments involving irreversible consequences, as evidenced in the Conference Report:

The conferees intend that in determining whether a proposed license amendment involves no significant hazards consideration, the Commission should be especially sensitive to the issue posed by license amendments that have irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections.). In those cases, issuing the order in advance of a hearing would, as a practical matter, foreclose the public's right to have its views considered. In addition, the licensing board would often be unable to order any substantial relief as a result of an after-the-fact hearing. Accordingly, the conferees intend the Commission be sensitive to those license amendments which involve such irreversible consequences. (Emphasis added.) Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 37-38 (1982).

The Commission noted (48 FR, at 14869) that this statement was explained in a colloquy between Senators Simpson and Domenici, as follows:

Mr. DOMENICI. In the statement of managers, I direct attention to a paragraph in section 12, the so-called Sholly provision, wherein it is stated that in applying the authority which that provision grants the NRC should be especially sensitive to the issue posed by license amendments that have irreversible consequences." Is that paragraph in general, or specifically, the words "irreversible consequences" intended to impose restrictions on the Commission's use of that authority beyond the provisions of the statutory language? Can the Senator clarify that, please?

Mr. SIMPSON. I shall. It is not the intention of the managers that the paragraph in general, nor the words "irreversible consequences," provide any restriction on the Commission's use of that authority beyond the statutory provision in section 189a. Under that provision, the only determination which the Commission must make is that its action does not involve a significant hazard. In that context, "irreversibility" is only one of the many considerations which we would expect the Commission to consider. It is the determination of hazard which is important, not whether the action is irreversible. Clearly, there are many irreversible actions which would not pose a hazard. Thus where the Commission determines that no significant hazard is involved, no further consideration need be given to the irreversibility of that action.

Mr. DOMENICI. I thank the Senator for the clarification. That is consistent with my readings of the language. . . . 134 Cong. Rec. (Part II), at S. 13056 (daily ed. Oct. 1, 1982).

The Commission then noted, 48 FR 14869, that the statement was further explained in a colloquy between Senators Mitchell and Hart, as follows:

Mr. MITCHELL. The portion of the statement of managers discussing section 12 of the report, the so-called Sholly provision, stresses that in determining whether a proposed amendment to a facility operating license involves no significant hazards consideration, the Commission "should be especially sensitive . . . to license amendments that have irreversible consequences." Is my understanding correct that the statement means the Commission should take special care in evaluating, for possible hazardous considerations, amendments that involve irreversible consequences?

Mr. HART. The Senator's understanding is correct. As you know, this provision seeks to overrule the holding of the U.S. Court of Appeals for the District of Columbia in *Sholly* against Nuclear Regulatory Commission. That case involved the venting of radioactive krypton gas from the damaged Three Mile Island Unit 2 reactor—an irreversible action.

As in this case, once the Commission has approved a license amendment, and it has gone into effect, it could prove impossible to correct any oversights of fact or errors of judgment. Therefore, the Commission has an obligation, when assessing the health or safety implications of an amendment having irreversible consequences, to insure that only those amendments that clearly raise no significant hazards issues will take effect

prior to a public hearing. 134 Cong. Rec. (Part III), at S. 13292.

In light of the Conference Report and colloquies it had quoted, the Commission stated that it would ensure "that only those amendments that clearly raise no significant hazards issues will take effect prior to a public hearing" (48 FR 14870), and that it would do this by providing in § 50.92 for review of proposed amendments with a view about whether they involve irreversible consequences. *Id.* In this regard, it made clear in example (iii) that an amendment which allows a plant to operate at full power during which one or more safety systems are not operable would be treated in the same way as other examples considered likely to involve a significant hazards consideration, in that it is likely to meet the criteria in § 50.92. *Id.*

The Commission also emphasized that the example did not cover all possible cases, were not necessarily representative of all possible concerns, and were set out simply as guidelines. *Id.*

The Commission left the proposed rule intact to the extent that the interim final rules stated standards with respect to the meaning of "no significant hazards consideration." The standards in the interim final rules were identical to those in the proposed rule, though the attendant language in new § 50.92 as well as in § 50.58 was revised to make the determination easier to use and understand. To supplement the standards incorporated into the Commission's regulations, the guidance embodied in the examples was referenced in the procedures of the Office of Nuclear Reactor Regulation, copies of which were placed in the Commission's Public Document Room and sent to licensees, States, and interested persons. It was the Commission's intention that any request for an amendment meet the standards in the regulations, and that the examples simply provide supplementary guidance.

d. Examples of Amendments That Are Considered Likely To Involve Significant Hazards Considerations Are Listed Below. The statement of considerations for the interim final rules listed the following examples of amendments that the Commission considered likely to involve significant hazards considerations. *Id.* It explained that unless the specific circumstances of a license amendment request lead to a contrary conclusion when measured against the standards in § 50.92, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under

§ 50.21(b) or § 50.22 or for a testing facility will likely be found to involve significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves one or more of the following:

- (i) A significant relaxation of the criteria used to establish safety limits.
- (ii) A significant relaxation of the bases for limiting safety system settings or limiting conditions for operation.
- (iii) A significant relaxation in limiting conditions for operation not accompanied by compensatory changes, conditions, or actions that maintain a commensurate level of safety (such as allowing a plant to operate at full power during a period in which one or more safety systems are not operable).
- (iv) Renewal of an operating license.
- (v) For a nuclear power plant, an increase in authorized maximum core power level.
- (vi) A change to technical specifications or other NRC approval involving a significant unreviewed safety question.
- (vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued. *Id.*

e. Examples of Amendments That Are Considered Not Likely To Involve Significant Hazards Considerations Are Listed Below. The statement of considerations for the interim final rules listed the following examples of amendments the Commission considered not likely to involve significant hazards considerations. 48 FR 14869. It explained that unless the specific circumstances of a license amendment request lead to a contrary conclusion when measured against the standards in § 50.92, then, pursuant to the procedures in § 50.91, a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility will likely be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following:

- (i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.
- (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, *e.g.*, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

(iv) A relief granted upon demonstration of acceptable operation from an operating restriction that was imposed because acceptable operation was not yet demonstrated. This assumes that the operating restriction and the criteria to be applied to a request for relief have been established in a prior review and that it is justified in a satisfactory way that the criteria have been met.

(v) Upon satisfactory completion of construction in connection with an operating facility, a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. This is intended to involve only restrictions where it is justified that construction has been completed satisfactorily.

(vi) A change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan, *e.g.*, a change resulting from the application of a small refinement of a previously used calculational model or design method.

(vii) A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

(viii) A change to a license to reflect a minor adjustment in ownership shares among co-owners already shown in the license. *Id.*

[As discussed below, the Commission has added examples (ix) and (x) in response to comments on the interim final rules.]

(ix) A repair or replacement of a major component or system important to safety, if the following conditions are met:

- (1) The repair or replacement process involves practices which have been successfully implemented at least once on similar components or systems

elsewhere in the nuclear industry or in other industries, and does not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated; and

(2) The repaired or replacement component or system does not result in a significant change in its safety function or a significant reduction in any safety limit (or limiting condition of operation) associated with the component or system.

(x) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;

(2) The storage expansion method does not involve rod consolidation or double tiering;

(3) The Keff of the pool is maintained less than or equal to 0.95; and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

II. Responses to Comments on Interim Final Rules

The comments are described in somewhat greater detail in an attachment to SECY-85-209A.

A. Clarity of Standards

1.1 Comments—A group of commenters state that the three standards in § 50.92(c) are unclear and argue that the examples in the statement of considerations—which they believe are clearer than the standards—should be made part of the rule; otherwise, they argue, the examples have no legal significance.

Response—The Commission disagrees with the request. As explained in response to the comments on the proposed rule (*see* 48 FR 14864), the commenters are correct that the examples have no binding legal significance. However, they do provide guidance to the staff, licensees and to the general public about the way the standards may be interpreted by the Commission. The Commission did consider combining the standards and examples as a single set of criteria in the interim final rules, but decided against this because (i) the standards and examples had proved useful over time, (ii) the staff had used all three standards

and most of the examples well before they were published in rule form, and (iii) the approach had proved adequate. Upon reconsideration, the Commission has decided to retain the standards as they were set out in the interim final rule. See the response in section II(D) below for a description of the standards.

1.2 Comment—One commenter believes that the interim final rules "unduly" and "improperly" limit freedom of speech and that minor changes in a plant can lead to severe health and safety consequences, such as the 1983 anticipated transient without scram (ATWS) at the Salem nuclear power plant.

Response—It is unclear how the interim final rule might limit freedom of speech. It is clear, though, that some amendment requests entail changes to a plant requiring a review of whether or not previously unevaluated accidents pose severe consequences. As explained above, before issuing any amendment, the Commission is required by the Atomic Energy Act (Act) to find that there is adequate protection for the public health and safety. However, a determination that an amendment involves "no significant hazards consideration" includes a finding under the three standards that the change does not involve a significant increase in previously evaluated accident probabilities or consequences, that it does not present a new type of accident not previously evaluated, and that it does not involve a significant decrease in safety margins.

Thus, the concern raised by the comment is related, if at all, only to amendments that involve significant hazards. Procedures governing these types of amendments are unaffected by this rule change. See, e.g., section 182a. of the Act.

1.3 Comment—One commenter suggests that the only standard that is needed is one that simply identifies those license amendments which make an accident possible.

Response—The standard suggested by the commenter is simple to state but impractical. An amendment may involve a previously reviewed issue and not alter the conclusions reached concerning accident probabilities or consequences. In such a case, the amendment may involve a system or component that is significant to an evaluation of a design basis accident yet not involve a significant hazards consideration. This suggestion changes the definition of "significant hazards considerations" and, thereby, changes the standards. The three standards given in the interim final rules together with the examples are directed to the

issue of significant hazards. See, for instance the discussion in section II(F)(1.3) below.

1.4 Comments—One commenter requests that NRC should consider only "credible accident scenarios" in evaluating amendment requests against the first two standards. It also suggests that, with respect to the third standard (significant reduction in safety margins), the Commission initially should determine the extent of the existing safety margin before deciding the significance of a reduction, because the extent of the existing margin is clearly relevant to the Commission's determination.

On the other hand, another commenter argues that it is inappropriate to specify a percentage change above which the change becomes significant. It notes that when the safety margin is three orders of magnitude, a ten percent reduction is clearly not significant, and that when the safety margin is fifteen percent, a comparable percentage reduction may be significant. It also suggests that the cumulative effects of successive changes to one system must also be considered, and not merely the individual change which is being subjected to review at any given time.

Response—The first comment is similar to the original petition (see section I(C)(1) above) which proposed standards limited to "major credible reactor accidents." The Commission disagrees with this comment—as it did previously—because it allows too much room for argument about the meaning of "credible" in various accident scenarios and does not include accidents of a type different from those previously evaluated, which is one of the criteria for evaluating no significant hazards considerations.

The second commenter suggests that, in assessing the degree of reduction in margin in determining whether an amendment involves significant hazards considerations, the Commission should assess the cumulative effects (on margin) of successive changes to one system, not merely the individual change in margin brought about by the amendment in question. The Commission believes that such a suggestion would be inconsistent with its staff's long-time practice in assessing the degree of reduction in margin, would be inconsistent with the thrust of the three standards on no significant hazards consideration, and would result in multiple counting of margin changes. The standard states that the Commission is to determine whether the amendment will result in a significant reduction in margin. The intent is to

compare the safety margin before the amendment to that which would exist after the amendment to determine whether that amendment would significantly reduce the margin. In applying this standard to determine whether a certain amendment involves significant hazards considerations, the intent is to assess just the reduction in margin from that amendment and not to assess all prior reductions in margin that resulted from prior amendments because these have already been considered. Consequently, the Commission has not accepted this suggestion.

1.5 Comments—One commenter points out that the three standards are virtually identical to the criteria in § 50.59 for determining whether unreviewed safety questions exist, and states that this similarity is appropriate.

Another commenter makes the same point but notes an important difference in § 50.59, namely, that the word "significant" is absent in paragraphs (a)(2)(i) to (a)(2)(iii) of that section. It suggests that § 50.59 should be amended to make it identical with § 50.92(c).

Response—Sections 50.59 and 50.92 serve two different purposes. The criteria in § 50.59(a)(2) are used to decide whether a proposed change, test, or experiment involves an "unreviewed safety question." Section 50.59 is used to decide, in part, whether prior Commission approval is necessary for the licensee of an operating reactor to make changes to it or to the procedures as described in the safety analysis report, or to conduct tests or experiments not described in the safety analysis report. The licensee may not make a change without such approval, if the change involves an unreviewed safety question. To insert the term "significant" into the criteria obviously would raise the threshold for making a determination. It would permit licensees to exercise far greater discretion in judging which changes require Commission review. Wide variations among licensees might be expected. If the Commission has not reviewed an issue, it should deliberate and decide whether its review is appropriate. Therefore, the comment has been rejected. The Commission is considering this subject, as discussed in Section II(K) below.

1.6 Comment—One commenter generally agrees with the interim final rules but believes that the word "significant" should be defined, if only to forestall court challenges by persons disagreeing with NRC. It suggests that NRC should create some sort of mechanism to resolve disputes between

the staff, a State, or other parties over whether or not an amendment request involves significant hazard considerations.

Response—The advantage of the notice provisions of the interim final rules is that they provide an opportunity for comment on proposed determinations. Based on a particular proposal in an amendment request, the Commission welcomes any and all persons' comments about the "significance" of the proposed action. Aside from using examples as guidelines, it believes that the term "significant" should not be defined in the abstract, but should be left to case-by-case resolution.

B. Clarity of Examples

Many commenters argue about the clarity of the various examples in the "likely" and "not likely" categories. Additionally, some want to change, to add to, or to subtract from the examples, noting for instance that the issue of repairs is problematic. A complete set of comments (as summarized) is attached to SECY-85-209A.

Additionally, two commenters argue that the word "significant" in the examples should be defined so as not to leave "critical decisions to the unreviewable judgment of the staff."

Finally, another commenter requests that the guidance embodied in both sets of examples should not only be referenced in the procedures of the Office of Nuclear Reactor Regulation, but that it should also be formally transmitted to all licensees in the form of a generic letter, regulatory guide, or other such document.

Response—The examples are merely guidelines and the Commission feels the present examples are adequate. A list of examples of all possible situations would be interminably long, and it is not the Commission's intent to provide such a listing. However, to clarify the Commission's position on the repair or replacement of a major component or system important to safety, the following example has been added to the list of examples (in section 1(C)(2)(e)) above considered not likely to involve significant hazards considerations:

(ix) A repair or replacement of a major component or system important to safety, if the following conditions are met:

(1) The repair or replacement process involves practices which have been successfully implemented at least once on similar components or systems elsewhere in the nuclear industry or in other industries, and does not involve a significant increase in the probability or

consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated; and

(2) The repaired or replacement component or system does not result in a significant change in its safety function or a significant reduction in any safety limit (or limiting condition of operation) associated with the component or system.

In this context, it once again bears repeating that the examples do not cover all possible examples and may not be representative of all possible concerns and problems. As problems are resolved and as new information is developed, the staff may refine the examples and add new ones, in keeping with the standards of this final rule.

As to the second set of comments, see the response to comment I(A)(1.6) above. Finally, as noted above, the guidance in the examples already has been sent to all licensees and others.

C. Classification of Decisions

Comments—Two commenters argue that the standards pose complex questions that "require a level of analysis that goes far beyond the initial sorting of issues that Congress authorized." They repeat an argument made when the standards were published as a proposed rule, namely, that "the use of these standards cannot help but require the NRC staff to make an initial determination, well before the formal hearing (if any) is held, of the health and safety merits of the proposed license amendment." And they argue that Congress did not authorize NRC to make such a determination in advance of the hearing on the merits. (A third commenter agrees with this argument.) In sum, these commenters would prefer standards that simply allow for the sorting of issues, rather than, as they argue, standards that allow the staff to determine issues which are "virtually the same" as those it determines when deciding whether or not to grant the license amendment.

In this same vein, both commenters argue that the standards contravene Congress' intent in that the Commission does not avoid resolving "doubtful or borderline cases with a finding of no significant hazards consideration."

Response—The Commission disagrees with the commenters, as explained in the previous discussion above on this very point. It should also be noted that one reason that determinations on significant hazards considerations are divided into "proposed determinations" and "final determinations" is to help sort the issues initially. In this process of sorting, the Commission hereby charges

the NRC staff to assure that doubtful or borderline cases are not found to involve no significant hazards consideration. As explained above, the decision about whether to issue an amendment is based on a separate health and safety determination, not on a determination about significant hazards considerations.

D. Rerackings

Comments—A group of commenters state that rerackings should be considered amendments that pose significant hazards considerations, in light of the Commission's past practice and the understanding of Congress that the practice would be continued.

Another group of commenters agrees with the Commission's position that the significant hazards determination on each amendment request to expand a specific spent fuel pool should be based on the Commission's technical judgment.

Response—In its decision to issue the two interim final rules, the Commission directed the staff to prepare a report which (1) examines the agency's experience to date on spent fuel pool expansion reviews and (2) provides a technical judgment on the basis for which various methods to expand spent fuel pools may or may not pose significant hazards considerations.

The staff contracted with Science Applications, Inc. (SAI) to perform an evaluation of whether increased storage of spent fuel could pose significant hazards considerations in light of the guidance in the interim final rules. SAI provided a report entitled, "Review and Evaluation of Spent Fuel Pool Expansion Potential Hazards Considerations." SAI-84-221-WA Rev. 1 (July 29, 1983). On the basis of that report, the staff informed the Commission in SECY-83-337 (August 15, 1983) of the results of its study and included the SAI report. (Both the report and the study are available as indicated above.)

The staff provided the following views to the Commission.

(1) NRC experience to date with respect to spent fuel pool expansion reviews:

As the Commission noted, the staff has been providing prior notice and opportunity for prior hearing on amendments involving expansion of spent fuel pool storage capacity. The applications were prenoticed as a matter of discretion because of possible public interest. This was the basis cited for prenoticing these applications in statements to Congressional committees. Public comments or requests to intervene have been received on 24 of the 96 applications for amendments received to date to increase the storage capacity of onsite spent fuel pools. In most cases, the comments and requests to intervene have been resolved without actual

hearings before an ASLB [Atomic Safety and Licensing Board].

Of the 96 applications, 31 have been a second or third application for the same pool(s). All of these applications have proposed reracking to increase the storage capacity—that is, replacing existing spent fuel storage racks with new racks that permit closer spacing of spent fuel assemblies. Two of the applications involved more than simply replacing the racks on the spent fuel pool floor. In one case, the capacity was increased by a method referred to as double-tiering. In this method, a rack is filled with aged spent fuel while sitting on the pool floor; once filled, the rack is raised and placed on top of another filled rack. Double-tiering was approved by the staff for Point Beach 1 and 2 by amendments issued on March 4, 1979. The other method that has been proposed to increase pool storage capacity is referred to as rod consolidation. Rod consolidation involves dismantling or cutting apart the fuel assembly and putting the individual fuel rods closer together. Storage of only the fuel rods, without the spacers, end caps and other hardware, can increase storage capacity by 60 to 100 percent compared to storage of non-disassembled fuel. Rod consolidation—in conjunction with reracking—has been requested for only one plant—Maine Yankee. The staff's review of this application was completed a year ago, but the application is pending before an Atomic Safety and Licensing Board. We have approved 85 amendments involving spent fuel pool storage expansions and the rest are still being processed. A detailed table indicating the agency's experience to date with respect to spent fuel pool expansion is contained in the SAI report. As of now, every operating reactor except Big Rock Point has received approval for at least one reracking or had the closer spacing storage method approved with their initial license.

The technical review of requests to increase spent fuel pool storage capacity involves evaluating the physical and mechanical processes which may create potential hazards such as criticality considerations, seismic and mechanical loading, pool cooling, long term corrosion and oxidation of fuel cladding, and probabilities and consequences of various postulated accidents and failures of decayed spent fuel. Also, the neutron poison and rack structural materials must be shown to be compatible with the pool environment for a significant period of time due to the uncertainties as to how long the storage will actually be required on site. However, potential safety hazards associated with spent fuel pool expansions are not as large as those associated with the reactor operation because the purpose of the expansion is to allow longer term storage of aged spent fuel. Since most plants are now on an 18 month refueling cycle and the NRC is processing a second expansion request application in many instances, the present expansion requests are to allow continued storage of spent fuel that has decayed over a decade along with the normal discharge of relatively new spent fuel for which the pool was originally designed. Typically a PWR will replace about one third of its core at each refueling and a typical BWR will replace

about one fourth of its core at each refueling. After a year of storage, about 99% of the initial radioactivity has decayed.

(2) Technical judgement on the basis which a spent fuel pool expansion amendment may or may not pose a significant hazards consideration:

The technical evaluation of whether or not an increased spent fuel pool storage capacity involves potential hazards consideration is centered on the Commission's three standards in the interim final rule.

First, does increasing the spent fuel pool capacity significantly increase the probability or consequences of accidents previously evaluated? As discussed in the SAI report, reracking to allow closer spacing of fuel assemblies does not significantly increase the probability or consequences of accidents previously analyzed. However, the rod consolidation method may increase the probability of a fuel drop accident by a factor of two because of the increase in the number of assembly lifts and involves handling of highly radioactive fuel assembly components. Double tiering of racks requires an increased frequency in lifting heavy loads over the spent fuel pool which would also increase the probability of an accident.

Second, does increasing the spent fuel storage capacity create the possibility of a new or different kind of accident from any accident previously analyzed? The staff, as well as SAI, have not identified any new categories or types of accidents as a result of reracking to allow closer spacing for the fuel assemblies. Double tiering and rod consolidation, however, do present new accident scenarios which may not be bounded by previous accident analysis for a given pool. In all reracking reviews completed to date, all credible accidents postulated have been found to be conservatively bounded by the valuations cited in the safety evaluation reports supporting each amendment.

Third, does increasing the spent fuel pool storage capacity significantly reduce a margin of safety? Neither the staff nor SAI have identified significant reductions in safety margins due to increasing the storage capacity of spent fuel pools. The expansion may result in a minor increase in pool temperatures by a few degrees, but this heat load increase is generally well within the design limitations of the installed cooling systems. In some cases it may be necessary to increase the heat removal capacity by relatively minor changes in the cooling system, i.e., by increasing a pump capacity. But in all cases, the temperature of the pool will remain below design values. The small increase in the total amount of fission products in the pool is not a significant factor in accident considerations. The increased storage capacity may result in an increase in the pool reactivity as measured by the neutron multiplication factor (Keff). However after extensive study, the staff determined in 1976 that as long as the maximum neutron multiplication factor was less than or equal to 0.95, then any change in the pool reactivity would not significantly reduce a margin of safety regardless of the storage capacity of the pool.

The techniques utilized to calculate Keff have been bench-marked against

experimental data and are considered very reliable.

In the interim final rule, the Commission stated that it was not the intent to make a no significant hazards consideration finding based on unproven technology. Reracking to allow a closer spacing between fuel assemblies can be done by proven technologies. The double tiering method of expansion can also be done by proven technology. Rod consolidation, however, involves new technology and increased handling of highly radioactive components of fuel assemblies.

In summary, both rod consolidation and double tiering represent potential safety hazards considerations. Rod consolidation involves relatively new technology and double tiering may significantly increase the probability of accidents previously analyzed. Replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits (a subset of reracking) is considered not likely to involve significant hazards considerations if several conditions are met. First, no new technology or unproven technology is utilized in either the construction process or in the analytical techniques necessary to justify the expansion. Second, the Keff of the pool is maintained less than or equal to 0.95. A Keff of greater than 0.95 may be justifiable for a particular application but it would go beyond the presently accepted staff criteria and would potentially be a significant hazards consideration. Reracking to allow closer spacing or the placing of additional racks of the original design on the pool floor, which satisfies the two preceding criteria, would be similar to example (iii) on nuclear reactor core reloading under examples of amendments that are not considered likely to involve significant hazards considerations. *Id.* (Emphasis added.)

The staff concluded in its technical judgement that a request to expand the storage capacity of a spent fuel pool which satisfies the following is considered not likely to involve significant hazards considerations:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits.

(2) The storage expansion method does not involve rod consolidation or double tiering.

(3) The Keff of the pool is maintained less than or equal to 0.95, and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

This judgment was based on the staff's review of 96 applications and the result of the SAI study, which indicates that if a spent fuel pool expansion request satisfies the above criteria then

it meets the three standards in the interim final rules in that it:

- (1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated;
- (2) Does not create the possibility of a new or different kind of accident from any accident previously evaluated; and
- (3) Does not involve a significant reduction in a margin of safety.

Finally, the staff stated to the Commission that:

Applications which do not fall into the above category must be evaluated on a case-by-case basis. There are secondary issues which may be associated with a spent fuel pool expansion, but they must be considered on their own technical merit as a separate issue. As an example, transferring fuel to another site for storage or transferring fuel in a cask to another onsite spent fuel pool, if requested, must both be evaluated on a separate basis as to whether or not they involve significant hazards considerations.

The Commission has accepted its staff's judgment, discussed above. It has added the following new example (x) to the list of examples in the "not likely" category in section I(C)(2)(e) for reracking requests satisfying the four criteria noted above (Reracking requests that do not meet these criteria will be evaluated case by case.)

(x) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

- (1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;
- (2) The storage expansion method does not involve rod consolidation or double tiering;
- (3) The Keff of the pool is maintained less than or equal to 0.95; and
- (4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

E. Irreversible Consequences

Comments—One commenter notes that license amendments involving irreversible consequences (such as those permitting an increase in the amount of effluents or radiation emitted from a facility or allowing a facility to operate for a period of time without full safety protections) require prior hearings so as not to foreclose the public's right to have its views considered. This commenter is especially concerned about the TMI-2 clean up and about the TMI-1 steam generator tube repairs. It argues that § 50.92(b) (which requires Commission

"sensitivity" to significant, irreversible consequences) contravenes Congress' intent.

Another commenter requests that a State and the public should have a say about any amendment request involving an environmental impact before NRC issues an amendment. It wants more from the Commission than the statement in the interim final rules that the "Commission will be particularly sensitive" to such impacts.

Another commenter asserts that certain situations which involve "irreversible consequences," such as permanent increases in the amount of effluents or radiation emitted from a facility, should be treated like "stretch power" situations. It argues that this class of amendments should not be considered likely to involve significant hazards considerations as long as the discharge or emission level does not exceed those evaluated in the Safety Analysis Report, the Final Environmental Statement or generically by rulemaking (*i.e.*, Part 50, Appendix I). This commenter adds that any temporary increase within generally recognized radiation protection standards, such as those in 10 CFR Part 20, should be treated similarly. Moreover, it requests that these situations should be included as examples in the "not likely" category.

On the other hand, another commenter argues that license amendments involving temporary waiving of radiation release limitations (so that airborne radioactive waste can be released at a rate in excess of that permitted—an issue in the *Sholly* decision), should involve significant hazards considerations and, consequently, a prior hearing.

Response—The Commission disagrees with the comment that § 50.92(b) contravenes Congress' intent. That section is taken almost verbatim from the Conference Report (*see* section I(C)(2)(c) in this preamble) and is entirely consistent with the colloquy of the Senators quoted in that section.

Before NRC issues an amendment, a State and the public can have a say about any amendment request that involves an environmental impact. The procedures described before have been designed so that at the time of NRC's proposed determination (1) the State within which the facility is located is consulted, (2) the public can comment on the determination, and (3) an interested party can request a hearing. Section 50.92(b) simply buttresses the point that the Commission will be especially sensitive to the types of irreversible impacts described by the commenters.

The Commission has not accepted the last two commenters' suggestions. The legislation clearly specified that the Commission should be sensitive to the kinds of circumstances outlined by the commenters. The interim final rule repeats this language and seeks to insure that the Commission's staff will evaluate each case with respect to its own intrinsic circumstances.

F. Emergency Situations

1.1 Comments—One commenter requests that the term "emergency" be deleted from the rule because it could be confused with a different use of this term in a final rule issued on April 1, 1983 (48 FR 13966) involving the applicability of license conditions and technical specifications in an emergency. *See* §§ 50.54(x) and 50.72(c). It suggests that the phrase "warranting expedited treatment" or some similar phrase could be used instead of the term "emergency."

Two other commenters request that § 50.91(a)(5) (involving emergency situations) be clarified to make clear that an emergency situation can exist whenever it is necessary that a plant not in operation return to operation or that a derated plant operate at a higher level of power generation. One of the commenters argues that unnecessary economic injury or impact on a generating system should also be classified as an emergency situation. It recommends that § 50.91(a)(5) be amended by inserting, after the words "derating or shutdown of the nuclear power plant" the words "including any prevention of either resumption of operation or increase in power output." The other commenter concurs with these words and would add the words "up to its licensed power level" after "power output."

Another commenter suggests that an emergency situation should also exist where a shutdown plant could be prevented from starting up because the Commission had failed to act in a timely way.

Several commenters agree with these comments, arguing that emergency situations should (1) be broadly defined, (2) be available when a plant is shutdown and cannot startup without a license amendment, and (3) include situations where an amendment is needed (as is the case with exigent circumstances) to improve protection to public health and safety.

Response—The Commission understands that the term "emergency" is used in different ways in various sections of its regulations. However, the legislation and its legislative history,

quoted above in section I(A), are very clear on the use of that term and specifically do use that term; consequently, the term must be used as a touchstone for the Commission's regulations.

The Commission agrees with the commenters about need to broaden the definition of "emergency situations." The Conference Report quoted above described "emergency situations" as encompassing those cases in which immediate action is necessary to prevent the shutdown or derating of a plant. There may be situations where the need to prevent shutdown or derating can be equivalent in terms of impact to the need to startup or to go to a higher power level. The Commission believes that expanding the definition of "emergency situation" to include these situations is not inconsistent with Congress' intent. Thus the Commission has decided to adopt the thrust of these comments and has changed § 50.91(a)(5) accordingly. See also response to comment in section II(F)(1.3) below.

1.2 Comment—Section 50.91(a)(5) states that the Commission will decline to dispense with notice and comment procedure, "if it determines that the licensee has failed to make a timely application for the amendment in order to create the emergency and to take advantage of the emergency provision." One commenter requests that the rule specify what is meant by the term "timely application".

Response—The provision cited by the commenter is clear enough. It is extracted almost verbatim from the Conference Report. The Report indicated that a "licensee should not be able to take advantage of an emergency itself" and thus that the Commission's regulations "should insure that the emergency situation" exception under section 12 of the conference agreement "will not apply if the licensee has failed to apply for the license amendment in a timely fashion." Further:

To prevent abuses of this provision, the conferees expect the Commission to independently assess the licensee's reasons for failure to file an application sufficiently in advance of the threatened closure or derating of the facility.

1.3 Comment—One commenter requests that NRC explain how it will process an amendment request that involves both an emergency situation and a significant hazard consideration. It suggests that, in this unlikely case, the Commission might issue an immediately effective order under 10 CFR 2.204.

Response—Since there is a possibility for confusion over the meaning of "emergency", § 50.91(a)(4) has been

modified and a new § 50.91(a)(7) has been added to clarify the problem. With the "Sholly" regulations now in place, there are now two possible types of emergencies:

(a) a "safety-related emergency" in which immediate NRC action may be necessary to protect the public health and safety; and

(b) the "emergency" referred to in the "Sholly" legislation in which the prompt issuance of a license amendment is required in order, for instance, to avoid a shutdown. An example of this type of an emergency is where prompt action is needed for continued full-power operation but not necessarily to protect the public health and safety (health and safety, arguably, is protected by the shutdown, which would occur if the "emergency" license amendment were not issued). This "emergency" is more in the nature of an economic emergency for the licensee.

Two fundamentally different approaches to amending a license arise from these two different types of emergency:

(a) For a safety-related emergency, the Administrative Procedure Act and the Commission's own regulations (10 CFR 2.240) authorize (if not compel) the issuance of an immediately effective order amending a license without regard to whether the amendment involves significant hazards considerations and without the need to make a finding on no significant hazards considerations or to provide a prior Sholly-type of notice.

(b) For an "emergency" where a prompt amendment is required to prevent the shutdown but not to protect the public health and safety, an immediately effective license amendment, without prior notice, may be issued *only if* the amendment involves no significant hazards considerations.

Consequently: (a) Where an immediately effective license amendment is needed to protect the public health and safety, the Commission can issue an immediately effective order amending a license regardless of whether the amendment involves significant hazards considerations and without prior notice and prior hearing;

(b) Where an immediately effective license amendment is needed, for instance, only to prevent the shutdown but not to protect public health and safety, the Commission may issue such an immediately effective amendment only if the amendment involves no significant hazards considerations. If the amendment does involve a significant hazards consideration, the Commission is required by law to provide 30 days

notice and an opportunity for prior hearing.

G. Exigent Circumstances

1.1 Comments—One commenter suggests that the two examples of exigent circumstances are unnecessarily narrow because both involve potentially lost opportunities to implement improvements in safety during a plant outage. The commenter recommends that the Commission make clear that these examples were not meant to be limiting and that exigent circumstances can occur whenever a proposed amendment involves no significant hazards consideration and the licensee can demonstrate that avoiding delay in issuance will provide a significant safety, environmental, reliability, economic, or other benefit.

Another commenter requests that exigent circumstances include instances (1) where a licensee's plant is shutdown and the licensee needs an amendment to startup and (2) involving significant hazards considerations. The commenter argues that both such cases entail delay and a significant financial burden on licensees.

Response—As explained above, the examples were meant merely as guidance and were meant to cover circumstances where a net safety benefit might be lost if an amendment were not issued in a timely manner. The Commission agrees with the first commenter that the examples should be read as also covering those circumstances where there is a net increase in safety or reliability or a significant environmental benefit.

As to the first point of the second comment, the Commission believes that there may be "exigent circumstances" which may involve start-up of a shutdown plant. In keeping with the thrust of the definition of "emergency situations," the "exigent circumstances" in § 50.91(a)(6) will include "start-up" and "increase in power levels". The discussion in section III(A) responds to the commenter's second point.

1.2 Comments—One commenter states that the public notice procedures for exigent circumstances should be no different from those for emergency situations.

Two commenters oppose the use of press releases or display advertising in local media, arguing that such notices would unnecessarily elevate the importance of amendment requests.

Another commenter recommends that if NRC believes that it must issue a press release, it should consult with the licensee on a proposed release before it

acts. It also requests that NRC inform the licensee of the States's and the public's comments and that it promptly forward to the licensee copies of all correspondence.

Two commenters also oppose the toll-free "hot-line" in exigent circumstances, arguing that the concept implies imminent danger or severe safety concerns which normally will not be present. One of these commenters requests, instead, the use of mailgrams or overnight express. It also recommends, if a hotline system is implemented, that the system should be confined to extraordinary amendments involving unique circumstances. To ensure accurate transcription of the comments received, it suggests that the comments be recorded and retained. The other commenter requests that copies of the recorded comments be sent to the licensee.

Another commenter suggests that the rule specify the geographical area to be covered by a notice to the media.

Response—By definition, in emergency situations NRC does not have time to issue a notice; in exigent circumstances, the Commission must act swiftly but has time to issue some type of notice; in most instances it will be a Federal Register notice requesting public comment within less than 30 days, but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC cannot issue a Federal Register notice for at least two weeks public comment in exigent circumstances, then, with the help of the licensee, it will issue some type of media notice requesting public comment within a reasonable time. It will consult with the licensee on a proposed release, on the geographical area of its coverage and, as necessary and appropriate, may inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, it will use that as opposed to a hotline; however, it will not rule out the use of a hotline. And if it does use a hotline, it may tape the conversations and may transcribe them, as necessary and appropriate, and may inform the licensee of these.

1.3 Comment—One commenter notes that exigent circumstances can arise after the publication of a Commission notice offering a normal public comment period on a proposed determination. It requests that in these circumstances the final rule should make clear that an expedited schedule would be established for receiving public comments and issuing the amendment.

Response—The Commission agrees that emergency situations and exigent

circumstances could arise during the normal comment period. If this were to occur, as noted in the notices it now issues, it will expedite the processing of the amendment request to the extent it can, if the request and the exigency or emergency are connected. As explained above, of course the Commission may also issue an appropriate order under 10 CFR Part 2 if there is an imminent danger to the public health or safety.

H. Retroactivity

Comments—One commenter requests (and another agrees) that NRC should clarify § 2.105(a)(4)(i)—which explains how NRC may make an amendment immediately effective—to state that NRC will not provide notices of proposed action on no significant hazards consideration amendment requests received before May 6, 1983 (the effective date of the interim final rule). It suggests that the Commission should publish instead notices of issuance of amendments pursuant to § 2.106.

Another commenter suggests expedited treatment for amendment requests received before May 6, 1983, when these relate to refueling outages scheduled by licensees before that date.

Response—The Commission has noticed amendment requests it received before May 6, 1983, along with its proposed determinations.

I. Notice and Consultation Procedures

1.1 Comments—One commenter proposes the following changes (endorsed by another commenter) to the notice procedures to shorten the comment period and to clarify the method of publication:

Routine, minor amendments should be published in the monthly Federal Register compilation only and a ten-day comment period accorded. There should be no individual Federal Register notice in routine cases. An individual notice should be published in the Federal Register for requests that are not routine, such as for instance, steam generator modifications or reracking. These requests could also be published in the monthly compilation, but the comment period should run from the date of the individual notice. As in the case for routine amendments, we propose a ten-day comment period. In exigent circumstances, which could encompass either routine or non-routine requests, we propose that notice be published individually in the Federal Register and that a reasonable comment period be accorded taking into account the facts of the particular case.

The commenter argues that expedited notice procedures would satisfy the statutory requirements, would eliminate a large source of delay, and would be approved by the courts, since expedited

procedures are the appropriate solution when notice and hearing are statutorily required but time is of the essence.

Two commenters are also concerned about the potential for delay in the new notice procedures, one requesting that the rule indicate the normal time NRC needs to process routine and emergency applications.

Response—The interim final rules preserve the option to publish individual or periodic Federal Register notices, or a combination of both. The Commission stated in the interim final rules that the periodic notices would be published at least every 30 days, leaving the option of more frequent publication if appropriate. Though it agrees that minor routine amendments could be published in its periodic notice and that non-routine amendments could be published in individual notices, it does not want to establish by rule any particular mode of publication.

The Commission does not agree that a 10-day comment period should be the norm. It believes that its system, which normally allows for 30 days public comment, is more in keeping with the intent of the legislation, which provided for a reasonable opportunity for public comment, except in emergency situations where there is no time provided for public comment and in exigent circumstances where there is less than 30 days provided.

Section 50.91(a)(6) has been clarified to indicate that the comment period on any notice begins on the date of that notice. If there is an initial individual notice and a later periodic notice, the comment period begins with the first notice.

Finally, the Commission does not agree that it should prescribe normal time periods for processing routine and emergency requests. Its staff will process all requests as quickly as it can. The Commission hereby directs the staff to handle requests promptly and efficiently to insure that the staff is not the cause for a licensee's emergency or exigency request.

1.2 Comments—One commenter argues that the consultation procedures created by the interim final rules do not meet Congress' intent because they leave it to a State to decide whether it wants to consult on the licensee's amendment request and NRC's proposed determination. It seeks "formal, active consultation" (before NRC makes its proposed determination and publishes a Federal Register notice) through the "scheduling of formal discussions between the State and the NRC on the proposed determination, with the foregoing of such only upon

written waiver of the State." It also seeks incorporation of the State's comments in the *Federal Register* notice along with an explanation of how NRC resolved these. Finally, it requests that NRC always telephone State officials before issuing an amendment, rather than merely "attempting" to telephone them as, the commenter states, the rule provides.

Another commenter is satisfied with the notice and consultation procedures, stating that "the regulations give the State no more authority in regulating the operation of the reactor than it had in the past, but they serve notice on the reactor operator that the State is an interested party in all nuclear operations within the State."

Response—The State consultation procedures are well within Congress' intent. These procedures allow a State to take on as active a role as it wishes, consulting with NRC on every amendment request, if it wants to do so.

On the other hand, if it wants to conserve its resources and consult only on amendment requests it considers important, it may do that as well. The system of formal consultation envisaged by the first commenter is contrary to the intent of Congress, as discussed in section III(B) below.

Finally, § 50.91(b)(3) of the interim final rule clearly states that before NRC issues the amendment, it will telephone the appointed State official in which the licensee's facility is located for the purpose of consultation. The Commission believes that this last step is needed to ensure that the State indeed is aware of the amendment request and does not wish to be consulted about it. The rule has been changed in minor ways to clarify these points.

J. Notices in Emergency Situations or Exigent Circumstances

Comment—One commenter recommends that the Commission clarify that it intends to issue a "post notice" under § 2.106 rather than a "prior notice" under § 2.105 when it has determined that there is an emergency situation or exigent circumstances and that an amendment involves no significant hazards consideration. The commenter suggests replacement of the phrase in § 2.105(a)(4)(ii) that "it will provide notice of opportunity for a hearing pursuant to § 2.106" with the words "instead of publishing a notice of proposed action pursuant to this section, it will publish a notice of issuance pursuant to § 2.106".

Response—The Commission has not accepted the latter part of the commenter's request. In an emergency situation involving no significant

hazards consideration, the Commission will publish a notice of issuance of the amendment under § 2.106. The licensee or any other person with the requisite interest may request a hearing pursuant to this notice. Thus, implicit in § 2.106 is the notion that a notice of issuance provides notice of opportunity for a hearing. The phrase in § 2.105 makes this notion explicit. Finally, contrary to the commenter's assertion, the Commission does provide prior rather than post notice in exigent circumstances.

K. Procedures to Reduce the Number of Amendments

Comment—One commenter suggests that many of the routine matters which require amendments should not be subject to the license amendment process. It argues that greater use should be made of § 50.59 (involving changes, tests and experiments without prior Commission approval, where these do not involve an unreviewed safety question or a technical specification incorporated in a license) for changes involving routine matters by not placing such changes into the technical specifications and thereby avoiding the need to issue license amendments. Two commenters also generally endorse the Commission's proposed rule (published on March 30, 1982 in 47 FR 13369) that would reduce the volume of technical specifications now part of an operating license, thereby reducing the need to request license amendments.

Response—The Commission is reconsidering the proposed rule noted above. It may issue a Policy Statement in its stead, or another different, simplified proposed rule, or both.

L. License Fees

Comment—One commenter argues that licensees should not be assessed additional fees to finance activities involving no significant hazards considerations determinations. It states that recently NRC proposed to amend the existing regulations governing payment of fees associated with, among other things, the processing of license amendment requests. (Proposed rule; 47 FR 52454 (November 22, 1982); final rule: 49 FR 21293 (May 21, 1984).) The key element of the proposed changes related to assessment of fees based upon actual NRC resources expended, rather than upon fixed fees for various classes of amendments. The commenter adds that if the Part 170 changes are issued as proposed, after May 6, 1983—the effective date of the interim final rules—NRC resources expended as part of the notice and State consultation process would be financed by the requesting licensee. It asserts that licensees would

not be the identifiable recipients of benefits resulting from this more involved process and thus licensees should not be assessed fees for expenses resulting from the public notice, State consultation, and other related activities. Finally, it argues that it is clear from the legislative history behind Pub. L. 97-415 that licensees are not the prime beneficiaries of this new license amendment process.

Response—It is clear that the issuance of a license amendment is a "special benefit" for the licensee, and that the Commission is therefore authorized to impose a fee to recover the cost to the agency of conferring that benefit. *Mississippi Power & Light Co. v. Nuclear Regulatory Commission*, 601 F.2d 223, 227 (5th Cir. 1979). The notice and consultation process established in the present rulemaking, together with all other aspects of the no significant hazards consideration determination, reflects statutory requirements that must be met in the issuance of a license amendment. Accordingly, the NRC resources expended in this part of the amendment proceedings are costs necessarily incurred by the agency on behalf of the licensee. Thus the Commission may include these costs in its fee for issuing the amendment.

While the Commission believes that the public as well as the licensee will benefit from this clarification and improvement in the amendment process, the "special benefit" of receiving a particular license amendment pertains to the licensee alone, and the Commission may therefore assess the full cost of providing it. *Mississippi Power & Light*, *supra*, at 230.

M. Regionalization

Comment—One commenter recommends that before NRC's headquarters transfers authority to the Regions to process "routine" amendments, there should be a clear understanding among the licensee, the Region and NRC's headquarters about the ground rules (1) on what would constitute "routine" versus "complex" amendments and (2) on the ways in which the amendments would be processed from the times they are requested, through notice and State consultation, to their grant or denial.

Response—The Commission agrees. For the time being, though, and perhaps in the future, NRC's headquarters will retain authority to process amendment requests for no significant hazards consideration determinations. See, generally, NRC Authorization Act for Fiscal Years 1984 and 1985 (Pub. L. 98-553, October 1984).

N. Exemption Requests

Comment—One commenter is concerned that NRC might automatically consider exemption requests as license amendments. It believes that exemption requests need not automatically be considered license amendments, even though NRC has occasionally elected to notice such requests in the *Federal Register* or has assigned license amendment numbers to the issuing documents.

Response—The Commission does not automatically consider exemption requests as license amendments. Most are not amendments. If an exemption to the regulations for a particular facility also entails or requires an amendment to the facility license, the amendment would be processed as a license amendment under the "Sholly" regulations and the requirements of the regulations could not be avoided simply because an exemption is also involved.

III. Present Practice, and Modifications Under the Final Rule

A. Notice for Public Comment and for Opportunity for a Hearing

In the two interim final rules, the Commission adopted the notice procedures and criteria contemplated by the legislation for no significant hazards consideration determinations. In addition it decided to combine the notices for public comment on no significant hazards considerations with the notices for opportunity for a hearing. Thus, normally, for operating license amendments for facilities described in § 50.21(b) or § 50.22 or for testing facilities, the Commission provided both prior notice of opportunity for hearing and prior notice of public comment. The Commission also explained in the interim final rules that while the substance of the public comments on the no significant consideration finding could be litigated in a hearing, when one is held, neither the Commission nor its Licensing Boards or Presiding Officers would entertain hearing requests on the NRC staff's substantive findings with respect to these comments. It noted that this is in keeping with the legislation which states that public comment cannot delay the effective date of an amendment. The Commission intends to continue this practice, as fully described below.

With respect to opportunity for hearing, the Commission amended § 2.105 to specify that normally it could issue in the *Federal Register* at least every 30 days, and perhaps more frequently, a list of "notices of proposed actions" or requests to amend operating licenses. These periodic notices—

presently issued biweekly—now provide an opportunity to request a hearing within thirty days. The Commission also retained the option of issuing individual notices, as it sees fit. In the final rule, the Commission's procedures provide that a person whose interest may be affected by the proceeding may file a petition for leave to intervene and request a hearing. See § 2.105(d)(2). If the staff does not receive any request for a hearing on an amendment within the notice period, it takes the proposed action when it has completed its review and made the necessary findings. If instead it receives a request for a hearing, it acts under new § 50.91, which describes the procedures and criteria the Commission uses to act on applications for amendments to operating licenses.

To implement the main theme of the legislation, the Commission combined a notice of opportunity for a hearing with a notice for public comment on any proposed determination on no significant hazards consideration. See § 50.91. New § 50.91 also permits the Commission to make an amendment immediately effective in advance of the conduct and completion of any required hearing where there has been a no significant hazards consideration determination. To buttress this point, the Commission has modified § 50.58(b)(6) to state that only it on its own initiative may review the staff's final no significant hazards consideration determination. Thus, § 50.91 builds upon amended § 2.105, providing details for the system of *Federal Register* notices. For instance, exceptions are made for emergency situations, with no prior notice of opportunity for a hearing and for public comment, assuming no significant hazards considerations. In sum, this system added a "notice for public comment" under § 50.91 to the former system of "notice of proposed action" under § 2.105 and "notice of issuance" § 2.106.

Under this new system, the Commission requires an applicant requesting an amendment to its operating license (1) to provide its careful appraisal on the significant hazards issue, using the standards in § 50.92 (and whatever examples are applicable), and (2) if it involves the emergency or exigency provisions, to address the features on which the Commission must make its findings. (Both points are discussed below.) The staff has frequently stated to applicants that the Commission wants a "reasoned analysis" from an applicant. An insufficient or sloppy appraisal will be returned to the applicant with a request to do a more careful analysis. Where an

application has been returned for such reasons, i.e., because of the applicant's negligence, the applicant cannot use the exigency or emergency provisions of the rule for any subsequent application for the same amendment.

When the staff receives the amendment request, as described below, it decides whether there is an emergency situation or exigent circumstances. If there is no emergency, it makes a preliminary decision—called a "proposed determination"—about whether the amendment involves no significant hazards considerations. Normally, this is done before completion of the safety analysis or evaluation. In the proposed determination, it might accept the applicant's appraisal in whole or in part or it might reject the applicant's appraisal but, nonetheless, reach the same conclusion. With respect to the proposed determination, the staff views the term "considerations" in the dictionary sense, that is, as a sorting of factors as to which it has to make that determination. In this sorting, the three standards are used as benchmarks and, if applicable, the examples may be used as guidelines.

Amendment requests received before May 6, 1983 (the effective date of the interim final rules) have been processed in the same way, except that licensees have not been required to provide their appraisals.

At this stage, if the staff decides that no significant hazards consideration is involved, it can issue an individual *Federal Register* notice or list this amendment in its periodic—biweekly—publication in the *Federal Register*. This periodic publication lists not only amendment requests for which the Commission is publishing a notice under § 2.105, it also provides a reasonable opportunity for public comment by listing this and all amendment requests received since the last such periodic notice, and, like an individual notice, (a) providing a description of the amendment and of the facility involved, (b) noting the proposed no significant hazards consideration determination, (c) soliciting public comment on the determinations which have not been previously noticed, and (d) providing for a 30-day comment period.

Out of a total of 2404 notices of no significant hazards considerations the Commission received requests for hearings on 13 notices and comments on 15 notices. Out of a total of 36 notices of significant hazards considerations, the Commission received requests for hearings on 3 notices and no comments.

Between May 6, 1983 and September 30, 1985, the Commission published

various types of notices in addition to or to the exclusion of **Federal Register** notices (FRNs). Three were press releases only; four were press releases and paid announcements; one was a press release and an FRN; and one was a paid announcement only.

For the purpose of illustration, the following table lists the Commission's monthly FRNs between May 6, 1983, and September 30, 1985, on determinations about no significant hazards considerations (NSHC). The final rule clarifies that if an individual notice has

been published, the periodic publication does not extend the deadline date for filing comments or providing an opportunity for a hearing. *See* § 50.91(a)(2).

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"SHOLLY" STATISTICS

May 6, 1983 through September 30, 1985	Biweekly FRN Proposed NSHC			Individual FRN Proposed NSHC			Individual FRN SHC			Totals						
PERIOD COVERED	4th Sept. Qtr. 1985	FY 85 to date	Total to date	4th Sept. Qtr. 1985	FY 85 to date	Total to date	4th Sept. Qtr. 1985	FY 85 to date	Total to date	4th Sept. Qtr. 1985	FY 85 to date	Total to date				
Comment period:																
30 days	87	282	984	2155	2	5	47	249	0	6	10	36	89	293	1041	2440
Less than 30 days																
Short FRN																
Press Release																
Public comments received	0	0	0	1	0	0	3	11	0	0	0	0	0	0	3	(12 FRN 2 PR) 14
Requests for hearing	0	1	1	4	0	0	0	9	0	0	2	3	0	1	3	(15 FRN 1 PR) 16
Amendments Issued - Total																
(1) With 30 days notice																
(2) Less than 30 days or NO NOTICE																
(3) Hearing requested but final NSHC determination made (50.91(a)(4))																
(4) Proposed NSHC; hearing requested; hearing completed and amendment issued. No final NSHC determination was made because hearing was completed before amendment was needed																
82 228 874 1647																
76 213 830 1555																
6 15 43 82																
0 0 0 10																

Backlog: (Applications received which were not noticed, either in biweekly FRN or individually through September 30, 1985): NUMBER: 227 (Includes items which were prepared and approved for publication in the next biweekly, items which are in concurrence, and items for which additional information was needed from licensee.)

While it is awaiting public comment, the staff proceeds with the safety analysis. After the public comment period, the Commission reviews the comments, if any, considers the safety analysis, and makes its decision on the amendment request. If it decides that no significant hazards consideration is involved, it either may publish an individual "notice of issuance" under § 2.106 or, normally, a notice of issuance in its system of periodic *Federal Register* notices, thus closing the public record. As the Commission explained in the preamble to the interim final rules, it does not normally make and publish a "final determination" on no significant hazards consideration, unless there is a request for a hearing as well as an NRC decision to make the amendment immediately effective before the hearing. In this regard, the staff need not respond to comments if a hearing has not been requested.

If it receives a hearing request during the comment period and the staff has decided that no significant hazards consideration is involved, it prepares a "final determination" on that issue which considers the request and the public comments, makes the necessary safety and public health findings, and proceeds to issue the amendment. The hearing request is treated the same way as in previous Commission practice, that is, by providing any requisite hearing after the amendment has been issued. As explained above, where the Commission has determined that no significant hazards consideration is involved, the legislation permits the Commission to make an amendment immediately effective in advance of the holding and completion of any required hearing, notwithstanding the pendency before it of a request for a hearing.

The procedures just described have been the usual way of handling license amendments under the interim final rules because most of these amendments do not involve (1) emergency situations, (2) exigent circumstances, or (3) entail a determination that a significant hazards consideration is involved. As discussed below, however, these three cases and other anomalies could arise.

For example, returning to the initial receipt of an application, if the staff were to receive an amendment request and then determine that a significant hazards consideration is involved, it would handle this amendment request by first issuing an individual notice of proposed action providing an opportunity for a prior hearing under § 2.105, and, afterwards, as appropriate, notifying the public of the final

disposition of the amendment by noting its issuance or denial in an individual *Federal Register* notice. As explained above, even if the amendment request were to involve an emergency situation and if it were determined that a significant hazards consideration were involved, the Commission would be required to issue a notice providing an opportunity for a prior hearing. If the Commission were to determine, however, that there was an imminent threat to public health or safety, it could issue an appropriate order under 10 CFR Part 2, as has been explained above, and as is also discussed below.

Another unusual case might arise: The staff may receive an amendment request and find an emergency situation, where failure to act in a timely way would result in derating or shutdown of a nuclear power plant. In this case, also discussed below in connection with State consultation, it may proceed to issue the license amendment, if it determines, among other things, that no significant hazards consideration is involved. In this circumstance, the staff might not necessarily be able to provide prior notice of opportunity for a hearing or prior notice for public comment; though it has not done this to date, it could issue an individual notice with an opportunity for a hearing after the amendment is issued (see § 2.106) or, as has been the case thus far, it could provide periodic notice (the Commission's periodic *Federal Register* notice system notes NRC's action on the amendment request and provides an opportunity for a hearing after issuance).

In the preamble to the interim final rules, in connection with emergency requests, the Commission stated that it expects its licensees to apply for license amendments in a timely fashion, explaining that it will decline to dispense with notice and comment on the no significant hazards consideration determination if it determines that the applicant has failed to make a timely application for the amendment because of negligence or in order to create the emergency so as to take advantage of the emergency provision. Whenever an emergency situation is involved, the Commission expects the applicant to explain to it why the emergency has occurred and why the applicant could not avoid it; the Commission will assess the applicant's reasons for failure to file an application sufficiently in advance of that event.

An emergency situation might also occur during the normal 30-day comment period. Depending upon the type of emergency (safety-related versus emergency situation in the "Sholly"

sense—see section II(F)(1.1) above), the Commission would act under the system described above.

Another unusual case might occur where the Commission receives an amendment request and finds an exigent circumstance, that is, a situation other than an emergency where swift action is necessary. The legislation, quoted above, states that the Commission should establish criteria which "take into account the exigency of the need for the amendment." The Conference Report, quoted above, points out that "the conference agreement preserves for the Commission substantial flexibility to tailor the notice and comment procedures to the exigency of the need for the license amendment" and that "the conferees expect the content, placement, and timing of the notice to be reasonably calculated to allow residents of the area surrounding the facility an adequate opportunity to formulate and submit reasoned comments."

In the interim final rules, the Commission stated that extraordinary cases may arise, short of an emergency, where a licensee and the Commission must act quickly and where time does not permit the Commission to publish a *Federal Register* notice soliciting public comment or to provide the 30 days ordinarily allowed for public comment. As noted in the response to public comments on the two interim final rules, the Commission gave as examples two circumstances where expedited action by the Commission would result in a net benefit to safety. (See additional examples at II(G)(1.1).) For example, a licensee with a reactor shutdown for a short time might wish to add some component clearly more reliable than one presently installed or the licensee might wish to use a different method of testing some system and that method would be better than one provided for in its technical specifications. In either case, the licensee may have to request an amendment, and if the staff determines, among other things, that no significant hazards consideration is involved, it may wish to grant the request before the licensee resumes plant operation and loses the opportunity to improve the plant.

The Commission noted in the interim final rules that in circumstances such as the two just described, it may use media other than the *Federal Register* to inform the public of the licensee's amendment request. For example, it may use a local newspaper published near the licensee's facility which is widely read by the residents in the area surrounding the facility. The Commission stated that in these instances it will provide the public

a reasonable opportunity to comment on the proposed no significant hazards determination. It also stated that to ensure timely receipt of the comments, it may also establish a toll-free hotline, allowing the public to telephone their comments to NRC on the amendment request.

This method of prior notice for public comment is in addition to any possible individual notice of hearing. It does not affect the time available to exercise the opportunity to request a hearing, though the Commission may provide that opportunity only after the amendment has been issued, when the Commission has determined that no significant hazards consideration is involved.

The Commission has modified slightly the procedure discussed above. In emergency situations the staff does not have time to issue a notice. In exigent circumstances, the staff has to act swiftly but has some time to issue a notice, usually a **Federal Register** notice requesting public comment within 30 days but not less than two weeks. The Commission, of course, needs the cooperation of a licensee to make the system work and to act quickly. If NRC is put in a situation where it cannot issue a **Federal Register** notice for at least two weeks public comment, it will issue a media notice. It may consult with the licensee on a proposed release and on the geographical area of its coverage and, as necessary and appropriate, may inform it of the State's and the public's comments. If a system of mailgrams or overnight express is workable, the Commission may use that as opposed to a hotline; however, it has not ruled out the use of a hotline. If it does use a hotline, it may tape the conversations and may transcribe them, as necessary and appropriate, and may inform the licensee of these.

As with its provisions on emergency situations, the Commission explained in the interim final rules that it would use these procedures sparingly and that it wants to make sure that its licensees will not abuse these procedures. It stated that it will use criteria similar to the ones it uses with respect to emergency situations to decide whether it will shorten the comment period and change the type of notice normally provided. It also stated in connection with requests indicating exigent circumstances that it expects its licensees to apply for license amendments in a timely fashion. It will not change its normal notice and public comment practices where it determines that the licensee has failed to use its best efforts to make a timely application for the amendment because of

negligence or in order to create the exigent circumstances so as to take advantage of the exigency provision. Whenever a licensee wants to use this provision, it must explain to the staff the reason for the exigency and why the licensee cannot avoid it; the staff will assess the licensee's reasons for failure to file an application sufficiently in advance of its proposed action or for its inability to take the action at some later time.

The staff could also receive an amendment request with respect to which it finds that it is in the public interest to offer an opportunity for a prior hearing. In this case, it would use its present individual notice procedure to allow for hearing requests. Whether or not a hearing is held, it would notify the public about the final disposition of the amendment in an individual **Federal Register** notice of issuance or denial.

It should also be re-emphasized that these procedures normally only apply to license amendments. The staff may, under existing §§ 2.202(f) and 2.204, make a determination that the public health, safety, or interest requires it to order the licensee to act without prior notice for public comment or opportunity for a hearing. In this case, the staff would follow its present procedure and publish an individual notice of issuance in the **Federal Register** and provide an opportunity for a hearing on the order.

The new system has changed only the Commission's noticing practices, not its hearing practices. The Commission explained in the two interim final rules that it has attempted to provide noticing procedures that are administratively simple, involve the least cost, do not entail undue delay, and allow a reasonable opportunity for public comment; nevertheless, it is clear that they are burdensome and involve resource impacts and timing delays for the Commission and for licensees requesting amendments. Licensees can reduce these delays under the procedures by providing to the Commission their timely and carefully prepared appraisals on the issue of significant hazards, and the staff can further reduce delay by processing requests expeditiously.

B. State Consultation

As noted above, Pub. L. 97-415 requires the Commission to consult with the State in which the facility involved is located and to promulgate regulations which prescribed procedures for such consultation on a determination that an amendment to an operating license involves no significant hazards consideration. The Conference Report,

cited earlier, stated that the conferees expect that the procedures for State consultation would include the following elements:

- (1) The State would be notified of a licensee's request for an amendment;
- (2) The State would be advised of the NRC's evaluation of the amendment request;
- (3) The NRC's proposed determination on whether the license amendment involves no significant hazards consideration would be discussed with the State and the NRC's reasons for making that determination would be explained to the State;
- (4) The NRC would listen to and consider any comments provided by the State official designated to consult with the NRC; and
- (5) The NRC would make a good faith attempt to consult with the State prior to issuing the license amendment.

At the same time, however, the procedures for State consultation would not:

- (1) Give the State a right to veto the proposed NRC determination;
- (2) Give the State a right to a hearing on the NRC determination before the amendment becomes effective;
- (3) Give the State the right to insist upon a postponement of the NRC determination or issuance of the amendment; or
- (4) Alter present provisions of law that reserve to the NRC exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

In requiring the NRC to exercise good faith in consulting with a State in determining whether a license amendment involves no significant hazards consideration, the conferees recognize that a very limited number of truly exceptional cases may arise when the NRC, despite its good faith efforts, cannot contact a responsible State official for purposes of prior consultation. Inability to consult with a responsible State official following good faith attempts should not prevent the NRC from making effective a license amendment involving no significant hazards consideration, if the NRC deems it necessary to avoid the shut-down or derating of a power plant. Conf. Rep. No. 97-884, 97th Cong., 2d Sess., at 39 (1982).

The law and its legislative history were quite specific. Accordingly, the Commission adopted the elements described in the Conference Report quoted above in those cases where it makes a proposed determination on no significant hazards consideration. The Commission has decided to retain this procedure. Normally, the State consultation procedures works as follows. To make the State consultation process simpler and speedier, under the interim final rules the Commission has required an applicant requesting an amendment to send a copy of its appraisal on the question of no significant hazards to the State in which the facility involved is located. (The

NRC compiled a list of State officials who were designated to consult with it on amendment requests involving no significant hazards considerations; it made this list available to all its licensees with facilities covered by § 50.21(b) or § 50.22 or with testing facilities.)

The staff sends its **Federal Register** notice, or some other notice in the case of exigent circumstances, containing its proposed determination to the State official designated to consult with it together with a request to that person to contact the Commission if there is any disagreement or concern about its proposed determination. If it does not hear from the State in a timely manner, it concludes that the State has no interest in its determination. In this regard, the staff made available to the designated State officials a list of its Project Managers and other personnel whom it has designated to consult with these officials. Nevertheless, to insure that the State is aware of the amendment request and that it is really not interested, the final rule has been clarified to point out that the Commission will make a reasonable effort to telephone the appropriate State official before it issues the amendment.

In an emergency situation, the staff does its best to consult with the State before it makes a final determination about no significant hazards consideration before it issues an amendment.

Finally, in light of the legislative history, though the staff gives careful consideration to the comments provided to it by the affected State on the question of no significant hazards consideration, the State comments are advisory to the Commission; the Commission remains responsible for making the final administrative decision on the amendment request; a State cannot veto the Commission's proposed or final determination. State consultation does not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

Separate Views of Commissioner Asselstine

I do not approve the Commission's final regulations implementing the "Sholly Amendment." I have two major concerns about the rule.

First, I believe that Congress did not intend that the Sholly provision be used to approve license amendments to allow the expansion of spent fuel storage, whether by reracking or by other means, prior to the completion of any requested

hearing. I set out my reasons for this belief in my separate views on the interim final rule so I will not repeat them here. See, 48 FR 14864.

Second, the statement of considerations does not clearly describe the nature of the staff's determination of whether there are "significant hazards considerations." Failure to clarify this issue in the interim final rule led to much consternation when the Commission considered the repair of the TMI-1 steam generators. The Commission should clearly state that the determination should be whether the proposed amendment presents any new or unreviewed safety issues for consideration; the issue is not whether the staff thinks that ultimately it will be able to conclude that the amendment will present no additional risk to the public.

Regulatory Analysis

The Commission prepared a Regulatory Analysis on these amendments, when it issued the two interim final rules. It is contained in SECY-83-16B and it may be examined at the address indicated in "ADDRESSES" above. Experience to date indicates that the staff resource impacts predicted in the Analysis are low by about a factor of three. This is expected to change as experience is gained in implementing the final rule.

Backfit Statement

Under 10 CFR 50.109, the final rule is not a backfit and preparation of a backfit analysis is not necessary because the final rule imposes no requirements on licensees beyond those already imposed by the interim final rules.

Paperwork Reduction Act Statement

This final rule amends information collection requirements subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under approval number 3150-0011.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (Act), 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and testing facilities. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Act or in the Small Business Size Standards set out in regulations issued

by the Small Business Administration at 13 CFR Part 121. Consequently, this rule does not fall within the purview of the Act.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments to 10 CFR Parts 2 and 50 are published as a document subject to codification.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 68 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955 as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239).

Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a-2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended. (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134,

Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.105, paragraphs (a)(4), (a)(6), and (d)(2) are revised to read as follows:

§ 2.105 Notice of proposed action.

(a) * * *

(4) An amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 of this chapter or for a testing facility, as follows:

(i) If the Commission determines under § 50.58 of this chapter that the amendment involves no significant hazards consideration, though it will provide notice of opportunity for a hearing pursuant to this section, it may make the amendment immediately effective and grant a hearing thereafter;

or

(ii) If the Commission determines under § 50.58 and § 50.91 of this chapter that an emergency situation exists or that exigent circumstances exist and that the amendment involves no significant hazards consideration, it will provide notice of opportunity for a hearing pursuant to § 2.106 (if a hearing is requested, it will be held after issuance of the amendment):

(6) An amendment to a license specified in paragraph (a)(5) of this section, or an amendment to a construction authorization granted in proceedings on an application for such a license, when such an amendment would authorize actions which may significantly affect the health and safety of the public; or

(d) * * *

(2) Any person whose interest may be affected by the proceeding may file a request for a hearing or a petition for leave to intervene if a hearing has already been requested.

§§ 2.300-2.309 [Removed]

3. Subpart C (§§ 2.300-2.309) is removed.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

4. The authority citation for Part 50 is revised to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100-50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73 and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 50.57 [Amended]

5. In § 50.57, paragraph (d) is removed.

6. In § 50.58, paragraph (b) is revised to read as follows:

§ 50.58 Hearings and report of the Advisory Committee on Reactor Safeguards.

(b)(1) The Commission will hold a hearing after at least 30-days' notice and publication once in the *Federal Register* on each application for a construction permit for a production or utilization facility which is of a type described in § 50.21(b) or § 50.22, or for a testing facility.

(2) When a construction permit has been issued for such a facility following the holding of a public hearing, and an application is made for an operating license or for an amendment to a construction permit or operating license, the Commission may hold a hearing after at least 30-days' notice and publication once in the *Federal Register*, or, in the absence of a request therefor by any person whose interest may be affected, may issue an operating license or an amendment to a construction permit or operating license without a hearing, upon 30-days' notice and publication once in the *Federal Register* of its intent to do so.

(3) If the Commission finds, in an emergency situation, as defined in § 50.91, that no significant hazards consideration is presented by an application for an amendment to an operating license, it may dispense with public notice and comment and may issue the amendment. If the Commission finds that exigent circumstances exist,

as described in § 50.91, it may reduce the period provided for public notice and comment.

(4) Both in an emergency situation and in the case of exigent circumstances, the Commission will provide 30 days notice of opportunity for a hearing, though this notice may be published after issuance of the amendment if the Commission determines that no significant hazards consideration is involved.

(5) The Commission will use the standards in § 50.92 to determine whether a significant hazards consideration is presented by an amendment to an operating license for a facility of the type described in § 50.21(b) or § 50.22, or which is a testing facility, and may make the amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

(6) No petition or other request for review of or hearing on the staff's significant hazards consideration determination will be entertained by the Commission. The staff's determination is final, subject only to the Commission's discretion, on its own initiative, to review the determination.

7. Section 50.91 is revised to read as follows:

§ 50.91 Notice for public comment; State consultation.

The Commission will use the following procedures on an application requesting an amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility:

(a) Notice for public comment.

(1) At the time a licensee requests an amendment, it must provide to the Commission its reasoned analysis, using the standards in § 50.92, about the issue of no significant hazards consideration.

(2)(i) The Commission may publish in the *Federal Register* under § 2.105 an individual notice of proposed action for an amendment for which it makes a proposed determination that no significant hazards consideration is involved, or, at least once every 30 days, publish a periodic *Federal Register* notice of proposed actions which identifies each amendment issued and each amendment proposed to be issued since the last such periodic notice, or it may publish both such notices.

(ii) For each amendment proposed to be issued, the notice will (A) contain the staff's proposed determination, under

the standards in § 50.92, (B) provide a brief description of the amendment and of the facility involved, (C) solicit public comments on the proposed determination, and (D) provide for a 30-day comment period.

(iii) The comment period will begin on the day after the date of the publication of the first notice, and, normally, the amendment will not be granted until after this comment period expires.

(3) The Commission may inform the public about the final disposition of an amendment request for which it has made a proposed determination of no significant hazards consideration either by issuing an individual notice of issuance under § 2.106 of this chapter or by publishing such a notice in its periodic system of **Federal Register** notices. In either event, it will not make and will not publish a final determination on no significant hazards consideration, unless it receives a request for a hearing on that amendment request.

(4) Where the Commission makes a final determination that no significant hazards consideration is involved and that the amendment should be issued, the amendment will be effective upon issuance, even if adverse public comments have been received and even if an interested person meeting the provisions for intervention called for in § 2.714 of this chapter has filed a request for a hearing. The Commission need hold any required hearing only after it issues an amendment, unless it determines that a significant hazards consideration is involved in which case the Commission will provide an opportunity for a prior hearing.

(5) Where the Commission finds that an emergency situation exists, in that failure to act in a timely way would result in derating or shutdown of a nuclear power plant, or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, it may issue a license amendment involving no significant hazards consideration without prior notice and opportunity for a hearing or for public comment. In such a situation, the Commission will not publish a notice of proposed determination on no significant hazards consideration, but will publish a notice of issuance under § 2.106 of this chapter, providing for opportunity for a hearing and for public comment after issuance. The Commission expects its licensees to apply for license amendments in timely fashion. It will decline to dispense with notice and comment on the determination of no significant hazards consideration if it determines that the licensee has abused the emergency

provision by failing to make timely application for the amendment and thus itself creating the emergency. Whenever an emergency situation exists, a licensee requesting an amendment must explain why this emergency situation occurred and why it could not avoid this situation, and the Commission will assess the licensee's reasons for failing to file an application sufficiently in advance of that event.

(6) Where the Commission finds that exigent circumstances exist, in that a licensee and the Commission must act quickly and that time does not permit the Commission to publish a **Federal Register** notice allowing 30 days for prior public comment, and it also determines that the amendment involves no significant hazards considerations, it:

(i)(A) Will either issue a **Federal Register** notice providing notice of an opportunity for hearing and allowing at least two weeks from the date of the notice for prior public comment; or

(B) Will use local media to provide reasonable notice to the public in the area surrounding a licensee's facility of the licensee's amendment and of its proposed determination as described in paragraph (a)(2) of this section, consulting with the licensee on the proposed media release and on the geographical area of its coverage;

(ii) Will provide for a reasonable opportunity for the public to comment, using its best efforts to make available to the public whatever means of communication it can for the public to respond quickly, and, in the case of telephone comments, have these comments recorded or transcribed, as necessary and appropriate;

(iii) When it has issued a local media release, may inform the licensee of the public's comments, as necessary and appropriate;

(iv) Will publish a notice of issuance under § 2.106;

(v) Will provide a hearing after issuance, if one has been requested by a person who satisfies the provisions for intervention called for in § 2.714 of this chapter;

(vi) Will require the licensee to explain the exigency and why the licensee cannot avoid it, and use its normal public notice and comment procedures in paragraph (a)(2) of this section if it determines that the licensee has failed to use its best efforts to make a timely application for the amendment in order to create the exigency and to take advantage of this procedure.

(7) Where the Commission finds that significant hazards considerations are involved, it will issue a **Federal Register** notice providing an opportunity for a prior hearing even in an emergency

situation, unless it finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR Part 2.

(b) State consultation.

(1) At the time a licensee requests an amendment, it must notify the State in which its facility is located of its request by providing that State with a copy of its application and its reasoned analysis about no significant hazards considerations and indicate on the application that it has done so. (The Commission will make available to the licensee the name of the appropriate State official designated to receive such amendments.)

(2) The Commission will advise the State of its proposed determination about no significant hazards consideration normally by sending it a copy of the **Federal Register** notice.

(3) The Commission will make available to the State official designated to consult with it about its proposed determination the names of the Project Manager or other NRC personnel it designated to consult with the State. The Commission will consider any comments of that State official. If it does not hear from the State in a timely manner, it will consider that the State has no interest in its determination; nonetheless, to ensure that the State is aware of the application, before it issues the amendment, it will make a good faith effort to telephone that official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration.)

(4) The Commission will make a good faith attempt to consult with the State before it issues a license amendment involving no significant hazards consideration. If, however, it does not have time to use its normal consultation procedures because of an emergency situation, it will attempt to telephone the appropriate State official. (Inability to consult with a responsible State official following good faith attempts will not prevent the Commission from making effective a license amendment involving no significant hazards consideration, if the Commission deems it necessary in an emergency situation.)

(5) After the Commission issues the requested amendment, it will send a copy of its determination to the State.

(c) Caveats about State consultation.

(1) The State consultation procedures in paragraph (b) of this section do not give the State a right:

(i) To veto the Commission's proposed or final determination;

(ii) To a hearing on the determination before the amendment becomes effective; or

(iii) To insist upon a postponement of the determination or upon issuance of the amendment.

(2) These procedures do not alter present provisions of law that reserve to the Commission exclusive responsibility for setting and enforcing radiological health and safety requirements for nuclear power plants.

8. Section 50.92 is revised to read as follows:

§ 50.92 Issuance of amendment.

(a) In determining whether an amendment to a license or construction permit will be issued to the applicant, the Commission will be guided by the considerations which govern the issuance of initial licenses or construction permits to the extent applicable and appropriate. If the application involves the material alteration of a licensed facility, a construction permit will be issued before the issuance of the amendment to the license. If the amendment involves a significant hazards consideration, the Commission will give notice of its proposed action (1) pursuant to § 2.105 of this chapter before acting thereon and (2) as soon as practicable after the application has been docketed.

(b) The Commission will be particularly sensitive to a license amendment request that involves irreversible consequences (such as one that permits a significant increase in the amount of effluents or radiation emitted by a nuclear power plant).

(c) The Commission may make a final determination, pursuant to the procedures in § 50.91, that a proposed amendment to an operating license for a facility licensed under § 50.21(b) or § 50.22 or for a testing facility involves no significant hazards consideration, if operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

Dated at Washington, DC this 26th day of February 1986.

For the Nuclear Regulatory Commission,
Samuel J. Chilk,

Secretary for the Commission.

[FR Doc. 86-4794 Filed 3-5-86; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-99-AD; Amdt. 39-5250]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires periodic inspections of the forward lavatory drain system and corrective action, if necessary, on all Boeing 727 airplanes. This action is necessary because ice formed by leaking drain systems, when it releases from the airplane, can cause damage to or loss of an engine.

DATE: Effective April 14, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. 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. Robert McCracken, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, Seattle Aircraft Certification Office; telephone (206) 431-2947. Mailing address: FAA, Seattle Aircraft Certification Office, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires periodic inspections of the forward lavatory drain system and corrective action, if necessary, on all Boeing Model 727 airplanes was published in the *Federal Register* on October 21, 1985 (50 FR 42562).

The comment period for the NPRM, which ended December 9, 1985, afforded interested persons an opportunity to participate in the making of this

amendment. Due consideration has been given to the comments received.

A number of commenters stated that the leakage associated with lavatory drain systems is the result of inadequate or improper maintenance and/or servicing. Proper maintenance would eliminate leaks except for those resulting from debris trapped in the flush valve, and that type of problem should be caught in routine servicing. The Air Transport Association (ATA) of America, representing operators of Boeing Model 727 airplanes, noted that in the preamble to Amendment 39-106 (30 FR 8826; July 14, 1965), the FAA stated that it would not issue ADs as a substitute for enforcing maintenance rules. This statement is preceded in that preamble by the following statements:

"... The responsibilities placed on the FAA by the Federal Aviation Act justify broadening the regulation [Part 39] to make any unsafe condition, whether resulting from maintenance, design defect, or otherwise, the proper subject of an AD. At the same time the Agency recognizes that use of ADs to correct improper or inadequate maintenance on the part of particular persons or organizations would impose an unreasonable burden on the vast majority of persons who comply with the regulations and properly maintain their aircraft."

While it is correct that proper maintenance will prevent the unsafe condition addressed by this AD from occurring, it is clear from the large number of incidents involving numerous operators that the maintenance deficiencies that result in the unsafe condition are not the sort of isolated incidents for which the issuance of an AD would be inappropriate. Rather, this is precisely the sort of situation which Amendment 39-106 was intended to address by broadening the scope of the applicability of the AD process: namely, widespread maintenance deficiencies resulting in unsafe conditions.

The Boeing Company suggested that this AD should apply only to airplanes with unmodified Monogram toilet tank flush valves. The FAA has determined that the number of "blue ice" incidents (where ice composed of lavatory waste water leaking from the lavatory drain systems and freezing on the outside of the airplane, has dislodged and impacted with the airplane itself or with buildings on the ground), in addition to the two incidents of engine loss referenced in the Notice, provide sufficient evidence of system malfunctions with modified and unmodified flush valves to warrant complete system leak checks on a periodic basis.

In addition, Boeing noted that many airplanes do not incorporate the "donut" secondary seal. The FAA has determined that if the outer valves leak, whether they are "donut"-equipped or not, tank valve failures will result in leakage under pressurized conditions. Boeing also felt that pressurizing the entire airplane for the test was unnecessary, and stated that filling the tank and opening the tank valve would result in a static head nearly equal to the practical ground pressurization level of 4 psi differential. Further investigation reveals that such a test method would provide approximately 1.2 psi differential, which is not considered adequate for reliable leak testing. The FAA has determined, however, that pressurizing the airplane on the ground to 3 psi differential will be sufficient for these tests. The final rule has been changed to specify a 3 psi minimum pressure differential.

Several commenters expressed concerns over the cost and complexity of a leak test of the drain system with the airplane pressurized. Other carriers reported that this does not present a problem. One commenter also pointed out that, due to the design of the system, only the outer drain valve is exposed to differential pressure during flight. The FAA has determined that leaks can occur through the drain valve during pressurized flight that would not be detectable in an unpressurized leak check, and that pressurized leak checks of the drain valve are, therefore, warranted. One commenter also questioned the appropriate pressurization level. As a point of clarification, the final rule requires a leak check of the outer drain valve with the airplane pressurized to 3 psi, but the tank-mounted flush valve may be tested unpressurized.

One commenter noted that, in their experience, careful repair of the Monogram valves using existing procedures has provided improved reliability. Apparently, proper cleaning of the surfaces prior to applying adhesive has given a good bond between the rubber bellows and the valve base. For this reason, this commenter believes the service letter called out in this AD is not required. The FAA does not concur since other operators have not had similar experiences.

Two other carriers suggested alternate methods of improving the reliability of the Monogram flush valve. Alternate methods of compliance may be approved in accordance with paragraph F. of this AD. The only approved service information available at this time is the

Monogram service letter referenced in the AD.

A number of commenters reported that major maintenance for which airplanes are brought to a maintenance center occurs at intervals approximating 13 months. Others requested a 15-month interval between inspections. The FAA has determined that the public interest will be served by retaining the Monogram unimproved flush valve unpressurized leak check at 60-day intervals, as proposed, and by changing the proposed 1-year interval for the leak check of the entire drain system to a 15-month interval. This change will significantly reduce the financial impact on operators while still providing improved drain system integrity.

One commenter requested that the compliance period for the initial inspection be extended from 60 days to 90 days to accommodate existing maintenance schedules. The FAA has determined that such an extension will not significantly affect safety and, therefore, has changed the rule accordingly.

The FAA has also reconsidered the proposed check of the Monogram-equipped airplanes. The probability of leakage of the external drain valve is no greater in airplanes with unmodified flush valves; hence, the 60 day periodic checks proposed in the NPRM for both valves will be required for the in-tank flush valve only. The external drain valve check with the airplane pressurized will be required for all airplanes at the new 15-month interval.

The DGAC, which is the Civil Aviation Authority of France, has noted that new designs in lavatory waste drain valves incorporating an inner sealing plate in addition to the drain tube cap, thus eliminating the donut, would be significantly more effective in preventing leaks at the service panel. One such valve has already been approved for installation on Boeing airplanes at the factory, and another has been installed by various carriers. DGAC has suggested that this modification be made terminating action for this AD. An airplane which lost an engine in 1985 after ingesting blue ice, had such a valve installed. Unfortunately, a sealing O-ring was damaged during installation and this resulted in a serious leak. This leak would not have occurred had the installation been properly accomplished, and would have been detected had a pressurized leak check been performed. The FAA has determined that the proper installation of a suitable double-sealing external drain valve, followed by a pressurized leak check, will essentially

eliminate the hazard introduced by leaking fluids at the forward lavatory. The final rule reflects this determination by including such an installation as a terminating action for the repetitive inspection requirement.

For purposes of clarification, a format change has been introduced in the final rule which combines paragraphs A. and B.

It is estimated that 1,200 airplanes of U.S. registry will be affected by this AD. Of this number, approximately 400 airplanes are equipped with Monogram lavatory assemblies. The costs associated with the requirements of this AD are as follows:

- All 1,200 airplanes affected will require a leak check at 15-month intervals, which takes 4 manhours per airplane to accomplish, at an average labor charge of \$40 per manhour. The total annual (recurring) cost of this check to U.S. operators will average \$154,000.
- On the 400 airplanes equipped with Monogram lavatory assemblies, an initial flush valve inspection will be required. This inspection takes approximately 2.5 manhours to accomplish, at an average labor charge of \$40 per manhour. The one-time total cost to U.S. operators will be \$40,000.
- The 400 unmodified airplanes will also require a leak check of the in-tank valve at 60-day intervals until modification has been accomplished. Assuming that the average number of leak checks performed before modification is 6, and that it would take approximately 1 manhour to accomplish each leak check, at an average labor charge of \$40 per manhour, the total cost of these checks to U.S. operators will be \$96,000.

Based on these figures, the total cost impact of the inspections required by this AD on U.S. operators will be \$290,000 for the first year, and \$154,000 for each year thereafter.

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

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant

economic effect on a substantial number of small entities because few, if any, Boeing Model 727 series airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new airworthiness directive:

Boeing: Applies to all Boeing Model 727 series airplanes, certificated in any category. To assure the integrity of the forward lavatory drain system, accomplish the following, unless already accomplished:

A. For airplanes with Monogram lavatory systems, within 90 days after the effective date of this AD:

(1) Determine, by inspection if necessary, whether the modification described in Monogram Service Letter 16000-SL-01, dated October 3, 1979, has been incorporated in the forward lavatory.

(2) If the modification has been accomplished, perform a leak check of the forward lavatory drain system (both flush valve and drain valve). The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential.

(3) If the modification has not been accomplished, perform a leak check of the forward lavatory drain system (both flush valve and drain valve). The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential. Repeat the check of the in-tank flush valve at intervals not to exceed 60 days. For these flush valve leak checks, the airplane does not need to be pressurized. Once the modification described in Monogram Service Letter 16000-SL-01, dated October 3, 1971, has been accomplished, the unpressurized flush valve leak checks (required at intervals not to exceed 60 days) may be discontinued.

B. For all airplanes with Monogram lavatory systems, repeat the leak check of the forward lavatory drain system (both valves) at intervals not to exceed 15 months following the initial leak check called out in paragraph A.(2) or A.(3) of this AD. The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential.

C. For airplanes with other than Monogram lavatory systems, within 90 days after the effective date of this AD, perform a leak

check of the forward lavatory drain system (both valves). The drain valve leak check must be performed with the airplane pressurized to a minimum of 3 psi differential. Repeat these leak checks at intervals not to exceed 15 months.

D. If leaks are discovered during any leak check, either repair the leak before further flight, or drain the lavatory system and placard the lavatory inoperative until repairs can be accomplished.

E. Installation of a new drain valve incorporating an inner integral door with a second positive seal, when the valve and installation service information are approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, shall constitute terminating action for the periodic leak checks required by paragraph B. and C. of this AD.

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

G. 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 the above specified service letter from the manufacturer may obtain copies upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. It 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.

This amendment becomes effective April 14, 1986.

Issued in Seattle, Washington, on February 26, 1986.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-4830 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 85-ACE-08]

Alteration of Transition Area, Abilene, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this Federal action is to alter the 700-foot transition area at Abilene, Kansas, to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Abilene Municipal Airport, Abilene, Kansas, utilizing the Salina, Kansas, VORTAC

as a navigational aid. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: May 8, 1986.

FOR FURTHER INFORMATION CONTACT:

Dale L. Carnine, Airspace Specialist, Traffic Management and Airspace Branch, Air Traffic Division, ACE-540, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

SUPPLEMENTARY INFORMATION:

To enhance airport usage, a new instrument approach procedure to the Abilene Municipal Airport, Abilene, Kansas, is being established utilizing the Salina VORTAC as a navigational aid. The establishment of this new instrument approach procedure based on this navigational aid entails alteration of a transition area at Abilene, Kansas, at and about 700 feet above the ground within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the new approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR). Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6A dated January 2, 1985.

Discussion of Comments

On page 53158 of the Federal Register dated December 30, 1985, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Abilene, Kansas. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal of the FAA. No objections were received as a result of the Notice of Proposed Rulemaking.

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

is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. By amending § 71.181 as follows:

Abilene, Kansas

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Abilene Municipal Airport (Latitude 38°54' 20" N; Longitude 97°14'08" W); within 3 miles either side of the 360° bearing from the ADELA waypoint (Latitude 38°47'05" N; Longitude 97°14'06" W); extending from 8 miles south of the airport to the 5 mile radius area and within 2 miles either side of the 086° bearing from the Salina VORTAC extending from 5.75 miles west of the airport to the 5 mile radius area.

This amendment becomes effective at 0901 UTC May 8, 1986.

Issued in Kansas City, Missouri, on February 24, 1986.

Wayne A. Smith,

Acting Manager, Air Traffic Division.

[FR Doc. 86-4829 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 50836-5220]

International Trade Surveys: U.S. Trade in Services with Foreign Persons; Reporting and Recordkeeping Requirements

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This notice sets forth final rules for surveys of trade in services between U.S. and foreign persons, conducted by the Bureau of Economic

Analysis (BEA). The rules shift the legal authority for conducting seven existing BEA surveys of U.S. services trade—the BE-29, BE-30, BE-36, BE-37, BE-47, BE-48, and BE-93—from the Bretton Woods Agreement Act to the International Investment and Trade in Services Survey Act. They also change reporting in four of these surveys—the BE-30, BE-37, BE-47, and BE-48—from voluntary to mandatory, primarily to prevent further erosion in survey response rates. To minimize the reporting burden, an exemption level below which reports are not required has been established for each survey; for the one survey (the BE-93) that already had an exemption level, the level has been raised substantially. These rules replace existing regulations regarding surveys of U.S. services transactions, as contained in 15 CFR Parts 802 and 803, which are hereby deleted.

The rules implement a portion of the President's responsibilities for collecting data on U.S. services trade under the International Investment and Trade in Services Survey Act. These responsibilities have been delegated to the Secretary of Commerce, who has redelegated them to BEA.

EFFECTIVE DATE: These rules will be effective April 17, 1986, commencing with annual reports covering transactions occurring in 1985 and with quarterly reports covering transactions occurring in the first quarter of 1986.

FOR FURTHER INFORMATION CONTACT: Anthony J. DiLullo, (202) 523-0621, for general information; Rafael Font, (202) 523-0611, for information on the BE-29, BE-30, BE-36, and BE-37 surveys; and Walter G. Kealy, Jr., (202) 523-0625, for information on the BE-47, BE-48, or BE-93 surveys. Alternatively, write Balance of Payments Division (BE-58), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Changes From Proposed Rules

A "Notice of Proposed Rulemaking" setting forth proposed rules for surveys of services trade between U.S. and foreign persons was published in the September 18, 1985 Federal Register, Volume 50, No. 181 (50 FR 37867). Specifically, that notice:

(1) Set forth proposed rules for a new, BE-20, Benchmark Survey of U.S. Services Transactions With Unaffiliated Foreign Persons, covering the year 1985, and announced BEA's intention to conduct an annual sample survey in subsequent nonbenchmark years to update the information obtained in the benchmark survey. The benchmark survey and annual follow-on survey

would have incorporated information from, and replaced, three existing BEA surveys of U.S. services trade—the BE-93, International Transactions in Royalties Licensing Fees, Film Rentals, Management Fees, etc., with Unaffiliated Foreign Residents; the BE-47, Foreign Contract Operations of U.S. Construction, Engineering, Consulting, and Other Technical Services Firms; and the BE-48, Reinsurance Transactions with Insurance Companies Resident Abroad. Reporting in both the benchmark and annual follow-on surveys was to have been mandatory, whereas reporting in two of the three existing surveys that were to be replaced—the BE-47 and BE-48—was voluntary.

(2) Set forth proposed rules to bring four other existing surveys under the authority of the International Investment and Trade in Services Survey Act and to make reporting in all four surveys mandatory. The four surveys are the BE-29, Foreign Carriers' Ocean Freight Revenues and Expenses in the United States; the BE-36, Foreign Airline Operators Revenues and Expenses in the United States; the BE-30, Ocean Freight Revenues and Expenses—United States Carriers; and the BE-37, U.S. Airline Operators Foreign Revenues and Expenses. Previously, these four surveys were conducted under authority of the Bretton Woods Agreements Act and two of the four surveys—the BE-30 and BE-37—were voluntary.

After publication of the proposed rules and submission of the BE-20 benchmark survey forms to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), OMB disapproved the BE-20 survey. A letter dated October 21, 1985, from Wendy L. Gramm, Administrator for Information and Regulatory Affairs of OMB, to Allan H. Young, Director of BEA, stated that while OMB recognizes the importance of securing information on international trade in services, as reflected in the International Investment and Trade in Services Survey Act of 1984, it believes the BE-20 in its current form is unreasonably burdensome on reporting firms and would not yield the quality of data required to achieve the survey's purposes.

As a result of OMB's disapproval of the BE-20 benchmark survey, these final rules differ from the proposed rules in several respects:

(1) The rules for conducting the BE-20, Benchmark Survey of U.S. Services Transactions With Unaffiliated Foreign Persons, have been deleted.

(2) Separate rules for the three existing services surveys that were to have been incorporated in, and replaced by, the BE-20 benchmark survey, have been set forth. Authority for conducting these surveys—the BE-47, BE-48, and BE-93—has been shifted from the Bretton Woods Agreements Act to the International Investment and Trade in Services Survey Act. The information requested on these surveys is the same as in the past. However, reporting in the BE-47 and BE-48 will now be mandatory. In order to minimize the reporting burden, exemption levels below which reporting is not required have been established for the BE-47 and BE-48. A U.S. person is exempt from reporting on the BE-47 if gross income or operating revenue from covered contract operations is less than \$1 million; a person is exempt from reporting on the BE-48 if reinsurance premium receipts, reinsurance premium payments, and reinsurance losses are each less than \$1 million. For the BE-93, the existing exemption level of \$25,000 of covered receipts and payments combined has been raised substantially, to \$500,000, and is to be applied to receipts and payments separately. Coverage of the BE-47 has been limited to construction, engineering, architectural, and related consulting and technical services. Previously, this survey also covered other business and professional services, although, in practice, few companies providing such services actually reported to BEA. It is anticipated that these services will be covered by other surveys in the future.

(3) The proposed rules to bring four other existing surveys—the BE-29, BE-30, BE-36, and BE-37—under the International Investment and Trade in Services Survey Act, and to make mandatory the two surveys that previously were voluntary, are made final, with the following changes:

(a) To minimize the reporting burden, an exemption level below which reports are not required has been established for each survey. The level for each is \$500,000 of annual covered revenues or annual covered expenses, as applicable.

(b) As a result of comments received, BEA has reinstated its past practice for the BE-29 of permitting, at its discretion, the submission of consolidated reports by foreign governments covering the operations of all of their national shipping concerns, if such consolidated reports would provide the required information. Under the proposed rules, separate reports from the U.S. agent of each individual foreign carrier would have been required. Where consolidated reports are accepted, the individual

reports from foreign carriers' U.S. agents will not be required. BEA requests that it be notified by January 31 of each year that a foreign government intends to file a consolidated annual report for its national shipping concerns. Such notification is necessary so that BEA can instruct U.S. agents not to report for those shipping concerns.

As a result of comments received on the BE-37 survey, additional instructions will be added to clarify several items on the form. However, the requirement for each reporter to report expenses in the five countries in which most expenditures were incurred will be retained. Estimates, labeled as such, may be provided in accordance with § 801.8(b) of these final rules.

One comment received on the proposed rules for the BE-29 survey concerned a misconception that the information on the form had to be submitted within 30 days of being contacted by BEA. The 30-day requirement was only for notification to BEA that a person contacted did not have to report because it had no covered services transactions or was exempt from reporting. The due date for the BE-29, which is contained in the instructions to the form itself and not in the proposed rules, indicated that a person required to report had 90 days after the end of the year in which to file the report. Nevertheless, it should be noted that the 30-day notification requirement for all surveys has been dropped and a person to whom BEA sends forms need only indicate on the form itself that it has no reportable transactions. This must be done by the due date on the form, not within 30 days of being contacted by BEA.

In these final rules, the titles (but not the form numbers) of several of the existing surveys have been changed slightly to clarify their coverage and ensure consistency of terminology.

In bringing the existing services surveys under the International Investment and Trade in Services Survey Act, the confidentiality requirements of the surveys have been strengthened considerably. The Act stipulates that disclosure of the data of individual respondents is prohibited and that the data can be used solely for analytical and statistical purposes. Information can be made available to other Government agencies or officials only if those agencies or officials are specifically designated by the President to perform functions under the Act.

In sum, these final rules bring seven existing surveys of U.S. services transactions under the authority of the International Investment and Trade in

Services Survey Act and make mandatory the four surveys—the BE-30, BE-37, BE-47, and BE-48—that previously were voluntary. Exemption levels for each survey have been established or raised to minimize the reporting burden. These rules replace the existing rules for these surveys, as contained in 15 CFR Parts 802 and 803, which are hereby deleted.

Statutory Authority

The Trade and Tariff Act of 1984 amended the International Investment Survey Act of 1976 to extend the latter's coverage to international services trade, and to rename it the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by section 306 of Pub. L. 98-573), hereafter "the Act." Section 4 of the Act authorizes the conduct of mandatory surveys of trade in services between U.S. and foreign persons. It provides that "The President shall, to the extent he deems necessary and feasible—(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services . . . ; (4) Conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; and (5) publish for the use of the general public and the United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection . . ." In section 3 of Executive Order 11961, as amended by Executive Order 12518 of June 3, 1985, the President delegated the authority under the Act as concerns trade in services to the Secretary of Commerce. The Secretary of Commerce has, in turn, redelegated this authority to BEA.

Executive Order 12291

BEA has determined that this final rulemaking is not "major" as defined in E.O. 12291 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, individuals, 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.

Paperwork Reduction Act

Two collection of information requirements, for BE-47 and BE-48, are pending OMB approval. All other collection of information requirements in these final rules have been approved by OMB (OMB Nos. 0608-0011, 0608-0012, 0608-0015, 0608-0016, and 0608-0017).

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to preparation of a regulatory flexibility analysis are not applicable to this final rulemaking because it will not have significant economic impact on a substantial number of small entities. The regulations raise the exemption levels which will act to eliminate reporting by many small entities. Moreover, relatively few small businesses currently engage in the types of international services transactions covered by the subject surveys.

Accordingly, the General Counsel, Department of Commerce, has certified under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that these rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: January 27, 1986.

Allan H. Young,

Director, Bureau of Economic Analysis.

15 CFR, Chapter VIII is therefore amended by adding a new Part 801 and by removing Parts 802 and 803.

1. Part 801 is added as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

- Sec.
- 801.1 Purpose.
 - 801.2 Recordkeeping requirements.
 - 801.3 General reporting requirements.
 - 801.4 Response required.
 - 801.5 Confidentiality.
 - 801.6 Penalties.
 - 801.7 General definitions.
 - 801.8 Miscellaneous.
 - 801.9 Reports required.

Authority: 5 U.S.C. 301; Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by Section 306 of Pub. L. 98-573; and Executive Order 11961, as amended by Executive Order 12518.

§ 801.1 Purposes.

The purpose of this part is to set forth the rules and regulations necessary to carry out the data collection program concerning international trade in services that is required by, or provided for in, the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101 to 3108, as amended by section 306 of Pub. L. 98-573), hereafter "the Act." The overall purpose of the Act with respect to services trade is to provide comprehensive and reliable information pertaining to international trade in services, and to do so with the minimum burden on respondents and with no unnecessary duplication of effort. The data are needed for policymaking purposes, for conducting international negotiations on trade in services, and for improving the recording of services transactions in the U.S. balance of payments accounts.

§ 801.2 Recordkeeping requirements.

In accordance with section 5(b)(1) of the Act (22 U.S.C. 3104), persons subject to the jurisdiction of the United States shall maintain any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential for carrying out the surveys and studies provided for by the Act.

§ 801.3 General reporting requirements.

(a) In accordance with section 5(b)(2) of the Act (22 U.S.C. 3104) persons subject to the jurisdiction of the United States shall furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies provided for by the Act.

(b) Such reports may be required from any U.S. person, other than the U.S. Government, engaged in international trade in services. Specific reporting requirements for a given report form are set forth below and, in more detail, on the form itself.

§ 801.4 Response required.

Reports, as specified below, are required from all U.S. persons coming within the reporting requirements, whether or not they are contacted by BEA. In addition, any person BEA contacts by sending them report forms must respond in writing. The response must be made by the due date of the report, either by filing the properly completed report form or by certifying in writing on the form that the person has no international services transactions within the purview of the Act or the regulations contained herein. The latter

requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act.

§ 801.5 Confidentiality.

Information collected pursuant to § 801.3 is confidential (see section 5(c) of the Act, 22 U.S.C. 3104).

(a) Access to this information shall be available only to officials and employees (including consultants and contractors and their employees) of agencies designated by the President to perform functions under the Act.

(b) Subject to paragraph (d) of this section, the President may authorize the exchange of information between agencies or officials designated to perform functions under the Act.

(c) Nothing in this part shall be construed to require any Federal agency to disclose information otherwise protected by law.

(d) This information shall be used solely for analytical or statistical purposes or for a proceeding under § 801.6.

(e) No official or employee (including consultants and contractors and their employees) shall publish or make available to any other person any information collected under the Act in such a manner that the person to whom the information relates can be specifically identified.

(f) Reports and copies of reports prepared pursuant to the Act are confidential and their submission or disclosure shall not be compelled by any person without the prior written permission of the person filing the report and the customer of such person where the information supplied is identifiable as being derived from the records of such customer.

§ 801.6 Penalties.

(a) Whoever fails to furnish any information required by the Act or by § 801.3, or to comply with any other rule, regulation, order or instruction promulgated under the Act, may be subject to a civil penalty not exceeding \$10,000 in a proceeding brought in an appropriate United States court and to injunctive relief commanding such person to comply, or both (see section 6 (a) and (b) of the Act, 22 U.S.C. 3105).

(b) Whoever willfully fails to submit any information required by the Act or by § 801.3, or willfully violates any other rule, regulation, order or instruction promulgated under the Act, upon conviction, shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent or any corporation who

knowingly participates in such violation, upon conviction, may be punished by a fine, imprisonment, or both (see section 6(c) of the Act, 22 U.S.C. 3105).

(c) Any person who willfully violates § 801.5 relating to confidentiality, shall, upon conviction, be fined not more than \$10,000, in addition to any other penalty imposed by law (see section 5(d) of the Act, 22 U.S.C. 3104).

§ 801.7 General definitions.

(a) "Services" means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design, engineering, management consulting, real estate, professional services, entertainment, education, and health care;

(b) "United States," when used in a geographic sense, means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States;

(c) "Foreign," when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States;

(d) "Person" means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government sponsored agency);

(e) "United States person" means any person resident in the United States or subject to the jurisdiction of the United States;

(f) "Foreign person" means any person resident outside the United States or subject to the jurisdiction of a country other than the United States;

(g) "Business enterprise" means any organization, association, branch, or venture which exists for profitmaking purposes or to otherwise secure economic advantage, and any ownership of any real estate;

(h) "Unaffiliated foreign person" means, with respect to a given U.S. person, any foreign person that is not an "affiliated foreign person" as defined in paragraph (i) of this section;

(i) "Affiliated foreign person" means, with respect to a given U.S. person—

(1) A foreign affiliate of which the U.S. person is a U.S. parent; or

(2) The foreign parent or other member of the affiliated foreign group of which the U.S. person is a U.S. affiliate;

(j) "Parent" means a person of one country who directly or indirectly, owns or controls 10 per centum or more of the voting stock of an incorporated business enterprise, or an equivalent ownership interest in an unincorporated business enterprise, which is located outside that country;

(k) "Affiliate" means a business enterprise located in one country which is directly or indirectly owned or controlled by a person of another country to the extent of 10 per centum or more of its voting stock for an incorporated business or an equivalent interest for an unincorporated business, including a branch;

(l) "U.S. parent" means the U.S. person that has direct investment in a foreign business enterprise;

(m) "Foreign affiliate" means an affiliate located outside the United States in which a U.S. person has direct investment;

(n) "Foreign parent" means the foreign person, or the first person outside the United States in a foreign chain of ownership, which has direct investment in a U.S. business enterprise, including a branch;

(o) "U.S. affiliate" means an affiliate located in the United States in which a foreign person has a direct investment;

(p) "Affiliated foreign group" means—

(1) The foreign parent;

(2) Any foreign person, proceeding up the foreign parent's ownership chain, which owns more than 50 per centum of the person below it up to and including that person which is not owned more than 50 per centum by another foreign person; and

(3) Any foreign person, proceeding down the ownership chain(s) of each of these members, which is owned more than 50 per centum by the person above it.

§ 801.8 Miscellaneous.

(a) *Required information not available.* All reasonable efforts should be made to obtain information required for reporting. Every applicable question on each form or schedule should be answered. When only partial information is available, an appropriate indication should be given.

(b) *Estimates.* If actual figures are not available, estimates should be supplied and labeled as such. When a data item cannot be fully subdivided as required, a total and an estimated breakdown of the total should be supplied.

(c) *Specify.* When "specify" is included in certain data items, the type and dollar amount of the major items included must be given for at least the items mentioned in the line or column instruction.

(d) *Space on form insufficient.* When space on a form is insufficient to permit a full answer to any item, the required information should be submitted on supplementary sheets, appropriately labeled and referenced to the item of column number and the form.

(e) *Extensions.* Requests for an extension of a reporting deadline will not normally be granted. However, in a hardship case, a written request for an extension will be considered provided it is received at least 15 days prior to the due date of the report and enumerates substantive reasons necessitating the extension.

(f) *Number of copies.* A single original copy of each form or schedule shall be filed with the Bureau of Economic Analysis. This should be the copy with the address label if such a labeled copy has been provided. In addition, each respondent must retain a copy of its report to facilitate resolution of problems. Both copies are protected by law; see § 801.5.

(g) *Other.* Instructions concerning filing dates, where to send reports, and whom to contact concerning a given report are contained on each form.

§ 801.9 Reports required.

(a) *Benchmark surveys.* None required.

(b) *Annual surveys.* (1) BE-29, Foreign Ocean Carriers' Expenses in the United States;

(i) *Who must report.* A BE-29 report is required from U.S. agents on behalf of foreign ocean carriers transporting freight or passengers to or from the United States. U.S. agents are steamship agents and other persons representing foreign carriers in arranging ocean transportation of freight and cargo between U.S. and foreign ports and in arranging port services in the United States. Foreign carriers are foreign persons that own or operate ocean going vessels calling at U.S. ports, including VLCC tankers discharging petroleum offshore to pipelines and lighter vessels destined for U.S. ports. They include carriers who own or who operate their own or chartered (United States or foreign-flag) vessels. They also include foreign subsidiaries of U.S. companies operating their own or chartered vessels as carriers for their own accounts. Where the vessels under foreign registry are operated directly by a U.S. carrier for its own account, the operations of

such vessels should be reported on Form BE-30, Ocean Freight Revenues and Foreign Expenses of United States Carriers. The Bureau of Economic Analysis may, in lieu of BE-29 reports required from foreign carriers' U.S. agents, accept consolidated reports from foreign governments covering the operations of their national shipping concerns when, in the Bureau's discretion, such consolidated reports would provide the required information. Where such reports are accepted, the individual reports from foreign carriers' U.S. agents will not be required.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total covered expenses are less than \$500,000 in the reporting period. In addition, a U.S. agent is exempted from reporting for any foreign operator whose annual covered expenses are less than \$500,000.

(2) BE-36, Foreign Airline Operators' Revenues and Expenses in the United States:

(i) *Who must report.* A BE-36 report is required from U.S. offices, agents, or other representatives of foreign airlines that are engaged in transporting passengers or freight and express to or from the United States. If the U.S. office, agent, or other representative does not have all the information required, it must obtain the additional information from the foreign airline operator.

(ii) *Exemption:* A U.S. person otherwise required to report is exempted from reporting if total covered revenues and total covered expenses incurred in the United States are each less than \$500,000 in the reporting period. If either total covered revenues or total covered expenses are \$500,000 or more in the reporting period, a report must be filed.

(3) BE-47, Foreign Contract Operations of U.S. Construction, Engineering, Architectural, and Related Consulting and Technical Services Firms:

(i) *Who must report.* A BE-47 report is required from U.S. persons that provide construction, engineering, architectural, and related consulting and technical services on a contract or other basis to unaffiliated foreign persons. Firms that perform these services on their own account, rather than under contract, do not have to report.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if gross income or operating revenue from covered foreign contract operations is less than \$1,000,000 in the reporting period.

(4) BE-48, Reinsurance Transactions with Insurance Companies Resident Abroad:

(i) *Who must report.* A BE-48 report is required from U.S. insurance companies that had reinsurance transactions with foreign persons, whether affiliated or unaffiliated.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if reinsurance premium receipts, reinsurance premium payments, and reinsurance losses are each less than \$1,000,000 in the reporting period. If any one of these items is \$1,000,000 or more in the reporting period, a report must be filed.

(5) BE-93, International Transactions in Royalties, Licensing Fees, Film Rentals, Management Fees, etc., With Unaffiliated Foreign Persons:

(i) *Who must report.* A BE-93 report is required from U.S. persons who have entered into agreements with unaffiliated persons, or governments, of foreign countries to buy, sell or use intangible assets or proprietary rights, including licensing of movie and TV film and tape. Oil royalties and natural resources (mining) royalties are not reportable.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total covered receipts and total covered payments are each less than \$500,000 in the reporting period. If either total covered receipts or total covered payments are \$500,000 or more in the reporting period, a report must be filed.

(c) *Quarterly surveys.* (1) BE-30, Ocean Freight Revenues and Foreign Expenses of United States Carriers:

(i) *Who must report.* A BE-30 report is required from U.S. carriers, i.e., from U.S. persons that own or operate dry cargo, passenger (including combination), and tanker vessels regardless of whether the vessels are registered in the United States or in foreign countries. Operators are persons who enter into any form of transportation contract with shippers of merchandise (or their agents) for the transportation of freight and cargo between U.S. and foreign ports or between foreign ports, whether on the operators' own vessels or chartered vessels.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total annual covered revenues (i.e., revenues on outbound, cross-trade, and inbound cargoes and charter hire received) and total annual covered expenses (i.e., charter hire paid and expenses in foreign countries) are, or are expected to be, each less than \$500,000. If either total annual covered revenues or total annual covered

expenses are, or are expected to be, \$500,000 or more, a report must be filed.

(2) BE-37, U.S. Airline Operators' Foreign Revenues and Expenses:

(i) *Who must report.* A BE-37 report is required from all U.S. airline operators engaged in transportation of passengers and freight to and from the United States or between foreign points.

(ii) *Exemption.* A U.S. person otherwise required to report is exempted from reporting if total annual covered revenues (i.e., revenues from carrying U.S. export freight to foreign countries) and total annual covered expenses (i.e., expenses incurred outside the United States and aircraft leasing expenses) are, or are expected to be, each less than \$500,000. If either total annual covered revenues or total annual covered expenses are, or are expected to be, \$500,000 or more, a report must be filed.

PARTS 802 AND 803—[REMOVED]

2. Parts 802 and 803 are removed.

[FR Doc. 86-4853 Filed 3-5-86; 8:45 am]
BILLING CODE 3510-06-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

Electric Utilities; Construction Work in Progress and Anticompetitive Implications; Interim Rule and Request for Comment

Issued February 28, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Adopting Interim Rule and Requesting Comment Concerning Construction Work in Progress and Anticompetitive Implications.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting interim regulations concerning filings to include costs associated with construction work in progress (CWIP) in the rate base of public utilities, under Part II of the Federal Power Act. The Commission is simultaneously soliciting comments on the anticompetitive implications of CWIP in rate base, which concerned the United States Court of Appeals for the District of Columbia Circuit in its recent decision affirming in part but vacating in part the Commission's prior CWIP rule. *Mid-Texas Electric Cooperative, Inc., et al. v. FERC*, 773 F.2d 327 (1985). This action is designed to prescribe an interim

treatment of CWIP filings, while initiating an expeditious process for assessing and minimizing the potential anticompetitive effects cited by the court. During the interim period, the Commission will consider requests for CWIP in rate base pursuant to the interim rule, which provides new interim safeguards for cases in which CWIP-related anticompetitive implications arise.

DATES: Effective date: February 27, 1986; initial comments: May 5, 1986; reply comments: June 4, 1986

ADDRESS: Comments should be filed with: Federal Energy Regulatory Commission, The Office of the Secretary, Room 3110, 825 N. Capitol St., NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Daniel L. Larcamp, Federal Energy Regulatory Commission, Room 8006-A, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8520.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naevie.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is promulgating interim regulations concerning construction work in progress (CWIP) for public utilities by recodifying, with certain modifications, § 35.26 (construction work in progress), and by adopting in their present form §§ 35.13(h) (7), (13), and (38), all or portions of which were recently vacated by the United States Court of Appeals for the District of Columbia Circuit.¹ Pending final action in this rulemaking, the Commission intends to consider individual requests for CWIP in rate base pursuant to the interim rule which is published herein and discussed in Section III below.² In addition, in Section IV of this preamble, the Commission discusses and requests specific comments concerning the implications of "price squeeze"³ and

"double whammy"⁴ in considering filings that include CWIP-related amounts.

The interim rule does not change the substance of the general provisions of the Commission's former CWIP rule under which public utilities could seek to include in rate base, in addition to pollution control and fuel conversion CWIP, up to 50% of all remaining CWIP. After reviewing the *Mid-Tex* decision, the Commission continues to believe that the principal reasons for departing from prior practice and adopting the present approach to CWIP remain sound.⁵ However, it is apparent that the Commission must give further consideration to issues involving potential anticompetitive concerns, specifically price squeeze and double whammy. Thus, the Commission is specifying interim procedures regarding the treatment of price squeeze and double whammy issues in individual cases. The Commission believes that such interim procedures should largely mitigate any potential short-term harm to consumers while the Commission further considers the complex issues raised on remand.

The Commission wishes to make clear that, although it is in large measure repromulgating the rule addressed by the court in *Mid-Tex* and specifically implementing an interim approach to related price squeeze and double whammy issues, interested parties may suggest alternative mechanisms for dealing with price squeeze and double whammy matters. While the Commission intends to make appropriate use of the record underlying the prior CWIP rulemaking (Order No. 298),⁶ the Commission assumes that

difference in price not justified by a difference in costs. See generally *FPC v. Conway Corp.*, 426 U.S. 271 (1976).

⁴ "Double whammy," as defined in the accompanying rule, is a situation which may arise when a wholesale electric rate customer embarks upon or participates in a construction program of its own to supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level. It is argued that this is anticompetitive because it would cause the wholesale customer to essentially subsidize its competitor, since the responsible customer would shoulder less of the CWIP burden as a result. As suggested in Order No. 298, 48 FR 24328, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.455 at 30.496 (1983), the Commission anticipates that double whammy implications will arise principally, if not entirely, in the case of requirements rates as opposed to coordination rates, although comment on this assumption or the definition generally will be entertained.

⁵ See 773 F.2d at 344.

⁶ Order No. 298, 48 FR 24323, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.455

parties may seek to demonstrate that the relevant conditions, particularly regarding price squeeze and double whammy, have changed since the close of the record in that proceeding. Therefore, parties will be permitted an opportunity to supplement comments submitted in the prior proceeding, if they so desire.

As discussed below, however, it is not the Commission's present intention to revisit the fundamental policy issues underlying the decision to permit some CWIP in rate base, except where circumstances clearly dictate. Rather, the Commission intends to use this proceeding as a vehicle to give further consideration to the particular anticompetitive concerns expressed by the *Mid-Tex* court. The Commission's tentative opinion is that if adequate procedures can be developed to handle individual instances of CWIP-related price squeeze and double whammy, the balance will continue to tip in favor of a rule permitting utilities to file rates which include CWIP in rate base. The Commission reaches this tentative conclusion based on the general objectives previously stated for the decision to permit CWIP in rate base, which were accepted by the *Mid-Tex* court, but for its concerns with anticompetitive implications.

II. Background

A. Order No. 555

Prior to Order Nos. 555 and 555-A,⁷ the policy of this Commission's predecessor, the Federal Power Commission, was to prohibit the inclusion of any CWIP in rate base,⁸ even though the Commission had the discretion to consider the justness and reasonableness of a rate supported by the inclusion of CWIP in rate base on a case-by-case basis.

In Docket No. RM75-13,⁹ the Commission proposed a change in its policy of prohibiting any CWIP in rate base "primarily to help alleviate the current financing problems being experienced by utility companies."¹⁰ In

(1983). The Commission does not believe that it will be productive to recreate the entire record where circumstances have not materially changed. Therefore, as discussed *infra* in Section VII, the Commission is incorporating by reference into this docket the record in the underlying Docket No. RM81-38, as well as the record in the pending Notice of Inquiry proceedings in Docket No. RM85-17 (Phases I and II).

⁷ 41 FR 51,392, 56 FPC 2939 (1976), and 42 FR 3022, 57 FPC 6 (1977).

⁸ *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Georgia Power Co.*, 54 FPC 458 (1975); *Philadelphia Electric Co.*, 54 FPC 1394 (1975).

⁹ 39 FR 40787 (1974).

¹⁰ *Id.*

¹ *Mid-Tex Electric Cooperative, Inc., et al. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (hereinafter referred to as *Mid-Tex*).

² As discussed below, the Commission in the interim rule is reinstating the filing requirements previously in effect, while providing for further evaluation of the topics of concern to the *Mid-Tex* court. Section 35.26(g) of the interim rule sets forth additional procedures which will be followed in cases where CWIP is requested and where CWIP-related anticompetitive effects are alleged.

³ A "price squeeze" occurs when a utility which sells at both wholesale and retail price discriminates against its wholesale customer creating the potential for an anticompetitive effect because the wholesale customer is inhibited in its ability to compete at the retail level against the wholesale supplier. Price discrimination is a

Order No. 555 the Commission modified its prior CWIP policy and agreed to consider requests for CWIP in rate base in three instances:

- (1) Where the construction involved facilities to be used for pollution control;
- (2) Where the construction involved conversion of facilities to the burning of other fossil fuels which previously burned oil or gas; and

(3) Where the utility requesting CWIP was in severe financial distress which could not be alleviated in the absence of CWIP in rate base without materially increasing the cost of electricity to consumers.

As to pollution control and fuel conversion CWIP, the Commission determined that, because of the current generation's commitment to the control of pollution and to preserve existing stocks of natural resources, it was proper to allow CWIP for these types of facilities. Order No. 555 permitted pollution control and fuel conversion CWIP to be reflected in rates at the same time the non-CWIP portion of a requested rate became effective.

With respect to CWIP requests concerning severe financial distress, the Commission noted that it would permit such CWIP only where "the rate of return necessary to enable the utility to maintain its credit and attract capital in accordance with the standards of the *Bluefield* decision would be materially in excess of the cost of capital for otherwise similar utilities."¹¹ The Commission determined that under these circumstances it would be to the benefit of the consumer if the additional earnings necessary to attract capital were permitted by way of an immediate return on CWIP, rather than by way of an inflated return on rate base (excluding the CWIP), since the CWIP treatment would eventually be reflected in a lower rate base, while the rate of return treatment would not. However, the Commission decided to permit CWIP claimed under the severe financial distress test only after a final Commission determination on rehearing that financial circumstances justified such inclusion.¹²

During the six and one-half years that Order No. 555 remained in effect, over 275 CWIP rate increase applications were filed with the Commission. However, given the stringency of the severe financial distress threshold, only thirteen utilities attempted to meet this test; the Commission has not granted CWIP to any company under that very stringent test.¹³

B. Order No. 298

In Docket No. RM81-38, the Commission again considered its policy with respect to requests for CWIP in rate base. Ultimately, the Commission issued Order Nos. 298 and 298-A,¹⁴ which modified the Commission's basic policy with respect to CWIP. Order No. 298 continued to permit electric utilities to file rates which included pollution control and fuel conversion CWIP in rate base. However, Order No. 298 discarded the prospective-only rule and the severe financial distress test, permitting electric utilities to file and attempt to support rates which, in addition to including pollution control and fuel conversion CWIP, also included up to 50% of all remaining CWIP in rate base.¹⁵

In Order No. 298, the Commission stated that including CWIP in rate base would advance three public interest objectives:

- (1) Mitigation of any bias against the construction of new generating facilities;
- (2) Providing for electric rates to more accurately reflect the costs of future service, allowing the need for new facilities to be tested, so far as possible, by the marketplace; and

¹³ Seven of these cases were settled before an initial decision was rendered. One case, *Public Service Company of New Hampshire*, Docket Nos. EL78-15 and ER78-339 (Phase I), was settled after an initial decision was rendered (the settlement agreement provided that the Phase I proceedings, which concerned CWIP and rate of return issues, would not be terminated before rates that included the Seabrook No. 1 generating plant in rate base went into effect, and that the company could move to reopen Phase I in the event it needed emergency wholesale rate increases). The case is pending on appeal of an initial decision which would terminate Phase I. 31 FERC ¶ 63,054 (1985). Four cases resulted in Commission opinions denying the requested CWIP, and one consolidated case (*Montaup Electric Company*, Docket Nos. ER81-749-000 and ER82-325-000) is pending before the Commission on appeal of the initial decision.

¹⁴ 48 FR 24323, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 (1983), and 48 FR 46012, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,500 (1983).

¹⁵ The 50% cap on non-pollution control and non-fuel conversion CWIP was subject until July 1, 1985, to the further limitation that any increase in the utility's wholesale revenues directly attributable to such CWIP could not exceed 6% of the utility's wholesale revenues under the rate schedules to be superseded. See 18 CFR 35.26(d) (1985).

(3) Furthering the goal of rate stability by providing for more gradual increases in electric rates to consumers.¹⁶

With respect to the first objective—mitigating bias against capital investment—the Commission concluded that economic regulation biases utility decisions concerning the construction of new generation facilities in two ways. First, economic regulation creates a bias against the creation of new capacity. Second, to the extent that new capacity is built, economic regulation creates a bias in favor of minimizing capital costs, rather than minimizing total economic costs. These regulatory biases have two sources: Utilities' inability to earn a return equal to their cost of capital; and a cash flow problem created by the high cost of new base load plant in relation to present rate base.¹⁷

The Commission concluded that inclusion of CWIP in rate base would reduce but not completely eliminate the first source of bias. As to the second source of bias, the Commission concluded that there were two ways to address this problem. The Commission could either increase the allowed rate of return to produce higher earnings or allow an immediate return on construction investments by including CWIP in rate base. The Commission elected to permit CWIP in rate base since this action would decrease future rate base, and, thus, lower future rates, while increasing the allowed rate of return would not be matched by similar future reductions.¹⁸

The second public interest objective—ensuring more accurate price signals—was desirable in order to permit the need for new capacity to be tested, so far as possible, by the marketplace. The Commission noted that utilities build new capacity, in part, based upon estimates of future demands, and that these estimates had become more difficult for three reasons. First, the assumption that demand will grow faster than the economy may no longer be valid. Second, the increased length of time between the beginning and the completion of new capacity requires demand projections farther into the future. The third reason was the difference between the price of

¹⁶ 48 FR 24329, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,497 (1983). The *Mid-Tex* court accepted the first two objectives as valid regulatory objectives. If also noted that the Federal Power Act gives the Commission discretion to give at least some weight to the third objective. 773 F.2d at 345.

¹⁷ 48 FR 24330, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,498 (1983).

¹⁸ 48 FR 24330, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,455 at 30,498-30,499 (1983).

¹¹ 41 FR 51395, 56 FPC 2946 (1976).

¹² The Commission granted one waiver from the prospective-only requirement in *Montaup Electric Co.*, Docket No. ER82-325-000, 19 FERC 61,062 (1982). In that case, the Commission held that the particular facts and circumstances warranted an exception to the Commission's general rule. A CWIP surcharge was suspended for one day and permitted to go into effect subject to refund. The case is awaiting Commission action on appeal of the initial decision where the ALJ disapproved the CWIP surcharge. 26 FERC ¶ 63,015 at 65,046.

electricity at the time that demand estimates are made and the price at which electricity must be sold when the new capacity comes on line.¹⁹

The Commission recognized that it could only have an impact on the third cause since the first two causes were not within its regulatory reach. As to the third cause, the Commission determined that since the addition of new facilities is likely to mean higher prices rather than lower ones, CWIP-based rates would provide a more accurate picture of the trends in power costs and, therefore, including CWIP in rate base would tend to lead to more efficient investment decisions by utilities.²⁰

The third public interest objective discussed in Order No. 298—rate stability—is closely related to the second objective. The Commission determined that "[r]atepayers should not face rates that fluctuate radically according to the completion of base load units. . . . Moreover, as large central station generation plants presently under construction are completed over the next few years, the Commission anticipates that the rate shock phenomenon will continue. By revising its CWIP policy, the Commission is attempting to minimize this problem, to the extent possible."²¹

As of December 1, 1985, twenty-six utilities had filed forty applications in which CWIP was requested in rate base pursuant to the Commission's Order No. 298 rule. As of December 1, 1985, twenty-four of these cases have been settled, four have been accepted for filing, one was withdrawn, eight are in litigation, one is awaiting initial decision, and two are awaiting Commission decision on appeal from the initial decisions. As discussed below, price squeeze was raised as an issue in twenty-six of these cases and double whammy was alleged in one.

C. The *Mid-Tex* Remand

On September 24, 1985, the court issued its opinion in *Mid-Tex* which vacated and remanded certain portions of Order No. 298. The court's mandate was issued on November 18, 1985.

The *Mid-Tex* court found that the Commission's stated purposes in adopting Order No. 298 were valid and affirmed the Commission's conclusion that CWIP in rate base would help achieve those purposes. 773 F.2d at 362. However, the court determined that the

Commission had not adequately considered whether and to what extent the purposes of the rule outweigh the regulatory objective of promoting competition, in the context of potential price squeeze and double whammy effects.

Therefore, the court vacated those portions of Order No. 298 related to the following decisions: (1) The decision to allow CWIP in rate base; (2) the choice of a 50% CWIP allowance; (3) the rejection of a CWIP rule that tracks the regulatory policies of the several states; (4) the decision to resolve CWIP-related price squeeze issues only on a case-by-case basis; (5) the decision to resolve CWIP-related double whammy issues only on a case-by-case basis; and (6) the decision to allow CWIP in rate base subject to refund.

The Commission believes it is significant that the *Mid-Tex* court ratified in large measure the Commission's rationale for departing from its earlier CWIP policy and did not specifically reinstate the Commission's prior rule under Order No. 555. Clearly, the thrust of the court's concern, while significant, was relatively narrow. Given this posture, the Commission does not consider it appropriate to revert generically to the superseded CWIP approach of former Order No. 555 on a temporary basis.²²

The Commission intends to thoroughly consider the anticompetitive concerns expressed by the *Mid-Tex* court. However, absent a significant demonstration that the circumstances and assumptions relied upon by the Commission have substantially changed, the Commission intends to focus primarily on the effect which the rule may have in cases where price squeeze and/or double whammy considerations are present rather than on the underlying policy decision to permit CWIP in rate base. There are two principal reasons for this approach. First, the *Mid-Tex* court accepted major portions of the Commission's rationale for adopting its prior CWIP rule. Second, while the Commission recognizes that

some pertinent conditions may have changed since Order No. 298 was issued on May 16, 1983, the Commission is not at this point persuaded that such changes alone will result in a "regulatory setting within which the utility industry can supply the nation's needs for electricity at the lowest reasonable cost,"²³ absent a rule which permits electric utilities to file rates which include CWIP in rate base.

The Commission stresses that this conclusion is preliminary and will be evaluated in light of the comments received in this proceeding. The present intention is to reexamine the delicate balance between "the harm to utilities from delaying CWIP relief against the harm to wholesale customers from allowing CWIP subject to refund." 773 F.2d at 360. Until the Commission completes its reevaluation of the complex issues raised on remand by the *Mid-Tex* court, the Commission, as discussed below, is implementing interim procedures for dealing with price squeeze and double whammy issues.

III. Interim Procedures

A. Discussion

Because the Commission's evaluation of the matters remanded by the court may take some time to complete and since parties in both ongoing and prospective rate proceedings are uncertain²⁴ as to the proper procedures to be followed in cases where CWIP has been or will be requested, the Commission concludes that immediate guidance on both a policy and a procedural level is needed. Thus, the Commission is promulgating the interim rule, set forth herein, to be effective immediately.

The interim rule provides the filing requirements which must be followed in all future cases where a utility requests CWIP in rate base. These filing requirements, including those in §§ 35.13(h) (7), (13), and (38) (which are being adopted herein), are virtually identical to the requirements promulgated by Order No. 298.

However, the requirements of vacated § 35.26 have been modified to delete the 6% initial CWIP limitation of § 35.26(d).

²² The Commission in Order No. 298 consciously abandoned the prospective-only CWIP treatment of Order No. 555 and its severe financial difficulty standard as being contrary to sound regulatory goals. At this juncture, the Commission is of the view that it would be counterproductive, as a temporary measure to reinstate the Order No. 555 CWIP treatment. The Commission believes that the factual circumstances of this case are distinguishable from those in *Action on Smoking and Health v. CAB*, 713 F.2d 795 (D.C. Cir. 1983) and similar cases where complete vacation of a new rule was construed as effectively reinstating a prior rule. In any event, the Commission believes that its action in promulgating an interim rule which addresses the areas of concern to the court effectively moots this question.

¹⁹ 48 FR 24330, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.455 at 30.499 (1983).

²⁰ 48 FR 24331, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.455 at 30.499 (1983).

²¹ 48 FR 46019, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.500 at 30.726 (1983).

²³ 48 FR 24329, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.455 at 30.497 (1983).

²⁴ The Commission notes that CWIP related motions have been filed in four pending cases since the *Mid-Tex* decision was issued. *Virginia Electric and Power Co.*, Docket No. ER85-400-003; *Montaup Electric Co.*, ER86-202-001; *Georgia Power Co.*, Docket No. ER85-659-001; and *Southwestern Public Service Co.*, Docket No. ER84-604-000. The Commission has acted on the motions in the first two cases.

to add a section concerning anticompetitive procedures, and to define the term double whammy. The effect of the interim procedures to be implemented by the Commission is as follows.

On an interim basis, the Commission will not preclude a utility from seeking to include in rate base, in addition to pollution control and fuel conversion CWIP, up to 50% of all remaining CWIP. However, the Commission acknowledges the court's concern (773 F.2d at 356) regarding "regulatory" price squeeze and the Commission's past reluctance to remedy a price squeeze based solely on differences in isolated regulatory practices. Notwithstanding the Commission's ultimate resolution of the questions posed by the *Mid-Tex* court, the Commission wishes to clarify that on an interim basis it will attempt to identify such price squeezes in individual cases and to provide effective relief where warranted. The Commission further recognizes the court's concerns involving double whammy allegations, and will attempt to identify double whammy situations in individual cases and to provide a remedy where warranted.²⁵ Therefore, where the utility, on the basis of experience or advice communications, should reasonably anticipate CWIP-related price squeeze or double whammy objections by one or more of its customers, the Commission will require the utility to address these matters in its filing and to suggest measures to mitigate such concerns.

In order to allow the Commission to adequately assess double whammy implications, a rate applicant will be required to provide to the Commission in addition to its other materials supporting CWIP, a positive demonstration that the customer's demand was a significant factor in the utility's decision to build the facilities included as non-pollution control/fuel conversion CWIP, or other justification for assessing against the customer the particular allocated share of construction costs. This requirement will, on an interim basis, reverse the initial burden of going forward with evidence on this issue, which was of specific concern to the *Mid-Tex* court. (The court, 773 F.2d at 359, indicated that Order No. 298 had shifted this burden to the wholesale customer without a reasoned basis for doing so.)

²⁵ Cases involving CWIP-related double whammy allegations do not appear to be numerous. Out of forty cases filed under the Order No. 298 rule, as of December 1, 1985, only one appears to involve allegations of double whammy. See *Georgia Power Company*, Docket No. ER85-659.

If, in its initial pleadings, an intervenor alleges price squeeze or double whammy as a direct result of the inclusion of CWIP in the proposed rates, and makes a concrete, substantial showing that it is likely to incur imminent irreparable harm if CWIP is allowed, then the Commission may consider preliminary relief at the suspension order stage. Depending on the type of showing made by an intervenor, including the likelihood, the immediacy, and the severity of any anticompetitive harm, the Commission may consider a variety of options which include, but are not limited to, suspension of the entire rate increase or the CWIP-related portion for up to five months or allowance of non-pollution control or non-fuel conversion CWIP prospectively only. In this regard, the Commission previously has recognized that, absent extraordinary circumstances, price squeeze allegations are not appropriately considered at the suspension stage of an individual rate proceeding.²⁶ The Commission continues to emphasize that intervenors will be expected to make a concrete demonstration that extraordinary relief is required from the inception. Another preliminary action the Commission might consider under unusual circumstances, depending on the type of initial showing made, is to modify the normal phasing of proceedings under *Arkansas Power & Light Co.*, *supra* note 26. In any event, whether or not relief is granted at the suspension stage will not preclude further remedies later in the proceeding, if warranted.

For pending cases in which CWIP has been sought and CWIP-related price squeeze or double whammy allegations have been made, the parties presumably have already complied with this interim rule in substantial part. To the extent they have not, they will be allowed to submit any additional information necessary to implement the policy

²⁶ See, e.g., *Virginia Electric and Power Co.*, 28 FERC ¶ 61,113 (1984), in which the Commission stated that, under typical circumstances, consideration of unproved price squeeze allegations at the suspension stage, absent extraordinary circumstances, is inappropriate. This policy has been based on several considerations, including the fact that price squeeze allegations are often raised in a very generalized fashion and not ultimately supported (*Virginia Electric and Power Co.*, 14 FERC ¶ 61,224 (1981)), and the fact that the Commission historically has focused on the just and reasonable, but for price squeeze, rate in evaluating the existence of price discrimination (see policy announced in *Arkansas Power and Light Co.*, 8 FERC ¶ 61,131 (1979), under which the Commission bifurcates proceedings in which price squeeze is alleged so that the first phase deals with cost of service, capitalization, and rate of return issues and, if the price squeeze then persists in the view of the alleging party, a second phase of the proceeding may follow).

objectives of this interim procedure, in accordance with the directions of the presiding administrative law judges. Any participant who alleges that a price squeeze is causing imminent, irreparable harm will be allowed to submit evidence to show why the judge, in his or her discretion, should modify any existing price squeeze phase of the proceeding. Lastly, the policy regarding potential remedies as stated herein will be applied, to the extent practicable, to ongoing cases as well as new ones.

The Commission recognizes that situations may arise which may not be covered by the policies announced herein. Because the Commission cannot anticipate these in advance, much less attempt to decide in advance the appropriate procedure to be followed, the Commission will deal with unusual situations as they arise. In the interim, the Commission believes that the above policies and procedures may be applied to the majority of cases filed, and will provide a workable mechanism to review CWIP requests and CWIP-related anticompetitive allegations on an interim basis.

B. Questions Concerning Interim Procedures

Under the interim rule promulgated today utilities will be permitted to file and seek to support rates which include up to 50% of all non-pollution control and non-fuel conversion CWIP in rate base. As noted, the Commission's preliminary views are that the pertinent circumstances relied upon in Order No. 298 continue to justify the current recovery of a portion of a utility's costs of constructing needed generation and transmission capacity. Thus far, the Commission has no reason to believe that improvements in the financial markets generally have overtaken the earlier considerations. Similarly, the Commission believes that the balance struck between utility and consumer interests through application of the 50% ceiling is generally a fair and equitable result. Thus, the Commission focuses here on these assumptions as they relate to the specific area of price squeeze and double whammy implications. With this narrowed scope in mind, the Commission requests comments concerning:

1. Whether modification of the 50% figure in individual cases may be an appropriate "remedy" if the interim rule would otherwise result in price squeeze or double whammy, especially the former. If commenters believe the 50% cap should be modified, generically or on a case-by-case basis, they should suggest an alternative percentage (or a

means of arriving at such a percentage in a given case), the relationship of such a percentage to the potential for mitigating instances of price squeeze or double whammy, and a detailed justification for that percentage.

2. Whether the procedures outlined in the interim rule, although at this time to be applied solely for interim purposes, would be adequate for dealing with any anticompetitive effects that may occur as a result of a utility requesting CWIP. If so, whether those procedures should be incorporated in a final rule or implemented on a case-by-case basis.

The Commission is confronted with a time problem at the suspension stage of a proceeding in reviewing an intervenor's allegation that price squeeze or double whammy will result from the inclusion of CWIP in rate base, since the Commission must normally decide within 60 days of filing whether and for how long to suspend the filing. Therefore, the interim rule requires the utility, if it reasonably anticipates, on the basis of experience or advance communication that price squeeze or double whammy objections will be made by one or more customers, to address these matters in its filing and suggest measures to mitigate such concerns. In addition, where double whammy objections are expected, the utility is required by the interim rule to provide a positive demonstration that the customer's demand was a significant factor in the utility's decision to build the facilities included as allocable CWIP or other justification from assessing against the customers the particular allocated share of construction financing costs. This requirement, on an interim basis, reverses the initial burden of going forward with evidence on this issue which was originally placed on the wholesale customer. See 773 F.2d at 359. The Commission seeks comments concerning:

3. Whether the double whammy procedures in the interim rule would adequately address the issue if retained in a permanent rule and, in particular, whether the initial burden of going forward should or must remain with the utility on the double whammy issue.

The interim rule also requires an intervenor alleging price squeeze or double whammy as a direct result of the inclusion of CWIP in the proposed rates to make a concrete, substantial showing that it is likely to incur imminent, irreparable harm if CWIP is allowed in the rates subject to refund in order for the Commission to consider preliminary relief at the suspension stage. Depending on the showing made, the Commission may consider a variety of options. It is important to reiterate that

the Commission has observed in a variety of contexts that price squeeze allegations are often raised in initial pleadings although they are frequently abandoned as the proceeding develops. Without speculating as to the scope of motives for this pleading pattern, the Commission remains reluctant to implement any procedure that will encourage unfounded or otherwise inappropriate price squeeze or double whammy allegations. Further, as noted, the Commission will typically have very little time in which to undertake a complete evaluation of the claims that are raised. Thus, it is the intent of the Commission to consider preliminary action in response to anticompetitive allegations only in truly extraordinary circumstances, where refund protection will not suffice. Without attempting to define the precise parameters of such circumstances, it is anticipated that the procedure will, in some senses, resemble a request for preliminary injunctive relief.

The Commission seeks comments concerning:

4. Whether this case-by-case procedure is an adequate response to allegations of CWIP-related price squeeze or double whammy.

5. Whether the imminent, irreparable harm standard is reasonable or some lesser standard is both desirable and feasible to implement.

6. Whether utilities, in all instances, should be required when filing rates which include CWIP to provide certain data in order to permit intervenors a more meaningful opportunity to demonstrate imminent, irreparable harm (or to meet some other standard) at the suspension stage, and, if so, what data should be required and why. Please quantify the additional filing burden that this would impose.

7. Whether additional remedies not set forth in the interim rule should be considered and, if so, what they are and what is the basis for the Commission's legal authority to implement them.

IV. Request for Additional Comments on Anticompetitive Effects

A. Price Squeeze

In *FPC v. Conway Corp.*, 426 U.S. 271, 279 (1976), the Court directed the Commission, in arriving at a rate level deemed to be just and reasonable in a particular case, to consider allegations that the proposed rates are discriminatory and anticompetitive in effect. In order to implement compliance with *Conway*, and to expedite consideration of price squeeze issues in wholesale rate proceedings, the Commission on July 29, 1976, issued a

notice of proposed statement of policy in Docket No. RM76-29, 41 FR 32910.²⁷

On March 21, 1977, the Commission issued Order No. 563 which promulgated § 2.17 of the Commission's General Policy and Interpretations and terminated Docket No. RM-76-29.²⁸ Section 2.17 provides the general procedures to be followed in raising price squeeze issues in wholesale rate proceedings "unless they are demonstrated in an individual case to be inadequate." Section 2.17 requires the intervening customer or other interested person alleging price squeeze to support its allegation by a *prima facie* case, and establishes procedures to be followed where a price squeeze allegation is made. Section 2.17(e) provides:

The burden of proof (*i.e.*, the risk of nonpersuasion) to rebut the allegations of price squeeze and to justify the proposed rates are on the utility proposing the rates under section 205(e) of the Federal Power Act.²⁹

The Commission is permitted by section 205(e) of the Federal Power Act to suspend the effectiveness of proposed rates for up to five months.³⁰ If the Commission has not concluded its review of such rate filing at the expiration of the suspension period, the Commission may require the utility to collect the new rates subject to refund. Section 205(e) of the EPA also specifies that the public utility proposing an increased rate bears "the burden of proof to show that the increased rate . . . is just and reasonable. . . ."

In filings where price squeeze is alleged, the Commission phases the case, absent a demonstration that such procedure is inadequate in the case.³¹ In the first phase, the Commission determines a preliminary just and reasonable rate without regard to the price squeeze allegation. If, after the preliminary just and reasonable rate is determined, the party alleging price squeeze wishes to continue with its allegation, a second phase of the proceeding may be convened to

²⁷ The Commission issued a notice of amendment of proposed statement of policy to include a rulemaking in Docket No. RM76-29, on November 8, 1976, 41 FR 50278.

²⁸ Order No. 563, 42 FR 16131, 57 FPC 1743 (1977).

²⁹ In Order No. 563-A, *Order Denying Rehearing*, 42 FR 27574, 58 FPC 1783, 1784, (1977), the Commission clarified that there would be no allegations to rebut, and, therefore, no shifting of the burden of proof unless a *prima facie* case had been established.

³⁰ *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), discusses the factors the Commission generally considers in determining the length of the suspension period.

³¹ See *Arkansas Power and Light Co.*, *supra* n. 26 at p. 18.

investigate the price squeeze allegations.

The interim CWIP rule does not seek to shift the burden of proof from the utility seeking a rate change to other parties. Rather, the interim rule merely permits a utility to file rates which include, in addition to CWIP related to pollution control and fuel conversion facilities, up to 50% of the remaining CWIP in rate base, and to support the filed rate through appropriate evidence.

The Commission seeks comments concerning:

8. Whether the foreseeable price squeeze effects of the 50% CWIP rule can be quantified in any reliable way or whether they are, as the Commission suggested in Order No. 298, so case-specific in nature and degree as to effectively compel a case-by-case analysis.

One type of price squeeze which has been characterized as "regulatory" price squeeze, is particularly troublesome to the Commission. The Commission position on this issue was succinctly stated in Order No. 298:

The Commission must exercise independent judgment in all matters assigned to it by statute. By deferring to the disparate CWIP policies of the states, the Commission might be viewed as having abdicated its responsibility. The significance and impact of deference to state policy would vary dramatically from state to state.³²

As a result, in Order No. 298, the Commission continued "our stated policy not to remedy a price squeeze if it is due solely to state regulatory action or inaction."³³ The Commission remains concerned that it is difficult to generically isolate what might be referred to as a "CWIP-related" price squeeze, given the wide variations in regulatory treatment of numerous ratemaking issues among the States. Indeed, without considering all ratemaking disparities as between this Commission and a particular State commission, it may be impossible to measure the net effect of a differing treatment of CWIP. Nonetheless, the Commission, on an interim basis, will exert its best efforts to identify "regulatory" price squeeze situations in individual cases and to remedy them where appropriate. To do so, we must depend heavily on information supplied both by the filing utility and its affected customers.

The Commission seeks comments concerning:

9. The implications, particularly for purposes of financial indices and implementation of Federal policy objectives, of a shift to a practice of remedying price squeezes that are attributable solely to a State commission's failure to allow the utility CWIP in rate base or the State commission's failure to allow as much CWIP as this Commission permits utilities subject to its jurisdiction to file for in proposed rates.³⁴

10. Whether the disparities between Federal and State regulation tend to balance out so that the rate treatment of one issue, such as CWIP, is not likely to offset the rate effects of all other rules dealing with other regulatory issues.

The Commission is particularly interested in comments from the State commissions on the issue of "regulatory" price squeeze associated with the Commission's policy on CWIP.

As discussed above, the *Mid-Tex* court accepted the first two purposes which the Commission announced as the justification for adopting the rule in Order No. 298: Mitigating bias against capital investment and ensuring more accurate price signals. 773 F.2d at 344. The Commission seeks comments (particularly from the investment community on questions 11 and 12) concerning:

11. What impact, if any, would a Commission policy of remedying "regulatory" price squeeze associated with CWIP have regarding capital investment in the electric utility industry?

12. Whether such a policy would be likely to increase utilities' cost of capital and, if so, by how much and for how long.

13. How would such a policy affect the accuracy of price signals sent to consumers?

14. If the Commission determines (beyond the interim period) that the public interest requires it to remedy a "CWIP-related regulatory price squeeze,"³⁵ what ultimate remedies should the Commission consider?

³² It appears that only eleven States completely disallow the inclusion of any CWIP in rate base for investor owned utilities. See Salomon Brothers, Inc., Stock Research, Electric Utility Regulation—Semiannual Review, pp. 10-19, August 8, 1985.

³³ According to Commission records, by December 1, 1985, 40 cases had been filed under Order No. 298 where non-pollution control and non-fuel conversion CWIP was requested. Price squeeze was alleged in 26 of those cases. Settlement was reached in 20 of the 26 cases where price squeeze was alleged. In 18 of the settled cases, the State regulatory authority, according to Solomon Brother (see n. 34, *supra*), allowed at least some CWIP in rate base.

B. Double Whammy

Double whammy is a special type of anticompetitive effect which may result if a wholesale customer embarks on a construction program, either under its direct management or through participation with others in a joint venture, and simultaneously pays rates which include CWIP to its current supplier. The wholesale customer pays rates including CWIP based on the assumption that it will continue its current level of service over the anticipated service lives of the facilities for which the CWIP is requested. If its level or length of service is less than that represented by the proposed allocation of CWIP, it may subsidize other customers, which may create a competitive disadvantage. On the other hand, if the customer's level or length of service is greater than that represented by the proposed allocation of CWIP, the customer may be subsidized by other customers which may create competitive disadvantages for those customers.

This is clearly a significant issue. However, it bears repeating that allegations of double whammy have not been common. Out of all the CWIP rate applications filed under Order No. 298, it appears that only one has involved a double whammy claim.³⁶

From the Commission's experience to date, it appears that most utilities requesting CWIP allocate the CWIP on the same basis that they allocate other rate base items, i.e., ratios reflecting expected test period service levels. With respect to existing wholesale customers, the test period allocation ratios may not exactly reflect the anticipated changes in the wholesale customer's and system loads that will actually occur during the period the facilities for which CWIP is requested are expected to be in service. For that reason, the Commission is considering requiring a utility to employ forward looking allocation ratios to allocate CWIP in those cases where a customer establishes that its own construction program will make it increasingly independent of its current supplier.³⁷ By using forward looking allocation ratios, which presumably would better reflect the wholesale customer's demand on the utility when the facilities for which CWIP is requested will be in service, any anticompetitive potential may be

³⁶ *Georgia Power Company*, Docket No. ER85-659.

³⁷ Forward looking ratios would be based on projections or estimates which look beyond the test year. This practice may better reflect a customer's anticipated relative use of the facility for which CWIP is requested.

³² 48 FR 24348, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.455 at 30.527.

³³ 48 FR 24346, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30.455 at 30.541, n. 97.

avoided or substantially mitigated. The Commission seeks comments concerning:

15. What type of showing, if any, the customer should be required to make before the utility would be required to allocate CWIP based on forward looking allocation ratios. The Commission at this time believes that before the utility should be required to use forward looking ratios, there should be a probability, rather than a mere possibility, that a customer's construction program will result in reductions in future service affecting the need for the facilities for which CWIP is requested.

Forward looking ratios must be based on projected data. A requirement that utilities use forward looking allocation ratios might create additional burdens on rate case participants. Also, the accuracy of such data might be suspect, particularly the farther into future the utility must project. The Commission seeks comments concerning:

16. Would such a requirement be burdensome to rate case participants and, if so, can the extent of such burden be quantified?

17. If forward looking allocations are required by the Commission in cases involving the probability of double whammy, how far forward should the allocation ratios cover? How far ahead can the Commission expect reasonable accuracy in such projections?

The Commission believes that a better understanding concerning how utilities and their wholesale customers view a utility's "obligation to serve" ³⁸ under the Federal Power Act may be of assistance in deciding how to deal with allegations of double whammy resulting from proposed rates which include CWIP.

18. Should a wholesale customer be permitted to waive any right to future service from its supplying utility and thereby avoid paying CWIP in rates, and, if so, how procedurally should such a waiver be accomplished?

19. How does a utility's obligation to serve differ, if any, when the customer is a full requirements customer; a partial requirements customer; a coordination customer?

20. Does a utility's legal or practical obligation to serve impede competition in the electric utility industry? If so, how is competition impeded?

³⁸ In Order No. 298, the Commission touched briefly on the question of a utility's obligation to serve. See 48 FR 24,332, III FERC Statutes and Regulations (Regulations Preambles) § 30,455 at 30,538, n.51.

V. Administrative Findings and Effective Date

The Commission is, by this order, adopting a final rule prior to providing notice and obtaining written comment, as required generally by the Administrative Procedure Act, 5 U.S.C. 553 (b) and (c) (1982), for any rulemaking proceeding.³⁹ The Commission is invoking exceptions to this requirement for very special reasons relating to the limited nature of this rulemaking. This proceeding is designed to establish general rules that (1) outline what amount of construction work in progress the Commission will consider for inclusion in any public utility's rate base, and (2) specify the information that a utility must file in support of its application for CWIP in rate base. However, the rule adopted here is intended to be in effect for an interim period, while the Commission studies the issues relating to certain potential anticompetitive effects of the rule that formed the basis for the court's remand in the *Mid-Tex* decision. The Commission is initiating a public comment process to consider the issues presented by the court and outlined in this preamble. Second, the fundamental approach to including CWIP in rate base has been investigated by the Commission in an extensive prior proceeding. The *Mid-Tex* court recognized, in substantial measure, not only the legitimacy of the Commission's objectives but the support that it had for its methods of accomplishing those objectives. To a considerable degree, therefore, the interim rule is already supported by a broad and substantial record. Third, the Commission is making a special effort in new § 35.26(g) to minimize or eliminate any possibility of price squeeze or double whammy—the focal concerns of the *Mid-Tex* court—while the interim rule is in effect. Finally, the Commission believes that a binding rule is required to ensure rational administration of the CWIP applications in electric rate cases while it addresses itself to the court's concerns. Recognizing that it has other alternatives such as refusal to consider CWIP in rate base for the interim or consideration of CWIP on an ad hoc

³⁹ With the exception of the anticompetitive procedures in § 35.26(g), the interim rule represents the same general approach, and will therefore have similar effects, as the rule adopted by Order No. 298. The Commission is therefore adopting its Order No. 298 certification under the Regulatory Flexibility Act, 5 U.S.C. 601–612, that the rule will not have a significant economic impact on a substantial number of small entities. See 48 FR 24,350, III FERC Statutes and Regulations (Regulations Preambles) § 30,455 at 30,529–30,530. This determination was upheld by the *Mid-Tex* court, 773 F.2d at 343.

adjudicatory basis, the Commission prefers an interim rule that allows utilities to apply for CWIP in rates subject to specific limitations and in accordance with detailed filing requirements. Such limitations represent a concrete advantage both from the perspective of the utility and its customers.

For the above reasons, the Commission finds good cause to issue this rule without additional prior notice and comment. Pending and imminent rate applications will present the CWIP issue for Commission consideration, in suspension and final rate orders as well as in the initial decisions of administrative law judges, well before the Commission can complete the public procedures and subsequent analysis desired by the court. The public interest is best served in this instance by the promulgation of a clear generic CWIP policy that will be administered in the interim consistent with the court's concerns about the potential anticompetitive effects of including CWIP in wholesale rates. It would therefore be impracticable, in light of pending cases, and contrary to the public interest in having a clear and identifiable CWIP rule, to delay readoption of any generic rule or policy until completion of all notice and comment procedures. 5 U.S.C. 553(b)(1982).

In addition, the Commission finds good cause to make this rule effective immediately, without a 30 day delay that is generally required to allow those directly affected to adjust to a new regulation. 5 U.S.C. 553(d) (1982). In this instance, a Commission CWIP approach similar to that adopted in this order has been administered in wholesale electric rate cases for nearly three years, following an extensive notice and comment rulemaking procedure. To provide clear guidance for CWIP-related rate cases that will continue to be filed, the Commission therefore believes that the public interest is further served in reestablishing its generic CWIP policies as soon as possible. The information collection requirements are subject to review and approval under the Paperwork Reduction Act, however.

VI. Paperwork Reduction Act

The information collection provisions in this Interim Rule and Request for Comment have been submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act ⁴⁰ and OMB's

⁴⁰ 44 U.S.C. 3501–3520 (1982).

regulations.⁴¹ Once OMB approves the information collection provisions in 18 CFR Part 35, it will assign to them one or more control numbers. The Commission will in turn publish notice that it has received OMB approval. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Ellen Brown (202) 357-8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, D.C. 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

VII. Public Comment Procedures

Interested parties are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments should refer to Docket No. RM86-6-000, on the outside of the envelope and on all documents submitted to the Commission. To ensure proper consideration of their comments, it is essential that persons submitting comments identify specifically the question they are addressing.

As noted, the Commission is incorporating by reference into this docket the record in the underlying Docket No. RM81-38. The Commission also incorporates by reference the record in the Docket No. RM85-17 Notice of Inquiry proceedings,⁴² particularly those comments concerning price squeeze and competition in the electric utility industry.⁴³ Any party

may reference comments or portions of comments in Docket No. RM81-38, as well as in Docket No. RM85-17, to the extent deemed necessary. However, the Commission will require that persons referring to comments filed in Docket No. RM81-38 or Docket No. RM85-17 also file copies of the relevant portions of those comments in this docket in order to facilitate the Commission's review.

When persons submitting comments urge an approach different from the interim rule, a specific alternative provision with appropriate legal or empirical support should be submitted. Fourteen copies should be submitted with the original.

To facilitate the Commission's analysis, the Commission urges commenters to provide a 3-5 page executive summary of their positions on the issues raised. Additionally, commenters should double space their comments, provide a concise description identifying themselves, use the same numbering system as this preamble when answering questions, and indicate by "N/A" when they have not answered a question. Each answer should start at the beginning of a new page.

All comment received by the Commission by May 5, 1986, will be considered prior to the promulgation of a final rule. Reply comments received by the Commission by June 4, 1986, will be considered prior to the promulgation of a final rule. Reply comments should be so identified and conform to all requirements applicable to initial written comments. Copies of the written comments may be obtained from the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., 20426. Comments are available for public inspection during business hours at the same location. Copies of comments will be available for purchase.

List of Subjects in 18 CFR Part 35

Filing of rate schedules.

VIII. Commission Order

In consideration of the foregoing, the Commission, effective immediately:

A. Readopts § 35.13(h)(7), (h)(13), (h)(38), as they currently appear in Part 35, Chapter I, Title 18, Code of Federal Regulations; and

B. Amends Part 35, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,
Secretary.

PART 35—FILING OF RATE SCHEDULES

1. In Part 35, the authority citation continue to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791-828c; Department of Energy Organization Act, 42 U.S.C. 7101-7352; Executive Order No. 12009, 3 C.F.R. 142 (1978).

2. Section 35.26 is revised to read as follows:

§ 35.26 Construction work in progress.

(a) Applicability. This section applies to any rate schedule filed under this part by any public utility as defined in subsection 201(e) of the Federal Power Act.

(b) Definitions. for purposes of this section

(1) "Construction work in progress" or "CWIP" means any expenditure for public utility plant in process of construction that is properly included in Accounts 107 (construction work in progress) and 120.1 (nuclear fuel in process of refinement, conversion, enrichment, and fabrication) of Part 101 of this chapter, the Uniform system of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act (Major and Nonmajor).

(2) "Pollution control facility" means an identifiable structure or portions of a structure that is designed to reduce the amount of pollution produced by the power plant, but does not include any facility that reduces pollution by substituting a different method of generation or that generates the additional power necessitated by the operation of a pollution control facility.

(3) "Fuel conversion facility" means any addition to public utility plant that enables a natural gas-burning plant to convert to the use of other fuels, or that enables an oil-burning plant to convert to the use of other fuels, other than natural gas. Such facilities include those that alter internal plant workings, such as oil or coal burners, soot blowers, bottom ash removal systems and concomitant air pollution control facilities, and any facility needed for receiving and storing the fuel to which the plant is being converted, which facility would not be necessary if the plant continued to burn gas or oil.

(4) "Double whammy" means a situation which may arise, when a wholesale electric rate customer embarks upon or participates in a construction program of its own to

⁴¹ 5 CFR 1320.14 (1985).

⁴² Docket No. RM85-17-000 (Phase I and Phase II), *Regulation of Electricity Sales-for-Resale and Transmission Service*, 50 FR 23445 (1985), and 50 FR 27604 (1985).

⁴³ Docket No. RM85-17 is a more comprehensive examination of how the Commission's policies promote, or impede, efficiencies in electricity markets. Here, the intended focus is much more narrow. In particular, the Commission is concerned with the effects of its CWIP policies on competition at the wholesale and retail levels, how these policies should be affected by the objectives of other regulatory agencies, and any credible attempts to quantify the relative positive effects of CWIP versus the potential anticompetitive consequences. The Commission does not believe that the Notice of Inquiry in any way limits the Commission's policy review of competition in this rulemaking or that this proceeding will limit in any way the Commission's review in that Inquiry. Rather, the two processes, each of which has distinctive advantages as vehicles for reviewing the Commission's role in fostering competition in the electric industry, are essentially complementary.

supply itself with all or a portion of its future power needs, thereby reducing its future dependence on the CWIP of the rate applicant, but is simultaneously forced to pay to the CWIP rate applicant the CWIP portion of the wholesale rates that reflects existing levels of service or a different anticipated service level.

(c) *General rule.* For purposes of any initial rate schedule or any rate schedule change filed under § 35.12 or § 35.13 of this part, a public utility may include in its rate base any costs of construction work in progress (CWIP), including allowance for funds used during construction (AFUDC), as provided in this section.

(1) *Pollution control facilities.* (i) Any CWIP for pollution control facilities allocable to electric power sales for resale may be included in the rate base of the public utility. (ii) In determining whether a facility is a pollution control facility for purpose of this section, the Commission will consider:

(A) Whether such facility is the type facility described in the Internal Revenue Service laws, 26 U.S.C. 169(d)(1), as follows: "a new identifiable treatment facility which is used... to abate or control water or atmospheric pollution or contamination by removing, altering, disposing, storing, or preventing the creation or emission of pollutants, contaminants, wastes or heat";

(B) Whether such facility has been certified by a local, state, or federal agency as being in conformity with, or required by, a program of pollution control;

(C) Whether such facility is the type facility described in the schedule of "Environmental Protection Facilities," sections 4(A) through 4(D), page 428, FERC Form No. 1, Annual Report of Electric Utilities, Licensees and Other (Major and Nonmajor) (Revised 12-85); and

(D) Other evidence showing that such facilities are for pollution control.

(2) *Fuel conversion facilities.* Any CWIP for fuel conversion facilities allocable to electric power sales for resale may be included in the rate base of public utility.

(3) *Other CWIP.* Not more than 50 percent of any CWIP allocable to electric power sales for resale not otherwise included in rate base under paragraphs (c)(1) and (2) of this section, may be included in the rate base of the public utility.

(d) *Effective date.* If a public utility proposes in its filed rates to include CWIP in rate base under this section, that portion of the rate related to CWIP is collectable at the time the general rate becomes effective pursuant to Commission order, whether or not

subject to refund, except as provided in paragraph (g) below.

(e) *Discontinuance of AFUDC.* On the date that any proposed rate that includes CWIP in rate base becomes effective, the public utility must discontinue the capitalization of any AFUDC related to those amounts of CWIP in rate base.

(f) *Accounting Procedures.* At the time that a public utility files to include CWIP in rate base pursuant to this section, it must propose accounting procedures in that rate schedule filing that:

(1) Ensure that wholesale customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP proposed to be included in rate base; and

(2) Ensure that wholesale customers will not be charged for any corresponding AFUDC capitalized as a result of different accounting or ratemaking treatments accorded CWIP by state or local regulatory authorities.

(g) *Anticompetitive Procedures*

(1) If a utility requests CWIP pursuant to § 35.26(c)(3) and, on the basis of past experience or advance communication should reasonably anticipate that one or more of its wholesale customers may raise price squeeze or double whammy objections as a direct result of such CWIP, the utility must address these matters in its filing and suggest measures to mitigate such objections.

(2) If an intervenor in its initial pleading alleges that a price squeeze will occur as a direct result of the utility's request for CWIP pursuant to § 35.26(c)(3), and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission may consider preliminary relief at the suspension stage of the case pursuant to paragraph (5) of this section.

(3) If an intervenor in its initial pleading alleges that a double whammy will occur as a direct result of the utility's request for CWIP pursuant to § 35.26(c)(3), and makes a concrete, substantial showing that it is likely to incur imminent, irreparable harm if such CWIP is allowed, the Commission may consider preliminary relief at the suspension stage of the case pursuant to paragraph (5) of this section.

(4) In order to request CWIP pursuant to § 35.26(c)(3), a utility must, in addition to any other requirements, also provide a positive demonstration that the wholesale customers' demands were a significant factor in the utility's decision to build the facilities for which such CWIP is requested or other justification for assessing the particular share of CWIP to such customers.

(5) Where an intervenor meets the requirements of paragraphs (g)(2) or (g)(3) of this section, the Commission, depending on the type of showing made including the likelihood, immediacy, and severity of any anticompetitive harm, may:

(i) Suspend the entire rate increases or the CWIP portion for up to five months;

(ii) Allow such CWIP only prospectively from the issuance of a final order on rehearing; or

(iii) Take such other action as is proper under the circumstances.

[FR Doc. 86-4783 Filed 3-5-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 152

[T.D. 86-56]

Entry of Merchandise Imported From Countries Imposing Export Restrictions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Policy.

SUMMARY: In recent years, importers of merchandise from countries which impose minimum price requirements to obtain quota or permission to export have been importing such merchandise using documents procured from the government of the country of origin by means of fraud or false statements. The documents in question are usually "visa'd invoices" (an invoice stamped with or otherwise recording export approval by an appropriate authority of the government of the country of origin), where the export approval was based on false (inflated or deflated) merchandise values supplied by the exporter and set forth on the invoice. The acceptance of these documents by Customs is inconsistent with the requirement, under the law and regulations, that the invoice set forth the purchase price of the merchandise, and is precluded by the regulations, which call for the rejection of any documents which appear, or are known, to be erroneous. Customs will adhere to the law and regulations.

EFFECTIVE DATE: The policy will become effective with respect to all merchandise entered or withdrawn from warehouse for consumption on or after May 5, 1986.

FOR FURTHER INFORMATION CONTACT: Bruce Shulman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION

Background

In recent years, certain importers of merchandise from countries which impose export restrictions on such merchandise (an export quota, for example) have gained export approval from the government of the country of origin by means which result in the presentation to Customs, upon the entry of the merchandise into the U.S., of documents—usually "visaed invoices"—which contain false statements. A "visaed invoice" is an invoice which is stamped with or otherwise signifies the export approval of the appropriate government authority in the country of origin but, in the situations in question, such approval is premised on false (inflated or deflated) merchandise values set forth in the invoice by the exporter.

For example, the exporter and the U.S. importer may agree on a unit price of \$10 for merchandise which the government of the country of origin will not approve for export to the U.S. at a unit price of less than \$20. To obtain export approval, therefore, the exporter prepares an invoice setting forth a unit price of \$20 for the merchandise; the appropriate authority of the government of the country of origin, based on the invoice information, stamps the invoice or otherwise signifies its approval for the export of the merchandise to the U.S. This document is required to be presented to Customs upon the entry of the merchandise into the U.S. and becomes a part of the entry package.

In many instances, the importer—for duty purposes—will allege the existence of a lower selling price than that recorded on the invoice, offering other evidence of the actual selling price, including: (1) A second invoice prepared by the exporter showing the actual selling price, and evidence of payment by the importer of the latter price; (2) evidence of receipt of a refund from the exporter in an amount of the difference between the invoice price and the actual agreed-upon selling price; or (3) evidence that the "overpayment" to the exporter per the inflated invoice price has been used to create an artificially low price for other goods shipped to the importer (other merchandise not subject to the same export restrictions). Although many importers have revealed the actual purchase details to Customs (in order to avoid any overpayment of duty, to avoid a possible penalty assessment for presenting Customs with a document known to contain false information, or for other reasons), others may not have done so—electing instead to pay the additional duty and to accept

the risk of penalties in an effort to facilitate the processing of the entry by Customs.

Section 484(a), Tariff Act of 1930, as amended (19 U.S.C. 1484(a)), requires that importers file with Customs documentation which, among other things, allows Customs "to assess properly the duties on the merchandise, [and] collect accurate statistics with respect to the merchandise * * *." Clearly, an invoice which sets forth a false purchase price does not satisfy this requirement. Equally clearly, such an invoice fails the requirement imposed by 19 U.S.C. 1481(a)(5), that each invoice of imported merchandise set forth "[t]he purchase price of each item * * *." These requirements are confirmed in the corresponding implementing regulations (e.g., §§ 141.81, 141.83 and 141.86, Customs Regulations, 19 CFR 141.81, 141.83, and 141.86). Sections 141.61(e)(4) and 141.64, Customs Regulations (19 CFR 141.61(e)(4) and 141.64), provide that Customs shall not accept entry and entry summary documentation which clearly appears, or is known by Customs, to be erroneous.

Action

On or after the effective date of this document, any differences or inconsistencies in the information contained in documents presented to Customs in connection with the importation of merchandise shall be considered as an indication that one or more of such documents contains false or erroneous information. In such circumstances, the entry documentation will not be accepted by Customs but will instead be returned to the importer for correction.

In situations where the visaed invoice or document presented to Customs (and necessary for the entry of the merchandise) contains erroneous value or price information, such invoice or document can only be corrected by the presentation to Customs of a new, corrected invoice or document stamped with the visa of the government of the country of origin. Customs will not accept pro forma invoices in any case involving apparent differences in price or value information in the documents required to be submitted to Customs and which involve the production of a document which is required to contain a foreign country's visa.

Customs will fully investigate any suspected attempts to circumvent the foregoing policy, including unusual resales and the submission of other entry documentation corroborating the value or price information set forth in a visa document and otherwise suspected to be false. In appropriate

circumstances, Customs will initiate actions under the civil and criminal penalty statutes it administers, including but not limited to 19 U.S.C. 1592, 18 U.S.C. 542, and 18 U.S.C. 1001.

Previous Customs Rulings

To the extent that any ruling previously issued by Customs, including those discussing whether a transaction value exists in situations similar to those described above, may have indicated that entry documentation containing inconsistencies or differences in price or value information would be accepted by Customs (either because the ruling failed to address the acceptability of such documentation or otherwise), those rulings are hereby amended and modified to conform with the policy hereinabove set forth.

Dated: February 20, 1986.

William von Raab,

Commissioner of Customs.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 86-4910 Filed 3-5-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Change of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of two new animal drug applications (NADA's) from Vitamin Premixers of Omaha (V.P.O., Inc.) to SmithKline Animal Health Products, Division of SmithKline Beckman Corp.

EFFECTIVE DATE: March 6, 1986.

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

SUPPLEMENTARY INFORMATION: SmithKline Animal Health Products, Division of SmithKline Beckman Corp., 1600 Paoli Pike, P.O. Box 2650, West Chester, PA 19380, has informed FDA that it has acquired ownership of two new NADA's from Vitamin Premixers of Omaha (V.P.O., Inc.) (NADA 98-431, tylosin; and NADA 100-127, tylosin/

sulfamethazine). V.P.O., Inc. has confirmed the sale. This change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The regulations providing for use of the premises are amended to reflect the change of sponsor.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.
Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

§ 558.625 [Amended]

2. In § 558.625 *Tylosin* in paragraph (b)(25) by removing the sponsor number "043743" and inserting in its place "000007".

§ 558.630 [Amended]

3. In § 558.630 *Tylosin and sulfamethazine* in paragraph (b)(3) by removing the sponsor number "043743" and adding in numerical sequence "000007".

Dated: February 26, 1986.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 86-4836 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Pennsylvania Permanent Regulatory Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document corrects letter designations of two subchapters of the Pennsylvania permanent program regulations printed in the Federal Register notice published February 19, 1986, which announced the approval of a program amendment to the State of Pennsylvania's permanent regulatory program (51 FR 5997).

The corrections pertain to 30 CFR 938.15(j) which codified the approval of an amendment to the Pennsylvania code of regulations.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Biggi, Director, Harrisburg Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101.

Dated: February 27, 1986.

Brent Wahlquist,

Assistant Director, Program Operations.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

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

2. 30 CFR 938.15(j) is correctly revised as follows:

§ 938.15 Approval of regulatory program amendments.

(j) The following amendment submitted to OSMRE on September 5, 1985 is approved effective February 19, 1986: Act 158 of 1984; Subchapter F of Chapter 87 and Subchapter G of Chapter 88 of the Pennsylvania code of regulations; letters from the Pennsylvania Deputy General Counsel and the First Deputy Attorney General to Rebecca W. Hanmer, Director, Office of Water Enforcement Permits, U.S. EPA, dated July 8, 1985, and August 19, 1985, respectively.

[FR Doc. 86-4855 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 80

[CGD 84-091]

International Regulations for Preventing Collisions at Sea; 1972 COLREGS Demarcation Lines

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is authorized to establish identifiable lines to delineate waters upon which International Regulations for Preventing Collisions at Sea, 1972 (COLREGS) apply and waters upon which Inland Navigation Rules apply. Regulations establishing these lines were promulgated July 11, 1977. Since the establishment of these lines, geographic and marking changes have outdated descriptions contained in the

regulations. The rulemaking will update all the 1972 COLREGS Demarcation Lines. The intent of this final rule is to provide accurate and current location descriptions and identification of these lines as shown on nautical charts.

EFFECTIVE DATE: April 7, 1986.

FOR FURTHER INFORMATION CONTACT:

CDR Charles K. Bell, (202) 245-0108.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the Federal Register on September 19, 1985 (50 FR 38013), and interested parties were given until November 4, 1985, to comment. Seven comments to the proposal were received. All seven comments further updated the Demarcation Lines by identifying seven additional locations where the lines had been altered due to reference objects being destroyed or relocated. The Coast Guard has incorporated all the changes suggested by the comments. The additional changes are 33 CFR 80.135(b), 33 CFR 80.305(i), 33 CFR 80.320(a), 33 CFR 80.735(c), 33 CFR 80.830(h), 33 CFR 80.845(a), and 33 CFR 80.1160.

Drafting information: The principal persons involved in drafting this rulemaking are LCDR Charles K. Bell, Project Manager, Office of Navigation, and LT Sandra Sylvester, Office of the Chief Counsel.

Regulatory Evaluation

This final rule is considered to be non-major under Executive Order 12291 and non-significant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is unnecessary. This rule merely updates the 1972 COLREG Demarcation Lines. Since the impact is expected to be minimal, the Coast Guard certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 80

Navigation, Navigable waters.

For the reasons stated above, the Coast Guard is amending Title 33 CFR Part 80 to read as set forth below.

PART 80—COLREGS DEMARCATION LINES

1. The authority citation for Part 80 is revised to read as follows:

Authority: 14 U.S.C. 2; 33 U.S.C. 151(a); 49 CFR 1.46(b).

2. In § 80.115, paragraph (b) is revised to read as follows:

§ 80.115 Portland Head, ME to Cape Ann, MA.

(b) A line drawn from the southernmost tower on Gerrish Island charted in approximate position latitude 43°04.0' N. longitude 70°41.2' W. to Whaleback Light; thence to Jaffrey Point Light 2A; thence to the northeasternmost extremity of Frost Point.

3. In § 80.135, paragraph (b) is revised to read as follows:

§ 80.135 Hull, MA to Race Point, MA.

(b) A line drawn from Canal Breakwater Light 4 south to the shoreline.

4. In § 80.145, paragraph (c) is revised to read as follows:

§ 80.145 Race Point, MA to Watch Hill, RI.

(c) A line drawn from Sakonnet Breakwater Light 2 tangent to the southernmost part of Sachuest Point charted in approximate position latitude 41°28.5' N. longitude 71°14.8' W.

5. In § 80.305, paragraphs (h) and (i) are revised to read as follows:

§ 80.305 Watch Hill, RI to Montauk Point, NY.

(h) A line drawn from Threemile Harbor West Breakwater Light to Threemile Harbor East Breakwater Light.

(i) A line drawn from Montauk West Jetty Light 1 to Montauk East Jetty Light 2.

6. In § 80.310, paragraph (a) is revised to read as follows:

§ 80.310 Montauk Point, NY to Atlantic Beach, NY.

(a) A line drawn from the Shinnecock Inlet East Breakwater Light to Shinnecock Inlet West Breakwater Light 1.

7. In § 80.320, paragraphs (a), (b), and (c) are revised to read as follows:

§ 80.320 Sandy Hook, NJ to Cape May, NJ.

(a) A line drawn from Shark River Inlet North Breakwater Light 2 to Shark River Inlet South Breakwater Light 1.

(b) A line drawn from Manasquan Inlet North Breakwater Light 4 to Manasquan Inlet South Breakwater Light 3.

(c) A line drawn from Barnegat Inlet North Breakwater Light 4A to the seaward extremity of the submerged Barnegat Inlet South Breakwater; thence

along the submerged breakwater to the shoreline.

8. In § 80.505, paragraphs (a) and (b) are revised to read as follows:

§ 80.505 Cape Henlopen, DE to Cape Charles, VA.

(a) A line drawn from the seaward extremity of Indian River Inlet North Jetty to Indian River Inlet South Jetty Light.

(b) A line drawn from Ocean City Inlet Light 6, 225° true across Ocean City Inlet to the submerged south breakwater.

9. In § 80.520, paragraph (a) is revised to read as follows:

§ 80.520 Cape Hatteras, NC to Cape Lookout, NC.

(a) A line drawn from Hatteras Inlet Lookout Tower 255° true to the eastern end of Ocracoke Island.

10. In § 80.525, paragraphs (d) and (f) are revised to read as follows:

§ 80.525 Cape Lookout, NC to Cape Fear, NC.

(d) A line drawn from the southeasternmost extremity on the southwest side of New River Inlet at latitude 34°31.5' N. longitude 77°20.6' W. to the seaward tangent of the shoreline on the northeast side on New River Inlet.

(f) A line drawn from the seaward extremity of the jetty on the northeast side of Masonboro Inlet to the seaward extremity of the jetty on the southeast side of the Inlet.

11. In § 80.712, paragraphs (a) and (f) are revised to read as follows:

§ 80.712 Morris Island, SC to Hilton Head Island, SC.

(a) A line drawn from the easternmost tip of Folley Island to the abandoned lighthouse tower on the northside of Lighthouse Inlet; thence west to the shoreline of Morris Island.

(f) A line drawn from the westernmost extremity of Bull Point on Capers Island to Port Royal Sound Channel Range Rear Light, latitude 32°13.7' N. longitude 80°36.0' W.; thence 259° true to the easternmost extremity of Hilton Head at latitude 32°13.0' N. longitude 80°40.1' W.

12. In § 80.727, paragraphs (d) and (g) are revised to read as follows:

§ 80.727 Cape Canaveral, FL to Miami Beach, FL.

(d) A north-south line (longitude 80°09.7' W.) drawn across St. Lucie Inlet.

(g) A line drawn across the seaward extremity of the Boynton Inlet Jetties.

13. In § 80.735, paragraphs (a) and (c) are revised to read as follows:

§ 80.735 Miami, FL to Long Key, FL.

(a) A line drawn from the southernmost extremity of Fisher Island 212° true to the point latitude 25°45.2' N. longitude 80°08.6' W. on Virginia Key.

(c) A line drawn from Cape Florida Light to Biscayne Channel Light 8; thence to the northernmost extremity on Soldier Key.

14. Section 80.740 is revised to read as follows:

§ 80.740 Long Key, FL to Cape Sable, FL.

A line drawn from the radar dome charted on Long Key at approximate position latitude 24°48.8' N longitude 80°49.6' W. to Long Key Light 1; thence to Arsenic Bank Light 1; thence to Arsenic Bank Light 2; thence to Sprigger Bank Light 5; thence to Schooner Bank Light 6; thence to Oxfoot Bank Light 10; thence to East Cape Light 2; thence through East Cape Daybeacon 1A to the shoreline at East Cape.

15. In § 80.745, paragraph (a) is revised to read as follows:

§ 80.745 Cape Sable, FL to Cape Romano, FL.

(a) A line drawn following the general trend of the mainland, highwater shoreline from Cape Sable at East Cape to Little Shark River Light 1; thence to westernmost extremity of Shark Point; thence following the general trend of the mainland, highwater shoreline crossing the entrances of Harney River, Broad Creek, Broad River, Rodgers River First Bay, Chatham River, Huston River, to the shoreline at coordinate latitude 25°41.8' N. longitude 81°17.9' W.

16. In § 80.748, paragraph (d) is revised to read as follows:

§ 80.748 Cape Romano, FL to Sanibel Island, FL.

(d) A line from the seaward extremity of Gordon Pass South Jetty 014° true to the shoreline at approximate coordinate latitude 26°05.7' N. longitude 81°48.1' W.

17. In § 80.750, paragraph (k) is revised to read as follows:

§ 80.750 Sanibel Island, FL to St. Petersburg, FL.

(k) A line drawn from the northernmost extremity of Mullet Key across Bunces Pass and South Channel to Pass-a-Grille Channel Light 8; thence to Pass-a-Grille Channel Daybeacon 9; thence to the southwesternmost extremity of Long Key.

18. In § 80.753, paragraph (d) is revised to read as follows:

§ 80.753 St. Petersburg, FL to the Anclote, FL.

(d) A line drawn from the northernmost extremity of Honeymoon Island to Anclote Anchorage South Entrance Light 7; thence a straight line through Anclote River Cut B Range Rear Light to the shoreline.

19. In § 80.757, paragraphs (d) and (h) are revised to read as follows:

§ 80.757 Suncoast Keys, FL to Horseshoe Point, FL.

(d) A north-south line drawn through the Cross Florida Barge Canal Daybeacon 48 across the canal.

(h) A north-south line drawn through Suwannee River Wadley Pass Channel Daybeacons 30 and 31 across the Suwannee River.

20. In § 80.805, paragraph (c) is revised to read as follows:

§ 80.805 Rock Island, FL to Cape San Blas, FL.

(c) A line drawn from St. Mark's (Range Rear) Light to St. Mark's Channel Light 11; thence to the southernmost extremity of Live Oak Point; thence in a straight line through Shell Point Light to the southernmost extremity of Ochlockonee Point; thence to Bald Point along longitude 84°20.5' W.

21. In § 80.810, paragraphs (a), (b) and (g) are revised to read as follows:

§ 80.810 Cape San Blas, FL to Perdido Bay, FL.

(a) A line drawn from St. Joseph Bay Entrance Range A Rear Light through St. Joseph Bay Entrance Range B Front Light to St. Joseph Point.

(b) A line drawn across the mouth of Salt Creek as an extension of the general trend of the shoreline to continue across the inlet to St. Andrews sound in the middle of Crooked Island.

(g) An east-west line drawn from Fort McRee Leading Light across the Pensacola Bay Entrance along latitude 30°19.5' N.

22. In § 80.815, paragraph (b) is revised to read as follows:

§ 80.815 Mobile Bay, AL to the Chandeleur Island, LA.

(b) A line drawn from Mobile Point Light to Dauphin Island Channel Light No. 1 to the eastern corner of Fort Gaines at Pelican Point.

23. In § 80.825, paragraphs (b) and (c) are revised to read as follows:

§ 80.825 Mississippi Passes, LA.

(b) A line drawn from coordinate latitude 29°21.5' N. longitude 89°11.7' W. following the general trend of the seaward, highwater shoreline in a southeasterly direction to coordinate latitude 29°15.3' N. longitude 89°06.5' W.; thence to coordinate latitude 29°13.3' N. longitude 89°01.7' W. located on the northwest bank of North Pass.

(c) A line drawn from coordinate latitude 29°13.0' N. longitude 89°01.3' W., to coordinate latitude 29°12.7' N. longitude 89°00.9' W.; thence to coordinate latitude 29°10.6' N. longitude 88°59.8' W.; thence to coordinate latitude 29°03.5' N. longitude 89°03.7' W.; thence to Mississippi River South Pass East Jetty Light 4.

24. In § 80.830, paragraphs (c), (e) and (h) are revised to read as follows:

§ 80.830 Mississippi Passes, LA to Point Au Fer, LA.

(c) An east-west line drawn from the westernmost extremity of Grand Terre Islands in the direction of 194° true to the Grand Isle Fishing Jetty Light.

(e) A line drawn from the westernmost extremity of the Timbalier Island to the easternmost extremity of Isles Dernieres.

(h) A line drawn on an axis of 103° true through Taylors Bayou Entrance Light 2 across the entrances to Jack Stout Bayou, Taylors Bayou, Pelican Pass, and Bayou de West.

25. In § 80.835, paragraphs (a) through (f) are revised to read as follows:

§ 80.835 Point Au Fer, LA to Calcasieu Pass, LA.

(a) A line drawn from Point Au Fer to Atchafalaya Channel Light 34, to Point Au Fer Reef Light 33; thence to

Atchafalaya Bay Pipeline Light D latitude 29°25.0' N. longitude 91°31.7' W.; thence to Atchafalaya Bay Light 1 latitude 29°25.3' N. longitude 91°35.8' W.; thence to South Point.

(b) Lines following the general trend of the highwater shoreline drawn across the bayou and canal inlets from the Gulf of Mexico between South Point and Calcasieu Pass except as otherwise described in this section.

(c) A line drawn on an axis of 140° true through Southwest Pass Vermillion Bay Light 4 across Southwest Pass.

(d) A line drawn across the seaward extremity of the Freshwater Bayou Canal Entrance Jetties.

(e) A line drawn from Mermentau Channel East Jetty Light 6 to Mermentau Channel West Jetty Light 7.

(f) A line drawn from the radio tower charted in approximate position latitude 29°45.7' N. longitude 93°06.3' W. 115° true across Mermentau Pass.

26. In § 80.845, paragraph (a) is revised to read as follows:

§ 80.845 Galveston, TX to Freeport, TX.

(a) A line drawn from Galveston North Jetty Light 6A to Galveston South Jetty Light 5A.

27. In § 80.850, paragraph (c) is revised to read as follows:

§ 80.850 Brazos River, TX to the Rio Grande, TX.

(c) A line drawn from the seaward tangent of Matagorda Peninsula at Decros Point to Matagorda Light.

28. Section § 80.1110 is revised to read as follows:

§ 80.1110 San Diego Harbor, CA.

A line drawn from Zuniga Jetty Light "V" to Zuniga Jetty Light "Z"; thence to Point Loma Light.

27. In § 80.1135, paragraph (a) is revised to read as follows:

§ 80.1135 San Pedro Bay—Anaheim Bay, CA.

(a) A line drawn across the seaward extremities of the Anaheim Bay Entrance Jetties; thence to Long Beach Breakwater East End Light 1.

28. Section 80.1160 is revised to read as follows:

§ 80.1160 Ventura Marina, CA.

A line drawn from Ventura Marina South Jetty Light 6 to Ventura Marina Breakwater South Light 3; thence to Ventura Marina North Jetty Light 7.

29. Section 80.1225 is revised to read as follows:

§ 80.1225 Santa Cruz Harbor, CA.

A line drawn from the seaward extremity of the Santa Cruz Harbor East Breakwater to Santa Cruz Harbor West Breakwater Light.

30. Section 80.1230 is revised to read as follows:

§ 80.1230 Pillar Point Harbor, CA.

A line drawn from Pillar Point Harbor Light 6 to Pillar Point Harbor Entrance Light.

31. Section 80.1275 is revised to read as follows:

§ 80.1275 Crescent City Harbor, CA.

A line drawn from Crescent City Entrance Light to the southeasternmost extremity of Whaler Island.

32. Section 80.1305 is revised to read as follows:

§ 80.1305 Chetco River, OR.

A line drawn across the seaward extremities of the Chetco River Entrance Jetties.

33. Section 80.1310 is revised to read as follows:

§ 80.1310 Rogue River, OR.

A line drawn across the seaward extremities of the Rogue River Entrance Jetties.

34. Section 80.1315 is revised to read as follows:

§ 80.1315 Coquille River, OR.

A line drawn across the seaward extremities of the Coquille River Entrance Jetties.

35. Section 80.1320 is revised to read as follows:

§ 80.1320 Coos Bay, OR.

A line drawn across the seaward extremities of the Coos Bay Entrance Jetties.

36. Section 80.1325 is revised to read as follows:

§ 80.1325 Umpqua River, OR.

A line drawn across the seaward extremities of the Umpqua River Entrance Jetties.

37. Section 80.1330 is revised to read as follows:

§ 80.1330 Siuslaw River, OR.

A line drawn across the seaward extremities of the Siuslaw River Entrance Jetties.

38. Section 80.1340 is revised to read as follows:

§ 80.1340 Yaquina Bay, OR.

A line drawn across the seaward extremities of the Yaquina Bay Entrance Jetties.

39. Section 80.1355 is revised to read as follows:

§ 80.1355 Tillamook Bay, OR.

A line drawn across the seaward extremities of the Tillamook Bay Entrance Jetties.

40. Section 80.1375 is revised to read as follows:

§ 80.1375 Grays Harbor, WA.

A line drawn across the seaward extremities (above water) of the Grays Harbor Entrance Jetties.

41. Section 80.1460 is revised to read as follows:

§ 80.1460 Kahului Harbor, Maui, HI.

A line drawn from Kahului Harbor Entrance Breakwater Light 1 to Kahului Harbor Entrance Breakwater Light 2.

Dated: March 3, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Office of Navigation.

[FR Doc. 86-4917 Filed 3-5-86; 4:45 pm]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-85-18]

Drawbridge Operation Regulations; Bayou LaBatre, AL

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of Bayou LaBatre and the Alabama Highway Department (AHD), the Coast Guard is changing the regulation governing the operation of the lift span bridge on St. Hwy. 188 over Bayou LaBatre, mile 2.3 at Bayou LaBatre, Mobile County, Alabama, by permitting the draw to remain closed from 8 p.m. to 4 a.m. daily, and from 7:00-8:00 a.m. and 2:15-3:30 p.m. from September 15 through June 15. The bridge will open on signal outside these hours. Presently, the draw is closed from 7:30-8:30 a.m. and 3-4:30 p.m. Monday through Friday except Federal holidays, throughout the year. This change is being made because there have been no openings for navigation between 8 p.m. and 4 a.m. since 1955, and because there is no need to close the draw on weekdays while area schools are not in session. This action will relieve the bridge owner of the burden of having a person available at the bridge during the closure periods, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Perry Haynes, Chief, Bridge

Administration Branch, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On November 21, 1985 the Coast Guard published a proposed rule (50 FR 48099) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a public notice dated 3 December 1985. In each notice interested persons were given until 6 January 1986 to submit comments.

Drafting Information

The drafters of this regulation are Perry Haynes, project officer, and Lieutenant Commander James Vallone, project attorney.

Discussion of Comments

Three letters were received in response to the public notice. Two offered no objections to the proposal. The third, from a small shipbuilding and repair facility located upstream of the bridge, suggested alternative bridge closure periods to permit its employees uninterrupted use of the bridge. In a subsequent meeting with the applicants, shipyard representatives stated acceptance of the proposed closure periods.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this regulation has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that the regulation merely revises the rush hour bridge closure periods to accommodate the revised school bus schedule and permits the bridge to remain closed to navigation during nighttime hours when there have been no bridge openings for navigation since 1955. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 117—DRAWBRIDGE
OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; and 49 CFR 146(c)(5) and 33 CFR 1.05-1(g).

2. Section 117.103 is revised to read as follows:

§ 117.103 Bayou LaBatre.

The draw of the S188 bridge, mile 2.3 at Bayou LaBatre, shall open on signal; except that, the draw need not be opened from 8 p.m. to 4 a.m., and from September 15 through June 15 from 7:00 to 8:00 a.m. and 2:15 to 3:30 p.m. Monday through Friday except holidays.

Dated: February 21, 1986.

Clyde T. Lusk, Jr.,

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

[FR Doc. 86-4913 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION**38 CFR Part 36****Decrease in Maximum Permissible
Interest Rates on Guaranteed
Manufactured Home Loans, Home and
Condominium Loans, and Home
Improvement Loans**

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: March 3, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), title 38, United States Code, to establish maximum interest rates for

manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

**Regulatory Flexibility Act/Executive
Order 12291**

For the reasons discussed in the May 7, 1981 Federal Register, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, and Veterans.

Approved: February 28, 1986.

Everett Alvarez, Jr.,

Acting Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date. (38 U.S.C. 1819(f))

(1) Effective March 3, 1986, 12 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective March 3, 1986, 11½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective March 3, 1986, 11½ percent simple interest per annum for a loan which will finance the

simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9½ per centum per annum, effective March 3, 1986, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 9½ per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 9¼ per centum per annum, effective March 3, 1986, the interest rate on any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 9¼ per centum per annum. (38 U.S.C. 1803(c)(1))

(c) Effective March 3, 1986, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11 per centum per annum on the unpaid principal balance. (38 U.S.C. 1803(c)(1))

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to \$33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to \$27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 9½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear

interest at the rate of 11 percent per annum. (38 U.S.C. 1811 (d)(1) and (2)(A))

[FR Doc. 86-4891 Filed 3-5-86; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 65

[Docket No. 9-85-31, FRL-2972-3]

Air Quality Implementation Plan: Delayed Compliance Order: Weiser Lock, Huntington Beach, CA

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA hereby issues an administrative order to Weiser Lock. The Order requires the company to bring volatile organic compounds emissions from its metal parts coating lines in Huntington Beach, California into compliance with the South Coast Air Quality Management District's Rule 1107(6)(B), part of the Federally approved California State Implementation Plan (SIP). The SIP requires final compliance with Rule 1107(6)(B) by January 1, 1985. Because the company is unable to comply with these regulations at this time, the Order establishes an expeditious schedule requiring final compliance by May 1, 1986. Source compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation of the SIP regulations covered by the Order. The proposed Order was published in the *Federal Register* on November 7, 1985. The proposed Order was agreed to and signed by the source, and was signed by the Administrator of EPA.

EFFECTIVE DATE: March 6, 1986.

FOR FURTHER INFORMATION CONTACT: Abra Bennett, Compliance Section, Air Management Division, U.S. EPA, 215 Fremont Street, San Francisco, California 94105 at (415) 974-8057.

SUPPLEMENTARY INFORMATION: Weiser Lock operates eight metal parts coating lines in Huntington Beach, California. The Order addresses volatile organic compounds (VOC) emissions from the coating lines at this facility, which are subject to the South Coast Air Quality Management District's (SCAQMD) Rule 1107, which is part of the Federally approved California SIP. Rule 1107 limits the VOC emissions from manufactured metal parts and products coatings. Rule 1107(6) specifies the date by which Weiser Lock must be in compliance with

the Rule, January 1, 1985. The Order requires final compliance with Rule 1107 by September 1, 1986 by conversion to the use of complying liquid coatings or powder coatings, or by November 1, 1986 by means of the installation of an add-on control device. Weiser Lock is to continue to evaluate its compliance options until December 31, 1985, at which time it will decide whether it will be able to convert to the use of complying coatings by September 1, 1986, or must purchase an add-on control device consisting of either a thermal or catalytic incinerator or carbon adsorption system and reach final compliance by November 1, 1986. The source has consented to the terms of this Order.

The proposed Order satisfies the applicable requirements of section 113(d) of the Clean Air Act (the Act). This order being issued, source compliance with its terms will preclude further EPA enforcement action under section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (section 304) is similarly precluded. However, Weiser Lock has been notified that its failure to achieve final compliance by the date specified in the Order may result in a requirement to pay a noncompliance penalty under section 120 of the Act.

During a 30 day comment period following the publication of the proposed Order in the *Federal Register* on November 7, 1985, no comments were received, nor were there any requests for a public hearing on the matter.

List of Subjects in 40 CFR Part 65

Air pollution control.

Dated: January 30, 1986.

Judith E. Ayres,

Regional Administrator, Region IX.

[FR Doc. 86-3830 Filed 3-5-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 298

Vessel Obligation Guarantees; Vessel Requirements; United States Construction

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule under statutory authority in Title XI of the Merchant Marine Act, 1936, as amended (Act). This rule effects a change in policy concerning the so-called "Buy American" requirement. MARAD now imposes this requirement through its regulations for obtaining financial assistance in the form of Government guarantees of debt instruments (obligations). Shipowners issue these obligations to finance the construction of U.S.-flag vessels in U.S. shipyards. By amending its regulation, MARAD will allow owners of new U.S.-flag commercial ships to purchase vessels containing less costly and/or higher quality foreign-manufactured materials and components so that these ships can be more competitive with foreign flag carriers and more efficient in domestic trade operation.

DATE: This rule is effective April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Norman O. Hammer, Acting Director, Office of Naval Architecture and Engineering, (202) 426-5733, or Mr. John M. Hotelling, Staff Project Engineer, (202) 426-5727. The mailing address for both is room 2103, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

Background

Title XI of the Act (46 U.S.C. § 1271-1279) provides authority for MARAD to give financial assistance to shipowners who are U.S. citizens and who construct vessels in U.S. shipyards and document them under U.S. laws. This financial assistance is in the form of a full faith and credit guarantee by the Government of each obligation that the shipowner undertakes to finance the construction of one or more vessels. If the shipowner defaults on the payment of principal or interest on these obligations at any time, the Government guarantees payment, in full, of the unpaid principal and interest. The existence of the guarantees generally allows owners of eligible vessels to obtain favorable interest rates on the obligations, that are secured by the vessels, for a period of up to 25 years. Under the Act, obligations may not exceed an aggregate of 87½ percent of the cost of these vessels, although the actual limit that MARAD will approve is 75 percent of the cost.

Buy American laws, policies and regulations that are implemented by government agencies were developed with the intent of protecting segments of the U.S. economy from excessive foreign competition, enabling domestic

industries to be self-sustaining and ensuring an industrial base that is adequate for defense mobilization purposes. While there is no Buy American provision in Title XI of the Act, it has been MARAD's longstanding policy that one of the conditions imposed on shipowners for receipt of Title XI guarantees is compliance with a Buy American requirement. That requirement is modeled on a provision in the Act for the award of construction differential subsidy (CDS), a program the MARAD has administered. This policy has been effected through a Title XI program regulation at 46 CFR 298.11. It provides, in part, that any vessel built with Title XI guarantees must be constructed, reconstructed or reconditioned entirely in a U.S. shipyard and, "where practicable, only from articles, materials and supplies of the growth, production or manufacture of the United States."

MARAD verifies compliance with this regulation through examination of vessel specifications, on-site inspections of the vessel and information received from interested parties, e.g., competing United States manufacturers of marine equipment and supplies. If a shipowner elects to use foreign materials or components, the cost of these items is excluded from the actual cost figure that is used as a basis for determining the maximum amount of the guarantees, unless the Secretary approves a waiver. A waiver may be based only on a finding either that the materials or articles are not available for purchase in the United States, or that use of domestically produced material or articles would cause an unreasonable delay in the ship's construction (46 CFR 298.11(a)). MARAD experience suggests that less than 10 percent of all directly purchased materials that are now used in vessels financed with Title XI guarantees are of foreign origin.

In recent years, the 100 percent Buy American requirement has caused problems for shipbuilders. It has become increasingly onerous to comply with this requirement, in part because the domestic marine supplier industry is shrinking. The reduced number of commercial vessels that are built in the United States has, in some instances, not provided a market of sufficient size to make it profitable for some domestic companies to engage in the development and manufacture of various types of marine equipment (e.g., slow-speed marine diesel engines, lifeboat engines). The result has been reduced competition, higher costs, and long delivery delays.

In some other instances, American manufacturers that traditionally geared

their products to domestic markets, in which shipbuilding is only a minor part, have been unable or unwilling to produce products with the quality of foreign-built equipment, and shipbuilders have suffered a competitive penalty. Some items manufactured by domestic marine equipment companies are technically inferior to the less expensive, more sophisticated marine equipment developed by other shipbuilding nations of the world. For instance, some foreign companies produce superior ship navigation communications, and propulsion systems.

Further, sometimes an American marine equipment manufacturer becomes the sole source for a product required to have 100 percent domestic content, e.g., some medium-speed diesel engines, anchors and chains, radar, and controllable pitch propellers. Moreover, decreasing market demand for some domestic items tends to perpetuate these monopolies as long as 100 percent domestic content is required, and precludes the development of a competitive marketplace.

In summary, MARAD has concluded that the continuation of the present 100 percent Buy American regulation, which unduly inhibits the use of international marine products, would appear to be harmful to the U.S. shipbuilding industry. A less restrictive material purchasing regulation is desirable for U.S.-flag ship purchasers with Title XI guarantees as well as for domestic shipbuilders. The result will be a move toward producing more efficient, higher quality ships at a reduced cost of construction. The Title XI ships can be more competitive with foreign flag vessels in serving the foreign trades and more efficient in domestic trade operations, resulting in lower freight rates that would be reflected in the cost of both domestic and foreign goods to the U.S. consumer. Lower shipyard costs and prices can offer a chance for domestic shipyards to increase sales.

Notice of Proposed Rulemaking (NPRM)

In a NPRM published in the Federal Register on March 21, 1985 (50 FR 11398), MARAD proposed to relax and Buy American requirements under the Title XI program by adopting one of four alternatives. MARAD initiated this rulemaking with the intention of benefitting U.S. shipowners and shipbuilders by providing an incentive to build more efficient ships in U.S. shipyards, with the highest quality materials and state-of-the-art components, at a significantly reduced cost.

The four alternatives presented in the NPRM were:

- (1) Require that each item of equipment be assembled in the United States.
- (2) Allow shipyards to use foreign materials and components, not to exceed 50 percent of the total cost of the materials, and also allow United States marine equipment manufacturers to include foreign content in domestically produced equipment, not to exceed 50 percent of the cost of the materials in that equipment.
- (3) Allow shipyards to use foreign materials and components, not to exceed 75 percent of the total cost of the materials, and allow United States marine equipment manufacturers to include foreign content in domestically produced equipment, not to exceed 75 percent of the cost of the materials in that equipment.
- (4) Eliminate the Buy American requirements.

In the NPRM preamble's discussion of the alternatives, MARAD rejected Alternative 1 because it would be the most difficult to administer and unnecessarily costly, and isolation and assignment of the assembly process to domestic companies would be insufficient and costly.

The discussion in the NPRM of the economic impact of these alternatives contained estimates of annual savings to shipowners and shipbuilders from the adoption of any one of the other three alternatives. The estimated savings would range from about \$22 to about \$33 million, dependent on the alternative selected. There could be a negative impact on the domestic marine component supplier industry ranging from an estimate of up to \$66 to \$150 million, dependent on which alternative was selected. However, MARAD believes that, for various business reasons, the level of foreign material purchases is not likely to exceed 40 percent of material cost, irrespective of the choice of alternatives. These estimates are based on Title XI vessel orders at the fiscal 1984 level of \$331 million.

Summary of Comments

MARAD received comments from 16 interested persons. Some of the comments were forwarded by members of Congress, to whom they had been directed. Six commenters opposed any relaxation of the Title XI Buy American requirements. Five favored a relaxation that would allow up to 50 percent foreign material and componentry. Five commenters argued for the total

elimination of Buy American requirements.

Comments Opposing Any Relaxation of the 100 Percent

The comments opposing any relaxation of MARAD's existing requirements were submitted by: equipment suppliers; an individual shipowner that has participated in the Title XI program; and an association representing shipyards that build and repair barges for the domestic water carrier industry, vessels for the offshore service industry, towing and fishing vessels. A summary of these comments and MARAD's responses are as follows:

- A commenter argued that relaxation of the 100 percent Buy American requirement is contrary to the policy set forth in the Act to ensure an adequate domestic industrial base for defense mobilization purposes.

The Act declares a policy to foster the development and encourage the maintenance of a "merchant marine" that will be adequate to serve the nation's needs in the conduct of foreign and domestic commerce, that is capable of serving as a naval and military auxiliary in time of war or national emergency and that is supplemented by an adequate shipyard base. An initiative by MARAD that will encourage the construction of new vessels in U.S. shipyards, with state-of-the-art technology and at significantly lower cost, is certainly consistent with the commercial aspect of the policy in the Act and with ensuring an adequate domestic industrial base for defense mobilization purposes.

- Another argued that since shipbuilding involves more than the assembly of components, to truly have a shipbuilding base, the United States must retain the domestic capability to supply materials and essential equipment.

MARAD disagrees with the contention that to have a shipbuilding base, a domestic capability to supply all materials and essential equipment is required. MARAD anticipates that these items will be available to the shipyards through domestic companies, foreign subsidiaries and affiliates of domestic companies.

- Several commenters asserted that the Government should not guarantee loans that provide benefits to foreign manufacturing companies.

MARAD is convinced that expanding the market for Title XI vessel equipment to include foreign sources of supply would principally benefit U.S. shipowners and shipbuilders (and ultimately consumers) because they would be able to purchase products that

are either lower in cost or of higher quality, or that possess both advantages.

- Another commenter stated that, even if there were no U.S. suppliers, there, nevertheless, would be the prospect of a sole source foreign supplier with the ability to control pricing.

MARAD believes that a sole source supplier problem is far less of a prospect where the market includes foreign companies. MARAD is hopeful that this rule, by expanding the supplier base for equipment eligible for Title XI guarantees, will foster competition and generate new Title XI shipbuilding activity.

- Several commenters argued that, while the purpose of opening our markets to foreign competition is to keep American industry competitive, it is impossible to be competitive when the foreign competition is receiving direct and indirect assistance from their governments and while the U.S. maritime industry suppliers receive no such assistance. Moreover, they commented that since there are items of vessel equipment produced in the U.S. that are technically competitive with any available in the world, a price advantage would be the only reason for purchasing such items foreign.

MARAD recognizes that some foreign governments provide assistance to various industries that enhances their advantage in competing with domestic manufacturers in the U.S. market. It also agrees that price alone may dictate the foreign purchase of some vessel equipment items that are of no better quality than those of domestic origin. MARAD believes that it also has a responsibility to assist and promote the U.S. merchant marine. It believes that it will benefit the merchant marine by removing ship construction restrictions that discourage competitive pricing and quality. Moreover, it is the policy of this Administration to approach trade issues through negotiation, rather than with legislation and regulations that may help segments of U.S. industry, but hurt the general economy. Increased competition will result in better quality domestic and foreign goods. It will encourage market place choices that are based on relative cost and quality, regardless of the origin of the product.

- A commenter also alleged that relaxation of the Buy American policy would "shrink the skilled manufacturing labor base" and "reduce the U.S. labor content (American jobs)" in the supplier industry, instead of creating the additional jobs in the domestic shipbuilding sector that MARAD

predicts will result from increased orders.

MARAD recognizes that this rule could (but is not expected to) result in the loss of domestic supplier industry jobs, and estimates that resulting increased shipyard and competitive activity, in general, will create additional (but fewer) jobs in the shipbuilding sector. This net loss of jobs must be viewed in light of an expected reduction in domestic shipbuilding costs of as much \$33 million.

- A commenter criticized MARAD's proposal to bring its Buy American regulation "into line" with the Navy's Buy American requirements for military vessels and the Coast Guard's for coastwise (Jones Act) trade documentation, since the commenter believes those requirements do not concern the guarantee of loans for commercial ventures.

MARAD disagrees with this contention. First, it believes that its action to harmonize its rule with others will benefit shipowners in their compliance with a variety of similarly applicable shipping regulations. Further, MARAD believes that the Federal government is entitled to impose or remove conditions on the provision of financial assistance, whether it involves the total payment for Navy vessels or obligation guarantees for Title XI commercial vessels. Furthermore, many of the coastwise trade vessels referred to by the commenter are Title XI commercial vessels.

- Another commenter stated that any relaxation of the Buy American requirement would penalize shipowners who made commitments prior to this rulemaking. It argued that, in the past, it has built ships for the domestic trade with Title XI obligation guarantees and it elected to use foreign materials that were not subject to a waiver. Therefore, the cost of those foreign materials was not includable in the actual cost used as the basis for determining the maximum amount of guarantees. The commenter further contended that owners should be allowed to use foreign materials, but should not be allowed to use Title XI benefits to do so.

MARAD believes that the commenter's description of its prior purchases of better quality foreign materials, without benefit of guarantees, supports the agency's rationale in revising the requirements. The purchase of foreign goods should not be denied to shipowners when they may be superior in quality or lower in cost than domestic items. Moreover, if a shipowner is unable to lower costs through foreign purchases due to Title XI restrictions,

healthy competition will not develop. Again, MARAD intends to finance the construction of U.S. ships built with the highest quality, lowest cost equipment available in the international market. That is MARAD's primary purpose in revising its rule.

That commenter also submitted a cost analysis that reflected an even greater cost saving under three of the regulatory alternatives than that estimated by MARAD in its Preliminary Regulatory Impact Analysis (14.4% v. 8.5% for 50% foreign, 16.8% v. 9% for 75% foreign and 17.5% v. 10% for no Buy American requirements). However, the commenter rejected MARAD's conclusion that adoption of any of the alternatives to a 100 percent Buy American requirement will produce higher quality ships at lower cost.

MARAD's initial expectation of reduced ship prices was based upon its general experience with purchases of materials under the CDS program. For a major vessel type (e.g. oceangoing tanker), MARAD assumed that between 71 and 76 percent of the required material would be procured foreign if shipowners and builders were permitted to freely purchase from any source. There are certain materials for which there appears to be little or no savings available through foreign procurement. In those cases, American companies would be viable resources. On an overall basis, MARAD assumed foreign material prices to be about 70 percent of U.S. cost and allowed 10 percent of the foreign price as an additional cost for import duties and extra ocean freight.

By allowing for ocean freight costs, MARAD was more conservative in its consideration of potential savings to be achieved from anticipated foreign purchases. Therefore, the Preliminary Regulatory Impact Analysis for the NPRM reached a different conclusion than did the commenter. After isolating the elements that MARAD factored into the foreign cost and comparing it to the commenter's estimated costs, e.g., "0.77 for 0.65", a lower savings of only 9.15 percent is computed instead of 14.4 percent for materials that are 75 percent foreign in origin. A savings of 10.95 percent is computed instead of 16.8 percent for materials that are 94 percent foreign in origin.

MARAD attempted to analyze the percentage of foreign components presently being procured under Title XI construction and discounted the savings generated from that portion of the material. Its review of a number of Title XI projects suggested that presently less than 10 percent of all direct purchase materials presently come from foreign sources. It further concluded that it

would be unlikely that allowing guarantees for foreign material would reduce ship prices by much more than 10 percent.

- Another commenter compared MARAD's proposal to Coast Guard's NPRM allowing government-subsidized foreign laboratories to carry out preapproval testing and inspection of lifesaving equipment. It claimed that both would benefit foreign manufacturers while harming domestic suppliers.

As stated in the NPRM, this rule could have some adverse effects on the ability of some domestic businesses to compete with foreign businesses in the United States marine equipment market. However, MARAD believes a less restrictive rule is desirable for U.S.-flag ship purchasers with Title XI guarantees, as well as for domestic shipbuilders. The result will be a move toward producing more efficient, higher quality ships at a reduced cost of construction.

Comments on the 50 and 75 Percent Alternatives

Five commenters favored the alternative that would allow up to 50 percent foreign material content on Title XI vessels. Two of these, representing shipbuilding interests, cited the need for an adequate defense mobilization base. However, they stated a willingness to accept this alternative, or a modification thereof, as a compromise, rather than see the total demise of the Buy American requirement. Summaries of these comments, with MARAD's responses, follow:

- One commenter claimed that Coast Guard's recent rulemaking to eliminate the 50 percent domestic component requirement for vessels documented for the coastwise trade "was a unilateral move made without a thorough evaluation of its impact, and should not be taken as precedence."

The Coast Guard observed the notice and public comment requirements of the Administrative Procedure Act (5 U.S.C. 553) in promulgating its rule. The subject Coast Guard rule, which eliminated the requirement that at least 50 percent of the cost of all machinery and components of a vessel, excluding an integral part of the hull or superstructure, be procured in the United States for the vessel to be considered "built in the United States" and, therefore, qualified for coastwise trade documentation (49 FR 4944; February 9, 1984). MARAD affirms the belief that it will benefit shipowners and shipbuilders in regulatory compliance if agencies strive to achieve some

uniformity in the rules that affect their industry.

• One commenter asserted that, in the interests of national security, 100 percent of marine equipment should remain of U.S. origin but that U.S. marine equipment be allowed to include foreign content of up to 50 percent in domestically produced equipment. A second commenter also supported the 50 percent option on the ground that "at least the American businesses have a 50/50 chance of survival in an already highly competitive environment." This commenter criticized the 75 percent option on the grounds that, if foreign competition is allowed at the rate of 25 percent over the 50 percent option, small supplier businesses possibly could be crippled or lost. Under the first commenter's recommendation, shipowners would not be allowed to use foreign equipment covered by the guarantees, even pursuant to a waiver. That commenter acknowledged, however, that "American firms must become more competitive in terms of both price and quality and this is occurring in procurements of equipment of naval ships."

A requirement that 100 percent of marine equipment be of U.S. origin, with allowable foreign content of up to 50 percent, would result in items that are foreign manufactured, yet sent for assembly in the United States. As we stated in the NPRM, MARAD has concluded that this would make "domestic" products available that are comparable to the foreign-made products, but at an artificially and unreasonably high cost.

One of the other three commenters favoring the 50 percent alternative states that it accepts the eventual logical extension of the 50 percent requirement to total elimination of the Buy American requirement, i.e., a two-stage relaxation of Buy American. It stated that:

"Our membership supports a conservative first-step approach during which time effects can be carefully monitored. If, after a period of experience, it can be observed that the benefits are approximately as projected in the Notice of Proposed Rulemaking and that the domestic losses were accurately predicted, consideration could be given to a further relaxation of the Buy American Requirement."

MARAD does not believe that a delay in implementation will assist the domestic marine equipment industry to become more competitive with foreign suppliers. A delay would perpetuate the problems of high cost and inferior quality for ship purchasers while only postponing the inevitable for domestic suppliers that cannot compete in an unregulated market. Presently, there

exist viable American manufacturers that gear their products to domestic maritime markets, produce quality products and operate in highly competitive markets (e.g. pumps, oil rig gear, motors, refrigeration equipment, satellite navigation gear). These manufacturers continue to exist even with the downturn in domestic shipping. MARAD believes that this already competitive group is fully capable of operating without delays or adjustments in the effective date of a final rule.

With respect to the comment opposing waivers for foreign equipment covered by guarantees, MARAD has granted waivers only after making regulatorily required findings, based on a careful review of all relevant facts. Adopting this recommendation would diminish the benefit of allowing up to 50 percent foreign material content by imposing further restrictions on procurement under the Title XI program that would add to shipbuilding costs.

• One commenter urged retention of the existing requirement that 100 percent of the hull construction steel be acquired from U.S. steel mills when that steel is reasonably available.

MARAD does not believe that there is sufficient justification to support the commenter's position that there be a requirement for use of 100 percent domestic steel. The requirement to fabricate and assemble the steel hull and superstructure in a U.S. shipyard will remain a requirement, but the source of the basic steel will be open to full competition.

• Another commenter urged that elimination of the Buy American requirement should be prospective, i.e., applicable only to guarantees issued after this amendment becomes effective. The commenter also urged a delay in implementation of any rule. Two reasons were cited: (1) To give the domestic marine equipment industry fair warning and time to become more competitive with foreign suppliers; and (2) to eliminate a "windfall" gain, in the form of a competitive advantage, for owners of those vessels under construction at the time of the rulemaking with guarantees that were issued prior to the effective date of the regulation.

As stated before, we do not believe that a delay or phase-in of a relaxation rule will assist suppliers in competing or result in the benefits that should accrue to Title XI shipowners. In response to the comment concerning "windfall gain," we recognize that retroactive application might bestow an unanticipated benefit on those that have already received guarantees, since it would reduce their capital costs, both

equity contribution and debt service on their total borrowings. MARAD agrees with the recommendation and, therefore, this rulemaking will have prospective application only, i.e., to letters of commitment issued after the effective date of this rule—30 days after the publication date. However, MARAD is providing for prospective application, primarily to avoid administrative complexities.

Comments Supporting Total Elimination

The five commenters supporting total elimination of Buy American requirements under the Title XI program include an association representing subsidized operators of U.S.-flag vessels, a domestic supplier of marine systems, a naval architecture and marine engineering firm, a law firm representing a foreign manufacturer of marine equipment, and a nonsubsidized U.S.-flag operator.

The association stated that complete elimination of restrictive procurement requirements will increase the quantity and lower the cost of U.S.-built ships, benefit ship operators and eventually benefit shippers and consumers. It argued that "vigorous competition has traditionally resulted in the best use of available resources and the greatest technological advancement. The restriction of competition has generally led to inefficiency and, eventually decay." It stated that lack of competition makes it difficult to negotiate reasonable delivery time with a vendor, and reasonable delivery time by suppliers is essential to efficient ship construction. While it acknowledged that there is some merit to the argument for maintaining domestic marine equipment manufacturing capability for national security reasons, that commenter noted that the U.S. Navy has a 50 percent domestic procurement requirement, and the U.S. Coast Guard has none. It concluded with the assessment that "ultimately, increased competition by equipment manufacturers could permit shipbuilders to construct modern, efficient ships at a reasonable cost and in a reasonable amount of time with state-of-the-art technology."

The domestic marine equipment supplier stated that the maritime construction industry can best be benefitted by a total elimination of prohibitions on the purchase of foreign components, so long as the hull and superstructure are fabricated in the United States and the vessel is assembled in the United States. The naval architecture and marine engineering firm agreed with the Coast

Guard's statement, in its final rule eliminating a Buy American test for coastwise trade documentation, that the laws were intended to protect the U.S. shipbuilding industry and not those industries that supply the shipbuilders. It believes that MARAD's estimate that, under this alternative, 40 percent of the total material purchase would be foreign could be correct initially. However, it believes that total would increase steadily to at least 75 percent as the shipyards and owners become familiar with the foreign products, "unless the domestic industries gear up to compete. In this case there would be a double benefit."

The foreign manufacturer of marine equipment stated that, where Title XI guarantees have been a crucial factor for building U.S.-flag vessels, the 100 percent Buy American requirement for equipment and materials has resulted in these vessels having either inferior or less technologically advanced features than similar foreign-flag vessels. Where comparable domestic origin items are available, they are substantially more expensive. That commenter stated that elimination of Buy American requirements would not only give U.S. shipowners the same flexibility as their foreign competition in selecting vessel equipment available on the international market, but would benefit domestic shipyards. The inability of the shipyards to offer the best and most cost efficient equipment, machinery and components available for Title XI vessels is creating a further burden on an already depressed industry. Improved procurement flexibility for the shipyards should improve their productivity and efficiency and possibly lead to lower prices, shorter construction times, and more technologically advanced ships.

With respect to the other alternatives offered by MARAD in the NPRM, that commenter agrees that a requirement that foreign source equipment be assembled by domestic firms would be unacceptably difficult and costly to administer and lead to inefficient and artificial manufacturing and production schemes. With respect to Alternatives 2 and 3 (50 percent and 75 percent allowance of foreign materials and equipment, respectively), that commenter believes that setting a maximum percentage of allowable foreign content, in terms of cost, poses a number of administrative problems and promotes the use of "creative accounting and questionable cost allocation decisions." That commenter cited Coast Guard's experience, prior to its 1984 rulemaking, in applying a 50 percent rule to determine whether a vessel was

"U.S.-built" for documentation purposes in the coastwise trade. It alleged that, from 1982, when the Coast Guard adopted its longstanding 50 percent guideline by regulation, until 1984, when it eliminated that provision, the regulation had generated so much confusion and so many differing interpretations that it was rarely enforced. The commenter predicts that adoption of a 50 percent or 75 percent foreign content limit for vessels built with Title XI guarantees would be similarly difficult to enforce and could not be effective without substantial administrative cost. That commenter concurs with MARAD's assessment that the level of foreign material and component purchase is not likely to exceed 40 percent of vessel cost under any of the alternatives proposed.

The nonsubsidized operator commented that eliminating Buy American requirements would most significantly assist the U.S. shipbuilding industry in becoming more cost competitive. It recommended that MARAD expand this proposal to its regulations governing the Capital Construction Fund (CCF), (46 CFR Part 390).

The main thrust of the arguments advanced by the commenters supporting total elimination of the Buy American requirement is that such action offers one major step toward the construction, by U.S. shipbuilders, of commercial vessels with state-of-the-art technology at a significant reduction in cost. MARAD agrees that the increased competition among marine equipment manufacturers and suppliers would greatly expand the choice of vessel equipment, accelerate deliveries to the U.S. shipyards, and shorten vessel construction times. The existing Buy American requirement for Title XI vessels has deterred some U.S. shipowners from obtaining the best equipment, either because the cost of superior foreign equipment would not be allowable in determining the maximum amount of guarantees, or because the cost of obtaining comparable equipment of domestic manufacture would be prohibitive.

In addition, MARAD concurs with the comment that there would be administrative problems in determining whether the vessel meets the allowable foreign content requirement under either alternative 2 or 3 and acknowledges that the Coast Guard's formal adoption of its 50 percent "rule of thumb" proved troublesome. MARAD would encounter the same "creative accounting and questionable cost allocation decision" problems.

In response to the recommendation concerning the CCF, MARAD cannot support application or extension of the Buy American proposal to the CCF, as that is a matter beyond the scope of this final rule.

Final Rule Decision

In reviewing the public comments on what was perceived as a very critical issue for the U.S. maritime industry, MARAD was impressed by the consensus that most segments of the domestic marine equipment industry cannot produce state-of-the-art shipboard equipment for delivery to U.S. shipyards at a price competitive with foreign manufacturers. Those commenters that would retain the existing Buy American policy, or adopt either the 50 or 75 percent alternative, or a modification of those alternatives, rely mainly on the national security justification and charges of unfair foreign competition in the form of direct and indirect foreign government assistance. Yet, none of these commenters has offered convincing arguments to support the contention either: (1) That the defense mobilization base will be significantly eroded by MARAD's total elimination of a Buy American requirement; or (2) that the domestic marine supplier industry can technically compete with foreign manufacturers "across the board."

Those commenters favoring the total elimination of a Title XI Buy American requirement have persuasively argued that the one strong element in significant improvement in domestic shipbuilding activity is vigorous competition among domestic and foreign marine equipment manufacturers for the Title XI vessel equipment market. It would promote the policy of the Act to foster the development and encourage the maintenance of an adequate merchant marine. MARAD believes that eliminating Title XI Buy American requirements now, rather than postponing this inevitable policy change, will provide an immediate incentive to build more efficient Title XI ships for operation in the domestic trade and more competitive ships for the foreign trade.

Since elimination of the Buy American requirement in a Federal guarantee program will generate shipments of foreign materials and equipment, MARAD will amend its Title XI agreements, consistent with its regulation at 46 CFR 381.7, with respect to the required carriage of at least 50 percent of the freight revenue and tonnage of cargo generated in privately owned U.S.-flag commercial vessels.

Applicable Laws and Regulations

This final rule has been evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policy and Procedures dated February 26, 1979 (DOT Order 2100.5). It is considered to be a major rule since it could (but is not expected to) have a maximum annual effect on the economy of \$100 million or more and have significant adverse effects on the ability of some domestic businesses in the United States marine equipment market. This estimate is based on the amount of Title XI financing guarantees for vessel construction which have totaled several hundred million dollars annually. In fiscal 1984, which was used as the base year for calculating the economic impact of the alternatives considered, the total construction cost for all vessels constructed with Title XI financing was \$331 million. Approximately one-half of that figure represented purchases of ship construction components and materials. The rule's principal benefits would be to enhance the competitive posture of domestic shipbuilders and ship operators and reduce the paperwork burden on vessel owners. It is also considered to be a significant rule, since it is costly and involves an area in which there is significant public and Departmental interest.

A Final Regulatory Impact Analysis has been prepared by the Maritime Administration, which examines in more detail the existing Buy American regulations, the alternative selected and the rejected alternatives. It will be placed in the rulemaking docket created for this rule and will be available for review in Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

The great majority of applicants for Title XI financing guarantees—shipbuilders and many of the domestic marine equipment manufacturers—have revenues or employment in excess of the existing Small Business Administration criteria for small businesses (13 CFR 121.3). Moreover, the primary suppliers of marine equipment, components or materials in the maritime industry are not small businesses. However, if small businesses are affected by this rule, MARAD believes that any effects will be minimal. Accordingly, the Maritime Administrator certifies, under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), that this rule will not, exert a significant economic impact on a substantial number of small entities.

This rule contains no new or expanded requirements for the collection of information within the

scope of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Environmental Impact

MARAD has previously evaluated the environmental impact of ship operations and ship construction, conversion, repair, and scrapping activities contracted under its maritime aids programs.

The environmental impact created by the additional ship construction and ship operation that would result from relaxing the Buy American restrictions is substantially the same as that considered by MARAD in the earlier environmental impact statements. Any additional ship construction or ship operation would be small in proportion to general shipyard industry activity and would not require the expansion of any existing shipbuilding facilities. Neither will it require the diversion of any significant raw materials or the development of new raw material sources. The elimination of the present Buy American restrictions will have a negligible effect on the environment.

List of Subjects in 46 CFR Part 298

Banks, Banking, Loan programs—Transportation, Mortgage, Mortgage insurance, Maritime carriers, and Uniform System of Accounts.

In consideration of the foregoing, the Maritime Administration adopts, as a final rule, amendments to 46 CFR Part 298 as follows:

1. The citation of authority for Part 298 is revised to read as follows:

Authority: Secs. 204(b) and 1109, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b), 1279(b); 49 CFR 1.66).

2. Amend § 298.11 by revising paragraph (a) to read as follows:

§ 298.11 Vessel requirements.

(a) *United States Construction.* A vessel financed by obligation guarantees for which a Letter Commitment is issued on or after April 7, 1986 is considered to be of United States construction if:

(1) It is built entirely in a shipyard or shipyards of the United States within the meaning of section 505 of the Act;

(2) All components of the hull and superstructure are fabricated in the United States; and

(3) The vessel is assembled entirely in the United States.

§ 298.21 [Amended]

3. Amend § 298.21 by removing existing paragraph (c)(12) and redesignating paragraphs (c)(13) and (c)(14) as paragraphs (c)(12) and (c)(13).

Dated: February 28, 1986.

Murray A. Bloom,
Assistant Secretary, Maritime
Administration.

[FR Doc. 86-4920 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-81-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83-514; RM-4431; RM-4561]

FM Broadcast Station in Susanville, CA and Reno, NV; Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein grants a petition for partial reconsideration filed by AMERICOM, licensee of Station KHTX(FM) (Channel 279), Carnelian Bay, California, by imposing an additional site restriction on Channel 225 at Reno, Nevada to permit KHTX to improve its facilities.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, 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.

Memorandum Opinion and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Susanville, California and Reno, Nevada). MM Docket No. 83-514, RM-4431 and 4561.

Adopted: January 31, 1986.

Released: February 27, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for partial reconsideration of the *Report and Order* herein, 50 FR 24643, published June 12, 1985, filed by AMERICOM (formerly the December Group) ("petitioner"), licensee of Station KHTX(FM) (Channel 279), Carnelian Bay, California. No oppositions to the petition were received.

2. Petitioner seeks partial reconsideration of the Commission's action allotting Class C Channel 225 to Reno, Nevada with a site restriction 17.4 kilometers (10.8 miles) northeast of the community. Petitioner requests that an additional 8 kilometer restriction be placed on Channel 225 to permit it to improve its facilities from Class B to Class C1 status at its present site.

3. Petitioner is authorized to operate Station KHTX as a Class C station in Zone I to serve Carnelian Bay. However, due to terrain obstacles, it was granted a waiver of the Class C facility requirements of Section 73.206(b) of the Commission's Rules, thus permitting it to operate as a Class B station with its transmitter in the State of Nevada. Petitioner advises that it desires to improve its facilities in order to provide a wider coverage signal to residents of the area. However, it notes that due to the topography of the area, it is unable to move its transmitter to accommodate an increase in power to attain Class C1 status. Moreover, petitioner adds that although it may now operate as a Class C1 in Zone II without the necessity of a waiver, the distance between its present transmitter site and the Channel 225 allotment to Reno is 40 kilometers, whereas a minimum distance separation of 48 kilometers is required in this instance to avoid Intermediate Frequency (IF) interference. Unless the requested additional site restriction is imposed on Channel 225 at Reno, its proposal would contravene 73.207(b) of the Commission's Rules.

4. In consideration of the above, and absent any formal objections, we believe petitioner's proposal is justified and is in accord with the Commission's policy to encourage broadcast licensees to improve their facilities. See, *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984). We do not view petitioner's proposal as an upgrade since Channel 279 can be used as either a Class B or C classification depending upon the location of the transmitter. As such, petitioner may file an application to increase its facilities as a Class C1 station.

5. In view of the above, the current applicants for Channel 225 at Reno, Nevada will be mailed a copy of this Order to apprise them of our action herein.¹

6. Accordingly, it is ordered, That the petition for partial reconsideration filed by AMERICOM is granted and the Report and Order herein is modified to

the extent a site restriction on Channel 225 at Reno of 24.3 kilometers (15.1 miles) northeast of the community is imposed.

7. It is further ordered, That the Secretary of the Commission shall send a copy of this Order by certified mail, return receipt requested, to the applicants for Channel 225 at Reno, Nevada, as follows:

Cynthia Escajeda Cart, 704 Douglas Avenue, Prescott, AZ 86301, (850711MY)
Reno 93-FM Broadcasters, 5530 Highline Court, Sun Valley, NV 89433 (850711OE)
Dennis L. Martin, 14760 Rimrock Drive, Reno, NV 89511 (850712ON)
Washoe Wireless Associates, 863 Bollen Circle, Gardnerville, NV 89410 (850712OO)
Reno Radio, Inc., 2204 Dickerson Road, Reno, NV 89503 (850712OP)
Reno FM Services Partnership, Ltd., 6472 Ridge Manor Ave., San Diego, CA 92120 (850712OQ)
Q Prime, Inc., 212-11th Street, Hoboken, NJ 07030 (850712OR)
High Sierra Communications Company, 626 Smithridge, Reno, NV 89502 (850712OV)
Condor & Associates, Inc., 872 East Front Street, Ventura, CA 93001 (850712OZ)
LC Broadcasting, Inc., 18400 Prairie Street, # 229 Northridge, CA 91324 (850712PA)
Susan Lundborg, Suesspath, Quogue, NY 11959 (850712TU)
Tropic-Air, Ltd., 1018 Cedar Grove Rd., Wynnwood, PA 19096 (850712TV)

9. It is further ordered, That this proceeding is terminated.

10. For further information concerning the above, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission
Charles Schott,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-4842 Filed 3-5-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 85-168; RM-4880; FCC 86-84]

Amendment of the Amateur Rules To Permit the Transmission of Emission F2A in the 29.5-29.7 MHz Repeater Subband

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Amateur service rules by permitting amateur stations to transmit emission F2A in the 10-meter repeater subband. The rule is necessary since that emission mode is not presently authorized for that subband. The effect of the rule is to allow amateur stations in repeater operation to transmit emission F2A when identifying the station.

EFFECTIVE DATE: April 23, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR INFORMATION CONTACT:

Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Amateur radio, Radio, Repeaters.

Report and Order

In the matter of amendment of § 97.61 (a) of the Amateur Radio Service Rules to permit emission F2A in the 29.5-29.7 MHz repeater subband, FR Docket No. 85-168, RM-4880.

Adopted: February 19, 1986.

Released: February 26, 1986.

By the Commission.

1. On May 23, 1985, the Commission adopted a Notice of Proposed Rule Making (50 FR 24548, June 11, 1985) to permit the transmission of emission F2A (telegraphy for aural reception) in the 10-meter repeater subband (29.5-29.7 MHz). Two comments were filed in this proceeding. Both supported the proposal.

2. The commenters, Robert A. Scupp and the American Radio Relay League, Inc. (ARRL), observe that since emission F2A is the primary emission mode used to identify amateur emission F3E repeaters by telegraphy, it should be available in the 10-meter repeater subband.

3. In its comments, the ARRL suggests that the emission designator G2A (phase-modulated telegraphy) also be shown in the table in Section 97.61 as available for the 10-meter repeater subband. This is unnecessary since the Third Report and Order concerning emission designators¹ permits both phase-modulated and frequency-modulated emission under the prefix F.

4. In our Notice of Proposed Rule Making, we specifically solicited information concerning the adverse effects on amateur communications of allowing the transmission of emission

¹ A staff analysis has determined that the transmitter sites proposed by the tendered applications for Channel 225 at Reno comply with the new site restriction imposed herein.

¹ Paragraph 16, Third Report and Order, General Docket No. 80-739; FCC 84-510; 49 FR 48694, December 34, 1984.

F2A in the 10-meter repeater subband. No such information was received. We conclude that there will be no negative impact.

5. Mr. Scupp and ARRL state that 29.5-29.7 MHz is the only amateur repeater subband not authorized for emission F2A. Actually, emission F2A is not currently listed in § 97.61(a) for any repeater subbands. To correct this, we have editorially amended § 97.61(a) to show emission F2A in the amateur bands 50.1-54.0, 144.1-148.0, 220-225, 420-450, 902-928, 1215-1300, 2300-2310 and 2390-2450 MHz. Also, the emission designator F2A is added for all of the line entries under Gigahertz in the table in that section. Frequency-modulated and phase-modulated telegraphy are already authorized. They were previously listed in those bands under the prior emission designator F2. The emission designator F2A² was inadvertently omitted from those bands when the emission designators were converted to the new system.³

6. In view of the foregoing, we adopt the rules in our Notice of Proposed Rule Making with modifications discussed herein.

7. It is ordered, That Part 97 is amended as set forth in the Appendix hereto. This action is taken pursuant to the authority contained in sections 4(i) and 303 (e) and (r) of the Communications Act of 1934, as amended.

² The suffix A denotes telegraphy for aural reception.

³ Third Report and Order in General Docket No. 80-739, *supra*.

8. It is further ordered, That these rule amendments shall become effective, April 23, 1986.

9. It is further ordered, That the Secretary shall cause a copy of this Report and Order to be published in the Federal Register.

10. It is further ordered, That this proceeding is terminated.

11. Information in this matter may be obtained by contacting Maurice J. DePont, (202) 632-4964, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 97—[AMENDED]

Part 97 of Chapter I of Title 47 of the Code of Federal Regulations is amended, as follows:

1. The authority citation for Part 97 continues to read, as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

2. The table in § 97.61(a) is revised by adding two line entries after 28000-28300, as follows:

§ 97.61 Authorized emissions.

(a) kilohertz:

Frequency band (kHz)	Emissions	Limitations (see paragraph (d))
28300-29500.....	A1A, A3E, F3E, G3E, A3C, F3C, A3F, F3F, H3E, J3E, R3E	

Frequency band (kHz)	Emissions	Limitations (see paragraph (d))
29500-29700.....	A1A, A3E, F2A, F3E, G3E, A3C, F3C, A3F, F3F, H3E, J3E, R3E	

3. Section 97.61(b) is revised to read, as follows:

§ 97.61 Authorized emissions.

(b) 50-144.1 MHz:

Frequency band (MHz)	Emissions
50.0-50.1.....	A1A.
50.1-51.0.....	A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2A, F2B, F3E, G3E, F3C, F3F, H3E, J3E, R3E.
51.0-54.0.....	NoN, A1A, A2A, A2B, A3E, A3C, A3F, F1B, F2A, F2B, F3E, G3E, F3C F3F, H3E, J3E, R3E.
144.0-144.1.....	A1A

4. Section 97.61(c) is amended by adding two new sentences at the end thereof, as follows:

§ 97.61 Authorized emissions.

(c) Above 144.1 MHz: * * *

Emission F2A may also be used in the following frequency subbands: 144.1-148.0, 220-225, 420-450, 902-928, 1215-1300, 2300-2310 and 2390-2450 MHz. Emission F2A may also be used on all Gigahertz frequencies.

[FR Doc. 86-4841 Filed 3-5-86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register

Vol. 51, No. 44

Thursday, March 6, 1986

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 591

Cost-of-Living Allowance and Post Differential; Nonforeign Areas

AGENCY: Office of Personnel
Management.

ACTION: Proposed rulemaking; notice of
further extension of public comment
period.

SUMMARY: OPM is extending the public comment period for responding to the proposed regulations covering the nonforeign area cost-of-living allowance and the post differential. The proposed regulations were published at 50 FR 42531 on October 21, 1985. The original expiration date of the comment period was December 20, 1985, and was extended to February 21, 1986 (50 FR 53330). One commenter has requested extension of the comment period until March 31, 1986, to provide additional opportunity for analysis and comment. The public comment period is now extended to March 31, 1986. A request was also made to hold hearings in the allowance areas. In view of the five-month comment period now provided, the request to hold hearings is denied.

DATES: Comments are now due on or
before March 3, 1986.

ADDRESS: Send or deliver written
comments to U.S. Office of Personnel
Management, Compensation Group,
Allowances and Special Rates Division,
Room 3353, 1900 E Street NW.,
Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT:
Barry E. Shapiro, (202) 632-7471.

U.S. Office of Personnel Management.

Constance Horner,
Director.

[FR Doc. 86-4831 Filed 3-5-86; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Freedom of Information Act Implementing Regulations

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of
Agriculture proposes to amend its
regulations (7 CFR Part 1, Subpart A)
implementing the Freedom of
Information Act (FOIA). The
Department also proposes to amend
Appendix A of the regulations which
pertains to the assessment of fees under
the Act.

DATE: Written comments must be
received by the contact person listed
below on or before April 7, 1986.

ADDRESS: Submit comments to
Department of Agriculture, Office of
Governmental and Public Affairs, Office
of Information, Special Programs
Division, Room 536-A, Washington, D.C.
20250.

FOR FURTHER INFORMATION CONTACT:
Milton Sloane, U.S. Department of
Agriculture, Office of Governmental and
Public Affairs, Office of Information,
Special Programs Division, Washington,
D.C. 20250; (202) 447-8164.

SUPPLEMENTARY INFORMATION: It is
proposed to amend 7 CFR Part 1,
Subpart A to: list the primary agency in
USDA for administering the Freedom
of Information Act; specify the
individuals responsible for acting on
FOIA requests and appeals to the Office
of the Secretary and the Office of
Governmental and Public Affairs;
outline the procedure for forwarding
FOIA requests to USDA's central
processing unit; announce new § 1.8 to
reflect guidance on handling data
submitted by private businesses; and to
update Appendix A (the fee schedule) to
reflect the higher costs for providing
certain materials and services under the
Act.

This rule does not constitute a "major
rule" within the meaning of Executive
Order No. 12291 (Improving Government
Regulations). Nor will these regulations
cause a significant economic impact or
other substantial effect on small entities.
Therefore, the requirements of the

Regulatory Flexibility Act, 5 U.S.C.
605(b), do not apply.

List of subjects in 7 CFR Part 1

Freedom of Information.

It is proposed to revise 7 CFR Part 1,
Subpart A to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec.

- 1.1 Purpose and scope.
- 1.2 Policy.
- 1.3 Agency implementing regulations.
- 1.4 Implementing regulations for the Office
of the Secretary.
- 1.5 Public access to certain materials.
- 1.6 Requests for records.
- 1.7 Agency response to requests for records.
- 1.8 Handling information from a private
business.
- 1.9 Date of receipt of requests or appeals.
- 1.10 Appeals.
- 1.11 Extension of administrative deadlines.
- 1.12 Failure to meet administrative
deadlines.
- 1.13 Fee schedule.
- 1.14 Exemptions and discretionary release.
- 1.15 Annual report.
- 1.16 Compilation of new records.
- 1.17 Authentication.
- 1.18 Compulsory process.
- 1.19 Records in formal adjudication
proceedings.

Appendix A—Fee Schedule

Subpart A—Official Records

Authority: 5 U.S.C. 301 and 552. Appendix
A also issued under 7 U.S.C. 2244; 31 U.S.C.
9701, and 7 CFR 2.75 (a)(6)(xiii).

§ 1.1 Purpose and scope.

This subpart establishes policy,
procedures, requirements, and
responsibilities for administration and
coordination of the Freedom of
Information Act (FOIA), 5 U.S.C. 552,
pursuant to which official records may
be obtained by any person. It also
provides rules pertaining to the
disclosure of records pursuant to
compulsory process. This subpart also
serves as the implementing regulations
(referred to in § 1.3, "Agency
implementing regulations") for the
Office of the Secretary (the immediate
offices of the Secretary, Deputy
Secretary, Under Secretaries and
Assistant Secretaries) and for the Office
of Governmental and Public Affairs. The
Office of Governmental and Public
Affairs has the primary administrative

responsibility for the FOIA in the Department of Agriculture (USDA). The term "agency" or "agencies" is used throughout this subpart to include both USDA program agencies and staff offices.

§ 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA for responding to and processing requests and appeals for agency documents, unless there are exceptional circumstances within the meaning of 5 U.S.C. (a)(6)(B). An agency shall notify a requester whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as Appendix A of this regulation, with regard to the charging of fees for providing copies of documents and related services to requesters.

§ 1.3 Agency implementing regulations.

(a) Each agency of the Department shall promulgate regulations setting forth the following:

(1) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by § 1.5 to be made available for public inspection and copying.

(2) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements thereto which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b).

(b) The title(s) and mailing address(es) of the official(s) of the agency who is/are authorized to receive requests for records submitted in accordance with § 1.6(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(1) Extend the 10-day administrative deadline for reply pursuant to § 1.11;

(2) Make discretionary releases pursuant to § 1.14(b); and

(3) Make determinations regarding the charging of fees pursuant to Appendix A of this subpart.

(c) The title and mailing address of the official of the agency who is authorized to receive appeals from denials of requests for records submitted in accordance with § 1.6(e) and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(1) Extend the 20-day administrative deadline for reply pursuant to § 1.11 (to

the extent the maximum extension authorized by § 1.11(c) was not used with regard to the initial request);

(2) Make discretionary releases pursuant to § 1.14(b); and

(3) Make determinations regarding the charging of fees pursuant to Appendix A of this subpart.

(d) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

§ 1.4 Implementing regulations for the Office of the Secretary.

For the Office of the Secretary and for the Office of Governmental and Public Affairs, the information required by § 1.3 is as follows:

(a) Records available for public inspection and copying may be obtained in Room 547-A, Administration Building, USDA, Washington, D.C. 20250 during the hours of 8:45 a.m. to 5:15 p.m.

(b) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and § 1.5(b) will also be available in Room 547-A, Administration Building, USDA, Washington, D.C. 20250 during the hours of 8:45 a.m. to 5:15 p.m.

(c) The person authorized to receive FOIA requests and to determine whether to grant or deny such requests is the Director of Information, Office of Governmental and Public Affairs, USDA, Washington, D.C. 20250.

(d) The official authorized to receive appeals from denials of FOIA requests and to determine whether to grant or deny such appeals is the Deputy Assistant Secretary for Governmental and Public Affairs, USDA, Washington, D.C. 20250.

§ 1.5 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2) each agency within the Department will make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the *Federal Register*; and

(3) Administrative staff manuals and instructions to staff that affect a member of the public.

(b) Each agency of the Department shall also maintain and make available current indexes providing identifying information regarding any matter issued, adopted or promulgated after July 4,

1967, and required by paragraph (a) of this section to be made available or published. Each agency shall publish and make available for distribution, copies of such indexes and supplements thereto at least quarterly, unless it determines by Notice published in the *Federal Register* that publication would be unnecessary and impracticable. After issuance of such Notice, the agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

§ 1.6 Request for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by the agency. The requester may in his or her petition ask for a waiver if there is likely to be a charge for the requested information. To inspect or obtain copies of records of the Office of the Secretary or the Office of Governmental and Public Affairs, requesters should submit their requests to the Director of Information, Office of Governmental and Public Affairs, U.S. Department of Agriculture, Washington, D.C. 20250. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether that Act is specifically mentioned. To facilitate processing of a request, the phrase "FOIA REQUEST" should be placed in capital letters on the front of the envelope.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, etc. which may help identify the records. If the request relates to a matter pending in litigation, the court and its location should be identified.

(c) If an agency determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances, for purposes of § 1.9(a), shall be the date of receipt of the amended or clarified request.

(d) Nothing in this subpart shall be interpreted to preclude an agency from honoring an oral request for information, but, if the requester is dissatisfied with the response, the agency official involved shall advise the requester to

submit a written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request for purposes of § 1.9(a), shall be the date of receipt of the written request. For recordkeeping purposes, an agency responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records made under this subpart is denied, the person making the request shall have the right to appeal the denial. This appeal must be in writing and addressed to the official designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

(f) Requests that are nonagency-specific, i.e., are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency or which are sent to the wrong agency of USDA, should be forwarded to the Department's central processing unit for FOIA in the Office of Governmental and Public Affairs, Office of Information, Special Programs Division, U.S. Department of Agriculture, Washington, D.C. 20250.

(g) The central processing unit will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency (agencies). The unit will also notify the requester of the referral and of the name of each agency to which the request has been referred.

(h) Each agency shall develop and maintain a record of all written and oral requests and appeals received in that agency, which shall include in addition to any other information the name and address of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the exemption(s) for making any denials, and the amount of fees associated with the request or appeal.

§ 1.7 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records or a fee waiver is submitted in accordance with § 1.6(a) shall inform the requester of its determination concerning that request within 10 days of its date of receipt (exception Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.11. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of

the request (e.g., payment of fees) and the appropriate date upon which compliance will be effected. If it grants only a portion of the request, it shall treat the portion not granted as a denial. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and of the following:

(1) The reasons for the denial;
(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the agency shall notify the requester of that fact.

(c) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which appeal of a denial is submitted in accordance with § 1.6(e) shall inform the requester of its determination concerning that appeal within 20 days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by § 1.11, of its date of receipt. If the agency determines to grant the appeal it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If it grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;
(2) The name and title or position of each person responsible for denial of the appeal; and

(3) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4).

(d) If in compliance with the request, a charge is to be made in accordance with Appendix A of this subpart, the agency's response shall inform the requester of the amount and basis for the charge. It may, in accordance with Appendix A of this subpart, require payment of the entire fee, or a portion thereof, before it provides the requested records. In instances where a requester refuses to remit payment in advance, an agency

may likewise refuse to process the request with written notice to that effect forwarded to the requester. The "date of receipt" of a request for which advance payment has been required shall be the date that payment is received.

(e) In the event compliance with the request involves inspection of records by the requester rather than the forwarding of copies, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(f) In the event the records requested contain some portions which are exempt from mandatory disclosure and others which are not, the official responding to the request shall insure that all nonexempt portions are disclosed, and that all exempt portions are identified according to the nature of information contained and the specific exemption or exemptions which are applicable.

§ 1.8 Handling information from a private business.

(a) The USDA is responsible for making the final determination with regard to the disclosure or nondisclosure of information submitted by a business. When in the course of responding to an FOIA request, an agency cannot determine readily whether the information is business information obtained from a person that is privileged and confidential, it is the policy of USDA to obtain and consider the views of the submitter of the information, and to provide the submitter an opportunity to object to any decision to disclose the information. Whenever a request is received in USDA for information which has been submitted by a business, all agencies of the Department should:

(1) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed, or on the other hand, that the information is not exempt by law from disclosure).

(2) Notify the requester of the need to inform the submitter of a request for submitted business information.

(3) Afford business information submitters time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to its competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information

provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA.

(4) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention.

(5) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

§ 1.9 Date of receipt of requests or appeals.

(a) The date of receipt of a request or appeal, which contains the phrase FOIA REQUEST or FOIA APPEAL and is addressed in accordance with applicable agency regulations, shall be the date it is received in the office responsible for the administrative processing of FOIA requests or appeals.

(b) The date of receipt of a request or appeal which is hand-delivered to the address specified in agency regulations shall be the date of such hand delivery.

(c) The date of receipt of a request or appeal which does not comply with paragraphs (a) or (b) of this section shall be the date it is received by the official designated in agency regulations to make the applicable determination.

§ 1.10 Appeals.

(a) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(b) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, Research and Operations Division, Office of the General Counsel. When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel.

(c) The Assistant General Counsel shall promptly review the matter (including necessary consultation with the Department of Justice and coordination with the Office of Governmental and Public Affairs) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension thereof.

§ 1.11 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section either of the administrative deadlines prescribed in § 1.7 may be extended by an authorized agency official. Written notice of the extension shall be sent to the requester within the applicable deadline, setting forth the reasons for such extension and the date a determination is expected to be dispatched. In no event shall the extension exceed a total of 10 working days.

(b) As used in this section, "unusual circumstances" shall be limited to the following:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein. (Note: consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Governmental and Public Affairs, or the Department of Justice is not a basis for extension under this section.)

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement shall be confirmed in writing and shall specify clearly the total time agreed upon.

§ 1.12 Failure to meet administrative deadlines.

In the event an agency fails to meet either of the administrative deadlines set forth in § 1.7, plus any extension authorized by § 1.11, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 522(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as

if it had been reached within the applicable deadline.

§ 1.13 Fee schedule.

Pursuant to authority delegated in § 2.75 of this title, the Director, Office of Finance and Management, has issued regulations, following notice and public comment, setting forth a uniform schedule of fees applicable to all agencies of the Department regarding requests for records under this subpart. (See Appendix A of this subpart.) Any amendments thereto will be made by the Director pursuant to notice and opportunity for comment. Said regulations provide reasonable standard charges for document search and duplication and provide for recovery of only the direct costs of such duplication. The regulations provide that documents may be furnished without charge or at a reduced charge where the agency determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 1.14 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Except where disclosure is specifically prohibited by Executive Order, statute, or applicable regulations, an agency may release records exempt from mandatory disclosure under 5 U.S.C. 552(b) whenever it determines that such disclosure would be in the public interest.

§ 1.15 Annual report.

(a) Each agency of the Department shall compile the following information for each calendar year:

(1) The number of determinations made by such agency not to comply with initial requests for records made to it under § 1.6(a), and the reasons for each such determination;

(2) The number of appeals made by persons under § 1.7(d), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) The name and title or position of each person responsible for the denial of records requested under this subpart and the number of instances of participation for each;

(4) The results of each proceeding conducted pursuant to 5 U.S.C. 552(a)(4)(F), including a report of the

disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) A copy of every rule made by the agency regarding this subpart;

(6) The total amount of fees collected by the agency for making records available under this subpart; and

(7) Such other information as indicates efforts to administer fully this subpart.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding calendar year into a report and submit this report to the Director of Information, Office of Governmental and Public Affairs, by February 1 of each year.

(c) The Director of Information shall combine the reports from the various agencies within USDA into a Departmental report, and shall arrange for submission of this report to the President of the Senate and the Speaker of the House of Representatives by March 1 of each year in accordance with 5 U.S.C. 552(d).

§ 1.16 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency compile a new record in order to fulfill a request for records. Such compilation may be undertaken voluntarily if the agency determines this action to be in the public interest.

§ 1.17 Authentication.

When a request is received for an authenticated copy of a document which the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk may authenticate copies of documents in the records of the Hearing Clerk.

§ 1.18 Compulsory process.

(a) (1) In any case where it is sought by subpoena, order, or other compulsory process (hereinafter in this section referred to as a "demand") to require the production or disclosure of any record or material which is exempt from disclosure under 5 U.S.C. 552(b) or information related thereto acquired by an employee of this Department in the performance of his or her official duties, the matter shall be referred to an official authorized by agency regulations to make releases pursuant to § 1.14(b). For the Office of the Secretary and for the Office of Governmental and Public

Affairs, this official is the Deputy Assistant Secretary for Governmental and Public Affairs.

(2) Such official may authorize release. However, if such official determines that it would be improper to comply with the demand, the official shall refer it to the agency head. The agency head may authorize release; however, if the agency head concurs with the initial conclusion, the matter shall be referred to the Secretary through the General Counsel for final determination.

(3) If the Secretary determines that the records, material, or information should not be produced, or if no final determination has been made, the employee shall be notified not to produce or disclose the records. The employee who appears in answer to the demand shall respectfully decline to produce or disclose the records, material, or information demanded on the ground that the disclosure is prohibited by this section. The employee shall provide the court or other authority with a copy of this subpart and a copy (when available) of the Secretary's determination, and shall respectfully request the court or other authority to withdraw or stay the demand.

(b) (1) Whenever a demand of the type described in paragraph (a) of this section is made upon an employee of this Department not authorized to make releases pursuant to § 1.14(b), by a court or other authority while he/she is appearing before, or is otherwise in the presence of the court or other authority, the employee, or other appropriate Government official or attorney acting on behalf of the employee, shall (i) immediately inform the court or other authority that this section prohibits the employee from producing or disclosing the information or material demanded and (ii) offer to refer the demand for the prompt consideration of authorized officials, providing the court or other authority a copy of this subpart and respectfully requesting that the demand be stayed pending his/her receipt of appropriate instructions concerning the demand.

(2) If the employee is authorized to make a release pursuant to § 1.14(b), but determines that such release would be improper, the employee shall offer to refer the demand for the prompt consideration of the agency head and/or Secretary and shall otherwise comply with paragraph (b)(1)(ii) of this section.

(c) If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with paragraphs (a) or (b) of this section pending the receipt by the employee of instructions or directions,

or if the court or other authority rules adversely on any assertion made in conformity with the provisions of this subpart, the employee upon whom the demand has been made may tender the records, material, or information demanded with a request they be held in camera until an appeal can be taken from the adverse ruling.

§ 1.19 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Information Resources Management, U.S. Department of Agriculture, Washington, D.C. 20250, and shall be made available to the public.

Appendix A—Fee Schedule

Sec. 1 *General*. This schedule sets forth fees to be charged for providing copies of records, including photographic reproductions, microfilm, maps and mosaics, and related services. The fees set forth in this schedule are applicable to all agencies of the Department of Agriculture.

Sec. 2. *Facilities*. Records and related services are available at the locations specified by the agencies in their statements of procedures to facilitate public inspection and copying of their records. Any material offered for sale by the Government Printing Office should be purchased from that source. Departmental agencies will not stock such material for public sale. Agencies do not stock copies of forms and publications or maintain records at any facility which does not require these materials in its operations.

Sec. 3. *Fees for materials and services*. All agencies of the Department shall comply with the fees set forth herein. Any changes or additions to this fee schedule shall be made by amendment to or revision of this schedule.

Sec. 4. *Fees for records and related services*.

a. The fee for photocopies of pages 8½"×14" or smaller shall be \$0.10 for the first copy and \$0.10 for each additional copy of the same page.

b. The fee for photocopies larger than 8½"×14" shall be \$0.25 per linear foot of the longest side of the copy.

c. Manual searches will be charged for at the rate of \$8.00 per hour for clerical time and \$14.00 per hour for supervisory or professional time. Charges will be computed to the nearest quarter hour required for the search. A search may involve both clerical and supervisory or professional time.

d. Other direct costs incurred will be assessed the requester at the actual cost to the Government, e.g., where records are required to be shipped from one office to another by commercial carrier in order to timely answer the request, the actual freight charges will be assessed the requester.

e. Computer services will be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed, except that where commercial time-sharing computer sources are the required search

media, the contract rate charged by the commercial source to the Government will be charged. A listing follows showing where those rates are published and the office from which copies may be obtained or at which the rates may be examined.

Fort Collins Computer Center Users Manual:

Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colo. 80521.

New Orleans Computer Center Users Manual:

New Orleans Computer Center, U.S. Department of Agriculture, 13800 Old Gentilly Road, Building 350, New Orleans, La. 70129.

Kansas City Computer Center Users Manual:

Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, Mo. 64141.

Washington Computer Center Users Handbook:

Washington Computer Center, U.S. Department of Agriculture, Room S-100, South Building, 12th Street and Independence Avenue SW., Washington, D.C. 20250.

St. Louis Computer Center. Charges for the

St. Louis Computer Center will be based on actual expenses incurred in performing the search. Address is: St. Louis Computer Center, U.S. Department of Agriculture, 1520 Market Street, St. Louis, Mo. 63103.

f. The fees do not include, and no charge shall be made for, (a) time spent examining records to determine whether an exemption can and should be asserted, (b) time spent deleting exempt matter being withheld from records to be furnished, (c) time spent in resolving legal or policy issues, or (d) time spent in monitoring a requester's inspection of agency records.

g. The fee for Certifications shall be \$2.00 each; Authentications under Department Seal (including aerial photographs), \$5.00 each.

h. Except as provided in Section 9 below, for services not subject to the Freedom of Information Act and not covered by (g) above, agencies may set their own fees in accordance with applicable law.

i. The fees specified in paragraphs a through f of this Section apply to all requests for services under the Freedom of Information Act, as amended (5 U.S.C. 552), unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to Section 5. No higher fees nor charges in addition to those provided for in this schedule may be charged a party requesting search or duplication services under the Freedom of Information Act.

j. The fees specified in paragraphs g and h of this Section and in Sections 9 through 15 of this schedule apply to requests for services other than those subject to the Freedom of Information Act. The authority for establishment of these fees is at 31 U.S.C. 9701 (formerly 31 U.S.C. 483a) and other applicable laws.

Sec. 5. Circumstances governing exceptions to the charging of fees for records and related services. (For photographic reproductions, see Sec. 11 of this Appendix.)

a. *Waiver of fees for records and related services.* Fees may be waived in whole or in part under the following conditions:

(1) Where individual collections are \$25.00 or less;

(2) Where the furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country or an international organization;

(3) Where the recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare;

(4) Where the agency determines that payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program involved;

(5) When the furnishing of records and related services is determined by the agency to be in the public interest as primarily benefitting the general public.

(6) In determining whether a fee waiver is appropriate for purposes of paragraph (a)(5) of this Section, an agency should consider the following factors:

(i) Whether there is a genuine public interest in the subject matter of the documents for which a fee waiver or reduction is sought;

(ii) The value to the public of the records themselves;

(iii) Whether the requested information is already available in the public domain;

(iv) The requester's specific qualifications, nature of research, and the purposes for which the requested materials will be used (the identity of a requester is usually not a proper factor to consider in granting or denying access, but should be considered in acting on a request for a fee waiver);

(v) The amount of personal benefit expected to accrue to the requester as the result of disclosure, compared with any discernible public benefit (FOIA fee waiver or reduction is appropriate only where the benefit to the general public is primary).

(7) An agency may, at its discretion, waive or reduce fees associated with a request for disclosure regardless of whether a waiver or reduction has been requested if the agency determines that disclosure will primarily benefit the general public.

b. *Fees not to be charged for records and related services.* Documents shall be furnished without charge under the following conditions:

(1) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number;

(2) When members of the public provide their own copying equipment, in which case no copying fee will be charged (although search fees may still be assessed);

(3) When any notices, decisions, orders, or other materials are required by law to be served on a party in any proceedings or matter before any Department agency.

c. Where both paragraphs a and b above apply to a matter, paragraph b shall be controlling.

Sec. 6. Limitations of copies.

a. Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to

take single copies to commercial sources for further appropriate reproduction.

b. Single or multiple copies of transcripts, provided the Department under a reporting service contract, may be obtained from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public but no other charge may be added.

Sec. 7 Search services.

a. Search services are services of agency personnel—clerical, supervisory, or professional salary level—used in trying to find the records sought by the requester. They include time spent examining records for the purpose of finding records which are within the scope of the request. They also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

b. Because of the nature of the Department's business and records, the normal location of a record in a file or other facility will not be considered a search. This would be the same as quickly locating a piece of material for purposes of answering a letter or telephone inquiry, and is based on the Department's obligation to respond to requests furnishing a reasonably specific description of the record.

Sec. 8. Payments of fees and charges.

a. Payments will be collected to the fullest extent possible in advance or at the time the requested materials are furnished.

b. Payment shall be made by check, draft, or money order payable to the Treasury of the United States, but small amounts may be paid in cash, particularly where services are performed in response to a visit to a Department office.

c. Where the estimated fees to be charged exceed \$50.00, a deposit of 50 percent of the estimated amount shall be collected from the requester before any of the requested materials are reproduced.

d. Where a request for records indicates the necessity of an extensive search that could result in a high search cost, the requester should be notified of that fact and of the possibility of an unproductive search. The notification should offer the requester the opportunity to confer with agency personnel to reform the request to meet the needs at a lower fee. When an extensive search still appears necessary, unless the agency determines that the request is in the public interest in accordance with Section 5a(5), it shall inform the requester that no search will be undertaken until an agreement to pay applicable fees is received, including a deposit of 50 percent of the estimated fee where appropriate.

Sec. 9. Photographic reproduction, microfilm, mosaic and maps. Reproduction of such aerial or other photographic microfilm, mosaic and maps as have been obtained in connection with the authorized work of the Department may be sold at the estimated cost of furnishing such reproductions as prescribed in this schedule.

Sec. 10. Agencies which furnish photographic reproductions.

a. *Aerial photographic reproductions.* The following agencies of the Department furnish aerial photographic reproductions:

Agricultural Stabilization and Conservation Service (ASCS), APFO, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

Soil Conservation Service (SCS) USDA, Cartographic Division, Washington, D.C. 20250, or Cartographic Facility in nearest SCS Technical Service Center.

b. *Other photographic reproductions.* Other types of photographic reproductions may be obtained from the following agencies of the Department:

Agricultural Stabilization and Conservation Service (ASCS) (Address above).

Forest Service (FS), USDA, P.O. Box 2417, Washington, D.C. 20013, or nearest Forest Service Regional Office.

Office of Governmental and Public Affairs, USDA, Photography Division, Room 4425 South Building, Washington, D.C. 20250.

Soil Conservation Service, USDA, Information Division, Audio Visual Branch, Washington, D.C. 20250.

National Agricultural Library, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, Md. 20705.

Sec. 11. *Circumstances under which photographic reproductions may be provided free.* Reproductions may be furnished free at the discretion of the agency, if it determines this action to be in the public interest, to:

a. Press, radio, television, and newsreel representatives for dissemination to the general public.

b. Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

c. Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

Sec. 12. *Loans.* Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

Sec. 13. *Sales of positive prints under government contracts.* The annual contract for furnishing single and double frames slide film negatives and positive prints to agencies of the Department, County Extension Agents, and other cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

Sec. 14. *Procedure for handling orders.* In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

Sec. 15. *Reproduction prices.* The prices for reproductions listed here are for the most generally requested items.

a. *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only: Reproduction of electrostatic, microfilm, and microfiche copy—\$3.00 for the first 10 pages or fraction

thereof, and \$2.00 for each additional 10 pages or fraction thereof. Duplication of NAL-owned microfilm—\$10.00 per reel.

Duplication of NAL-owned microfiche—\$3.00 for the first fiche, and \$0.50 for each additional fiche. Magnetic tape containing bibliographic files—\$45 per reel. Charges for manual and automated data base searches for bibliographic or other research information will be made in accordance with Section 4, subsections c-e of this fee schedule. The contract rate charged by the commercial source to the National Agricultural Library for computer services is available at the National Agricultural Library, Room 111, Information Access Division, USDA, Beltsville, Maryland 20705 (301-344-3834).

b. *General photographic reproductions.* Minimum charge \$1 per order. All sizes are approximate. An extra charge may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

Class of work and unit	Price
1. Black and white copy negatives and film positives:	
4 by 5 (each).....	\$4.20
5 by 7 (each).....	4.50
8 by 10 (each).....	5.40
11 by 14 (each).....	8.40
2. Black and white enlargements:	
Up to 8 by 10 (each).....	3.30
11 by 14 (each).....	4.80
Over 11 by 14 (per square foot).....	4.20
3. Reductions (from any size negative):	
4. Slides: Black and white (from copy negative):	
2 by 2 cardboard mounted (each).....	3.00
3 1/4 by 3 1/4 (each).....	4.20
Original color (from flat copy) (each).....	2.25
Duplicate color (2 by 2 cardboard mounted) (each).....	.35
(Duplicate color slides are slides copied from 35mm color slides only.) Slides made from black and white material, or from transparencies larger or smaller than 35mm, will be charged at the same rates shown for black and white and original color slides	
5. Color transparencies (4 by 5) (each).....	9.00
6. Color prints.....	(1)
7. Current USDA slide sets in stock:	
1 to 50 frames.....	14.50
51 to 60 frames.....	16.50
61 to 75 frames.....	18.50
76 to 95 frames.....	21.50
96 to 105 frames.....	23.00
106 to 130 frames.....	26.50
(Prices include printed narrative guide.)	
The following can be purchased for the corresponding slide sets above: Cassettes.....	3.00
8. Milk sedimentation standards (5 by 7 black and white photograph) (each).....	1.25
9. Seeds and seedlings (any size) (each).....	2.40

(1) By quotation.

c. *Aerial photographic reproductions.* There is no minimum charge on aerial photography orders. The prices for various types of aerial photographic reproductions are set forth below. Size measurements refer to the approximate size in inches of the paper required to produce the print.

1. Black-and-white contact prints.

Size	Price each
10 x 10 Paper.....	\$3
10 x 10 Diapositive (film).....	6
10 x 10 Copy Negative.....	4

2. Aerial Photo Index Sheets.

Size	Price each
20 x 24 RC (Resin coated base) Paper.....	\$5
24 x 36 Oxid.....	4
Microfilm (Photo indexes):	
Aperture Cards.....	1
Microfiche.....	2

3. Black-and-white enlargements (projection prints).

Size	Price each	
	RC paper	Film positive transparency
12 x 12.....	\$6	\$12
17 x 17.....	8	14
24 x 24.....	12	20
38 x 38.....	25	35

4. Reproductions from color negatives.

Size	Price each	
	RC color paper	Color film positive transparency
10 x 10 contact.....	\$5	15
12 x 12 enlargement.....	20	
20 x 20 enlargement.....	25	
24 x 24 enlargement.....	30	
38 x 38 enlargement.....	45	

5. Reproductions from color positive transparencies (natural color or color infrared).

Size	Price each	
	White opaque base color print film	Color film positive transparency
10 x 10 contact.....	\$8	\$12
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6. *Special need.* For special needs not covered above, persons desiring aerial photographic reproductions should contact the agencies listed in section 10a or the Departmental aerial photography coordinator, Aerial Photography Field Office, USDA-ASCS, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

d. *Audio and videotape reproductions.* For reproductions of audio or videotapes, requesters must supply their own recording tape, and will be assessed a fee of \$20.00 an hour for copying work requested. There is a one-hour minimum charge. Payment is required at the time videotapes or audiotapes are accepted by the requester.

Dated: March 3, 1986.

Frank W. Naylor, Jr.,

Acting Secretary of Agriculture.

[FR Doc. 86-4935 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-13-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

Branch Technical Position Statement on Licensing of Alternative Methods of Disposal for Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft branch technical position statement; requests for comments.

SUMMARY: This draft branch technical position statement proposes to answer licensing questions regarding the land disposal of low-level radioactive waste (LLW) and improve and simplify the licensing process. This statement would provide answers to certain questions that have arisen regarding the applicability of 10 CFR Part 61 to near-surface disposal of waste, using methods that incorporate engineered barriers or structures, and other alternatives to conventional shallow land burial disposal practices. Also, there have been general requests for regulatory guidance on alternative disposal methods. The specific alternative methods of interest to the requesters, however, are undetermined, as is the type and extent of desired guidance. This statement identifies a recently published NRC contractor report which addresses the applicability of 10 CFR Part 61 to a range of generic disposal concepts and which provides guidance that the staff intends to use for these concepts. To ensure prompt and meaningful regulatory guidance during the development of new disposal capacity for LLW, NRC staff encourages early and continuing interactions between the NRC and other entities involved in efforts to develop or regulate new LLW disposal sites. Finally, this notice solicits the States and other interested persons to identify any additional alternative disposal methods that they may be considering, so that they can be included in NRC actions to fulfill the requirements of section 8(a) of Pub. L. 99-240, the Low-Level Radioactive Waste Policy Amendments Act of 1985.

DATES: The comment period expires May 5, 1986.

ADDRESSES: Send written comments to the Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of all comments received by the NRC may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Dr. R. John Starmer, Low-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (202) 427-4170.

SUPPLEMENTARY INFORMATION: This statement would provide technical guidance for licensing and regulation of alternative methods for near-surface land disposal of LLW. The statement describes general design concepts for several alternative disposal methods and discusses related licensing considerations. For the purpose of this statement, alternative disposal methods are defined as disposal facility designs or disposal concepts which incorporate engineered barriers or structures, or otherwise differ from the past and present methods of near-surface land disposal of LLW by shallow land burial.

With the enactment of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Pub. L. 99-240), on January 15, 1986, the NRC is required, in consultation with the States and other interested persons, to identify methods for the disposal of low-level radioactive waste other than shallow land burial, and establish and publish technical guidance regarding licensing of facilities that use such methods. These actions are to be completed by January 1987. Further, the Act requires that by January 1988, the NRC, again in consultation with the States and other interested persons, identify and publish all relevant technical information regarding such alternative disposal methods that must be provided to the Commission in order to pursue such methods. For the NRC to meet these statutory requirements in a timely manner, it must immediately hear from the States and other interested parties as to what additional alternatives should be identified, as licensing guidance must be developed and published over very short time frames. Alternatives identified after the comment period will be noted, but licensing guidance for them not be available within the statutory time frames.

Draft Branch Technical Position Statement on Licensing of Alternative Methods of Disposal for Low-Level Radioactive Waste

A. Introduction

This technical position statement on alternative methods of land disposal of low-level radioactive waste (LLW) is provided in response to the question of whether disposal methods employing engineered structures and barriers can

be licensed under the existing requirements in 10 CFR Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste". The answer to the question is, "yes". This technical position statement is further prompted by the receipt of general requests for guidance on alternative disposal methods. These requests, however, have been indefinite regarding the disposal methods of specific interest, and the extent and type of regulatory guidance desired. The NRC staff has met with a number of different State and Regional Compact officials over the past six months to discuss regulatory guidance needed for the development of new disposal sites. Such discussions will continue and we hope they will begin to focus more sharply on specific technical questions as States and Regional Compacts reach decisions on choice of disposal method. A major purpose of this technical position statement is to provide guidance in response to requests received to date and to help ensure that States and Compacts are able to make timely decisions. The specific information contained in this technical position is intended to:

- Clarify the scope of disposal methods included within the meaning of the term "near-surface disposal";
- Define the characteristics of alternative land disposal concepts considered to be within the framework of the existing regulatory requirements in 10 CFR Part 61;
- Provide general guidance regarding the various components of the disposal system for alternative near-surface land disposal concepts which may present problems in light of the performance objectives of 10 CFR Part 61;
- Encourage early and continuing interactions between potential license applicants, the LLW disposal service industry, States, other government agencies, and the NRC regarding efforts to develop and regulate new disposal capacity for LLW;
- Encourage design engineers, vendors, and prospective license applicants to submit detailed technical information on proposed disposal methods as far in advance of license application as possible; and
- Encourage focus on the fewest possible approaches to ensure standardization and resultant ability to use limited NRC resources most effectively.

The NRC staff will apply existing licensing criteria, performance objectives, and most of the technical requirements of 10 CFR Part 61 to proposed alternative disposal methods

employing engineered structures and barriers. The NRC staff believes it will be possible to complete reviews of disposal alternatives with an expectation of fully resolving the licensing questions that may arise in the review process provided that an adequate pre-licensing dialogue is established.

B. Background Considerations

As a part of its work in developing 10 CFR Part 61 and its supporting environmental impact statement, NRC conducted a study of alternative low-level waste disposal methods. This was intended to help ensure that all viable disposal methods were considered and that the initial issuance of the regulation and subsequent amendments would be based on the disposal methods most likely to be used. The results of studies and public comments in response to the Advance Notice of Proposed Rulemaking for Part 61 led NRC to concentrate its efforts to develop regulations on land disposal methods.

Land disposal methods readily divide into two categories: Those that take place near the earth's surface and those that involve deeper disposal. Near-surface disposal encompasses the full range of technology that can be applied to low-level waste disposal near the earth's surface; that is, shallow land burial, deeper burial at depths up to 30 meters, and the use of engineered structures, barriers, and other concepts, some of which may be partially above the surface.

Specific requirements for deeper land disposal methods such as mined cavities, either natural or man-made, were not considered in the initial rulemaking effort. This technology involves considerations for siting and facility design, operations, and closure which are sufficiently different from those for near-surface disposal, that certain technical requirements in Subpart D of 10 CFR Part 61 do not apply. Such methods were left to be addressed in action on a specific application, subsequent guidance, and rulemaking effort, if rulemaking is warranted. It was also recognized that other disposal methods such as hydrofracture and deep-well injection have been used (e.g., by the Department of Energy in Oak Ridge, Tennessee). These two alternatives were not specifically addressed in the initial Part 61 rulemaking effort since they are suited to a very narrow range of waste types and require specific geologic and hydrogeologic conditions. Consequently, they also were left to be addressed at a later time, if necessary. Mined cavity, hydrofracture, or deep-well injection

disposal methods, could, however, be sited and licensed on a facility-specific basis under existing regulatory provisions in Part 61.

C. Position

1. Regulatory Framework

The regulatory framework established in 10 CFR Part 61 covers all phases of waste disposal from site selection through facility design, licensing, operations, closure, and post-closure stabilization, to the end of the period of active institutional control. This framework of regulations establishes the procedures, criteria, terms, and conditions forming the basis upon which the NRC will issue and renew licenses for the land disposal of LLW.

Subparts of the rule covering general provisions and procedural licensing aspects, as well as those subparts covering performance objectives, financial assurances, State and Tribal participation, and records, reports, tests and inspections apply to all methods of land disposal of LLW, both near-surface and at greater depths. The technical requirements in Subpart D are specified only for near-surface disposal methods with reserved sections for other than near-surface. As discussed in Section 5, the NRC staff believes that, except for the potential need to develop site specific alternative waste form and classification requirements, the technical requirements in Subpart D should apply to alternative methods of near-surface disposal using engineered barriers or structures. These alternative methods include, for example, disposal by emplacement in below-ground engineered vaults, partially above-ground engineered vaults, earth-mounded engineered bunkers, lined shafts or boreholes, caissons or pipes, and concrete-walled trenches.

2. Evaluation of Alternative Disposal Methods

This technical position is guided by the background of knowledge and experience reflected in the rulemaking which culminated in the issuance of 10 CFR Part 61. Both draft and final environmental impact statements for the rule address alternative disposal methods. Alternative disposal facility design and operating practices were also among the subjects covered in the background studies and information considered in the rulemaking.

Since the publication of Part 61 in December 1982, the staff has continued to evaluate alternative disposal methods. A NRC contractor report prepared by the U.S. Army Corps of Engineers, entitled "Alternative

Methods for Disposal of Low-Level Radioactive Wastes" (NUREG/CR-3774)¹ was published in five volumes:

- Volume 1, "Description of Methods and Assessment of Criteria," published April 1984, examined the applicability of 10 CFR Part 61 requirements—siting, design, operations and closure, and monitoring—to five generic design concepts for alternative disposal methods. The five design concepts are below-ground vaults, above-ground vaults, earth-mounded concrete bunkers, mined cavities, and augered holes.

- Volumes 2-5 published October 1985, provide a more detailed assessment of the applicability of existing criteria for near-surface disposal (Subpart D, 10 CFR Part 61) to four of the five alternative disposal methods covered in Volume 1. The four methods covered in the reports were below-ground vaults, above-ground vaults, earth-mounded concrete bunkers, and shaft disposal. (Note that mined cavity disposal is being evaluated but the work is incomplete at the present time.)

The authors concluded that the siting and site design, operations, closure, and monitoring criteria of Subpart D, 10 CFR Part 61, should apply to the four alternative disposal methods. The staff agrees with those conclusions, differing with the contractor's report on only a few minor interpretive points of the regulation. The findings of these reports and clarification of the ways the criteria should be interpreted will be incorporated into future regulatory guidance. This guidance will be issued based on consideration of any specific disposal alternatives that may be received for review, and analysis of particular design features of the generic disposal concepts that have already been studied. Staff expects to issue the guidance as modifications to a standard format and content guide being prepared for shallow land burial applications under Part 61.

The NRC basis for selecting the conceptual designs for first study by the Army Corps of Engineers was that each method appears to be under practical consideration by other countries, U.S. agencies, or States. One of these concepts, mined cavities, does not

¹ Copies of NUREG/CR-3774 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

appear to be under serious domestic consideration at this time. Further, as noted earlier, mined cavity disposal represents a significant departure from the experience, data and knowledge base used in formulating the requirements for Part 61. The NRC staff is currently evaluating the recommendations made by the Corps of Engineers regarding technical requirements for mined cavity disposal prior to publication of a separate volume of NUREG/CR-3774 on that disposal alternative.

While NRC has studied design concepts for alternative disposal methods, NRC cannot complete detailed design work or developmental research on new concepts or specific designs for facilities that would have the effect of establishing or developing their commercial potential. These activities are developmental rather than regulatory in nature and should be supported by the entities responsible for establishing new waste disposal capacity or, on the Federal level, by the Department of Energy.

3. General Guidance

Section 9 of the Low-Level Radioactive Waste Policy Amendments Act of 1985 requires that, to the extent practicable, NRC complete all activities associated with the review and processing of any license application within 15 months of receipt of the application. The NRC is moving ahead to provide information which will help to ensure the timely review of low-level waste disposal facility license applications. However, the NRC staff will also evaluate innovative disposal designs that might later be reflected in a license application. To promote timely regulatory decisions, designers, vendors, and prospective license applicants are encouraged to submit detailed technical information on proposed disposal facility designs in advance of formal license application. This will permit NRC staff to evaluate fundamental safety and performance aspects and provide pre-licensing guidance. However, such information should only be submitted when the designs are a part of a specific application being prepared, represent work sponsored by a potential applicant, or are based on some other type of commitment by a potential licensee. Advance review, and where feasible, approval of designs and related technical information can reduce considerably the time needed for license application review.

Designs for alternative disposal methods should reflect both the benefits of significant research and development work, and the experience gained from

waste disposal operations in the United States and other countries. It is anticipated that alternative disposal methods may offer an enhanced margin of protection for the public and the environment. If the alternative design is coupled with innovative operations (e.g., automated handling and emplacement) or more conservative waste forms, content, or packaging, it may also offer an enhanced margin of protection for workers. Tradeoffs on worker exposure, operations, and waste form should be factored into designing as indicated in Section 4 which follows. The NRC particularly encourages design innovations which increase safety and reliability and which generally are supported by a proven technology or one which can be demonstrated by a satisfactory technology development program.

Early review of facility design can be requested on an individual applicant basis. However, the NRC believes that there are advantages to standardized approaches to waste disposal. Standard disposal design features can benefit public and environmental protection by concentrating the resources of waste management engineers and vendors on particular approaches, and by stimulating standardized programs of construction practice and quality assurance. The use of standardized approaches and design concepts can also facilitate more effective and efficient licensing and inspection processes. To this end, staff plans to give higher priority and focus resources on those approaches which are of greatest interest to States. Therefore, the NRC staff strongly encourages industry and the States to pursue standardization in developing alternative waste disposal methods. Procedures for reviewing standard designs could be patterned after the procedures for reviewing standard designs for reactors in Appendix O to 10 CFR Part 50.

The public should note that pre-application requests for NRC review that also request approval by NCR involve fees. There are two ways for NRC to give approval. Both involve fees under 10 CFR Part 170. Requests that are suitable and submitted as Topical Reports involve a \$20,000 fee. If the request is not suitable and not submitted as a Topical Report, Part 170 requires full cost recovery as a Special Project (see 10 CFR 170.31, Item 12). Also see 10 CFR 170.11(b) which allows the Commission to consider exemptions from the fee requirements when consistent with law and the public interest.

The NRC intends, commensurate with its statutory responsibilities, to improve and simplify the licensing process and provide stability and predictability in the regulation of new LLW disposal facilities. To help accomplish this objective, the NRC staff encourages the earliest possible interaction between potential license applicants, the waste disposal service industry, States, other government agencies, and the NRC. This should also serve to provide all interested parties, including the public, with timely and objective assessments of the public and environmental protection aspects of proposed alternative waste disposal methods.

4. Descriptions of Alternative Disposal Concepts

Each of the design concepts described below has either been evaluated as a waste disposal alternative to shallow land burial or is currently being used or considered for that purpose in other countries. Descriptions of these design concepts are included here to help define the range of design characteristics considered to be within the framework of the existing regulatory requirements of 10 CFR Part 61. The concepts are described in more detail in NUREG/CR-3774.

a. *Below-ground Vaults.* The term below-ground vault refers to any enclosed engineered structure built totally below the surface of the earth and used for the disposal of low-level radioactive waste. No portion of the structure would protrude above the natural surface grade. A below-ground vault could be fabricated from the engineering materials discussed below for above-ground vaults. The vault could be built with engineered walls and roof; the floor could be natural soil or rock, treated soil or rock, or engineered materials. The vault, as an integrated structure, also has the characteristic of limited access to its interior space, such as a doorway or portal or hatch opening. Operational access to the vault from the surface may be in the form of an excavated ramp, which is built and then covered over at closure. During operations, however, the vault may have more extensive access, depending on its design. See Volume 2 of NUREG/CR-3774 for a more complete description of variations in conceptual design and operation of below-ground vaults.

b. *Above-ground Vaults.* An above-ground vault disposal unit is an engineered structure or building with floor, walls, roof, and limited access openings on a foundation near the ground surface. At least some portion of the structure would be above the final

post-closure surface grade. The vault is built from engineered structural materials. Fabrication could be of masonry blocks, fabricated metal shapes, reinforced cast-in-place or sprayed concrete, pre-cast concrete, or plastic or fluid media molded into various solid shells. All of these materials have been used to construct vaults. There are no existing regulatory constraints on material selection or shape of the vault as long as it can be demonstrated by the license applicant that the performance objectives of 10 CFR Part 61 can be achieved. See Volume 3 of NUREG/CR-3774 for a more complete description of variation in conceptual design and operation of above-ground vaults.

c. Earth-mounded Concrete Bunkers. The design of earth-mounded concrete bunkers may include features of trenches, below-ground vaults, and earth mounds. This disposal method may also rely on mandatory requirements on waste form or site operation, such as specialized packaging and encapsulation. The basic design of an earth-mounded concrete bunker currently used in France segregates wastes according to level of radioactivity. Wastes with higher levels of radioactivity are embedded in concrete below ground. Waste packages with lower levels of radioactivity are emplaced above ground at natural grade in earthen mounds (tumuli). Thus, an earth-mounded concrete bunker may involve both above-ground and below-ground construction, and may include waste encapsulation and backfilling with both concrete and earth. See Volume 4 of NUREG/CR-3774 for a more complete description of variations in conceptual design and operation of earth-mounded concrete bunkers.

d. Shaft Disposal. The term shaft disposal refers to a near-surface disposal alternative in which wastes would be disposed of in shafts or boreholes augered, bored, or sunk by conventional construction methods. The shafts could be lined or unlined and be of various sizes. Lining could be of concrete, metal, or other suitable structural material. See Volume 5 of NUREG/CR-3774 for a more complete description of variations in conceptual design, use, and operations of shaft disposal.

If specific disposal facility designs are brought to the NRC for evaluation, the NRC will provide pre-licensing guidance to help ensure that key issues will be identified and resolved prior to licensing and that NRC's regulatory requirements are incorporated into the applicant's program. However, until such time as

detailed technical information on designs are submitted, the NRC staff believes that regulatory guidance must be sufficiently general to avoid placing unnecessary constraints on the development of new design concepts. The nature of any new NRC regulatory requirements will be based on the extent to which an individual proposed disposal design is shown to conform to the existing technical requirements of Part 61 or is compatible with meeting the performance objectives set out in Part 61 when combined with other components of the disposal system.

The following general guidance is provided for features and characteristics of various alternative disposal concepts which may present problems in demonstrating compliance with the 10 CFR Part 61 performance objectives. Requirements to reassess and potentially modify other components of the disposal system are also discussed. This guidance is intended to assist waste disposal engineers, license applicants, and States in identifying a preferred waste disposal design.

5. Design Considerations

Land disposal facilities must be sited, designed, operated, closed, and controlled after closure to achieve the performance objectives set forth in Subpart C of Part 61. The combination of performance objectives and technical requirements establish a systems approach to waste disposal. The components of the "system" include the site and its characteristics, the facility and disposal unit design, the waste, facility operations and closure, intruder barriers, and institutional controls. Environmental monitoring is used to assess the system's performance. Reliance is not placed on any one component of the system. Rather, all interact in achieving the performance objectives. Design of the facility and disposal units plays an important role in the performance of the waste disposal system.

a. Siting. The disposal site suitability requirements of § 61.50 are minimum common sense requirements and apply to siting of all near-surface alternative disposal methods. The first critical step, as with any disposal facility, is to select a site where natural conditions favor disposal.

Engineered structures and barriers should not be viewed as a planned substitute for a suitable site. Rather, in conjunction with other disposal system components, the engineered features should offer enhanced confidence in protection for the public and environment.

Thus, States are encouraged to proceed expeditiously with their disposal siting programs while NRC develops supplemental standard format and content guidance for alternative methods.

b. Design of Disposal Units. The disposal site design requirements of § 61.51 are sufficiently flexible to apply to alternative disposal methods which fall within the four concepts described in section 4 of this statement. Although little experience concerning waste disposal in engineered structures is available, the technology exists to construct buildings and structures that will last for centuries. There are structures in use today that were built hundreds and even thousands of years ago. However, procedures are not well developed for obtaining assurance that structures will be left alone or will survive intact over the period required to safely isolate emplaced wastes from the human environment after the loss of institutional controls. Designs which actively rely on engineering should be evaluated for deterrence of intrusion and also the consequences of intrusion and failure of the structure sooner than expected.

Waste retrievability is not required or prohibited by 10 CFR Part 61. If waste retrievability is proposed as a design feature, several important factors should be considered. Retrievability should not compromise or otherwise lessen the ability of the combined features to meet the performance objectives of Part 61. The designer should be sure that retrievability measures do not result in increased problems in protecting the inadvertent intruder. If the retrievability concept requires action by the custodial agency during the active institutional control period to assure long-term performance (e.g., grouting around packages), funding and institutional commitments for the action should be included.

c. Waste Classification. The ability to dispose of all Class A, B, and C LLW, as currently specified in Subpart D of Part 61, may have to be reassessed for the specific concept finally developed. Existing concentration limits for Class A, B, and C are based on associated waste form and other components of the system to determine critical pathways. Certain disposal methods and associated operations may not accommodate all classes of LLW or parts of one or more classes. An alternative waste classification system may be proposed by the applicant because of the types of waste generated within the region served by the proposed facility, the specific design of

disposal units, or other factors. The applicant may propose a waste classification system different from that described in § 61.55, provided the system is compatible with the performance objectives of Part 61 and the concentrations of radionuclides in the system proposed do not exceed the values specified in § 61.55 for Class C waste. Alternatives to current waste classification requirements can be considered under the flexibility in § 61.58. However, alternative waste classes have the potential to confuse waste generators. Staff believes that using other options such as more restrictive waste forms or packaging or alternative emplacement methods would minimize waste generator confusion.

d. *Intruder Barriers.* Part 61 requires Class C waste to be disposed of in such a manner that the top of the waste is a minimum of five meters below the top surface of the cover over the waste or that intruder barriers are included that are designed to protect against an inadvertent intrusion for at least 500 years (§ 61.42, § 61.52). Alternative disposal methods coupled with alternative waste classification systems should provide a level of protection for the inadvertent intruder equivalent to the existing requirements.

e. *Waste Characteristics:* The minimum requirements on waste characteristics specified in § 61.56(a) will apply for alternative disposal methods. The applicant may use the flexibility on stability requirements in 10 CFR 61.56(b)(1) if waste stability is to be provided by the engineered structure in which the waste is emplaced. However, proposed designs may need more stringent minimum waste forms or packaging to protect workers or design features to accommodate planned operations (e.g., weight or size limits). Supplemental requirements should be reasonable enough so that generators and processors can be relied on to comply with the requirements. Alternatives to current waste characteristics requirements can be considered under § 61.58.

f. *Facility Operations and Closure:* The requirements for facility operations and closure in § 61.52 will be applied to the alternative disposal methods described in this statement. The specific application of the individual requirements may vary with a particular alternative disposal design. Worker exposure and safe operations should obviously be a factor in developing designs. Volumes 2 through 5 of NUREG/CR-3774 contain a more complete explanation and discussion of individual requirements of § 61.52 and

their application than is included in this position.

g. *Environmental Monitoring:* The requirements for monitoring specified in § 61.53 will apply for alternative disposal methods. The specific parameters to be monitored and the measurements and observations to be made may vary significantly between below-ground and above-ground disposal units and, for above-ground units, between earth covered and uncovered units. Provisions for monitoring should be included in design considerations.

h. *Institutional Requirements.* The land ownership and institutional control requirements of § 61.59 will apply to alternative disposal methods. Existing requirements related to active institutional controls may have to be modified by license to accommodate some engineered structure disposal concepts, such as those built above ground without cover. For example, the wastes may be more readily available for exposure, so additional controls and a more comprehensive program to exclude the public from the site during the active institutional control period may be necessary. Part 61 provides that active institutional controls cannot be relied on for more than 100 years. Part 61 does not prohibit longer periods of active controls. However, longer periods should only provide additional assurances and should not be necessary to assure long-term performance.

6. Summary

The NRC staff should be informed as early as possible of new design concepts under development by the industry or under consideration by States and Compacts that do not represent a variation on the four concepts in Volumes 2 through 5 of NUREG/CR-3774. New disposal concepts may involve technical issues that should be identified and resolved in order to assure timely regulatory actions on license applications. NRC resources are limited and their use must be planned and focused on real needs. Recent legislation also requires that licensing guidance on alternatives be prepared and published by January 1987. Also, if design questions on specific proposals raise serious problems in meeting the requirements of 10 CFR Part 61, the most cost-effective decision on the part of the applicant may be to eliminate a particular alternative or design feature from further consideration. Early consultation with the appropriate licensing authority will aid timely decisions.

Prospective applicants should understand that they are responsible for

all research, data, and technical evaluations necessary to support a specific license application. NRC conducts research only to provide the technical bases for rulemaking and regulatory decisions, to support licensing and inspection activities, to assess the feasibility and effectiveness of safety features and to increase our understanding of phenomena for which analytical methods are needed to carry out regulatory responsibilities.

D. Questions

A number of basic issues have been identified by NRC staff in the course of its evaluation of alternative disposal methods. The staff requests comments from States and all other interested parties on these questions as well as any other aspect of this proposed technical position.

1. Are there any alternative disposal methods under serious consideration that do not represent a variation or combination of the four concepts evaluated in Volumes 2 through 5 of NUREG/CR-3774?

2. With the publication and endorsement of NUREG/CR-3774 and plans for modified guidance on the content of applications for alternative methods, what additional specific regulatory guidance is needed regarding alternative disposal methods?

3. To concentrate the resources of designers, engineers, and vendors on particular approaches, and permit a more effective and efficient licensing process, should NRC's regulatory program include active solicitation and review of a reference design concept? The staff could review and approve a submitted generic design for most (or a major portion) of a near-surface land disposal facility outside the context of an application for a site-specific license. (An approval design may be referenced in later applications.) If so, what aspects of a disposal facility design are amenable to standardization?

4. To promote a more effective and efficient licensing process, should NRC's regulatory approach include early pre-application review of site suitability issues relating to the development of a low-level radioactive waste disposal facility separately from and prior to the application for a license to construct and operate such a facility? Such early review and documentation of staff findings could be patterned after the procedures for reactor construction permits in Appendix Q to 10 CFR Part 50. If so, what provisions in Appendix Q should be included or deleted?

Dated at Silver Spring, Maryland, this 26th day of February, 1986.

For the Nuclear Regulatory Commission.
Robert E. Browning,
*Director, Division of Waste Management,
 Office of Nuclear Material Safety and
 Safeguards.*

[FR Doc. 86-4790 Filed 3-5-86; 8:45 am]
 BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 424

Retail Food Store Advertising and Marketing Practices

AGENCY: Federal Trade Commission.

ACTION: Notice of Postponement of Scheduled Public Hearing.

SUMMARY: The Federal Trade Commission has postponed until April 1, 1986, the public hearing on the Proposed Amendment of the Retail Food Store Advertising and Marketing Practices Trade Regulation Rule. The time for filing statements of testimony and exhibits by witnesses has not been extended.

DATE: The public hearing will commence at 9:30 a.m., April 1, 1986.

ADDRESS: The public hearing will be held in Room 532 of the Federal Trade Commission Building, Pennsylvania Avenue and Sixth Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Henry B. Cabell, Presiding Officer, Federal Trade Commission, Washington, DC 20580, 202-523-3564 of Jill Goodrich-Mahoney, Attorney, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, 202-523-5998.

SUPPLEMENTARY INFORMATION: By Federal Register Notice of October 24, 1985 (50 FR 43224) the Commission published the proposed amendment of the rule, announced the date for commencement of the hearing and set a deadline for filing statements of testimony by prospective witnesses and exhibits. The hearing was scheduled to commence on March 17, 1986. Prepared statements of testimony by witnesses and exhibits were to be filed on or before February 14, 1986.

The Presiding Officer has granted the motion of the Commission staff for a delay in the commencement of the hearing, and has postponed the commencement date of the hearing until April 1, 1986. The Presiding Officer has not extended the deadline for filing prepared statements of testimony and exhibits by witnesses.

Issued: February 28, 1986.
Henry B. Cabell,
Presiding Officer.
 [FR Doc. 86-4845 Filed 3-5-86; 8:45 am]
 BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 202, 203, 206, 207, 210, 212, 241, and 250

Royalty Management; Product Valuation Regulations and Related Topics

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Addition to advance notice of proposed rulemaking and request for comments.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is supplementing its February 5, 1986, Federal Register Notice announcing an advance notice of proposed rulemaking. Two alternative product valuation methods are proposed for oil and gas and associated products.

DATES: Comments must be received on or before April 7, 1986. A public meeting will be held on March 18 and 19, 1986, from 8:30 a.m. to 4:00 p.m.

ADDRESSES: Comments should be mailed to Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 660, Denver, Colorado 80225, Attention: Vernon B. Ingraham. The public meeting will be held at the Denver Federal Center, Building 25, Room 1254, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, telephone: (303) 231-3360, (FTS) 236-3360.

SUPPLEMENTARY INFORMATION:

I. Background

An advance notice of proposed rulemaking giving notice of the availability of draft valuation regulations for coal, oil, gas and associated products, gas processing allowances, and transportation allowances was published in the Federal Register on February 5, 1986 (51 FR 4507). The background information in that notice applies also to this notice.

II. Draft Regulations

The draft regulations for each of the products being made available for review and comment (i.e. coal, oil, and gas) incorporate a procedure for valuing products disposed of under non-arm's-

length-contract and no-contract situations that requires an intensive, up-front MMS approval process. However, future resources available to MMS may be inadequate to support the active MMS role required in the draft proposed regulations. Therefore, MMS specifically requests comments for each of the regulations regarding alternatives that may require fewer resources for both the lessee and MMS. In this regard, MMS has identified a few specific alternatives, but other alternative suggestions are requested.

In valuing oil, posted prices are a well-recognized valuation standard, and posted price bulletins cover almost all producing areas. MMS has proposed to use these posted prices as the primary valuation criteria. Under the draft regulations, MMS would review all transactions that do not occur under an arm's-length contract. This review would be based primarily upon information submitted to MMS by the lessee, and then MMS would specify a value, which in all probability would be based upon prices posted for the producing area. As an alternative, MMS would like comments on whether the regulations could require the lessee to compute royalties based on a price which is no more than 5 percent less than the highest price posted applicable to the producing area, adjusted for gravity. This would eliminate both the need for lessees to submit information and for MMS to review all that information before establishing a royalty value in non-arm's-length and no-contract situations. The lessee's valuation still would be subject to later audit by MMS.

For valuing gas, one alternative to the draft regulations would retain the basic approach of the draft proposed regulations, but up-front MMS approval would not be required for non-arm's-length-contract and no-contract situations. The lessee would be responsible for determining whether its non-arm's-length contract is equivalent to non-arm's-length contracts or, failing that, for determining which of the prioritized valuation criteria should be used. Thus, rather than requiring the lessee to propose a value, submit that proposal to MMS with supporting documentation, and then await MMS approval, this alternative would allow the lessee, in the first instance, to apply the prioritized criteria which would be set forth in the rules. Of course, the lessee's value would be subject to later audit to ensure its reasonableness. While this approach would reduce MMS's involvement in establishing value, comments are requested on

whether it would provide the level of certainly to the lessee that MMS desires in the regulations. One purpose of the regulations is to eliminate, to the extent practicable, the situation which currently exists whereby lessees are uncertain as to what the royalty value of a product will be until MMS conducts an audit.

A second alternative for valuing gas in non-arm's-length-contract and no-contract situations would be to have the regulations prescribe, by geographical area, a minimum value for royalty purposes. This minimum value would change periodically based upon an index which would also be prescribed by the regulations. The index would be designed to reflect changing market conditions, and thus cause the minimum value to rise or fall with the market. For example, assume minimum value for NGPA section 102 gas for January 1986 is determined after the notice and opportunity for comment to be \$2.10 per MMBtu for the Gulf of Mexico OCS. The index is prescribed to be the average projected base price reported to FERC for the Gulf of Mexico OCS under all Purchased Gas Adjustment (PGA) filings in effect for the current month divided by the average projected base price reported to FERC under all PGA filings in effect for January 1986. If the average projected base price reported to FERC for January 1986 was \$2.00 per MMBtu, and for June 1986 it was \$1.75 per MMBtu, the minimum value upon which royalties could be based for June 1986 Gulf of Mexico OCS production would be \$1.84 per MMBtu.

PGA filings are required to be filed by all interstate pipeline companies that purchase gas for resale and these filings are publicly available. One concern with this alternative is that the PGA filing information may not represent the total gas sales from an area because it does not include intrastate gas sales, direct producer sales, etc. In the worst case, there may be no PGA filing information available, such as for the State of California where no gas produced is sold into the interstate market. The advantage of this alternative is that lessees would be able to determine with some certainty what their royalty obligation would be. For MMS, the audit burden would be decreased significantly because auditors would be required to determine only if the lessee paid either gross proceeds or the minimum value, whichever is greater.

MMS's objective is to have clear and concise valuation regulations which result in proper, reasonable values for royalty purposes. Our goal is to avoid a process that is burdensome on either the

lessee or lessor. Therefore, comments are requested on the draft rules, the alternatives outlined in this notice, and any other suggestions lessees or others may have for inclusion in proposed regulations.

III. Availability of Draft Regulations

Interested persons may obtain a copy of the draft regulations upon request from the MMS at the address above in ADDRESSES.

The format of the public meeting will be the same as that specified in the preamble section of the draft regulations. The oil and gas draft regulations will be covered on March 18, the coal draft regulations will be covered in the morning session on March 19, and the gas processing and transportation allowance draft regulations will be covered in the afternoon session on March 19.

Dated: March 2, 1986.
William D. Bettenberg,
Director, Minerals Management Service.
[FR Doc. 86-4884 Filed 3-5-86; 8:45 am]
BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD3-85-81]

Special Anchorage Area; Hudson River, Tarrytown, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a special anchorage area in the Hudson River southwest of Tarrytown, New York and northeast of the Tappan Zee Bridge. This proposal is being considered because there is a reported shortage of dock space for recreational vessels in the lower Hudson River. The proposed special anchorage would help alleviate the shortage of space by providing a mooring area for approximately 45 small vessels.

DATE: Comments must be received on or before April 21, 1986.

ADDRESSES: Comments should be mailed to Commander, Coast Guard Group New York, Bldg. 109, Governors Island, New York, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at the Vessel Movement Office, Bldg. 109, Governors Island, New York. Normal office hours are between 8:00 a.m. and

4:30 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade T.S. Kuhaneck, Vessel Movement Officer, Commander, Coast Guard Group New York, at (212) 668-7933.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3-85-81) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are LTJG T.S. Kuhaneck, Project Officer, Coast Guard Group New York, and Mrs. M.A. Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations

The area proposed for designation as a special anchorage lies in an area southwest of Tarrytown, New York, and northeast of the Tappan Zee Bridge. This is an area of heavy recreational boating concentration but one lacking in available dock area. The proposed special anchorage would increase the area available for recreational boaters to anchor in this section of the Hudson River. This rule would allow anchoring of small boats (vessels under 65 feet in length) without requiring them to display anchor lights or sound fog signals. The area is well away from the navigable channel and is located where general navigation will not endanger or be endangered by unlighted vessels. It is projected that approximately 45 small vessels will use this designated area. The area would be open to the general public with access available at the Washington Irving Boat Club. The boat club has launching equipment, a paved launching ramp, and fueling and parking facilities. This regulation is issued

pursuant to 33 U.S.C. 2030, 2035, and 2070 as set out in the authority citation for all of Part 110.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Establishment of this proposed Special Anchorage Area will not require dredging or result in increased cost to any segment of the public. In fact, it may attract additional recreational boaters to the area which would have a favorable economic impact in commercial facilities providing services to these boaters.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Lists of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 110 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g), Sec. 110.1a also issued under 33 U.S.C. 1223 and 1231.

2. In § 110.60, paragraphs (p-1) and (p-2) are redesignated (p-2) and (p-3), respectively, and a new paragraph (p-1) is added to read as follows:

§ 110.60. Port of New York and vicinity.

(p-1) *Hudson River, at Tarrytown, NY.* Beginning at a point on the shoreline at latitude 41°04'20" N., longitude 73°52'04" W.; thence due west to a point at latitude 41°04'20" N., longitude 73°52'12" W.; thence due south to a point at latitude 41°04'13" N., longitude 73°52'12" W.; thence due east to a point on the shoreline at latitude 41°04'13" N., longitude 73°52'00" W.; thence along the shoreline to the point of beginning.

Dated: February 24, 1986.

P.A. Yost,

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

[FR Doc. 86-4915 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD 12-86-01]

Drawbridge Operation Regulations; Sacramento River, CA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the California Department of Transportation the Coast Guard is considering a change to the regulations governing the Butte City bridge across the Sacramento River, mile 169.7, at Butte City, California to provide that the draw need not open. This proposal is being made because no requests have been made to open the draw since the bridge was completed in 1949. This action should relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and should still provide for the reasonable needs of navigation. The Coast Guard also proposes to delete the 1972 requirement that the draws above Chico Landing be returned to operable condition within six months after notification by the District Commander.

DATE: Comments must be received on or before April 21, 1986.

ADDRESSES: Comments should be mailed to Commander (oan), Twelfth Coast Guard District, Building 51-3, Government Island, Alameda, CA 94501-5100. The comments and other materials referenced in this notice will be available for inspection and copying in the Bridge Section at the above address. Normal office hours are between 6:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Rose E. Guerra, Assistant Chief, Bridge Section, Aide to Navigation Branch (telephone: (415) 437-3514).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received

should enclose a stamped, self-addressed postcard or envelope.

The Commander, Twelfth Coast Guard District will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Rose E. Guerra, project officer, and Lieutenant Commander Peter K. Mitchell, project attorney.

Discussion of Proposed Regulations

The Butte City drawbridge has not had any requests for an opening since it was completed in 1949. The bridge owner has made test openings every few years to make sure the operating mechanism was in working order. The fender system has been a maintenance problem due to debris carried by seasonal runoff. The closest downstream bridge is at Colusa, mile 143.5. This is a removable span bridge which is not required to open. The closest upstream bridge is at Ordbend, mile 185.0, and is a fixed bridge. Both bridges provide less vertical clearance than the Butte City bridge in the closed position.

The Hamilton City bridge, mile 203.5, and the Tehama railroad bridge, mile 232.5, are the only two remaining drawbridges above Chico Landing. The Hamilton City bridge is currently being replaced with a fixed bridge. The Tehama railroad bridge is immediately upstream of an adjacent fixed highway bridge. The bridge has not been opened since 1934. Therefore the regulation requiring the bridge(s) to be returned to service within six months of notice by the District Commander is no longer necessary.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since there has not been any requests for openings since the bridge was constructed it will not have any impact on navigation.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic

impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

AUTHORITY: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section § 117.189 (b) and (c) are revised to read as follows:

§ 117.189 Sacramento River

(b) The draws of the California Department of Transportation bridges, mile 90.1 at Knights Landing, and mile 135.5 at Meridian, shall open on signal if at least 12 hours notice is given to the California Department of Transportation at Marysville.

(c) The draws of the bridges above Meridian need not be opened for the passage of vessels.

Dated: February 20, 1986.

John D. Costello,
Vice Admiral, U.S. Coast Guard, Commander,
Twelfth Coast Guard District.

[FR Doc. 86-4914 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 166

[CGD 85-062]

Shipping Safety Fairways; Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This notice proposes to establish a shipping safety fairway in the vicinity of Heald Bank in the approach to Galveston, Texas. This shipping safety fairway is intended to increase navigation safety by providing a corridor free from fixed offshore structures. This proposal is necessary to permit deep draft vessels to navigate safely around the area off Heald Bank Shoals in the approach to Galveston, Texas. This proposal would also implement the results of the port access route study as reported in the *Federal Register* on March 11, 1985 (50 FR 9682).

DATE: Comments must be received on or before May 5, 1986.

ADDRESS: Comments should be submitted to Commandant (G-CMC/21) (CGD 85-062), U.S. Coast Guard, Washington, D.C. 20593. Comments may be delivered to and will be available for inspection and copying at the Marine Safety Council, room 2110 between the hours of 8 a.m. and 4 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation (G-NSR-3), room 1606, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593, (202) 245-0108.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include his or her name and address, identify this notice as CGD 85-062, and give the reasons for the comment. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will be beneficial to this rulemaking.

Drafting Information

The principal persons involved in drafting this rulemaking are: Lieutenant (j.g.) Daphne Reese, Project Manager, Office of Navigation, and Lieutenant Sandra Sylvester, Project Attorney, Office of Chief Counsel.

Discussion of Proposed Regulations.

In 1978, the Ports and Waterways Safety Act (PWSA) was amended to authorize the Coast Guard to establish shipping safety fairways (33 U.S.C. 1223). Prior to this amendment, fairways were established by the U.S. Army Corps of Engineers (COE). Although the Coast Guard now designates the fairways, the authority to issue permits for structures remains with the COE.

A shipping safety fairway is an area or corridor of a waterway in which no fixed structures are permitted. In accordance with the PWSA, the right of

navigation is paramount over other uses in these areas. A fixed structure in a fairway would be considered an obstruction to navigation and the COE will therefore not issue a permit for the construction of a structure therein. The fairways exist to ensure that an obstruction free corridor is available to navigation during development and production of offshore resources. Although the proposed fairways will be indicated on navigation charts, the use of fairways by vessels is voluntary.

The authority to create a fairway may be exercised by the Coast Guard only after a study of potential traffic density and use conflicts has been conducted to determine the need for designated safe access routes for vessels proceeding to and from United States ports. The results of a port access route study could cause restrictions on the manner in which specific offshore areas are leased after the date of the study notice. The study for this rulemaking was initiated by a notice in the *Federal Register* on March 19, 1984 (49 FR 10127, corrected on April 12, 1984 at 49 FR 14538) and on July 10, 1984 (49 FR 28074). The Eighth Coast Guard District performed the study to determine the need for safe access in the approach to Galveston because of a problem with shoals in the vicinity of Heald Bank. This problem was brought to the Coast Guard's attention by the Houston/Galveston Navigation Safety Advisory Committee in 1983. Presently, there are four fairway segments leading into Galveston. The northwest-southeast leg of the Galveston Entrance Fairway (33 CFR 166.200(d)(10)) is the most direct route for the majority of traffic using the Houston/Galveston port complex. Within this fairway is a section of shallow water in the vicinity of Heald Bank (approximately 34 ft.). The Advisory Committee recommended that the Coast Guard designate a secondary fairway through deeper water. The Eighth District's study results concurred with this recommendation.

Study results were published in the *Federal Register* on March 11, 1985 (50 FR 9682). The study recommended a new fairway be established to permit deep draft vessels to navigate safely around the area of Heald Bank shoals in the approach to Galveston. The present rulemaking is intended to implement the Heald Bank deep draft fairway recommendation. The study also recommended the existing fairway system in the approach to the Louisiana Offshore Oil Port (LOOP) remain as it

was originally established, and the existing LOOP fairway system be incorporated into Part 166 of Title 33, Code of Federal Regulations, to consolidate all fairways in a single part. A final rule was published on July 1, 1985 (50 FR 26989) to incorporate the LOOP fairway system into 33 CFR 166.200(d)(52).

Heald Bank Cutoff Safety Fairway

A new shipping safety fairway is proposed around the area of Heald Bank Shoals in the approach to Galveston. The proposed fairway would connect the Northwest-Southeast leg of the Galveston Entrance Fairway with the North-South leg of the fairway. It would be approximately two miles wide, 125 miles long, approximately 40 miles offshore, and would run generally east-west. It would affect one tenth of one tract (High Island Area A-45) leased after the notice of study (49 FR 10127) was published, under the stipulation that development of the tract be in accordance with future fairway restrictions. The new fairway will provide a corridor free from fixed structures for deep draft vessel traffic in the approach to Galveston.

Regulatory Evaluation

This proposed rulemaking will not have adverse energy or environmental impact. On the contrary, the risk of environmental damage will decrease if the rule is implemented because deep draft vessels will have an established access route where structures will not be permitted, allowing for safer maritime navigation. The Coast Guard is directed by the PWSA to anticipate development on the Outer Continental Shelf (OCS) and to reconcile the potential conflict with navigation by establishing routing measures in frequently used corridors.

The proposed fairway was designed to have the least adverse impact upon future tracts and present leaseholders. As indicated above, there is one tract in the proposed fairway which was leased after the study was opened. The proposed fairway may interfere with direct exploration and production of oil in the portion of the leased tract within the designated area. However, it is impossible to determine what offshore resources, if any, would be inaccessible if the proposed fairway is established.

In circumstances where the Coast Guard is convinced that fixed structures must be placed in an area designated as a fairway, to gain access to significant quantities of oil or gas, and that navigation safety would not be jeopardized by a modification of that fairway, a request for adjustment would

be given the appropriate consideration in accordance with the PWSA and rulemaking procedures. In most cases, a fairway modification will require a PWSA port access study before rulemaking can be commenced.

This proposed regulation is considered to be non-major under Executive Order 12291 and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). There are no costs associated with the proposed fairway which can be identified and calculated at this time. This designation will contribute to navigation safety without significantly interfering with development of the OCS. The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary. Since the impact of this proposal has been found to be so minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 166

Anchorage grounds, Marine safety, Navigation (water), Waterways, Shipping safety fairways.

In consideration of the foregoing, the Coast Guard proposes to amend Part 166 of Title 33 Code of Federal Regulations as follows:

PART 166—SHIPPING SAFETY FAIRWAYS

1. The authority citation for Part 166 continues to read as follows:

Authority: 33 U.S.C. 1223; 49 CFR 1.46(n)(4).

2. Section 166.200 is amended by adding a new paragraph (d)(53) to read as follows:

§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.

(d) * * *

(53) Heald Bank Cutoff Safety Fairway. The area enclosed by rhumb lines joining points at:

Latitude	Longitude
28°57'15" N.	94°23'55" W.
28°51'30" N.	93°56'30" W.
28°48'30" N.	93°51'45" W.
28°55'15" N.	94°23'55" W.

Dated: March 3, 1986.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation.

[FR Doc. 86-4916 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-2975-1]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at eight facilities from the list of hazardous wastes contained in 40 CFR 261.31 and § 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated three of the petitions which are discussed in today's notice. Based on our review at that time, two of the petitioners were granted a temporary exclusion, while the third petitioner was granted an informal exclusion. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions and the other five petitions for which we propose to grant an exclusion have been evaluated both for the factors for which the wastes were originally listed, as well as other factors and toxicants reasonably expected to be present in these wastes.

DATES: EPA will accept public comments on these proposed exclusions until April 7, 1986. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen whose address appears below, by March 21, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send two copies of your comments to EPA. One copy should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW.,

Washington, D.C. 20460. A second copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Identify your comments at the top with this statement: "Section 3001—Delisting Petition; Proposed Exclusions Beginning with Chamberlain-Featherlite, Inc.; March 6, 1986."

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket for these proposed exclusions is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous waste identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under

which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the wastes was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); Section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to waste listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) that the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent of the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine whether these residues exhibit any of the hazardous waste characteristics on a periodic basis.

Approach Used To Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny

the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose the submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the

environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground-water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.¹

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.² The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the

aquifer (*i.e.*, any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the receptor well equal to or less than that same level). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petitions discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioners to present truthful and accurate results. In addition, the Agency has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting an exclusion. All of the exclusions proposed today will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusions published today involve the following petitioners:

Chamberlain-Featherlite, Inc., Hot Springs, Arkansas;
Falconer Glass Industries, Inc., Falconer, New York;
Lake City Army Ammunition Plant, Independence, Missouri;
Loxreen Company, Inc., Hayti, Missouri;
Olin Corporation, Augusta, Georgia;
SR of Tennessee, Ripley, Tennessee;
Tennessee Electroplating, Ripley, Tennessee;
Valley City Steel Company, Valley City, Ohio.

I. Chamberlain-Featherlite, Inc.

A. Petition for Exclusion

Chamberlain-Featherlite, Inc. (Chamberlain), located in Hot Springs, Arkansas, is involved in the manufacture of aluminum storm doors. Chamberlain has petitioned the Agency to exclude its treated sludge presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide. Chamberlain has petitioned to exclude its waste because it does not meet the criteria for which it is listed.³

Chamberlain's conversion coating process is a pretreatment process that applies a corrosion-resistant film to the metal surface before painting. Chamberlain claims that its wastewater treatment process generates a non-hazardous waste because the constituents for which the waste was listed are not present in the waste or, if present, are in essentially an immobile form. Chamberlain further claims that this waste is not hazardous for any reason.

Chamberlain has submitted a detailed description of its manufacturing and wastewater treatment processes, including: schematic diagrams; total constituent analyses for total chromium and cyanide; EP toxicity test results for total chromium; distilled water leach test results for cyanide; and reactivity test results with respect to cyanide and sulfide content. Chamberlain also submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, nickel, selenium, and silver and test results for total oil and grease. Chamberlain further submitted a list of raw materials used in their manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

¹ The Agency recently proposed a similar approach, including a ground-water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not yet received or evaluated the comments on this proposal. If this approach is promulgated, the Agency will consider revising the delisting analysis at that time.

² Other factors may result in the denial of a petition, such as actual ground-water monitoring data or spot check verification data.

³ Chamberlain originally submitted their petition of July 5, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. § 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Chamberlain. This additional information was submitted on May 10, 1984, and June 11 and September 17, 1985.

Chamberlain manufactures aluminum storm doors. Their manufacturing process includes metal cutting, extrusion forming, cleaning with caustic baths, etching, and conversion coating with chromates to prepare the metal surface for painting. Chamberlain claims that the painting process is completely separate and that paint wastes do not contaminate the conversion coating wastes. Chamberlain also claims that cyanide is not used in the manufacturing process.

The chrome wastes generated from the 5-parts washer (conversion coating process) are collected in a sump and fed through a sulfonator where sulfuric acid and sulfur dioxide are added to reduce hexavalent chromium to trivalent chromium. This waste then flows to a neutralizing tank where it is combined with the alkaline rinse wastewater. The pH is adjusted with a lime slurry, and the waste flows into a bag filter vessel (BMD filter) where the waste achieves a 10-18% solids content. The sludges removed by the filtration are accumulated for dewatering in a holding tank and fed to the filter press on a batch basis. The effluent is recycled through the wastewater treatment system.

Four daily grab samples were collected from the filter press over a two-week period in August, 1985.⁴ Samples were also collected from the filter press in May, 1985, and analyzed for lead using the EP toxicity test. Chamberlain claims that the samples collected are representative of any variation of the listed and non-listed constituent concentrations in its wastestream, since the conversion coating pretreatment process does not vary. Chamberlain further claims that the use of raw materials does not vary over time. Consequently, they believe that the samples collected and analyzed fully characterize their waste.

The total constituent and EP toxicity analyses of the chemical conversion coating waste, generated from the filter press for the listed constituents, revealed the maximum concentrations reported in Table 1.

⁴ Chamberlain's demonstration was initially based on samples taken before the filter press was installed; four samples were collected over a two-month period from the "blowdown" wastestream, which was generated from the BMD filter and piped to the surface impoundment. Five core samples were collected from the impoundment in March 1983. In March 1984, the surface impoundment was closed as a hazardous waste facility, and the filter press installed.

TABLE 1.—MAXIMUM CONCENTRATIONS (FILTER PRESS)

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
CN ¹	<1.0	<0.02 ²
Cr (total)	23300	0.13

¹ Hexavalent chromium is listed as the constituent of concern for this waste; however, the concentration of total chromium is low enough to make determination of hexavalent chromium unnecessary.

² From distilled water leach test. Distilled water is used rather than the normal acidic EP extraction medium to avoid the destruction of cyanide during the extraction procedure.

The total constituent and EP toxicity analyses of the filter press waste for the non-listed constituents revealed the maximum concentrations reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS (FILTER PRESS)

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
As	<5.0	<0.5
Ba	1540	18.6
Pb	4.75	<0.04
Hg	<0.02	<0.002
Se	<5.0	<0.2
Ag	<0.5	<0.03
Cd	<0.1	<0.01
Ni	15.8	0.40

The maximum total oil and grease value reported for the filter press sludge was .1 percent. Chamberlain also analyzed their sludge, for sulfide and cyanide content, with respect to reactivity. Maximum concentrations of sulfide and total cyanide were less than 5 ppm and less than 1.25 ppm, respectively. Chamberlain also submitted a list of raw materials used in the chemical conversion coating process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process, and that formation of any of these constituents is highly unlikely. Chamberlain also provided test data indicating that the sludge is not ignitable or corrosive. Chamberlain claims to generate a maximum of 111 tons per year of filter press waste from this process.

B. Agency Analysis and Action

Chamberlain has demonstrated that the treatment sludge generated from its filter press is non-hazardous. The Agency believes that the samples collected were non-biased and adequately represent any variations that may occur in the waste petitioned for exclusion. Due to the nature and consistency of the manufacturing operations involved (*i.e.*, the facility is not a job shop and production does not

vary seasonally), the Agency believes that the samples are representative of the waste generated by Chamberlain.

The Agency has evaluated the mobility of the constituents from Chamberlain's waste using a vertical and horizontal spread (VHS) model.⁵ The Agency's evaluation of the 111 tons of filter press sludge generated annually and the corresponding maximum extract levels, using the VHS model for the listed constituents, predicted levels at the compliance point which are less than the applicable level of regulatory concern, as seen in Table 3.⁶ (Where concentrations were below the detection limits, the detection limit was used in the VHS model calculations).

TABLE 3.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS (PPM)

	Cr(total)	CN
Filter press regulatory	0.004	0.0006
Standard	0.95	0.2

The filter press sludge exhibited chromium levels (at the receptor well) below the National Interim Primary Drinking Water Standard, and cyanide levels below the U.S. Public Health Services' suggested drinking water standard.⁷ Total cyanide levels in the waste are also below the air threshold limit set by the American Conference of Governmental Industrial Hygienists.⁸ These constituents, therefore, are not of regulatory concern.

The Agency has also concluded, through the use of the VHS land-fill model, that no other hazardous inorganic constituents are present in the filter press waste at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point, see Table 4). In addition, we also

⁵ See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

⁶ The maximum EP value reported was used in the VHS model calculations because the sample size was small (4 samples were collected from the filter press for all of the EP toxic metals, except Pb). Ten samples were collected and analyzed during two different sampling periods for this parameter due to high concentrations found in the "blowdown" waste before installation of the filter press. The elevated lead concentrations were due to a billet masking compound which contained 70% lead. Chamberlain discontinued use of this compound in April 1985; the maximum lead level found in subsequent analyses of the waste was 4.5 ppm.

⁷ Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm).

⁸ See American Conference of Governmental Hygienists: *Documentation of the Threshold Limit Values for Substances in Workroom Air*, Third Edition, 1971, Cincinnati, Ohio.

find that no hazardous organic constituents are present in the waste; the Agency reviewed the list or raw

materials used by Chamberlain in their manufacturing process (*i.e.*, they do not use any organic hazardous constituents).

TABLE 4.—COMPLIANCE POINT CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag	Cd	Ni
Filter press regulatory	.015	.58	.001	<.0001	.006	<.001	<.001	.012
Standard	.05	1.0	.05	.002	.01	.05	.01	.35

The Agency believes that based upon the constituents and factors evaluated, Chamberlain's wastewater treatment sludge is non-hazardous and should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Chamberlain-Featherlite, Inc., located in Hot Springs, Arkansas, for its dewatered chemical conversion coating wastes, as described in its petition.

II. Falconer Glass Industries Inc.

A. Petition for Exclusion

Falconer Glass Industries, Inc. (Falconer), located in Falconer, New York, manufactures mirrors and mirror products. Falconer has petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical-etching and milling of aluminum. Falconer has petitioned to exclude its waste because it does not meet the criteria for which is listed.⁹

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Falconer claims that its wastewater treatment process generates non-hazardous sludges from the filter press and magnetic drum separator, because the

constituents of concern, although present in the wastes, are in essentially an immobile form. Falconer further claims that these wastes are not hazardous for any other reason.

Falconer has submitted a detailed description of its electroplating and wastewater treatment processes, including: a schematic diagram; total constituent analyses and EP toxicity test results of the sludges for cadmium, total chromium, and nickel; and total constituent analyses and distilled water leach test results for cyanide. Falconer also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and results of oil and grease analyses on representative waste samples. Falconer further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents, other than those for which the wastes were originally listed, are present in the waste at levels of regulatory concern.

Falconer manufactures mirrors and mirror products. The manufacturing process includes: glass cleaning and pretreatment; electrochemical silver deposition; galvanic copper plating; silver and copper film removal; and regeneration of ion exchange resin beds. Falconer claims that cadmium, nickel, chromium, and cyanide are not used in any of its processes.

Falconer's waste treatment system consists of two interconnected processes. Process I receives most of the waste iron generated from the galvanic copper plating process and uses a magnetic drum separator to remove the iron from the waste. The wastewater from the drum separator joins the regeneration wastes from the ion exchange resin beds (process II) where they are neutralized with sulfuric acid or sodium hydroxide, treated with an anionic polymer for flocculation, clarified, and pumped to a filter press where the sludge forms cakes of up to 40 percent solids.

Four grab samples were collected from both the filter press and from the magnetic drum separator (iron waste)

over a two week period in July, 1985.¹⁰ The petitioner claims that the manufacturing processes used at the facility are uniform and that the use of raw materials does not vary over time. Falconer claims, therefore, that the samples collected are representative of any variation of the listed and unlisted constituent concentrations in the wastes.

The total constituent and EP toxicity analyses of the final filter cake and separator wastes for the listed constituents revealed the maximum concentrations reported in Table 1.¹¹

TABLE 1.—MAXIMUM CONCENTRATIONS

	Filter press waste		Separator waste	
	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
Cd	0.16	<0.10	0.17	0.299
Cr (total) ¹	7.51	<0.50	33.2	<0.50
Ni	28	<0.50	202	<0.50
CN	<2	* <0.033	<2	* <0.02

¹ Hexavalent chromium is listed as the constituent of concern for these wastes; however, the concentration of total chromium is low enough to make a determination of hexavalent chromium unnecessary.

* From distilled water leach test.

The total constituent and EP toxicity analyses for the non-listed metals for the filter press and separator wastes are reported in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

	Filter press waste		Separator waste	
	Total constituent analysis (mg/kg)	EP Leachate Analysis (mg/l)	Total constituent analysis (mg/kg)	EP Leachate Analysis (mg/l)
As	<5	<0.5	<5	<0.5
Ba	183	3.33	7.42	2.08
Pb	430	<0.5	12.5	<0.5
Hg	0.15	<0.0004	<0.14	<0.0004
Se	<5	<0.1	<5	<0.1
Ag	36.6	<0.5	27.4	<0.5

¹⁰ In the original submittal, Falconer collected grab samples, for seven days, from the filter press and composited them into a single sample (Process II). Falconer also submitted results from five past EP toxicity analyses on the filter press waste taken in July and October, 1981, and March, June, and August of 1982. Process I waste treatment (iron waste) previously involved a gravity settling tank and an evaporation pit. In their original petition, Falconer collected seven samples from the settling pit and composited them into a single sample. The magnetic drum separator was installed in 1984.

¹¹ Concentrations of nickel and chromium were found in Falconer's wastes even though these constituents are not used in either the manufacturing or wastewater treatment processes. The presence of these compounds is most likely a result of the stainless steel tanks, pumps, and conveyor belt ends, as well as the stainless steel magnetic drum separator, that are used at the facility. Although nickel and chromium are present in the wastes, the results from the EP toxicity test demonstrate that they are immobilized in the wastes.

⁹ Falconer originally submitted their petition on February 7, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. § 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Falconer. This information was submitted by Falconer on October 10, 1984, and May 13, and October 1, 1985.

The maximum total oil and grease values reported for the filter press and separator wastes were 0.004 and 0.003 percent, respectively. Falconer also submitted a list of raw materials used in their process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in their process and that formation of any of these constituents is highly unlikely. Falconer claims to generate a maximum of 93 and 103 tons per year, respectively, of filter press and separator sludges.

B. Agency Analysis and Action

Falconer has demonstrated that the treatment sludges generated from its filter press and magnetic drum separator are non-hazardous. The Agency believes that the total of four grab samples and one weekly composite from the filter press, and the four grab samples from the separator, as well as the samples collected in 1981 and 1982, were non-biased. The Agency also believes that the samples adequately reflect any variations that may occur in the wastes petitioned for exclusion due to the nature and consistency of the operations performed by Falconer (*i.e.*, the facility is not a job shop and production does not vary seasonally). The Agency, therefore, believes that the samples are representative of the wastes generated by Falconer.

The Agency has evaluated the mobility of the constituents from Falconer's waste using a vertical and horizontal spread (VSH) model.¹² The Agency's evaluation of the 93 and 103 tons, respectively, of filter press and magnetic drum separator wastes generated annually and the corresponding maximum extract levels, using the VHS model, has generated the compliance point concentrations for the listed constituents exhibited in Table 3.¹³ (Where

TABLE 3.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS (PPM)

	Cd	Cr	CN	Ni
Filter Press Sludge.....	0.003	0.015	0.001	0.015
Separator Sludge.....	0.0092	0.015	<0.001	0.015
Regulatory Standards				
	0.01	0.05	0.2	0.35

concentrations were below detection limits, the detection limit value was used in the VHS model calculations.)

¹² See footnote 5.

¹³ The maximum EP value was used in the VHS model to determine constituent concentrations at the compliance-point due to the small sample population.

The filter press sludge and the iron waste generated from the magnetic drum separator exhibited cadmium and chromium levels (at the receptor point) below the National Interim Primary Drinking Water Standards, nickel levels below the interim health-based standard¹⁴ and cyanide levels below

the U.S. Public Health Services' suggested drinking water standard.¹⁵ Total cyanide levels in the waste are also below the air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists.¹⁶ These constituents, therefore, are not of regulatory concern.

TABLE 4.—VHS MODEL: COMPLIANCE POINT CONCENTRATIONS (PPM)

	AS	Ba	Pb	Hg	Se	Ag
Filter Press Sludge.....	0.015	0.10	0.015	<0.0001	0.003	0.015
Separator Sludge.....	0.015	0.06	0.015	<0.0001	0.003	0.015
Regulatory Standard						
	0.05	1	0.05	0.002	0.01	0.05

Furthermore, the Agency has also concluded, through use of the VHS model, that no other hazardous inorganic constituents are present in the petitioned waste at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point, see Table 4). In addition, no hazardous organic constituents are present in the waste; the Agency reviewed the raw materials list submitted by Falconer, which demonstrates that no organic hazardous constituents are used in their manufacturing process.

The Agency believes, based upon the constituents and factors evaluated, that Falconer's waste is non-hazardous, and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Falconer Glass Industries Inc., located in Falconer, New York, for its electroplating wastes, as described in its petition.

III. Lake City Army Ammunition Plant

A. Petition for Exclusion

Lake City Army Ammunition Plant (Lake City), located in Independence, Missouri, is involved in the manufacture of small arms ammunition and related items. Lake City has petitioned the Agency to grant a one time exclusion for their wastewater treatment sludge, which is contained in an on-site landfill. (Lake City's petition only addresses the waste already in the landfill; waste is no longer being put into this on-site landfill.) This waste is presently listed as EPA Hazardous Waste No. K046—Wastewater treatment sludges from the manufacturing, formulation, and loading

of lead-based initiating compounds. The listed constituent of concern for EPA Hazardous Waste No. K046 is lead. Lake City's petition to exclude their waste is based upon their demonstration that the hazardous constituents contained in the sludge are present only in essentially immobile forms.¹⁷

At Lake City, clean-up water from blending and charging operations is treated to destroy the reactivity of residual explosive materials and then directed to the on-site industrial waste treatment facility. Prior to introduction into the treatment facility, the killed clean-up water stream is combined with non-hazardous waste streams and constitutes approximately 1% of the total stream to the facility. This treatment facility uses a flotation unit in a pH-controlled condition to remove oils and greases. (The oily waste from this unit was not addressed in Lake City's petition and is not, therefore, included in this proposed exclusion.) Heavy metals also are removed by using lime to increase the pH and precipitate metal hydroxides. The precipitate is

purpose of evaluating delisting petitions. The basis for this standard and its intended use are explained at 50 FR 20239-20248, May 15, 1985.

¹⁵ See footnote 7.

¹⁶ See footnote 8.

¹⁷ Lake City originally submitted their petition on May 18, 1982. In response to Agency requests, supplementary information was supplied on July 15, 1982 and on January 17, March 10, and June 7, 1983. On November 8, 1984, Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or similar regulatory changes, the Agency requested information from petitioners which addresses these additional factors. Lake City supplied this information on May 1 and December 6, 1984, and on February 1, September 6, and October 18, 1985.

¹⁴ In previous notices, the Agency has used 632 ppb as the regulator standard for nickel. Pending the completion of current EPA studies on the health effects of nickel, the Agency is using 350 ppb for the

flocculated with alum and allowed to settle in holding ponds. The resultant lime-metal hydroxide sludge is allowed to partially dry in one of two settling lagoons and then removed to an on-site landfill. The lime-metal hydroxide sludge in that landfill is the subject of Lake City's petition.

In support of their petition, Lake City submitted analytical data to characterize the sludge in its as-disposed condition. Lake City also provided process descriptions, lists of raw materials, and material safety data sheets, in order to identify any hazardous constituents which could be present in the sludge, as well as ground-water monitoring data from the vicinity of the landfill.

Samples used to characterize the sludge were collected from both the on-site landfill and the east settling lagoon. (The sludge sampled while in the east lagoon was subsequently removed to the landfill and is included in this proposed exclusion.) The landfill was sampled by collecting five full-depth cores from each quadrant of the cell which receives the sludge. These cores were composited to produce one sample from each quadrant. The landfill was sampled in this manner in June 1983 and on February 23 and August 7, 1984. The June 1983 samples were analyzed for the EP leachate concentrations for EP toxic metals; the February 23, 1984 samples were analyzed for specific organic compounds; and the August 7, 1984 samples were analyzed for the EP leachate concentration of lead.

The sludge contained in the east lagoon was sampled by collecting five full-depth cores from each quadrant of the lagoon. These cores were composited to produce one sample from each quadrant. The lagoon was sampled in this manner on February 23 and August 8, 1984; on September 13 and 19, 1985; and on October 4, 1985. The February 23, 1984 samples were analyzed for specific organic compounds; the August 8, 1984 and September 13, 1985 samples were analyzed for the EP leachate concentration of lead; and the September 19 and October 4, 1985 samples were analyzed for the constituent and leachate concentrations of all EP toxic metals, nickel, and cyanide, as well as the constituent concentration of sulfide.

The results of EP leachate test for lead ranged from <0.25 mg/l to 0.43 mg/l for the eight samples from the landfill (average=0.32 mg/l) and from 0.04 mg/l to 1.53 mg/l for the 16 samples from the

lagoon (average=0.28 mg/l).¹⁸ Constituent analysis for the lead content of the sludge indicated a range of concentrations from 458 mg/kg to 1470 mg/kg for samples from the lagoon (average=952.5 mg/kg).¹⁹

In order to demonstrate that other metals are either not present or present only in essentially immobile forms, Lake City performed leachate tests for the remaining EP toxic metals and nickel. The results of these tests, as well as the results of constituents analysis of the sludge from the east lagoon, are presented in Table 1.

MAXIMUM CONCENTRATION

Toxicant	Landfill		East lagoon	
	EP leachate (mg/l)	EP leachate (mg/l)	Consistent (mg/kg)	
As.....	0.063	<0.25	<1.0	
BA.....	3.5	<5.0	105	
Cd.....	0.07	<0.05	<1	
Cr.....	0.04	<0.25	48	
Hg.....	0.0023	<0.01	0.844	
Se.....	<0.005	<0.05	<1	
Ag.....	0.03	<0.25	<1	
Ni.....	1	<0.25	22	

¹⁸ Since nickel was not expected to be present in significant quantities, the sludge was not initially analyzed for nickel.

Based upon the processes and raw materials used at Lake City, several hazardous organic compounds could be expected to be present in the sludge. In order to demonstrate that these compounds are present only in environmentally insignificant quantities, the sludges in both the landfill and the east lagoon were tested. The compounds and their maximum concentrations are presented in Table 2.

¹⁸ One of Lake City's earlier submissions indicated higher leachate concentrations of lead. (EP leachate tests performed on samples collected from the settling lagoons in June 1982 indicated lead concentrations that range from 0.50 mg/l to 1.70 mg/l). Lake City asserts that these results were artificially high due to analytical error or interferences. Lake City also states that, while they believed the June 1982 results to be erroneously high, the samples were not re-analyzed since they believed the values were less than the acceptable upper limit for delisting. Lake City further notes that this particular lot of sludge was removed to the landfill prior to the August 1984 landfill sampling, in which the lead leachate concentrations ranged from 0.25 mg/l to 0.35 mg/l.

¹⁹ Constituent analysis for metals was only performed on the samples from the lagoon. While the Agency would typically require constituent analysis of the landfilled sludge as well, it was concluded that there was no reason to expect the sludge in the landfill to differ significantly from the sludge in the lagoon. The Agency did not, therefore, require Lake City to re-sample and analyze the landfilled sludge for the constituent concentration of metals.

TABLE 2.—MAXIMUM CONCENTRATIONS

Compound	Landfill (mg/kg)	East lagoon (mg/kg)
1,1,1-Trichloroethane.....	<0.01	<0.01
Methylene chloride.....	<0.01	<0.06
Toluene.....	<0.01	<0.01
Resorcinol.....	<0.15	<0.15

Lake City also analyzed their sludge for sulfide and cyanide content. These tests were performed on sludge from the east lagoon. Maximum concentrations of sulfide and total cyanide were 6.1 mg/kg and 0.062 mg/kg, respectively. In addition, the sludge was tested for leachable cyanide using a distilled water extraction procedure. The maximum cyanide concentration in the extract was 0.006 mg/l.

B. Agency Analysis and Action

Lake City has demonstrated that the sludge contained in their on-site landfill is non-hazardous (this includes the sludge that was sampled while in the east lagoon and later placed in the landfill). The Agency believes that the random samples collected by Lake City are non-biased and adequately characterize that sludge. The collection of full-depth cores from each quadrant of both the landfill and the lagoon takes into account any vertical or horizontal stratification that may have occurred as the landfill cell or the lagoon was being filled. The samples are believed, therefore, to be representative of Lake City's waste.

The Agency has evaluated the mobility of toxicants from Lake City's sludge by using the vertical and horizontal spread (VHS) model.²⁰ For lead, this evaluation, using the estimated volume of waste in Lake City's landfill (15,000 yd³) and the average of the EP leachate analyses (0.29 mg/l)²¹, resulted in a predicted maximum compliance point concentration of 0.047 mg/l. This concentration is less than the National Interim Drinking Water Standard of 0.05 mg/l. The presence of lead at the reported level is, therefore, not of regulatory concern.

For the other inorganic toxicants, the VHS model predicted the maximum compliance point concentrations

²⁰ See footnote 5.

²¹ Due to the large number of samples that Lake City collected and analyzed for the EP leachate concentration of lead (24), the Agency believes that the average concentration should be used in the VHS model. The Agency solicits comments on the use of average concentrations to evaluate a static lot of waste when a large number of samples (each a composite of several full-depth cores) has been analyzed.

presented in Table 3.²² Table 3 also presents, for each toxicant, the regulatory standard to which the compliance point concentration is compared.

TABLE 3.—PREDICTED COMPLIANCE-POINT CONCENTRATION

Toxicant	Maximum compliance point concentration (mg/l)	Regulatory standard (mg/l)
As.....	0.04	0.05
Ba.....	<0.81	1.0
Cd.....	<0.008	0.01
Cr.....	<0.04	0.05
Hg.....	<0.0016	0.002
Se.....	<0.008	0.01
Ag.....	<0.04	0.05
Ni.....	<0.04	0.35
CN.....	0.001	0.2

As indicated in Table 3, the maximum predicted concentrations of the EP toxic metals are all less than the National Interim Primary Drinking Water Standards. Also, the predicted nickel and cyanide concentrations are less than the Agency's interim nickel standard²³ and the U.S. Health Services suggested drinking water standard,²⁴ respectively. The presence of these toxicants at the reported levels is, therefore, not of regulatory concern.

The organic compounds listed in Table 2 were evaluated by first estimating their leachate concentrations, and then predicting their compliance point concentrations with the VHS model.²⁵ This procedure resulted in the compliance point concentrations presented in Table 4. Table 4 also presents, for each organic compound, the regulatory standard to which the predicted concentration is compared:

²² For each toxicant, the leachate concentrations used in this evaluation was the greater of the two values reported in Table 1. While the use of average values also might have been appropriate, the more conservative approach of using the maximum values (and the fact that the compliance point concentrations are below the regulatory standards) illustrates that the presence of those toxicants at the reported levels is not of regulatory concern.

²³ See footnote 14.

²⁴ See footnote 7.

²⁵ The predicted leachate concentration is based upon an algorithm which incorporates each compound's solubility and constituent concentration in the waste. (For details of this calculation, see 50 FR 48943, November 27, 1985.) This predicted leachate concentration is then used in the VHS model to estimate the dilution that would occur due to dispersion in an underlying aquifer (See footnote 6). While the predicted compliance point concentration may be further reduced due to degradation processes (e.g., hydrolysis, biodegradation), these processes were not considered. This is because the predicted leachate concentrations are sufficiently low that the levels in the waste are not of concern, without consideration of these effects.

TABLE 4.—PREDICTED COMPLIANCE-POINT CONCENTRATION

Compound	Predicted leachate concentration (mg/l)	Predicted compliance-point concentration (mg/l)	Regulatory standard (mg/l)
1,1,1-Trichloroethane.....	<3.21 × 10 ⁻⁴	<5.18 × 10 ⁻⁵	1
Methylene chloride.....	<2.57 × 10 ⁻²	<4.15 × 10 ⁻³	0.06
Toluene.....	<1.16 × 10 ⁻⁴	<1.87 × 10 ⁻⁵	10
Resorcinol.....	<1.5 × 10 ⁻¹	<2.42 × 10 ⁻²	2

¹ An explanation of the derivation of these regulatory standards is available in the public docket.

² This value is derived from the TLV described in *Documentation of Threshold Limit Values*, 4th edition, American Conference of Governmental Industrial Hygienists, Cincinnati, Ohio (1980). The value is calculated as 0.23 mg/kg/day × 70 kg/2 l/day.

As indicated in Table 4, the maximum predicted compliance point concentrations of those organic compounds are each less than the compound's regulatory standard. The presence of these compounds at the reported levels is, therefore, not of regulatory concern. Also, the Agency's evaluation of the processes and raw materials used at Lake City indicates that no other hazardous organic compounds would be expected to be present in the sludge.

The sludge's sulfide and cyanide content (6.1 mg/kg, and 0.062 mg/kg, respectively) is low enough so as to preclude the generation of hazardous levels of toxic gases.²⁶ (The capability of a sulfide- or cyanide-bearing waste to generate hazardous levels of toxic gases, vapors, or fumes is a property of the reactivity characteristic.) Accordingly, this waste is not of regulatory concern through an air contamination route.

Based upon the constituents and factors evaluated, the Agency believes that Lake City has demonstrated that the sludge contained in their landfill (including the sludge that was sampled while in the lagoon and subsequently removed to the landfill) is non-hazardous and that, as such, it should be excluded from hazardous waste control. The Agency proposes, therefore, to grant an exclusion to Lake City Army Ammunition Plant, located in Independence, Missouri, for their wastewater treatment sludge from the manufacturing, formulation, and loading of lead-based initiating compounds that is currently contained in their on-site landfill. This is a one time only exclusion for the waste in the on-site landfill.

IV. Loxgreen Company, Incorporated

A. Petition for Exclusion

The Loxgreen Company, Inc. (Loxgreen), located in Hayti, Missouri, is

²⁶ A copy of these calculations is available in the public docket for this notice.

involved in the manufacturing of extruded aluminum parts and decorative trim. Loxgreen has petitioned the Agency to exclude its wastewater treatment sludges, presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. Loxgreen has petitioned to exclude its waste because it does not meet the criteria for which it was listed. The listed constituents of concern for these wastes are hexavalent chromium and cyanide (complexed). Loxgreen claims that its wastewater treatment system produces a sludge that is non-hazardous because the constituents of concern are present in essentially an immobile form.

Based upon the Agency's review of their petition, Loxgreen was granted an informal exclusion for the F019 filter press cake on March 11, 1982.²⁷ Our basis for granting the exclusion was the low migration potential of the constituents of concern. The Agency conditioned the informal exclusion, however, by requiring that the waste either be covered as a daily practice or that Loxgreen test each batch of waste to determine the level of cyanide in the waste. If the cyanide in the waste exceeded 10 ppm, the waste had to be covered as a daily practice. This decision was based on a concern that some of the complexed cyanide in the waste might be converted to free cyanide by sunlight. This condition was incorporated into the informal exclusion to prevent the possible photo-decomposition of total cyanide to free cyanide in the waste.

Since that time, the Hazardous and Solid Waste Amendments of 1984 have been enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was originally listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated Loxgreen's petition: (1) to determine whether the waste should be excluded based on the original listing criteria, and (2) to evaluate the waste for factors

²⁷ On March 11, 1982, a memorandum was sent from the Acting Deputy Associate Enforcement Counsel to the Regions indicating, among other things, that the Office of Solid Waste had made a preliminary determination to grant the delisting petition submitted by Loxgreen for the F019 wastes generated at their Hayti, Missouri plant. The memo suggested that the Regions use discretion when dealing with this waste until our decision was published in the Federal Register.

(other than those for which the waste was listed) to determine whether the waste is non-hazardous. Today's notice is the Agency's re-evaluation of this petition.

Loxreen has submitted a detailed description and a schematic diagram of its production processes; total constituent analyses and EP toxicity test results of the sludge for total chromium and hexavalent chromium; total constituent analyses and distilled water leach test results for total cyanide; total oil and grease analyses; and total constituent analyses for free cyanide and sulfides. Loxreen also submitted total constituent and EP toxicity analyses for arsenic, barium, cadmium, lead, nickel, silver, mercury, and selenium. Furthermore, Loxreen submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

In Loxreen's process, extruded pieces are received into an anodizing process, which uses an electrolytic bath of sulfuric acid in combination with alkaline rinses, hot and cold water rinses, and caustic etching baths. The pieces are then sent to the paint preparation chromating line, which uses hot alkaline cleaning and degreasing sprays, a water rinse, bond coating, neutralization, and a final clear water rinse. Wastes from the caustic cleaning of extrusion dies and from daily boiler blowdown are also influent to the wastestream. Loxreen claims that no cyanides are used in the manufacturing process. Loxreen's waste treatment system combines pH adjustment; reduction of hexavalent chromium to trivalent with sodium bisulfite; polymer addition; flocculation; and press filtration.

Ten grab samples were taken after dewatering from random locations on the filter press, and composited to form single daily samples. Samples were collected in this way (during September 15-22, 1981, December 18, 1981, January 14-28, 1985, and May 8-10, 1985) and resulted in a minimum of four analyses for each EP toxic metal and nickel. Loxreen claims that the raw materials, production processes, and treatment process do not vary over time. Loxreen claims, therefore, that the samples collected are representative of any variation of the listed and non-listed constituent concentrations of the waste.

The total constituent analyses and EP leachate analyses for the listed constituents in the sampled sludge

yielded the maximum concentrations shown in Table 1.

TABLE 1.—FILTER PRESS SLUDGE

	Maximum total concentration (ppm)	Maximum EP concentration (mg/l)
Chromium (total).....	11,000.0	0.12
Chromium (hex) ¹	<0.07	<0.004
Cyanide (total).....	35.0	* <0.01

Notes.—¹ Difference in detection limits is due to separate analysis (i.e., September 1981 and January 1985).

* Distilled water used in EP test.

The EP toxicity and total constituent analyses for the non-listed metals revealed the maximum concentrations reported in Table 2.

TABLE 2.—FILTER PRESS SLUDGE

	Maximum total concentration (ppm)	Maximum EP concentration (mg/l)
Arsenic.....	0.54	<0.002
Barium.....	<0.03	<0.03
Cadmium.....	3.36	0.44
Lead.....	35.1	<0.05
Nickel.....	317.1	2.11
Silver.....	<0.1	<0.01
Mercury.....	0.166	<0.001
Selenium.....	<0.002	<0.002

Total oil and grease values were reported at a maximum of 0.08%. Loxreen has also submitted a list of raw materials which indicates that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is not likely. The maximum amount of sludge produced by Loxreen from its filter press is 240 tons per year.

B. Agency Analysis and Action

Loxreen has demonstrated that the wastewater treatment system in use at its Hayti, Missouri facility generates a non-hazardous sludge. The Agency believes that the composite samples taken from the filter press over a four year interval are non-biased and adequately represent any variability which may occur in the petitioned waste stream. The Agency is satisfied that the daily compositing done by Loxreen does not conceal concentration variations. The major factor which may vary constituent concentrations is the use of different raw materials, due to changes in the product being manufactured. Variation in raw materials can be expected when a facility performs as a job shop or has seasonal variations or production. Since this facility does not perform as a job shop and has no seasonal product variations, the Agency believes that Loxreen's claim that the manufacturing

and treatment processes are uniform and consistent has been substantiated.

The Agency has evaluated the mobility of the constituents from Loxreen's waste by using a vertical and horizontal spread (VHS) model.²⁸ The Agency's evaluation of Loxreen's 240 tons of filtered sludge and the maximum EP leachate levels for the listed constituents using the VHS model has generated the compliance point concentrations exhibited in Table 3.

TABLE 3.—VHS MODEL—CALCULATED COMPLIANCE POINT CONCENTRATION

	Compliance point concentration (ppm)	Regulatory standard (ppm)
Cr (total).....	0.004	0.25
CN ⁻ (total).....	0.0003	0.20

Using the VHS model, the Agency's evaluation of levels for the non-listed constituents generated the compliance point concentrations shown in Table 4.

TABLE 4.—VHS MODEL—CALCULATED COMPLIANCE POINT CONCENTRATION

	Compliance point concentration (ppm)	Regulatory standard (ppm)
As.....	<0.00006	0.05
Ba.....	<0.0009	1.00
Cd.....	0.014	0.01
Pb.....	<0.001	0.05
Ni.....	0.065	0.35
Ag.....	<0.0003	0.05
Se.....	<0.00006	0.01
Hg.....	<0.00003	0.002

The filtered sludge exhibited arsenic, barium, chromium, lead, silver, mercury, and selenium levels (at the compliance point) at, or below, the National Interim Primary Drinking Water Standards, nickel levels below the Agency's interim standard,²⁹ and cyanide levels below the U.S. Public Health Services suggested standard.³⁰ The predicted maximum well concentration for cadmium (0.014 mg/l) exceeds the NIPDWS value of 0.01 mg/l. This prediction is based upon the highest reported cadmium leachate value. This value also exceeds the 95% confidence interval calculated for the cadmium data. Testing of three additional samples for cadmium (for a total of seven data points) indicated that the elevated value is probably an outlier. If the upper limit of the 95% confidence interval is used as the EP leachate value in the VHS calculations, the model predicts a maximum well concentration

²⁸ See footnote 5.

²⁹ See footnote 14.

³⁰ See footnote 7.

of 0.0061 mg/l. Since use of the maximum leachate value results in a concentration approximately equal to the NIPDWS, and the statistical evaluation results in a predicted concentration below the NIPDWS, the Agency concludes that cadmium levels in the waste are not of regulatory concern. Accordingly, none of the toxic heavy metals are present in the waste at levels of regulatory concern.

The free cyanide level documented in the petition (<0.5 ppm) is not expected to create a health hazard. The maximum total cyanide level reported in Table 1, in spite of the fact that cyanide is not used in the manufacturing process, can be attributed to the immersion cleaning of extrusion dies with a nitriding solution. This process has since been discontinued. Cyanide concentrations in the waste thus are not expected to be of regulatory concern.

The Agency has also reviewed the chemical components used in each raw material, as supplied by raw materials lists and material safety data sheets, in Loxgreen's conversion coating operation. The Agency has concluded from this review that no other Appendix VIII toxicants are present in the petitioned waste.

The Agency believes that this waste is non-hazardous and, as such, should be excluded from the hazardous waste management system. The Agency, therefore, proposes to grant an exclusion to Loxgreen Company, Incorporated, located in Hayti, Missouri, for its wastewater treatment sludge, as described in its petition.

V. Olin Corporation

A. Petition for Exclusion

The Olin Corporation (Olin) is involved in the production of chlorine and caustic soda at its facility in Augusta, Georgia. Olin has petitioned the Agency to exclude the water-washed brine muds generated by Olin's mercury cell chlorine process. These muds are listed as EPA Hazardous Waste No. K071—Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used. Olin has requested the Agency to exclude these muds because they do not meet the criteria for which they are listed.^{31 32}

³¹ Olin originally submitted a petition in April 1982, based on bench-scale studies, to delist the brine muds. A second petition was forwarded to EPA in April 1985 after completion of Olin's new, full-scale operating unit in August 1984; the initial petition was withdrawn. Additional information was requested from Olin, which was submitted to EPA on September 5, 1985.

The listed constituent for EPA Hazardous Waste No. K071 is mercury. Olin claims that its brine treatment and dewatering unit produces a calcium sulfate brine mud that is non-hazardous with respect to leachable mercury because the constituent of concern is present at low concentrations and is immobile. Olin further claims that the muds are not hazardous for any other reason.

Olin has submitted detailed descriptions of its production and treatment processes, including a schematic diagram; EP toxicity data for mercury; EP toxicity data for the other EP toxic metals and nickel; total constituent analyses for all the EP toxic metals; total oil and grease analyses; and test results for total cyanide. Olin also submitted a list of raw materials used in its manufacturing processes, as well as a contingency plan including daily sampling and testing of the waste prior to disposal. Much of this information was requested to determine if hazardous constituents, other than those for which the waste was listed, were present in the waste at levels of regulatory concern.

Olin uses a closed-loop mercury cell chlorine process, in which sodium chloride brine is brought to near saturation, purified and acidified, then pumped to a series of mercury cathode cells. In the cells, electrolysis of the brine produces chlorine, which is taken off as a gas and liquified, and sodium, which is processed with water to form caustic soda (sodium hydroxide). The brine exits the cells and is returned to be re-saturated and re-used in the process. Mercury is slowly lost from the cathode cells through this process, carried away by the brine, and deposited in the brine muds when brine purification takes place.

The brine purification system involves the use of a baffle crystallizer to remove calcium sulfate (CaSO₄) solids from the brine. The accumulated solids are pumped to a horizontal vacuum filter for dewatering, while the recovered brine is returned to the crystallizer. At the vacuum filter, the CaSO₄ solids are

³² Ground water contamination from the on-site disposal of untreated brine muds has been documented at this facility. The State of Georgia's environmental department has issued a compliance order to Olin regarding its groundwater contamination problems. This proposed exclusion, however, applies only to treated calcium sulfate brine purification muds currently generated at Olin's new treatment facility. These currently generated wastes are not responsible for producing the high concentrations of mercury presently found in the ground water at this site, and are not expected to produce ground water contaminant concentrations above the regulatory standard. The exclusion does not apply to any other wastes which have been generated, stored, or disposed on-site at the Augusta site.

spray washed with water to remove mercury. The mercury-laden washwater is processed to recover the mercury before the effluent is disposed of at an NPDES-permitted outfall. The solids are collected in a dumpster and landfilled.

Grab samples of washed brine mud filter cake were taken from the filter press over a two-month period while using a range of washing rates in the filtration process. This was done to determine which washing rate was the most effective in producing a non-hazardous waste. Olin claims that demonstration brine mud samples which were washed with at least 1.2 gallons of water per minute (all other variables held constant) exhibit uniformly lower EP leachate concentrations of mercury than either unwashed muds or muds washed with smaller volumes of water. Olin will, as the result of this testing, operate their treatment system using a wash rate of at least 1.2 gallons per minute (gpm) in order to maintain a lbs water/lbs waste ratio of approximately one, while maintaining a uniform process rate (filter belt speed) of 15 feet per minute and a sludge thickness of 0.25 inches on the vacuum filter. Olin also claims that the raw materials used in the production processes do not vary.

Maximum total constituent and EP toxicity values for the listed constituent are presented in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUES

	Total (mg/kg)	EP (mg/l)
Mercury.....	2.50	0.012

Maximum total constituent and EP toxicity data values for the non-listed toxic metal constituents are given in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUES

	Total (mg/kg)	EP toxicity (mg/l)
Arsenic.....	<0.1	<0.1
Barium.....	0.3	0.21
Cadmium.....	0.04	0.04
Chromium.....	0.04	0.04
Lead.....	0.1	0.1
Selenium.....	<0.5	¹ <0.00005
Silver.....	0.04	0.02
Nickel.....	²	0.13

¹ Since the EP leachate levels for nickel are low, additional testing for total nickel was not required.

² Indicates differing detection limits due to different analytical techniques.

No oil and grease was detected in the waste. Olin claims that no cyanides are used in their processes, and total

cyanide levels are correspondingly low (0.013 mg/kg). No samples demonstrated reactivity, corrosivity, or ignitability. Olin also provided material safety data sheets for the materials used in their process. This data indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of these constituents is highly unlikely. Olin claims to generate a maximum of 700 tons of brine muds per year.

B. Agency Analysis and Action

Olin has demonstrated to the Agency that non-hazardous brine muds are generated by the treatment process. The Agency believes that the 15 EP leachate analyses and six total constituent analyses (18 EP analyses for mercury) performed on brine mud samples washed with >1.2 gallons of water per minute have adequately characterized any variations that may occur. The Agency is satisfied that the grab samples taken by Olin have not concealed variations in concentrations. The samples presented in support of the petition are representative of the brine muds generated by Olin.

The Agency has evaluated the mobility of the inorganic constituents from Olin's waste using the VHS ground water model.³³ The Agency's evaluation of Olin's maximum generation rate of 700 tons per year and the maximum EP extract levels has produced the compliance point concentrations shown in Table 3. The maximum EP values were used in the model calculations because maximum values are more indicative of a worst case situation within an on-line treatment system, and will more accurately address the Agency's concerns about the inherent variability of the waste.

TABLE 3.—VHS MODEL: PREDICTED CONCENTRATIONS AT COMPLIANCE POINT (PPM)

	VHS model	Regulatory standard
As.....	<0.0045	0.05
Ba.....	0.009	1.0
Cd.....	0.0018	0.01
Cr (total).....	0.00018	0.05
Pb.....	0.0045	0.05
Hg.....	0.0005	0.002
Se.....	<0.000002	0.01
Ag.....	0.0009	0.05
Ni.....	0.0059	0.35

The muds exhibited arsenic, barium, cadmium, total chromium, lead, mercury, selenium, and silver levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards, and nickel levels below the Agency's interim

delisting criterion.³⁴ In addition, cyanide is not of concern due to the low total cyanide levels present in the waste (0.013 mg/kg), which does not exceed the Agency's regulatory standard.³⁵ These constituents are therefore not of regulatory concern.

The Agency has also concluded that no organic constituents are present in the waste based upon a review of the raw materials used in the process that potentially can enter the wastewater treatment system. It was determined from these sheets that no other Appendix VIII hazardous constituents are influent to Olin's waste treatment processes, and that formation of any of these constituents is unlikely.

The Agency believes that the treatment process employed by Olin, when used in conjunction with a washing rate equal to or greater than 1.2 gpm, generates a non-hazardous waste. Due to the severe neurotoxic effects associated with exposure to low concentrations of mercury, the Agency is concerned about the potential for significant amounts of mercury to be present in the waste. The Agency's experience with the inherent variability in the mercury content of chlor-alkali brine muds is such that it is believed that the exclusion should require continuous batch testing for mercury using the EP toxicity test prior to disposal. Each batch of Olin's waste must be tested, however, to assure that the waste exhibits mercury extract levels below 0.02 mg/l.³⁶ The Agency will review the data collected over an initial six-month period of treatment. If the data indicate that the mercury extract levels are characteristically low, the Agency may propose to amend the exclusion to require less frequent testing. Subject to this condition, the Agency proposes to grant an exclusion to Olin Corporation for the washed chlor-alkali brine purification muds produced by the calcium sulfate crystallizer at their Augusta, Georgia facility.

VI. SR of Tennessee

A. Petition for Exclusion

SR of Tennessee, (SR), located in Ripley, Tennessee, is involved in copper, nickel, and chromium electroplating of plastic parts (such as grilles and headlight bezels) for the automotive industry. SR has petitioned the Agency

to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. SR has petitioned to exclude its currently generated filter press sludge as well as the electroplating sludges previously disposed of in an on-site surface impoundment which has been closed and capped, because it does not meet the criteria for which it was listed.³⁷

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel and cyanide (complexed). SR claims that its wastewater treatment process generates a non-hazardous sludge, because cadmium and cyanide are not used in the process. In addition, chromium and nickel, although present in the waste, are in essentially an immobile form. SR further claims that this waste is not hazardous for any other reason.

Based on our review of their petition, SR was granted a temporary exclusion for its filter press sludge on November 22, 1982 (see 47 FR 52668). At that time, the petitioner's request pertained only to the filter press sludge that they generated after that date, since they did not realize that the impounded waste was also defined as listed F006 waste. Thus, the waste in their impoundment is still subject to Subtitle C control. Our basis for granting the exclusion for the filter press sludge was the low migration potential of chromium and nickel, and the absence of cadmium and cyanide in the waste. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted.³⁸

³⁷ SR originally submitted their petition on October 14, 1981. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from SR. This additional information was submitted on May 17, September 28, and October 7, 1985.

³⁸ See footnote 37.

³³ See footnote 5.

³⁴ See footnote 14.

³⁵ See footnote 7.

³⁶ Olin incorporated this testing requirement in the contingency plan filed in their petition. Wastes not meeting the imposed mercury extract limit of 0.02 ppm will be re-treated or disposed as hazardous by Olin.

As a result, the Agency has reevaluated SR's petition to determine whether the temporary exclusion should be made final. This evaluation was based on the original listing criteria as well as other factors.

SR submitted a detailed description of its electroplating and wastewater treatment processes, including: schematic diagrams; total constituent analyses for cadmium, chromium, and nickel; analyses for total, free, and reactive cyanide; and EP toxicity test results for cadmium, total chromium, and nickel. SR also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease analyses on representative waste samples. SR also submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as indicated above, to determine if hazardous constituents, other than those for which the waste was listed, are present in the waste at levels of regulatory concern.

SR's manufacturing process includes ABS* plastic injection molding, chrome etching, electroless nickel plating, and copper, nickel, and chromium plating. SR's waste treatment system involves chromium reduction, metals precipitation, neutralization, and vacuum filtration. In previous years, the petitioner used an on-site impoundment to contain sludge during times of filter press break down. The impoundment which has been inactive since 1982, is now dry, closed, and covered.

SR divided the impoundment into quadrants and collected six random complete depth core samples in each quadrant. The samples from each quadrant were then combined to form four composite samples. This procedure was repeated on a second day, creating eight composite samples which were then analyzed. SR claims that these samples were representative since their manufacturing process was uniform and the use of raw materials did not vary substantially over time. The petitioner further claimed that the random full core samples were representative of any vertical and horizontal stratification that could have occurred in the impoundment.

With respect to the filter press sludge, nineteen composite samples were collected at random times from the vacuum filter over a four-week period. Grab samples from three discrete areas of the filter press were collected and combined to form one composite sample on each sampling date. SR claims that the samples collected are representative of any variation of the listed and non-listed constituent concentrations in the

waste. SR further claims that although the facility could be considered a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. In addition, the petitioner claims that the sampling period was long enough to cover any scheduled changes in the product line and, therefore, all raw materials used in the process are represented by the samples collected.

The total constituent analyses of the filter press sludge and the lagooned sludge for the listed constituents revealed the maximum concentrations reported in Table 1. Leachate analyses for these same constituents revealed the maximum concentrations reported in Table 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	Cd	Cr (total)	Ni	CN (total)
Vacuum filter sludge.....	0.2	300	408	<0.2
Lagooned sludge.....	0.2	297	381	<0.2

TABLE 2.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	Cd	Cr (total)	Ni	CN (total) (distilled-water)
Vacuum filter sludge.....	0.01	0.22	0.98	<0.02
Lagooned sludge.....	0.03	0.31	0.63	<0.02

The total constituent and EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Tables 3 and 4, respectively.

TABLE 3.—MAXIMUM TOTAL CONSTITUENT ANALYSES (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge.....	<0.1	4	2.7	<0.01	<0.1	<0.1
Lagooned sludge.....	<0.1	6	2.2	<0.01	<0.1	<0.1

TABLE 4.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge.....	<0.01	4.0	0.17	<0.01	<0.01	<0.01
Lagooned sludge.....	<0.01	2.0	0.14	<0.001	<0.01	<0.01

The maximum total oil and grease content reported was 800 ppm. Ground water monitoring data submitted from a single downgradient well indicated that nickel, chromium, and cadmium were not detectable at detection limits of 0.005, 0.005, and 0.001 ppm, respectively. SR also submitted a list of raw materials used in the process. This list indicated

that no other Appendix VIII hazardous constituents were used in the process and that formation of any of these constituents is highly unlikely. SR claims that it generates a maximum of 3300 tons of waste annually from its filter press and that 8750 tons of dry sludge are contained in the closed impoundment.

B. Agency Analysis and Action

SR has demonstrated that the waste treatment sludge generated from its filter press and that contained in its closed on-site impoundment are non-hazardous. The Agency believes that the nineteen composite samples collected from the filter press and the eight composite core samples collected from the impoundment were non-biased and adequately represent any variations which may occur in the waste petitioned for exclusion.

The key factor which could vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product line being manufactured. Variation in the raw materials can be expected either when the facility performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the sampling period used by SR was long enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The samples, therefore, are representative of the waste generated by SR.

The Agency's conclusion that the sampling adequately represents SR waste was confirmed by a comparison of the total constituent analyses of each sample. This analysis would have, but did not, detect any significant variation in the waste (*i.e.*, the standard deviation was low).

The Agency has evaluated the mobility of the listed constituents of concern from SR's waste using a vertical and horizontal spread (VHS) model.³⁹ The VHS model generated compliance point values using the 3300 tons per year generation rate and the maximum reported extract levels. The sludge content of 8750 tons and the mean extract levels were used⁴⁰ to calculate

³⁹ See footnote 5.

⁴⁰ SR's closed lagoon represents a fixed amount of waste which would leach as a unit. Since a large number of samples were collected (*i.e.*, 48 complete depth cores) which suitably represent the variation in the waste generated over a long period of time, the mean extract concentrations were used in the VHS calculation. The mean extract concentrations

compliance point values for the impoundment sludge. These compliance point concentrations are exhibited in Table 5.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION (PPM)

	Cd	Cr	Ni	CN
Vacuum filter sludge.....	<0.001	0.03	0.16	<0.003
Lagooned sludge.....	0.003	0.03	0.09	0.03
Regulatory Standard				
	0.01	0.05	0.35	0.20

The vacuum filter sludge and lagooned sludge all exhibited cadmium and chromium levels (at the compliance point) well below the National Interim Primary Drinking Water Standards; nickel levels below the Agency's interim standard;⁴¹ and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.⁴² Total cyanide levels in the waste also are below the air threshold limit set by the American Conference of Governmental Industrial Hygienists.⁴³ These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in either the filter press sludge or the lagooned waste at levels of regulatory concern (*i.e.*, none

used were 0.016, 0.18, 0.54, and 0.2 ppm, for cadmium, chromium, nickel and cyanide, respectively. The mean extract values for arsenic, barium, lead, mercury, selenium, and silver were <0.01, 1.38, 0.096, <0.001, <0.01, <0.01ppm, respectively.

⁴¹ See footnote 14.

⁴² See footnote 7.

⁴³ See footnote 8.

are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 6.

The Agency also reviewed SR's raw

material lists, and material safety data sheets for each component in the raw materials lists. The Agency has concluded from this review that no other Appendix VIII hazardous constituents are present in the petitioned waste.

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge.....	<0.002	0.63	0.03	<0.0002	<0.002	<0.002
Lagooned sludge.....	0.002	0.22	0.02	<0.0002	<0.002	<0.002
Health-Based Standards						
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency believes that the treatment process used by SR generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to SR's facility located in Ripley, Tennessee for its filter press sludge and lagooned sludge, as described in its petition.

VII. Tennessee Electroplating

A. Petition for Exclusion

Tennessee Electroplating, located in Ripley, Tennessee, is involved in zinc diecasting and copper, nickel, and chromium electroplating of parts for ceiling fans, hood ornaments, and pay telephones. Tennessee Electroplating has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F0006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or

zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Tennessee Electroplating has petitioned to exclude its currently generated filter press sludge, as well as the electroplating sludges previously disposed of in an on-site surface impoundment which has been closed and capped, because they do not meet the criteria for which it was listed.⁴⁴

⁴⁴ Tennessee Electroplating originally submitted their petition on April 27, 1981. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. § 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Tennessee Electroplating. This additional information was submitted on June 19 and August 20, 1981, and May 6, 1985.

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Tennessee Electroplating claims that its wastewater treatment process generates a non-hazardous sludge, because cadmium is not used in the process. In addition, chromium, nickel, and cyanide, although present in the waste, are in essentially an immobile form. Tennessee Electroplating further claims that this waste is not hazardous for any other reason.

Based on our review of their petition, Tennessee Electroplating was granted a temporary exclusion for its filter press sludge on December 16, 1981 (see 46 FR 61281). At that time, the petitioner's request pertained only to the filter press sludge that they generated after that date since they did not realize that the impounded waste was also defined as listed F006 waste. Thus, the waste in their impoundment is still subject to Subtitle C control. Our basis for granting the exclusion was the low migration potential of chromium, nickel, and cyanide, and the absence of cadmium from the waste. Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted.⁴⁵ As a result, the Agency has reevaluated Tennessee Electroplating's petition to determine whether the temporary exclusion should be made final. This evaluation was based on the original listing criteria as well as other factors.

Tennessee Electroplating submitted a detailed description of its electroplating and wastewater treatment processes, including: schematic diagrams; total constituent analyses for cadmium, chromium, and nickel; analyses for total, free, and reactive cyanide; and EP toxicity test results for cadmium, total chromium, and nickel. Tennessee Electroplating also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease analyses on representative waste samples. Tennessee Electroplating also submitted a list of raw materials used in the manufacturing process.

The Agency requested this information, as indicated above, to determine if hazardous constituents, other than those for which the waste was listed, are present in the waste at levels of regulatory concern.

Tennessee Electroplating's manufacturing process includes a metal preparation system involving zinc diecasting metal cleaning, copper, nickel, and chromium plating, and glass cutting and grinding. Tennessee Electroplating's waste treatment system involves chromium reduction, metals precipitation, neutralization, and vacuum filtration. In previous years, the petitioner used an on-site impoundment to contain sludge during times of filter press break down. The impoundment which has been inactive since 1982, is now dry, closed, and covered.

Tennessee Electroplating divided the impoundment into quadrants and collected six random complete depth core samples in each quadrant. The samples from each quadrant were then combined to form four composite samples. This procedure was repeated on a second day, creating eight composite samples which were then analyzed. Tennessee Electroplating claims that these samples were representative since their manufacturing process was uniform and the use of raw materials did not vary substantially over time. The petitioner further claimed that the random full core samples were representative of any vertical and horizontal stratification that could have occurred in the impoundment.

With respect to the filter press sludge, twenty-five composite samples were collected at random times from the vacuum filter over a seven-week period. Grab samples from three discrete areas of the filter press were collected and combined to form one composite sample on each sampling date. Tennessee Electroplating claims that the samples

collected are representative of any variation of the listed and non-listed constituent concentrations in the waste. Tennessee Electroplating further claims that although the facility could be considered a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. In addition, the petitioner claims that the sampling period was long enough to cover any scheduled changes in the product line and, therefore, all raw materials used in the process are represented by the samples collected.

The total constituent analyses of the filtered press sludge and the lagooned sludge for the listed constituents revealed the maximum concentrations reported in Table 1. Leachate analysis for these same constituents revealed the maximum concentrations reported in Table 2.

TABLE 1.—MAXIMUM TOTAL CONSTITUENTS ANALYSES (PPM)

	Cd	Cr (total)	Ni	CN (total)	CN (free)
Vacuum filter sludge	0.2	260	298	<10	<0.1
Lagooned sludge	0.2	236	251	165	<0.1

TABLE 2.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	Cd	Cr (total)	Ni	CN (total) (distilled-water)
Vacuum filter sludge	0.03	0.82	0.78	<0.2
Lagooned sludge	0.2	0.4	0.86	0.15

The total constituent and EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Tables 3 and 4, respectively.

TABLE 3.—MAXIMUM TOTAL CONSTITUENTS ANALYSES (PPM)

	AS	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge	<0.1	<5.0	2.5	<0.01	<0.1	<0.1
Lagooned sludge	<0.1	<6.0	3.1	0.01	<0.1	<0.1

⁴⁵ See footnote 44.

TABLE 4.—MAXIMUM LEACHATE CONCENTRATION (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge.....	<0.01	4.0	<0.29	<0.001	<0.01	<0.01
Lagooned sludge.....	<0.01	2.0	0.11	<0.001	<0.01	<0.01

The maximum total oil and grease content reported was 2400 ppm. Ground water monitoring data submitted from a single downgradient well indicated that nickel, chromium, and cadmium were not detectable at detection limits of 0.005, 0.005, and 0.001 ppm, respectively.

Tennessee Electroplating also ran tests for reactive and photodegradable cyanide on its lagooned sludge samples due to high levels of total cyanide present in this waste. The maximum concentration of reactive cyanide reported was 1.1 ppm. The maximum concentration of photodegradable cyanide reported was 0.03 ppm. Tennessee Electroplating also submitted a list of raw materials used in their process. This list indicated that no other Appendix VIII hazardous constituents were used in the process and that formation of any of these constituents is highly unlikely. Tennessee Electroplating claims that it generates a maximum of 840 tons of waste annually from its filter press and that 6300 tons of dry sludge are contained in the closed impoundment.

B. Agency Analysis and Action

Tennessee Electroplating has demonstrated that the waste treatment sludge generated from its filter press and that contained in its closed on-site impoundment is non-hazardous. The Agency believes that the twenty-five samples collected from the filter press and the eight composite core samples collected from the impoundment were non-biased and adequately represent any variations which may occur in the waste petitioned for exclusion.

The key factor which could vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product line being manufactured. Variation in the raw materials can be expected either when the facility performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the sampling period used by Tennessee Electroplating was long enough to cover any scheduled changes in the product line, since the petitioner has verified that all of the plating lines were in operation during the sampling period. The samples, therefore, are representative of the waste generated by Tennessee Electroplating.

The Agency's conclusion that the sampling adequately represents Tennessee Electroplating's waste was confirmed by a comparison of the total constituent analyses of each sample. This analysis would have, but did not, detect any significant variation in the waste (*i.e.*, the standard deviation was low).

The Agency has evaluated the mobility of the listed constituents of concern from Tennessee Electroplating's waste using a vertical and horizontal spread (VHS) model.⁴⁶ The Agency's evaluation of the maximum 840 tons generated yearly and the maximum extract levels for the vacuum filter sludge are shown in Table 5. The Agency used the lagoon content of 6300 tons and the mean extract values.⁴⁷ to generate the compliance point levels, also shown in Table 5, for the lagooned sludge.

TABLE 5.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATION (PPM)

	Cd	Cr	Ni	CN
Vacuum filter sludge.....	<0.002	0.04	0.04	<0.01
Lagooned Sludge.....	0.003	0.03	0.08	0.02
Regulatory Standard				
	0.01	0.05	0.35	0.20

TABLE 6.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	As	Ba	Pb	Hg	Se	Ag
Vacuum filter sludge.....	<0.0005	0.2	0.02	<0.0005	<0.0005	<0.0005
Lagooned sludge.....	0.002	0.22	0.01	<0.0002	<0.002	<0.0002
Regulatory Standards						
	0.05	1.0	0.05	0.002	0.01	0.05

The Agency believes that the treatment process used by Tennessee Electroplating generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to Tennessee Electroplating's facility, located in Ripley, Tennessee, for its filter press sludge and lagooned sludge, as described in its petition.

⁴⁶ See footnote 5.

⁴⁷ Since the lagoon represents a cell of waste which would leach as a unit, the mean extract concentrations were used in the VHS calculation. The mean extract concentrations used were 0.016, 0.23, 0.53, and 0.11 ppm, for cadmium, chromium, nickel and cyanide, respectively. The mean extract

The vacuum filter sludge and lagooned sludge all exhibited cadmium and chromium levels (at the compliance point) well below the National Interim Primary Drinking Water Standards; nickel levels below the Agency's interim standard,⁴⁸ and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.⁴⁹ Total cyanide levels in the filter press sludge also are below the air threshold limit set by the American Conference of Governmental Industrial Hygienists (ACGIH).⁵⁰ Only that portion of total cyanide which is reported as reactive and photo-degradable can be considered available through an atmospheric exposure route. The reactive and photo-degradable cyanide levels in the impounded sludge are also below the air threshold limit set by the (ACGIH). These constituents, therefore, are not of regulatory concern.

The Agency also concluded, through the use of the VHS model, that no other EP toxic metals are present in either the filter press sludge or the lagooned waste at levels of regulatory concern (*i.e.*, none are above any regulatory standard at the compliance point in the VHS model). The compliance point values generated from these extract levels are displayed in Table 6.

The Agency also reviewed SR's raw materials lists, and material safety data sheets for each component in the raw materials lists. The Agency has concluded from this review that no other Appendix VIII hazardous constituents are present in the petitioned waste.

VIII. Valley City Steel Company

A. Petition for Exclusion

The Valley City Steel Company (Valley City), located in Valley City, Ohio, is involved in pickling of plain carbon and high strength-low alloy (HSLA) steel sheets, strips, and plates.

values for arsenic, barium, lead, mercury, selenium, and silver were <0.01, 1.38, 0.08, <0.001, <0.01, <0.01 ppm, respectively.

⁴⁸ See footnote 14.

⁴⁹ See footnote 7.

⁵⁰ See footnote 8.

Valley City has petitioned the Agency to exclude the metal oxide powder generated from the regeneration of spent pickle liquor from their pickling process. This oxide powder is classified as hazardous under 40 CFR § 261.3(c)(2) because it is derived from the treatment of spent pickle liquors listed as EPA Hazardous Waste No. K062—Spent pickle liquor from steel finishing operations. Valley City has petitioned to exclude their waste because it does not meet the criteria for which it was listed.⁵¹

The listed constituents of concern for this waste are hexavalent chromium and lead. Valley City claims that its pickle liquor regeneration process generates a non-hazardous waste because the constituents of concern are present at insignificant concentrations and in essentially an immobile form.

Valley City has submitted detailed descriptions of its steel pickling and wastewater treatment systems, including schematic diagrams; total constituent and EP toxicity analyses of the waste for all the EP toxic metals, hexavalent chromium, and nickel; total constituent analyses for cyanide, sulfide, and total oil and grease; and a distilled water leachate test for cyanide. Valley City also submitted material safety data sheets for the compounds used in their processes which have the potential to enter the wastestream. The Agency requested this information to determine if hazardous constituents other than those for which the waste was originally listed were present in the waste.

The acid pickling process at the Valley City facility involves the straightening of coiled steel, pickling in tandem hydrochloric acid (HCl) pickle tanks, washing in a series of fresh water rinses, and finishing the steel by either drying it, applying oil to prevent rust, or coating the steel with a lubricant to aid in future forming or sampling operations. There are approximately 400 gallons of waste pickle liquor generated per hour at the facility.

Treatment of the pickle liquor involves the use of a pickle liquor

regeneration system. Spent acid (containing metallic chlorides) is collected during the daily operation of the pickling lines. The solution is filtered, then atomized in a gas-fired roasting furnace at temperatures up to 800 °C. Iron chloride particles gravitate downward in the furnace, away from the acid droplets and combustion products. The roasting of the iron chlorides produces iron oxides, which are continuously collected and removed to a storage bin, and HCl gas. The HCl gas is condensed by water sprays in an adsorption column, and the condensate is returned to the pickling line. The iron oxide is a high purity, 300-mesh powder with a density of 0.3–0.5 kg/l.

Samples of the dry oxide powder were collected from both the transport dumpster (composited samples) and the roasting furnace exit (grab samples taken during normal operation of the unit). Valley City claims that due to the blending of pickle liquors in the storage tank prior to treatment in the roaster, all samples of treated waste are uniform and non-biased in nature. They also claim that the raw materials and production operations at the facility will not vary over time, and that the waste samples are representative of the oxide recovered in normal operations.

The total constituents and EP toxicity analyses of the oxide powder for the listed constituents are reported in Table 1.

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUE

	Total (mg/kg)	EP (mg/l)
Cr (total).....	49.	1.41
Cr (hex).....	<0.2	(⁵²)
Pb.....	2.5	0.28

⁵² Hexavalent chromium is the listed constituent of concern for this waste, but since the amounts of total hexavalent chromium and extractable total chromium in the waste are so small, EP tests for hexavalent chromium were not required.

The total constituent and EP toxicity analyses of the oxide powder for the non-listed inorganic constituents are reported in Table 2.

TABLE 2.—MAXIMUM TOTAL CONSTITUENT AND EP TOXICITY VALUES

	Total (mg/kg)	EP (mg/l)
As.....	<0.25	<0.005
Ba.....	50.	2.5
Cd.....	<0.25	0.008
Hg.....	0.1	0.0013
Se.....	0.04	<0.01
Ag.....	1.	0.01
Ni.....	32.	0.32
CN (total).....	3.4	<0.005
S ⁻	<9.	

Oil and grease content of the waste averaged 314 ppm. This concentration is

largely attributable to oils and rust preventatives present from the repickling of previously processed steel; most of the organic content of the pickle liquor would be expected to be incinerated in the spray roaster. No additives, solvents, or cleaners are added to Valley City's pickling process. An inspection of the material safety data sheets provided by Valley City did not indicate the presence of any other Appendix VIII hazardous constituents in the waste, nor are they likely to be generated in the waste. Valley City claims that a maximum of 2600 tons of waste is generated annually from the pickle liquor regeneration process.

B. Agency Analysis and Action

Valley City has demonstrated that its waste treatment system produces a non-hazardous waste. The Agency believes that the grab samples taken from the roaster and composites taken from the dumpster were non-biased and adequately represent any variations which may occur in the wastestream petitioned for exclusion. Samples were taken in May 1984 and August–September 1985, and represent a time period sufficient to reflect any variability in the waste. The Agency believes that Valley City's claim of the uniformity of the waste has been substantiated.

The Agency has evaluated the mobility of the inorganic constituents from Valley City's waste by means of the VHS groundwater model.⁵³ The Agency's evaluation of the 2600 tons of oxides generated yearly and the maximum EP extract levels described for this waste using the VHS model has generated the compliance point concentrations shown in Table 2.

TABLE 2.—VHS MODEL: PREDICTED CONCENTRATIONS AT COMPLIANCE POINT

	VHS Model (ppm)	Regula- tory stand- ard (ppm)
As.....	<0.0006	0.05
Ba.....	0.326	1.00
Cd.....	0.001	0.01
Cr (total).....	0.184	0.05
Pb.....	0.037	0.05
Hg.....	0.0002	0.002
Se.....	<0.0013	0.01
Ag.....	0.001	0.05
Ni.....	0.042	0.35
CN (total).....	<0.0006	0.20

The predicted levels for all the EP toxic metals except chromium are below their respective National Interim Primary Drinking Water Standards (NIPDWS); nickel levels are below the

⁵³ See footnote 5.

⁵¹ Valley City originally submitted its petition on August 10, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Valley City. This additional information was submitted by Valley City on August 9, and October 30, 1985.

Agency's interim delisting criterion;⁵⁴ and cyanide levels are below the U.S. Public Health Service's suggested drinking water standard.⁵⁵ The predicted maximum well concentration for total chromium (0.184 mg/l) exceeds the NIPDWS value of 0.05 mg/l.

This prediction is based upon the highest reported chromium leachate value. The value, however, exceeds the next highest value by a factor of five. Statistical evaluation of all the reported chromium leachate values indicates that this aberrant chromium value is 2.5 times greater than the upper limit of the 95% confidence interval for all the chromium data. The value in question was generated by a separate laboratory analysis performed prior to the testing done for the petition, and no quality control information concerning this early analysis is available. All subsequent analyses (performed by another laboratory) produced verifiably accurate data. Consequently, the Agency believes that the elevated chromium value is an outlier that may be due to laboratory error, and so this value will be disregarded. If the 95% confidence interval is re-calculated after discarding the outlier, and the upper limit of this interval is used as the leachate value in the VHS calculations, the resultant compliance point toxicant concentration (0.0196 ppm) does not exceed the NIPDWS for chromium.

These constituents are, therefore, not of regulatory concern. The Agency has also concluded that no hazardous organic constituents are present in the waste based upon a review of the raw materials used in the process and the potential for those organics to exist after going through the roaster.

Valley City has demonstrated to the Agency that the metal oxide powder residue produced from their spent pickle

liquor regeneration process is non-hazardous. The Agency proposes to grant an exclusion to Valley City Steel Company, located in Valley City, Ohio, for this oxide powder, as described in the petition.

IX. Effective Date

The rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that these rules should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

X. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

XI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility

Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: February 19, 1986.

Marcia Williams,

Director, Office of Solid Waste.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

1. The authority citation 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. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDES FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Chamberlain-Featherlite, Inc.	Hot Springs, AR	Dewatered wastewater sludges (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after [date of publication].
Falconer Glass Industries, Inc.	Falconer, NY	Wastewater treatment sludges from filter press and magnetic drum separator (EPA Hazardous Waste No. F006) generated from their electroplating operations after [date of publication].
Like City Army Ammunition Plant	Independence, MO	Wastewater treatment sludge (EPA Hazardous Waste No. K046) generated from the manufacturing, formulation and loading of lead-based initiating compounds and contained in an on-site landfill on [date of publication]. This is a one time only exclusion for the waste contained in the on-site landfill.
Loxgreen Company, Inc.	Hayti, MO	Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after [date of publication].
Olin Corp.	Augusta, GA	Brine purification muds (EPA Hazardous Waste No. K071) generated from the mercury cell process in chlorine production and produced in their brine treatment and dewatering unit after [date of publication]. There must be continuous batch testing for mercury using the EP toxicity test prior to disposal. Each batch of waste must exhibit mercury extract levels below 0.02 mg/l. This exclusion does not apply to a batch unless both of these conditions are met.

⁵⁴ See footnote 14.

⁵⁵ See footnote 7.

TABLE 1.—WASTES EXCLUDES FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
SR of Tennessee	Ripley, TN	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of publication] and wastewater treatment sludges contained in their closed on-site impoundment on that date.
Tennessee Electroplating	Ripley, TN	Wastewater treatment sludges (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of publication] and wastewater treatment sludges contained in their closed on-site impoundment on that date.
Valley City Steel Co.	Valley City, OH	Metal oxide powder (EPA Hazardous Waste No. K062) produced from the regeneration of spent pickle liquor from their pickling process after [date of publication].

[FR Doc. 86-4887 Filed 3-5-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 260, 261, 262, 264, 265, 268, 270 and 271

[SWH-FRL 2927-3]

Hazardous Waste Management System; Land Disposal Restrictions*Correction*

In FR Doc. 86-618 beginning on page 1602 in the issue of Tuesday, January 14, 1986, make the following corrections:

1. On page 1602, third column, second paragraph, seventh line, "achieved" should read "achievable".
2. On page 1605, second column, first complete paragraph, third from last line and last line, "6934" should read "6924".
3. On page 1608, second column, first complete paragraph, seventh line, "disposal" should read "disposed".
4. On page 1621, third column, second complete paragraph, sixth line, "Wastes" should read "Wastes".
5. On page 1623, second column, first paragraph, seventh line from the bottom, insert "not" between "has" and "been".
6. On page 1625, second column, second complete paragraph, fifteenth line, "interaction" was misspelled.
7. On page 1627, second column, first complete paragraph, eleventh line, "donated" should read "denoted".
8. On page 1633, third column, in the table, in the first entry, " $\pm 10^{-9}$ " should read " $> 10^{-9}$ "; in the second entry, " ± 500 " should read " > 500 ".
9. On page 1641, second column, twenty-first line, "264.228" should read "264.228".
10. On page 1642, second column, second complete paragraph, eleventh line, "absorption" should read "adsorption".
11. On page 1643, first column, second complete paragraph, twelfth line, "absorbed" should read "adsorbed".
12. On page 1644, second column, second paragraph, third line, insert a dash after the first parenthesis.
13. On page 1649, first column, twelfth line, "Y" should read " α_L ". In the third column, ninth line, "long-uniform" should read "log-uniform". In the same

column, first complete paragraph, second line, "pb" should read " P_b ".

13a. On page 1650, second column, in the fifth line beginning "density", "pp" should read "Pp". In the seventeenth line of the first complete paragraph, "K" should read " K_s ".

14. On page 1651, first column, in the equation, insert "[" after "exp".

15. On page 1654, first column, in paragraph (v), first line, remove the parenthesis before "of".

16. On page 1656, insert "WASTE SITE" at the top of the illustration.

17. On page 1663, first complete paragraph, sixth line, "Control" should read "Quality".

18. On page 1666, first column, in every place that " m_g " and " m_L " appear, insert a "•" above "m".

19. On page 1668, second column, in paragraph iii, ninth line, "absorbed" should read "adsorbed".

20. On page 1669, second column, in the paragraph below Equation (A27), fourth line, " F_F " should read " K_F ".

In the third column, in the paragraph below Equation (A30), fifth line, "one" should read "once".

21. On page 1672, third column, in the first paragraph and in the equation immediately following, insert a "•" above " C_s ".

22. On page 1673, in the text between Equations (B22) and (B23), in the first column, " k_{ha} " should read " k_{HA} ". In the second column, " k_{hn} " should read " k_{HN} " and " k_{hb} " should read " k_{HB} ".

23. On page 1675, in the first column, in the first line, " σ_g " should read " $\dot{m}_g$ "; in the third line, " σ_L " should read " $\dot{m}_L$ "; in the fifth line, " σ_P " should read " $\dot{m}_P$ "; in the fourteenth line, "stream pH" should read "stream p^{OH} "; and in the twenty-seventh line, " Q^R " should read " $\dot{Q}^R$ ".

24. Also on page 1675, in the second column, in the nineteenth line, " ζ " should read "yg".

25. On page 1678, in the first column, in the second complete paragraph, in the eleventh line, "data" should read "date".

26. On page 1682, in the first column, in paragraph (D), in the ninth line, "nonliner" should read "nonlinear"; in the second column, in the first line, "one-hundredth" should read "one one-

hundredth"; in the last line, "factor is" should read "factor in"; and in the third column, in the first complete paragraph, in the eighth line from the bottom of the paragraph, "The" should read "Ten".

27. On page 1684, in the second column, in the last line, "outliner" should read "outlier".

28. On page 1690, in the second column, in the seventh line from the bottom, " 5.0 ± 0.2 " should read " 5.0 ± 0.2 ".

29. On page 1694, in the first column, in the fifth line from the top, "waste group" should read "waste or waste group".

30. On page 1696, in the second column, in the fourth line from the bottom, "today become" should read "today to become"; in the third column, in the last line, "data" should read "date".

31. On page 1698, in the first column, in the first paragraph under "7. Granting of Extension Approval", in the eleventh line, "the disposal" should read "the duration of the extension and the name and location of any land disposal".

32. On page 1708, in the first column, in the first complete paragraph, in the seventh line, "effect" should read "effort".

33. On page 1712, in the first column, in entry F005, in the first line, "following non-halogenated" should read "following spent non-halogenated"; in the second column, in the second complete paragraph, in the seventh line, "derived for" should read "derived from".

34. On page 1715, in the second column, in paragraph v, in the third line, "inducted" should read "induced".

35. On page 1721, in the second column, in the seventh line, "choromium (VI)" should read "chromium (VI)".

36. On page 1730, in the second column, in footnote 14, in the fourth line, "CDFs—and" should read "CDDs—and".

37. On page 1732, in Table 16, in the last entry, the last column should read " 21 mg/l ".

38. On page 1752, in the third column, in paragraph 7.10.2, in the second line, " $100 \pm ^\circ\text{C}$ " should read " $100 \pm 20^\circ\text{C}$ ".

39. On page 1753, in the second column, in paragraph 7.15.3, in the third line, "may be" should read "may not be".

40. On page 1755, in Table 2, in the third column, move the third line up under the first line.

41. On page 1764, in the first column, in entry U031, "alcohol" was misspelled.

42. On page 1765, in the third column, in the table in § 268.42, in the twenty-ninth entry, "1,2,2-tyrifluoroethane" should read "1,2,2-trifluoroethane".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 431

General Regulations for Power Generation, Operation, Maintenance, and Replacement at the Boulder Canyon Project, Arizona/Nevada

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: In accordance with the Boulder Canyon Project Act of 1928 (Project Act), the Boulder Canyon Project Adjustment Act of 1940 (Adjustment Act), and the Hoover Power Plant Act of 1984 (Hoover Power Plant Act), the Bureau of Reclamation (Reclamation) has developed these proposed General Regulations for Power Generation, Operation, Maintenance and Replacement at the Boulder Canyon Project (General Regulations) to define the procedures to be used by Reclamation in providing contractors and the Western Area Power Administration (Western) with cost and power generation data associated with operation of the Project. These proposed General Regulations will supersede those portions of the "General Regulations for Lease of Power," dated April 25, 1930, and the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act," approved and promulgated on May 20, 1941 (1941 Generation Regulations), which are under the jurisdiction of the Secretary of the Interior and which will terminate on May 31, 1987.

DATES: Written comments concerning the proposed General Regulations must be received within 45 days of the date of this notice.

ADDRESS: Written comments concerning the General Regulations should be sent to: Mr. Edward Hallenbeck, Regional Director, Bureau of Reclamation, P.O.

Box 427, Boulder City, Nevada 89005, (702) 293-8411.

FOR FURTHER INFORMATION CONTACT: Robert McCullough, Regional Supervisor of Power, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8104.

SUPPLEMENTARY INFORMATION: The Project Act provides for the construction of works for the protection and development of the Colorado River Basin and for other purposes. Section 5 of the Project Act addresses the Secretary of the Interior's authority, under such regulations as the Secretary may prescribe, to contract for the generation and delivery of electrical energy upon charges that will provide sufficient revenue that will cover all expenses of operation, maintenance, and repayment of all amounts advanced from the Treasury with interest for the Boulder Canyon Project. Section 9 of the Adjustment Act provides for the operation, maintenance, and the making of replacements, however necessitated, of the Hoover Powerplant by the United States, either directly or through such agent or agents as the Secretary of the Interior may designate.

The Project Adjustment Act further defined the Secretary of the Interior's authority to promulgate the charges or the basis of computation thereof for electrical energy generated at Hoover Dam. In accordance with this authority, the Secretary of the Interior approved and promulgated the 1941 General Regulations. Those 1941 General Regulations provide the basis for computation of the charges for electrical energy generated at Hoover Dam through May 31, 1987.

The Department of Energy Organization Act of 1977 transferred the responsibility for the power marketing and transmission functions of the Boulder Canyon Project from Reclamation to the Western Area Power Administration (Western). The construction, power generation, operation, maintenance, and replacement responsibilities of the Project powerplant and appurtenant works remained with Reclamation. The power marketing function includes the responsibility for promulgating charges for the sale of power. General Regulations for the Charges for the Sale of Power from the Boulder Canyon Project will be the subject of a separate rulemaking by the Secretary of Energy, acting through the Administrator of Western under 10 CFR Part 904.

These proposed General Regulations, promulgated pursuant to section 8 of the Adjustment Act, are necessary and appropriate for the administration of the

Project in accordance with the Project Act and the Adjustment Act, as amended.

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 parties are invited to submit comments concerning these proposed General Regulations to the location identified in the address section of this notice. The final General Regulations will be published by the Secretary of the Interior, acting through the Commissioner of Reclamation, 90 days from the date of this publication. Reclamation will review and consider each comment prior to the publication in the *Federal Register* of the final General Regulations. Included also in that *Federal Register* publication will be responses to all major comments, criticisms, and alternatives offered during the comment period.

Executive Order 12291

The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

Pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations (CEQ) for implementing the procedural provisions of NEPA (40 CFR Parts 1500-1508), and the Department of the Interior Manual (516 DM 1-7), the Bureau of Reclamation will evaluate the potential environmental impacts associated with the proposed regulations for power generation, operation, maintenance, and replacement activities at the Boulder Canyon Project.

Based on a preliminary analysis, Reclamation anticipates preparing a categorical exclusion. The environmental compliance will be completed prior to final implementation of the regulations.

List of Subjects in 43 CFR Part 431

Electric power, Power generation.

It is proposed to amend 43 CFR by adding a new Part 431 to read as follows:

PART 431—GENERAL REGULATIONS FOR POWER GENERATION, OPERATION, MAINTENANCE, AND REPLACEMENT AT THE BOULDER CANYON PROJECT, ARIZONA/NEVADA

Sec.

- 431.1 Purpose.
- 431.2 Scope.
- 431.3 Definitions.
- 431.4 Power generation responsibilities.
- 431.5 Operation, maintenance, and replacement cost estimates.
- 431.6 Power generation estimates.
- 431.7 Administration and management of the Colorado River Dam Fund.
- 431.8 Disputes.
- 431.9 Future regulations.

Authority: Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), Colorado River Storage Project Act of 1956 (43 U.S.C. *et seq.*), Colorado River Basin Project Act of 1968 (43 U.S.C. 150 *et seq.*), and Hoover Power Plant Act of 1984 (98 Stat. 1333).

§ 431.1 Purpose.

(a) The Secretary of the Interior (Secretary), acting through the Commissioner of Reclamation, is authorized and directed to operate, maintain, and replace the facilities at the Boulder Canyon Project powerplant, and also to promulgate general regulations as the Secretary finds necessary and appropriate in accordance with the authorities in the Reclamation Act of 1902 (32 Stat. 388), and all acts amendatory thereof and supplementary thereto.

(b) In accordance with the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*) as amended and supplemented (Project Act), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 628 *et seq.*) as amended and supplemented (Adjustment Act), and the Hoover Power Plant Act of 1984 (98 Stat. 1333), Reclamation promulgates these General Regulations defining procedures to be used in providing contractors and Western with cost and power generation data associated with the operation of the Boulder Canyon Project. These General Regulations shall supersede those portions of the "General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act" (1941 General Regulations), approved and promulgated on May 20, 1941, and the "General Regulations for Lease of Power," dated April 25, 1930, which are under the jurisdiction of the Secretary of the Interior and which will terminate on May 31, 1987.

§ 431.2 Scope.

These General Regulations shall be effective on June 1, 1987, and shall apply to Power Generation, Operation, Maintenance, and Replacement activities at the Boulder Canyon Project after May 31, 1987. Those portions of the General Regulations for Generation and Sale of Power in Accordance with the Boulder Canyon Project Adjustment Act, dated May 20, 1941, and the "General Regulations for Lease of Power," dated April 25, 1930, which are under the jurisdiction of the Secretary of the Interior, are repealed as of the effective date of these regulations.

§ 431.3 Definitions.

As used in this part:

(a) "Additions and betterments" means such additions and betterments constructed or acquired which enhance or improve the Project and do more than restore the Project to a former good operating condition.

(b) "Colorado River Dam Fund" or "Fund" means that special fund established by Section 2 of the Project Act for the purpose of carrying out the provisions of the Project Act.

(c) "Contractors" means those entities which have a fully executed contract with Western for the purchase of power from the Project.

(d) "Project" or "Boulder Canyon Project" means all works authorized by the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act, to be constructed and owned by the United States, and any future authorized additions, but exclusive of the main canal and appurtenances mentioned therein, now known as the All-American Canal.

(e) "Replacements" means such replacements as determined by the United States to be necessary to keep the Project in good operating condition, but shall not include (except where used in conjunction with the word "emergency" or the words "however necessitated") replacements made necessary by any act of God, or of the public enemy, or by any major catastrophe.

(f) "Western" means the Western Area Power Administration, an agency of the Department of Energy.

§ 431.4 Power generation responsibilities.

(a) Power generation, and associated operation, maintenance, and replacement activities, however necessitated, shall be the responsibility of the United States Department of the Interior, Bureau of Reclamation (Reclamation).

(b) Subject to the statutory requirement that Hoover Dam and Lake Mead shall be used: first, for river regulation, improvement of navigation and flood control; second, for irrigation and domestic uses and satisfaction or perfected rights mentioned in Section 6 of the Project Act; and third, for power, and subject to water availability or water releases necessary for river system operations or forced or planned powerplant outages that affect powerplant capability, as determined by Reclamation, Reclamation will release water and make available generating capacity in such quantities, and at such times, as are necessary for the delivery of the capacity and energy to which contractors are entitled.

(c) Reclamation reserves the right to temporarily discontinue or reduce the delivery of water for the generation of electrical energy at any time for the purpose of maintenance, repairs, and/or replacements, and for investigations and inspections necessary thereto, provided, however, that Reclamation shall, except in case of emergency, give Western reasonable notice in advance of such temporary discontinuation or reduction, and that Reclamation shall make such inspections and perform such maintenance and repair work at such times and in such manner as to cause the least inconvenience possible to contractors and that Reclamation shall prosecute such work with diligence and without unnecessary delay, resume delivery of water so discontinued or reduced.

§ 431.5 Operation, maintenance, and replacement cost estimates.

Reclamation shall submit annually to Western, cost estimates for operation, maintenance, replacements, additions and betterments, interest, and amortization of the Project for the next 5 fiscal years. Such cost estimates shall identify major items included in the cost estimates. Thirty (30) days after the President's budget has been submitted to Congress, Reclamation shall submit such cost estimates to Western and shall also provide such cost estimates to contractors for review with an opportunity to present written views within 60 days. Reclamation responses to written views shall be provided within 60 days of receipt.

§ 431.6 Power generation estimates.

At least once each fiscal year, Reclamation shall provide to Western and to contractors, an integrated annual schedule showing estimated power generation and estimated maintenance outages for review, and shall provide an

opportunity to present written views within 60 days. Reclamation responses to written views shall be provided within 60 days of receipt. The estimated annual operation schedule of Hoover Powerplant shall be subject to necessary modifications, either higher or lower, to allow for changing powerplant maintenance schedules and/or generation rates, and for changing reservoir and river conditions, as well as for release requirements for flood control.

§ 431.7 Administration and management of the Colorado River Dam Fund.

(a) All receipts to the Project shall be deposited in the Fund along with power sales revenues deposited by Western and shall be available without further appropriation for:

(1) The cost of operation, maintenance, and replacement of all Project facilities, including emergency replacements necessary to insure continuous operations;

(2) Payment of interest on the unamortized balance of capital investment;

(3) Repayment of capital investments including amounts readvanced;

(4) Payments to the States of Arizona and Nevada as provided in section 2(c) of the Adjustment Act and section 403(c)(2) of the Colorado River Basin Project Act;

(5) Transfers to the Lower Colorado River Basin Development Fund as provided in section 403(c)(2) of the Colorado River Basin Project Act and section 102(c) of the Hoover Power Plant Act;

(6) Transfers from the Lower Colorado River Basin Development Fund to the Upper Colorado River Basin Fund as reimbursement for the monies expended heretofore from the Upper Colorado River Basin Fund to meet deficiencies in generation at Hoover Dam during the filling period of storage units of the Colorado River Storage Project in accordance with the provisions of sections 403(g) and 502 of the Colorado River Basin Project Act, such transfers to be effected at the rate of \$1,532,854.44 per year during the period 1988 to 2005; and

(7) Any other purposes authorized by existing and future Federal law.

(b) The Fund shall be administered and managed in accordance with applicable Federal law and regulation, by the Secretary of the Interior acting through the Commissioner of Reclamation.

§ 431.8 Disputes.

(a) Any disputes or disagreements as to interpretation or performance of the

provisions of these regulations under the responsibility of the Secretary of the Interior shall first be presented to and decided by the Secretary or the Secretary's designated representative, hereinafter called the Federal Representative. The decision of the Federal Representative shall be final and binding unless a written request for arbitration is received by the Federal Representative within 30 days of the date of receipt of the notice of decision, or the disputing party files a claim in a proper Federal District Court within 6 months of receipt of the notice of decision. The Federal Representative shall have 90 days from the date of receipt of the request for arbitration to respond in writing by either concurring in or denying the request. Failure by the Federal Representative to take any action within the 90 days shall be deemed a denial of the request for arbitration. In the event of a denial of a request for arbitration, the disputing party's remedy lies with the appropriate Federal District Court.

(b) When a timely request for arbitration is received and the Federal Representative concurs in writing with the request, the disputing party and the Federal Representative shall each, within 30 days, name one arbitrator to the panel of arbitrators which will decide the dispute. In the event there is more than one disputing party in addition to the Federal Representative, the disputing parties shall collectively name one arbitrator to the panel of arbitrators. In addition, the Federal Representative shall make a request in writing to the appropriate Federal District Court that a third arbitrator be named to the panel of arbitrators by the Chief Judge of the Federal District Court which would have exercised jurisdiction over the dispute but for the mutually agreed to arbitration process. The third arbitrator shall act as chairperson of the panel. The panel of arbitrators shall render a final decision within 60 days of the date of the naming of the third arbitrator. A decision by any two of the three arbitrators named to the panel shall be final and binding on all parties involved in the dispute. Pending a final decision by the panel arbitrators, the Federal Representative's prior decision shall be binding upon the parties.

§ 431.9 Future regulations.

Reclamation may from time to time promulgate such additional or amendatory regulations as deemed necessary for the administration of the Project in accordance with applicable law.

Dated: February 11, 1986.

Wayne Marchant,
Deputy Assistant Secretary—Water and Science.

[FR Doc. 86-4890 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-09-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-74; RM-5169]

FM Broadcast Station in De Witt, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 243A to De Witt, Michigan, in response to a petition filed by William S. Gannon. This allotment could provide a first FM broadcast service for the community.

DATES: Comments must be filed on or before April 21, 1986, and reply comments on or before May 6, 1986.

ADDRESS: Federal Communication Commission, Washington, DC 20054.

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 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. (De Witt, Michigan); MM Docket No. 86-74, RM-5169.

Adopted: January 31, 1986.

Released: February 27, 1986.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by William S. Gannon ("petitioner"), seeking the allotment of FM Channel 243A to De Witt, Michigan, as that community's first broadcast service. Petitioner submitted information in support of the proposal and stated his intention to file an application for the channel.

2. Channel 243A can be allocated to De Witt, Michigan, in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules provided an application (BMPH850911E) filed by Station WHNN, Channel 241, Bay City, Michigan, to relocate its transmitter and increase its facilities to the Class C standards is approved by the Commission.¹ At present, the proposal for Channel 243A at De Witt would be short spaced to the 16 kilometer buffer zone of Station WHNN. However, if the application is approved to allow Station WHNN to operate as a full Class C facility, the buffer zone would be removed and Channel 243A could be allocated to De Witt.² Since De Witt is located within 320 kilometers (200 miles) of the common U.S.-Canadian border, Canadian concurrence is required.

PART 73—[AMENDED]

3. In view of the fact that the proposed allocation could provide a first FM broadcast service to De Witt, Michigan, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

Community	Channel No.	
	Present	Proposed
De Witt, Mich.		243A

4. It is ordered, That the Secretary of the Commission shall send by certified mail, Return Receipt Requested, a copy of the Notice to the following: Mr. Steven J. Kuiper, 2049 Action Street, Grand Rapids, Michigan 49504 (851115MQ).

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 allotted.

¹ One of the applications filed for Channel 243A at Portage, Michigan (851115MQ), is short spaced to the proposed allotment of Channel 243A at De Witt. The applicant will be served a copy of this Notice of Proposed Rule Making. See paragraph 4, *infra*.

² Should the application filed by WHNN not be granted and the buffer zone for Channel 241, Bay City, remain until March 1987, FM Channel 227A could be allotted to De Witt. A site restriction of 8.6 kilometers northwest of the community would be necessary for the allocation of Channel 227A at De Witt.

6. Interested parties may file comments on or before April 21, 1986, and reply comments on or before May 6, 1986, 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: William S. Gannon, 4208 South Cedar Street, Lansing, Michigan 48910.

7. 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 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 allotments. 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 persons(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(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 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, DC.

[FR Doc. 86-4843 Filed 3-5-86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 252

Department of Defense Federal Acquisition Regulation Supplement; Debarment and Suspension

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council is considering the promulgation of a new rule in the DOD FAR Supplement (DFARS), Parts 209 and 252, with respect to Debarment and Suspension. The purpose of the proposed rule is to provide the contracting officer with current information regarding the debarment or suspension status of offerors and ensure that subcontracts are not awarded to firms which have been debarred or suspended.

DATE: Comments on the proposed rule should be submitted in writing to the DAR Council at the address shown below no later than May 5, 1986, to be considered in formulation of the final rule. Please cite DAR Case 83-72 in all correspondence related to this matter.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, OASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7268.

SUPPLEMENTARY INFORMATION:

A. Background

Current provisions in the FAR and DFARS essentially state that, absent compelling circumstances, DOD Components will not solicit bids or proposals from, award contracts to, or renew existing contracts with firms who are debarred or suspended or are pending debarment action, and in addition, will not consent to nor approve

subcontracts with such firms. Debarred or suspended contractors are excluded from conducting business with the DOD as agents or representatives or other contractors. Currently, DOD contracting officers rely upon the Consolidated List of Debarred, Suspended and Ineligible Contractors specified in FAR 9.403 in giving effect to the above provisions. However, on occasion, contracts inadvertently have been awarded to firms which were debarred or suspended at the time of award or were pending debarment action, because of the administrative delay involved in preparation and distribution of the Consolidated List to DOD contracting offices worldwide. The proposed rule would address and cure this problem by requiring, in other than small purchases under FAR Part 13, that offerors certify their eligibility for award at the time of submission of bids and proposals and obtain similar certifications from prospective subcontractors, thereby assisting contracting officers in making informed responsibility determinations. As drafted, the proposed rule extends the prohibition on contracting with debarred or suspended firms to the subcontract level, as the prohibition would apply to circumstances other than those in which formal Government consent or approval is required under the terms of a Government prime contract.

B. Regulatory Flexibility Act

The proposed rule is expected to impact only upon a small number of firms which, although debarred or suspended, seek to do business under DOD prime contracts as subcontractors. Because the number of debarred or suspended firms which are small entities is itself currently limited to approximately 1200 firms, and because present DOD prime contractor purchasing practices and prime contract provisions concerning Government consent and approval of subcontracts tend to exclude such firms from receiving subcontract awards to a large extent, it is believed that an insubstantial number of small entities will be affected. Comments are solicited in this regard.

C. Paperwork Reduction Act

The proposed rule requires certification of status and does not impose information collection requirements under the statute. Therefore, OMB approval under 44 U.S.C. 3501, et seq., is not required.

List of Subjects in 48 CFR Parts 209 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulator Council.

Therefore, it is proposed that 48 CFR Parts 209 and 252 be amended as follows:

PART 209—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR Part 209 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 209.405-3 is added to read as follows:

209.405-3 Contract clause.

The contracting officer shall insert the clause at 52.209-7000, Representation Regarding Debarment and Suspension and Subcontracting with Debarred or Suspended Contractors, in all solicitations and contracts other than small purchases under FAR Part 13.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority for Part 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

4. Section 252.209-7000 is added to read as follows:

252.209-7000 Representation regarding debarment and suspension and subcontracting with debarred or suspended contractors.

As prescribed in 209.405-3, insert the following clause:

Representation Regarding Debarment and Suspension and Subcontracting With Debarred or Suspended Contractors (1986 MAR)

(a) The Offeror (Contractor) represents and certifies (with its submission of this offer) that it () is, () is not (check one) suspended, debarred or ineligible from entering into contracts with the executive branch of the Federal Government, or in receipt of a notice of proposed debarment from any department or agency of the Department of Defense. This representation concerns a matter within the jurisdiction of a department or agency of the United States so that the making of a false, fictitious or fraudulent representation will render the maker subject to punishment under Title 18, United States Code, Section 1001.

(b) The Offeror (Contractor) certifies that () if awarded a contract under this solicitation,

it will knowingly enter into any subcontract exceeding \$25,000 under the contract with a contractor that is suspended, debarred or ineligible from entering into contracts with the executive branch of the Federal Government, or in receipt of a notice or proposed debarment from any department or agency of the Department of Defense. The Contractor may rely on a representation by the subcontractor similar to that in paragraph (a), above, unless it has knowledge of a suspension, debarment, or eligibility of, or receipt of notice of proposed debarment by the subcontractor. If the Contractor does knowingly enter into a subcontract exceeding \$25,000 with a contractor that is suspended, debarred, ineligible or in receipt of a notice of proposed debarment, the Contracting Officer may direct cancellation of the subcontract at no cost to the Government or terminate the prime contract for default.

(c) Prior to award of a contract under this solicitation, the Offeror shall provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal Government, or upon receipt of a notice of proposed debarment from any department or agency of the Department of Defense.

(d) (If awarded a contract under this solicitation,) the Offeror (Contractor) shall, during the performance of the contract, provide immediate notice to the Contracting Officer in the event of being suspended, debarred or declared ineligible by any department or agency of the Federal Government, or upon receipt of a notice of proposed debarment from any department or agency of the Department of Defense.

(e) (If awarded a contract under this solicitation,) the Offeror (Contractor) shall include paragraphs (a) and (b), above, and this paragraph (e), modified and supplemented as necessary to reflect the relationship of the contracting parties, in all subcontracts exceeding \$25,000 and shall

include reference to the government contract number, contracting office, and Contracting Officer in such subcontracts.
(End of clause)

[FR Doc. 86-4888 Filed 3-5-86; 8:45 am]

BILLING CODE 3810-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1063

[Ex Parte No. MC-95; Sub-3]

Adequacy of Intercity Motor Common Carrier Passenger Service

AGENCY: Interstate Commerce Commission.

ACTION: Notice of discontinuance of rulemaking proceeding.

SUMMARY: This proceeding concerning adequacy of service, equipment, and facilities provided by motor passenger carriers operating over regular routes was reopened for further comments by decision served November 30, 1984. Notice of the action was published December 3, 1984, in the *ICC Register* and the *Federal Register* at 49 FR 47277. The supplemental comments that have been submitted have identified no reasons why any modifications to the existing regulations should be adopted. The Commission has concluded that the increasingly competitive environment fostered under the provisions of the Bus Regulatory Reform Act of 1982 makes it unnecessary to impose more stringent requirements upon the intercity bus industry.

DATES: This proceeding is discontinued, effective March 6, 1986.

FOR FURTHER INFORMATION CONTACT:

James L. Brown (202) 275-7898
or

Howell I. Sporn (202) 275-7691

SUPPLEMENTARY INFORMATION:

Additional information is contained in the full Commission decision, which is available for public inspection at the Office of the Secretary, Room 2215, 12th Street and Constitution Ave., NW., Washington, DC 20423. Copies may be purchased from T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (800) 424-5403, or (202) 289-4357 in the Washington, DC, Metropolitan area.

This decision will not significantly affect the quality of the human environment or the conservation of energy resources, nor will it have a significant effect on a substantial number of small authorities.

List of Subjects in 49 CFR Part 1063

Buses.

This decision is issued pursuant to 5 U.S.C. 553 and 559 and 49 U.S.C. 10102, 10321, 10703, 10762, 10730, 10922, 11145, and 11702.

Dated: February 25, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,
Secretary.

[FR Doc. 86-4883 Filed 3-5-86; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 51, No. 44

Thursday, March 8, 1986

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

Commodity Credit Corporation

1986-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of Proposed Determinations.

SUMMARY: The purpose of this notice is to propose a level of price support for the honey price support program for the 1986-crop and to propose additional program changes. These proposed determinations are made in accordance with the provisions of section 201(b) of the Agricultural Act of 1949, as amended by the Food Security Act of 1985. Written comments are invited from interested persons.

DATE: Comments must be received on or before March 24 in order to be assured of consideration.

ADDRESS: Mail comments to Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA-ASCS, 3741 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Harry A. Sullivan, Agricultural Economist, Commodity Analysis Division, USDA-ASCS, Room 3741 South Building, P.O. Box 2415, Washington, D.C. 20013, (202) 447-6758. The Preliminary Regulatory Impact Analysis describing the options considered in developing these proposed determinations and the impact of implementing each option is available from the above-named individual.

SUPPLEMENTARY INFORMATION: These proposed determinations have been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and have been classified "not major." It has been determined that these proposed determinations will not result

in: (1) An annual effect on the economy of \$100 million or more; (2) major increases 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 U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which these proposed determinations apply are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice of proposed determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

In order to implement a price support program for the 1986 crop of honey by April 1, 1986, the beginning of the marketing season, it is necessary to limit the public comment period to less than 30 days. Accordingly, comments must be received by March 24 in order to be assured of consideration.

Domestic production, imports, CCC and commercial stocks, and honey pledged as collateral for CCC price support loans are expected to result in a total supply of honey in the United States for 1986 of 550 million pounds.

Domestic honey production in 1986 is projected to be 196 million pounds from 4,350,000 colonies. This is 46 million pounds more than the estimated volume of honey produced during the 1985 crop year. Imports of honey in 1986 are projected to total 140 million pounds, about the same quantity imported in 1985. As of December 31, 1985, there were approximately 108.3 million pounds of honey remaining in CCC inventory while approximately 20 million pounds of honey remained in commercial stocks. Another 86 million pounds of honey were pledged as price support loan collateral under the honey program for the 1985 crop year. These figures may fluctuate due to domestic disappearance which, for the 1979 to 1981 crop years, averaged 247 million pounds per year. Disappearance,

beginning with the 1981 crop year has been rising due to the added disposition of CCC inventories through noncommercial outlets.

The U.S. market price for honey in 1985 declined from 49.5 cents per pound in 1984 to an estimated 45.5 cents per pound on a bulk, extracted, wholesale, unprocessed basis. The level of price support for the 1985 crop of honey was established at 60 percent of parity or 65.3 cents per pound. Thus, average market prices have lagged well behind the levels of price support, which have increased steadily to over 65 cents per pound in 1985.

Section 201(b) of the Agricultural Act of 1949 (the "1949 Act"), as amended by section 1041 of the Food Security Act of 1985, provides that the Secretary of Agriculture shall make available through loans, purchases, or other operations, price support to producers of 1986-crop honey at 64 cents per pound.

In accordance with section 403 of the 1949 Act, it is proposed that the loan rate for the 1986 crop of honey be adjusted to reflect floral source, color, class and grade, and other market differentials which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the 1949 Act the Secretary may permit producers who have obtained price support loans with respect to the 1986-1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

Accordingly, the following determinations are proposed with respect to the 1986-crop:

Proposed Determinations

The 1986 program will be a price support loan program with a loan rate of 64 cents per pound as required by statute.

The 1986-crop honey loan rate will be adjusted to reflect floral source, color, class and grade, and other market

differentials under which honey is marketed.

Producers with price support loans for the 1986-crop honey will be permitted to repay such loans at the lesser of the loan level for such crop or at a level which the Secretary determines will minimize the number of loan forfeitures, not result in excessive total stocks of honey, reduce the costs incurred by the Federal Government in storing honey, and maintain the competitiveness of honey in domestic and export markets. At this present time, it is contemplated that a repayment level may be established in a range of 20 to 40 cents a pound, which roughly reflects the wide range of potential landed import prices for honey. A repayment level in this range would result in direct competition with imported honey whereby commercial sales of domestically produced honey would increase and total stocks of domestically produced honey would decrease. This increased competition would minimize the number of loan forfeitures and thus reduce the costs incurred by the Federal Government in storing honey. Repayment within this range would not only make domestically produced honey more competitive with foreign honey in domestic markets but would increase its competitiveness in foreign markets as well.

Consideration will be given to all views and recommendations that are received relating to the above determinations.

All comments will be available for public inspection in room 3741 of USDA's South Building during business hours (8:00 a.m. to 4:30 p.m.).

Signed at Washington, DC on: March 4, 1986.

Milton J. Hertz,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-4989 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Mount St. Helens Scientific Advisory Board Meeting

The Mount St. Helens Scientific Advisory Board will meet at 9 a.m., April 15, 1986, at the Forest Supervisors Office, Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660, to receive information on and discuss the following:

1. The final Comprehensive Management Plan.
2. Research access to Spirit Lake Basin.

3. Status of Monument Scientist position.

4. The National Volcanic Monument Science Panel.

5. Promoting research needs in the NVM.

6. Status of outlets at Coldwater and Castle Lakes.

7. Summer meeting and field trip.

8. Open discussion of topics of interest to the Advisory Board.

The meeting will be open to the public. Persons who wish to make a statement to the Board should notify Dr. Jack K. Winjum, Chairperson, c/o Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington 98660, 206-696-7570. Written statements may be filed with the Board before or after the meeting.

Dated: February 27, 1986.

James C. Space,

Acting Regional Forester.

[FR Doc. 86-4875 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Bush River-Beaverdam Creek Watershed, South Carolina

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 Bush River-Beaverdam Creek Watershed, Newberry and Laurens Counties, South Carolina.

FOR FURTHER INFORMATION CONTACT:

Mr. Billy Abercrombie, State Conservationist, Soil Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, telephone (803) 765-5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally-assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Billy Abercrombie, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for erosion control on 7,410 acres of cropland in Newberry and Laurens Counties. The work will be accomplished through conservation plans and long-term contracts involving about 70 farms. The soil and water conservation districts will provide leadership for installing the project.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Billy Abercrombie.

No administrative action on implementation of the proposal will be taken until 30 days after date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

Dated: February 25, 1986.

Byron Thompson,

Asst. State Conservationist.

[FR Doc. 86-4874 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Perry County Roadbanks Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Perry County Roadbanks Critical Area Treatment RC&D Measure, Perry County, Ohio.

FOR FURTHER INFORMATION CONTACT:

Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of 30 acres of bare and eroding banks, 2,000 feet of a severely eroding roadside ditch, and stabilization of one roadway slip. Planned works of improvement include seeding and mulching the bare and eroding areas, installation of design drains for surplus runoff, installation of a grade stabilization structure, installation of subsurface drains, and the rebuilding of the landslip areas.

The Notice of 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 Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Harry W. Oneth,
State Conservationist

February 26, 1986.

[FR Doc. 86-4861 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Scioto County Road 32 Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact

statement is not being prepared for the Scioto County Road 32 Critical Area Treatment RC&D Measure, Scioto County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of landslips along Scioto County Road 32, also known as Bear Creek Rarden Road. Planned works of improvement include the installation of approximately 400 feet of subsurface drains to intercept seepage in the slip area and the installation of a road ditch to divert surface water away from the slip area. The slip area will be regraded and seeded.

The Notice of 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 Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Harry W. Oneth,
State Conservationist

[FR Doc. 86-4862 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Springfield Township Road 22-50 Critical Area Treatment RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Springfield Township Road 22-50 Critical Area Treatment RC&D Measure, Williams County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the critical area treatment of a roadside slip approximately 400 feet long. The slip created a traffic safety hazard and erosion problem. Planned works of improvement include a 400 foot diversion to divert surface runoff away from the slip area and the installation of a subsurface drain to intercept seepage. After construction the area will be graded and seeded.

The Notice of 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 Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which

requires intergovernmental consultation with state and local officials]
February 26, 1986.

Harry W. Oneth,
State Conservationist.

[FR Doc. 86-4863 Filed 3-5-86; 8:45 am]
BILLING CODE 3410-16-M

Tycoon Wildlife Area Public Water-Based Fish and Wildlife RC&D Measure, Ohio

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Tycoon Wildlife Area Public Water-Based Fish and Wildlife RC&D Measure, Gallia County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for the restoration and improvement of the public water-based fish and wildlife habitat on 10 acres of land owned and operated by the Division of Wildlife, Ohio Department of Natural Resources. It will restore a washed out dike and wetland area. Planned works of improvement include the installation of a dike and water control structure to manage the water level behind the dike for the benefit of the wildlife.

The Notice of 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. Basis data developed during

the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

February 26, 1986.

Harry W. Oneth,
State Conservationist.

[FR Doc. 86-4864 Filed 3-5-86; 8:45 am]
BILLING CODE 3410-16-M

Deauthorization of Funds; Hardin Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Hardin Creek Watershed Creek Watershed project, Hardin and Wayne Counties, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,
State Conservationist

[FR Doc. 86-4893 Filed 3-5-86; 8:45 am]
BILLING CODE 3410-16-M

Deauthorization of Funds; Lewis-Hunsaker Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil

Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Lewis-Hunsaker Creek Watershed project, Dyer County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,
State Conservationist.

[FR Doc. 86-4894 Filed 3-5-86; 8:45 am]
BILLING CODE 3410-16-M

Deauthorization of Funds; Little Bigby Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Lewis-Hunsaker Creek Watershed project, Dyer County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,
State Conservationist.

[FR Doc. 86-4894 Filed 3-5-86; 8:45 am]
BILLING CODE 3410-16-M

Deauthorization of Funds; Mill Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Mill Creek Watershed project, Overton and Clay Counties, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,
State Conservationist.

[FR Doc. 86-4896 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; Mulberry Creek Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Mulberry Creek Watershed project, Moore and Lincoln Counties, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,
State Conservationist.

[FR Doc. 86-4897 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; North Fork Obion River Watershed, TN

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the North Fork Obion River Watershed project, Henry County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,
State Conservationist.

[FR Doc. 86-4898 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Deauthorization of Funds; Wilson-Spring Creek Watershed, TN

AGENCY: Soil Conservation Service.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Wilson-Spring Creek Watershed project, Wilson County, Tennessee, effective on February 7, 1986.

FOR FURTHER INFORMATION CONTACT: Donald C. Bivens, State Conservationist, Soil Conservation Service, 675 Estes Kefauver FB-USCH, 801 Broadway, Nashville, TN 37203, 615/736-5471.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: February 27, 1986.

Donald C. Bivens,
State Conservationist.

[FR Doc. 86-4899 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

Tucson Plant Materials Center Land Exchange, AZ; Finding of No Significant 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 Tucson Plant Materials Center Land Exchange, Pima County, Arizona.

FOR FURTHER INFORMATION CONTACT: Verne M. Bathurst, State Conservationist, USDA Soil Conservation Service, 201 East Indianola, Suite 200, Phoenix, Arizona 85012, Telephone (602) 241-2247.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federal action indicates that the exchange will not cause significant local, regional or national impacts on the environment. As a result of these findings, Verne Bathurst, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this land exchange.

Tucson Plant Materials Center Land Exchange, AZ**Notice of a Finding of No Significant Impact**

This activity concerns exchanging 27.77 acres (more or less) of agricultural land (surrounded by urban area) for 80 acres (more or less) in a rural agricultural area. The Government property will be transferred by quit claim deed. The property to be accepted by the Soil Conservation Service will be utilized as a new Plant Materials Center. This exchange was prompted by Section 4 of Executive Order 12348 as implemented by Subpart 101-47.8 of the Federal Property Management Regulations (FPMR). Based on the highest and best use analysis and land cost comparisons, the entire Tucson PMC property is not being put to

optimum use. The appraised value of the Tucson PMC is \$98,127.00 per acre. Comparably improved, ready-to-farm agricultural land, outside of the urban sprawl, is available for \$3,000.00 per acre.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single copy requests. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Verne Bathurst.

No administrative action on implementation of this land exchange will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901-Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

Dated: February 27, 1986.

Verne M. Bathurst,
State Conservationist.

[FR Doc. 86-4900 Filed 3-5-86; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

Importers and Retailers' Textile Advisory Committee; Partially Closed Meeting

A meeting of the Importers and Retailers' Textile Advisory Committee will be held on April 8, 1986 at 10:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC 20230. (The Committee was established by the Secretary of Commerce on August 13, 1963 to advise Department officials of the effects on import markets of cotton, wool, and man-made fiber textile and apparel agreements.)

General Session: 10:30 a.m. Review of import trends, international activities, report on conditions in the market, and other business.

Executive Session: 11:00 a.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c) (1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of

Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b (c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: March 3, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-4922 Filed 3-5-86; 8:45 am]

BILLING CODE 3510-DR-M

Management-Labor Textile Advisory Committee; Partially Closed Meeting

A meeting of the Management-Labor Textile Advisory Committee will be held March 27, 1986 at 1:00 p.m., Herbert C. Hoover Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. (The Committee was established by the Secretary of Commerce on October 18, 1961 to advise Department officials on problems and conditions in the textile and apparel industry.)

General Session: 1:00 a.m. Review of import trends, implementation of textile agreements, report on conditions in the domestic market, and other business.

Executive Session: 1:30 p.m. Discussion of matters properly classified under Executive Order 12356 (3 CFR Part (1982) and listed in 5 U.S.C. 552b(c) (1) and (9).

The general session will be open to the public with the limited number of seats available. A Notice of Determination to close meetings or portions of meetings to the public on the basis of 5 U.S.C. 553b (c)(1) and (c)(9) has been approved in accordance with the Federal Advisory Committee Act. A copy of the notice is available for public inspection and copying in the Central Facility Room 6628, U.S. Department of Commerce, (202) 377-3031.

For further information or copies of the minutes contact Helen L. LeGrande (202) 377-3737.

Dated: March 3, 1986.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-4923 Filed 3-5-86; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments; Sam Houston State University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No. 86-111. Applicant: Sam Houston State University, Huntsville, TX 77341. Instrument:

Spectrophotometer, Model DA3.25 with Accessories. Manufacturer: Bomen Inc., Canada. Intended use: The instrument will be used to investigate the optical and electrical properties of semi-insulating gallium arsenide (GaAs), neutron transmutation doped (NTD) GaAs, high purity silicon and NTD silicon using infrared absorption spectroscopy, photothermal ionization spectroscopy and electron paramagnetic resonance techniques. Application received by Commissioner of Customs: February 4, 1986.

Docket No. 86-114. Applicant: Ohio State University, Research Foundation, 1314 Kinnear Road, Columbus, OH 43210. Instrument: Electron Microscope, Model EM 10CA. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument will be used for the following research interests:

- (1) Ultrastructural studies of green algae.
- (2) Studies of the mechanism of double fertilization in angiosperms.
- (3) Structure-function relationships in stomata and in higher plant graviperception.
- (4) Ultrastructural studies of fossil plants.

In addition, the instrument will be used to teach electron microscopy techniques to graduate and advanced undergraduate students. Application received by Commissioner of Customs: February 4, 1986.

Docket No. 86-116. Applicant: State University of New York, Stonybrook, NY 11794. Instrument: Electron Microscope, Model CM 12 with

Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument is intended to be used for the study of metallic and ceramic materials and light metal hydrides. Particular emphasis will be on hcp metals, refractory metals and binary alloys. Experiments will consist of microscopic imaging and diffraction studies and *in situ* straining. In addition, the instrument will be used for teaching the following courses:

- (1) ESM 302 Techniques in Materials Science
- (2) ESM 605 Diffraction Techniques
- (3) ESM 607 Imperfections in Crystals
- (4) ESM 696 Problems in Materials Science
- (5) ESM 599 and 699 Research in Materials Science. Application received by Commissioner of Customs: February 10, 1986.

Docket No. 86-117. Applicant: Medical College of Ohio, 3000 Arlington Avenue, C.S. 10008, Toledo, OH 43699. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used for analysis of a wide range of vertebrate tissues involving both developing and mature forms. The primary biological tissues for study will be embryonic avian and mammalian heart, dog kidney, human bronchus and rodent pituitary gland, blood vessels and brain. Invertebrate studies will include the yeasts. The overall objectives of the experiments to be conducted are:

- (1) A comparison of development in normal and experimental hearts;
- (2) effects of renal necrosis induced by pharmacological agents;
- (3) mechanics of bronchial and lung carcinogenesis;
- (4) a description of alterations induced in the kidneys and blood vessels of hypertensive rats and
- (5) the effect of mycoccocal predation on cyanobacteria in planktonic communities. Application received by Commissioner of Customs: February 4, 1986.

Docket No. 86-121. Applicant: State University of New York, College of Optometry, 100 East 24th Street, New York, NY 10010. Instrument: CRT Display Unit and GRSYS-2 Microprocessor Grating Generator with Interface Hardware. Manufacturer: Joyce Electronics, Ltd., United Kingdom. Intended use: The instrument will be used to study the human accommodation system (focussing mechanism of the eye). Experiments will be conducted with the hope of

developing a better understanding of the stimuli that control the focus of the eye. Application received by Commissioner of Customs: February 7, 1986.

Docket No. 86-122. Applicant: Harvard University, Purchasing Department, 1350 Massachusetts Avenue, Cambridge, MA 02138. Instrument: Microscope Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use: Studies of the neuroanatomy of the mammalian brain to gain insights of the basic structure and function of the brain, in particular Alzheimer's disease and epilepsy. The instrument will also be used for training undergraduate, graduate and postdoctoral students. Application received by Commissioner of Customs: February 7, 1986.

Docket No. 86-124. Applicant: NOAA, National Marine Fisheries Service, 3209 Frederick Street, Pascagoula, MS 39567. Instrument: Towed Underwater Submersible System. Manufacturer: Sea-I Research Ltd., Canada. Intended use: The instrument is intended to be used in a project initiated to delineate the latent resource stocks in the Gulf of Mexico. This project will involve investigation of the potential of large mesh midwater trawls and high opening bottom trawls as sampling and harvesting gear for coastal pelagics in offshore waters. The two major problems which must be addressed to effectively evaluate the gear potential are: (1) identification of acoustic signals from the research vessel's fish-finding sonar and acoustic color sounders and (2) determination of the fishing configuration of the gear and the behavior of fish in response to the gear so gear can be modified to efficiently sample and harvest the fish. Application received by Commissioner of Customs: February 10, 1986.

Docket No. 84-35R. Applicant: Stanford University, Department of Radiology, Stanford, CA 94305. Instrument: Radiotherapy Treatment Planning Simulator. Manufacturer: Varian, United Kingdom. Original notice of this resubmitted application was published in the *Federal Register* of January 13, 1984.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Leonard E. Mallas,

Florence Agreement Program, Statutory Import Programs Staff.

[FR Doc. 86-4852 Filed 3-5-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Determination of Commercial Fishery Failure Due to a Resource Disaster Under the Authority of the Commercial Fisheries Research and Development Act of 1964

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

SUMMARY: The coastal waters of Alabama and Florida support many individuals and firms that are engaged in the harvesting, processing, distribution, and marketing of oysters to meet consumer needs. These oyster resources make an important contribution to the economy and economic wellbeing of these States. As a result of Hurricane Elena on September 1, 1985, Florida officials estimated that the annualized loss of production is \$31.4 million in that State alone. Alabama officials likewise estimated that the oyster loss in that State from Hurricane Elena is over \$48 million.

The extreme tidal activity, hurricane force winds, and heavy rainfall that occurred from Hurricane Elena killed approximately 70 percent of the oysters in Mobile Bay, Alabama, and approximately 80 percent of those in Apalachicola Bay, Florida. These two areas combined totalled 1,634 productive acres of oyster reefs. Natural rehabilitation and subsequent production of these areas would take many years due to heavy siltation and fouling of cultch material.

Past experiences and practices have shown that damaged oyster resources can be effectively and economically restored through planting of cultch materials.

Therefore, as the authorized representative of the Secretary of Commerce, I hereby determine that the damage caused by Hurricane Elena to the oyster resources of the States of Alabama and Florida constitutes a commercial fishery failure due to a resource disaster raising from natural causes within the meaning of subsection 779b of the Commercial Fisheries Research and Development Act of 1964, as amended (Pub. L. 88-309, subsection 4(b)). I hereby authorize the use of funds appropriated by Pub. L. 99-180 for the purposes of subsection 4(b) of Pub. L. 88-309, to restore and return to production the damaged oyster resources of the coastal areas of Alabama and Florida.

Dated: February 27, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 86-4924 Filed 3-5-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Mexico

Correction

In FR Doc. 86-2725 beginning on page 4781 in the issue of Friday, February 7, 1986, make the following corrections:

On page 4782, second column, in the table, in the second column, first line, the entry should read "4,000,000 pounds." In the first column of the table, third line from the bottom, "659" should read "569".

Billing Code 1505-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Draft Environmental Impact Statement; Buffalo Bayou and Tributaries, Texas; Comprehensive Flood Damage Prevention Study

AGENCY: U.S. Army Corps of Engineers, DOD, Galveston District.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. The proposed action to be addressed in the DEIS consists of a comprehensive plan for urban and suburban flood damage prevention throughout the Buffalo Bayou watershed in the Houston metropolitan area, Harris, and parts of Fort Bend and Waller Counties, Texas. The study area includes Buffalo Bayou Main Stem, major tributary drainage basins including Carpenters, Greens, Halls, Hunting, Brays and lower White Oak Bayous and several tributary basins about Addicks and Barker Flood Detention reservoirs. The proposed plan would provide for flood protection in the Houston area now subject to periodic stream flooding.

2. Alternatives to be considered in the DEIS for Buffalo Bayou and its several major tributaries include no action, various levels of channel modification and enlargement with and without erosion control measures, regional flood water retention facilities, diversion

channels, and various combinations. Other plans to be investigated during the study include consideration of water supply storage feasibility as Addicks and Barker Reservoirs and recreational development on lands associated with proposed flood control improvements.

3. Coordination. a. The comprehensive study has been coordinated with Harris County Flood Control District, the local sponsor, and other local interests to assure that plans being considered are consistent with those planned by local government. The U.S. Fish and Wildlife Service has provided planning aid documents for study area drainage basins. Public meetings have been held in 1971, 1974, 1975 and 1982 in conjunction with interim studies on upper White Oak Bayou and Sims Bayou tributary basins; however, no public meetings have been held for the comprehensive study in recent years. A public meeting to present water resource problems in the watershed and results of formulation stage planning study is scheduled to be held in Houston, Texas in late 1986. Proposed plans for improvements on various bayous in the drainage basin are being developed in accordance with Corps of Engineers regulations considering the views expressed by the public and agencies of local, State and Federal governments.

b. Environmental considerations to be analyzed as a result of past coordination and participation include: (1) Limiting removal of vegetation on one or both sides of the bayous in proposed channel right-of-way areas to minimize disturbance of wildlife habitat and aesthetics, (2) minimizing impacts to populations of aquatic organisms in bayous from flood control improvements, (3) preserving or maintaining existing wetlands along bayous, (4) disposal of excavated material in areas where environmental damages would be minimal, (5) preserving and enhancing species of recognized importance that may occur in the area, (6) investigating environmentally oriented erosion control measures to control scouring of stream banks, and (7) considering development of recreational opportunities on project lands in recognition of documented metropolitan Houston parkland deficiencies.

c. Further coordination and consultation will be continued with appropriate local, State and Federal agencies and interested organizations and individuals.

d. Environmental consultation and review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental

Quality regulations (40 CFR Parts 1500-1508), and all other applicable laws, regulations and guidelines.

4. All previous and future input to studies for the feasibility study will be considered in the scoping process. A public meeting specifically to determine the scope of the DEIS will not be held.

5. The DEIS is scheduled to be available to the public in late 1986.

ADDRESS: Questions about the ongoing study and DEIS can be answered by Mr. C.R. Harbaugh, Chief, Environmental Resources Branch, Galveston District, Corps of Engineers, P.O. Box 1229, Galveston, Texas 77553-1229, (409) 766-3044.

Dated: February 26, 1986.

Gordon M. Clarke,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86-4892 Filed 3-5-86; 8:45 am]

BILLING CODE 3710-52-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Consent Order; Texas Pacific Oil Company, Inc.

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Texas Pacific Oil Company, Inc. (Texas Pacific) shall be made a final order of the DOE. The Consent Order resolves issues of compliance by Texas Pacific with the federal petroleum price and allocation regulations concerning the production and sale of crude oil for the period August 19, 1973 through January 28, 1981. Texas Pacific will pay to DOE the sum of \$1,300,000 within thirty (30) days of notification from DOE that the Consent Order has been adopted as a final order by the agency, and DOE will deposit these funds in a suitable account for appropriate disposition. The decision to make the Texas Pacific Consent Order final was made after a review of all written comments received.

FOR FURTHER INFORMATION CONTACT: Alan R. Fedman, Office of the Solicitor (RG-43), Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, DC. 20585, (202) 252-2856.

SUPPLEMENTARY INFORMATION:

I. Introduction

II. Comments Received

III. Decision

I. Introduction

ERA previously issued a notice announcing a proposed consent order between DOE and Texas Pacific which would resolve matters relating to compliance by the firm with the federal petroleum price and allocation regulations for the period August 19, 1973 through January 28, 1981. (51 FR 426, January 6, 1986). The proposed consent order required Texas Pacific to pay \$1,300,000 within thirty (30) days of the effective date of the Consent Order. The notice solicited written comments from the public relating to the terms and conditions of the settlement.

II. Comments Received

ERA received three comments, which addressed the question of the ultimate disposition of the funds to be paid by Texas Pacific pursuant to the settlement, but which did not question the basis of the settlement or the adequacy of the settlement amount. These comments were submitted by the Controller of the State of California, the Director of the Governor's Energy Office for the State of Florida and by the Attorneys General of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island and West Virginia. These comments, although formulated differently and differing in the nature and amount of supporting analysis, are devoted exclusively to establishing the proposition that monies received under the Texas Pacific Consent Order that could not be paid to parties injured by alleged overcharges should be paid to State governments, and should not be deposited in the U.S. Treasury.

During the period covered by this Consent Order the violations allegedly committed by Texas Pacific related to the miscertification of crude oil. Such violations resulted in cost increases that were distributed among all refiners by the entitlements programs, and the refiners could then pass the overcharges on to others. See *United States v. Exxon Corp.*, —F.2d—, Slip op. at 110-112 (TECA, July 1, 1985) (Nos. 91 et seq.).

The DOE's Office of Hearings and Appeals in a report to the District Court for the District of Kansas in *In re: the Department of Energy Stripper Well Litigation*, MDL No. 378, determined that where alleged crude oil violations involve such crude oil miscertification, the resulting harm cannot be traced to specific customers. As explained by the DOE in an accompanying Statement of Restitutionary Policy:

Essentially, OHA concluded that direct purchasers (as such) generally did not absorb the overcharges because they were reimbursed by the entitlements programs. [sic] Tracing of overcharges is impossible in view of the spreading effect of the entitlements program, the fungibility of refiner costs and the consequent inability of firms and OHA to determine which costs were passed through and which, if any, were retained, and the high proportion of cost passthrough, among other factors.

OHA's finding that it is impossible to trace crude oil cost increases that were equalized by the entitlements program, . . . is consistent with the conclusions of the two district courts that have previously determined that the harm resulting from crude oil miscertifications cannot be traced. 50 FR 27400 (July 2, 1985).

DOE then examined the possible use of econometric modeling methods to estimate the extent to which overcharges were passed through at the various distribution levels within the industry. With regard to this indirect methodology, DOE concluded:

It is too inexact in determining injury to particular classes of claimants and yields no conclusions concerning the injury to individuals within any class. The governmental costs in resources and, more importantly, societal costs in years of continued litigation prior to distribution are unacceptably high. *Id.* at 27402.

The comments on the Texas Pacific Consent Order appear to assume that DOE will distribute, or attempt to distribute, funds received under the Consent Order to parties injured by the firm's alleged overcharges. However, as discussed above, it is impossible to determine which persons were ultimately injured by crude oil miscertifications. Therefore, DOE will not attempt to make such a determination here, and the funds received from Texas Pacific pursuant to the Consent Order will not be the subject of a Subpart V petition and proceeding.

DOE's Statement of Policy also addressed the question of how to effect indirect restitution where refunds to individual injured claimants are not feasible. The policy statement provides that the ERA will retain the monies received in an escrow account for a reasonable time to allow Congress an opportunity to determine an appropriate disposition of the funds. If Congress does not enact legislation within a reasonable time, the DOE will transfer the funds to the general fund of the U.S. Treasury.

Because the terms of the settlement are consistent with the foregoing action, ERA has determined to make the Consent Order final.

III. Decision

Pursuant to 10 CFR 205.199, the Consent Order between Texas Pacific and DOE shall become a final order of the DOE. Today DOE has issued notice to Texas Pacific of the agency's decision to make the Consent Order final, and the Consent Order shall become final upon delivery of that notice.

Issued in Washington, DC, on February 27, 1986.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-4880 Filed 3-5-86; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. 86-06-NG]

Natural Gas Imports; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of application for authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 15, 1986, of the application of Tennessee Gas Pipeline Company (Tennessee) for (1) extension of its authorization to import up to 75,000 Mcf of Canadian natural gas per day through October 31, 2000, to be purchased from ProGas Limited (ProGas) at the international border near Emerson, Manitoba; (2) approval of new pricing provisions establishing a two-part rate, a ratable take provision, and reducing Tennessee's take-or-pay obligation; and (3) authorization to import gas for the account of third parties.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than April 7, 1986.

FOR FURTHER INFORMATION CONTACT:

Chuck Boehl, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6050
Michael T. Skinner, Natural Gas and Mineral Leasing, Office of General

Counsel, U.S. Department of Energy,
Forrestal Building, Room 6E-042, 1000
Independence Avenue, SW.,
Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: On April 24, 1981, DOE/ERA Opinion and Order No. 32 authorized Tennessee to import up to 75,000 Mcf per day from ProGas through October 31, 1987 (ERA Docket No. 79-15-NG). On April 16, 1984, Tennessee notified the ERA that it intended to seek an amendment to its ProGas contract to bring it into conformity with the policy guidelines issued by the DOE (49 FR 6684, February 22, 1984). Since that time it has reached agreement with ProGas on three amendments to their contract. The application describes the progressive amendments made to the contract to achieve the new contract for which Tennessee is requesting approval.

On November 1, 1984, according to Tennessee, the first amendment established an initial monthly demand charge of \$15.21 (U.S.) per Mcf of daily contract quantity and a commodity charge of \$2.68 (U.S.) per MMBtu, providing a 100 percent load factor price of \$3.18 per MMBtu in substitution for the prior \$4.94 per MMBtu border price. The minimum take-or-pay level was reduced from 75 percent to 60 and make-up provisions more favorable to Tennessee were provided. The amendment also provided for semi-annual pricing adjustments through semi-annual application of an index factor developed from the composite U.S. refiner acquisition cost of crude oil as published in the DOE Energy Information Administration's *Monthly Energy Review* for the relevant period. Through this adjustment procedure, the commodity charge was reduced on July 1, 1985, to \$2.55 (U.S.) per MMBtu. In addition, the November 1, 1984, amendment provided opportunity for renegotiation of the pricing provisions.

A November 20, 1985, amendment made in response to declining natural gas prices, according to Tennessee, provided for the purchase of gas from November 20, 1985, until February 1, 1986, at a commodity rate of \$2.00 (U.S.) per MMBtu. Tennessee was to purchase this gas from the date of approval by the Canadian National Energy Board (NEB)—November 19, 1985—at an annual daily volume of not less than 37,500 Mcf, or 50 percent of the daily contract volume authorized.

On November 25, 1985, Tennessee and ProGas reached another agreement as a result of their renegotiation. This agreement represents a new contract, supersedes all prior agreements, and is the arrangement for which Tennessee is

requesting approval by this application. According to Tennessee, the new contract continues many of the elements of the original May 17, 1979, agreement although the pricing provisions were renegotiated.

According to Tennessee the new contract includes the two-part demand/commodity charge mentioned above. The monthly demand charge remains \$15.21 per Mcf of daily contract quantity. This demand charge can be adjusted up or down to reflect transportation cost changes, but to the extent this is done, the commodity charge is decreased or increased to reflect the change. The commodity charge has been lowered to \$2.00 (U.S.) per MMBtu and the contract terms provide for quarterly adjustment tied to changes in the average daily prices of No. 6 fuel oil and No. 2 heating oil, per spot cargoes, New York harbor. At full contract quantity, this results in the price on the date of application of \$2.50 per Mcf. The price mechanism for the commodity charge can be renegotiated yearly and disputes are subject to binding arbitration.

In addition, Tennessee states that the contract provides that ProGas, from time to time, may offer certain volumes of the contract gas as "special purchase gas" for sale at a special commodity charge less than the commodity charge otherwise in effect under the agreement. Tennessee claims this portion of the agreement provides a mechanism for adjustment of prices to meet changing market conditions even more expeditiously than as provided by the quarterly adjustment provisions. The contract allows Tennessee to assign its rights and obligations with respect to the purchase, receipt and payment for any or all of this special purchase gas to third parties through spot sales. Sale of this special purchase gas would also serve to fulfill Tennessee's take-or-pay obligation of 60 percent under the new contract. There is also a ratable take provision based on all of Tennessee's long-term purchase if purchases from ProGas fall to 75 percent during the contract year. Tennessee requests authorization to import gas for the account of third parties, through October 31, 2000, the time period of the extension.

Tennessee's application also asks for an extension of the authorization to import gas after October 31, 1987, as presently authorized in DOE/ERA Opinion and Order No. 32. According to Tennessee, by the terms of its May 17, 1979, contract with ProGas, the initial daily contract quantity of 75,000 Mcf was to be in effect until October 31, 1979. However, because of waivers of

certain rights by TransCanada Pipelines Limited (TransCanada), the 75,000 Mcf per day is now available to Tennessee through October 31, 1988. The November 25, 1985, agreement provides for annual stepdowns after October 31, 1988, of 20 percent in the daily contract quantity. These stepdowns will only occur, however, if TransCanada timely exercises its option to purchase certain quantities of gas from ProGas. If TransCanada waives its rights, the contract is ever-greened to provide for the sale of gas by ProGas to Tennessee until October 31, 2000. In the expectation that TransCanada will continue to waive its purchase rights, Tennessee requests that its authorization be amended to allow the import of up to 75,000 Mcf per day through October 31, 2000.

In support of its application, Tennessee asserts that the price adjustment and renegotiated provisions ensure that the price of gas under the contract will be responsive to the marketplace, and that all its contractual changes are consistent with the DOE's policy guidelines. Tennessee requests that the ERA find, pursuant to section 3 of the Natural Gas Act, that the import of natural gas under the terms of the new contract between Tennessee and ProGas, insofar as the agreement affects the prices to be paid and including the use of a two-part, demand-commodity pricing structure, with gas costs passed through on that basis, complies with the policy guidelines and is not inconsistent with the public interest.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of the import arrangement in the markets served in the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that the import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene, or notice of intervention, as applicable, and written comments. Any person wishing to become a party to this proceeding and to have written comments considered as a basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable.

The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076-A, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., April 7, 1986.

The Administrator intends to develop a decisional record on the application through responses to the notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request for a oral presentation should identify the substantial question of fact, law or policy at issue, show that it is material and relevant to a decision on the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based upon the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Tennessee's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, February 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-4881 Filed 3-5-86; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Proposed Decision and Order; Period of February 10 Through February 21, 1986

During the period of February 10 through February 21, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: February 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Beard Oil and Supply Co., Mt. Pleasant, Michigan, KEE-0017.

Beard Oil and Supply Company filed an Application for Exception from the requirement that it file Form EIA-782B, the

Resellers/Retailers' Monthly Petroleum Product Sales Report. The exception request, if granted, would permit Beard to be excused from the requirement that it file Form EIA-782B on a monthly basis. On February 18, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 86-4879 Filed 3-5-86; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order; Period of February 3 Through February 21, 1986

During the period of February 3 through February 21, 1986, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: February 26, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

O.K. Oil & Gas, Inc., Enid, Oklahoma, KRO-0240 crude oil

On February 18, 1986, O.K. Oil and Gas, Inc. (O.K.) and Jack D. Pointer, Jr. (Pointer), 800 S I-35, Suite 106, Oklahoma City, Oklahoma 73149, filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration (ERA) issued to the firm on January 17, 1986. In the PRO, the ERA found that during the period June 1979 through December 1980, O.K. and Pointer charged prices in excess of ceiling prices in first sales of domestically produced crude oil in violation of 10 CFR § 212.79. According to the PRO the violation resulted in \$261,495.84 of overcharges.

[FR Doc. 86-4878 Filed 3-5-86; 8:45 am]

BILLING CODE 6450-01-M

**ENVIRONMENTAL PROTECTION
AGENCY**

[OPTS-51610; FRL-2969-6]

**Certain Chemicals Premanufacture
Notices****Correction**

In FR Doc. 86-3186, beginning on page 5592, in the issue of Friday, February 14, 1986, make the following correction.

On page 5593, second column, under "P86-478", third line, "[2-ethenediylbis]" should read "[1,2-ethenediylbis]".

BILLING CODE 1505-1-M

**FEDERAL COMMUNICATIONS
COMMISSION****Public Information Collection
Requirement Submitted to Office of
Management and Budget for Review**

February 26, 1986.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

Copies of the submission are available from Jerry Cowden, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact David Reed, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

OMB Number: 3060-0253

Title: Part 68, Connection of Telephone Equipment to the Telephone Network (§§ 68.106, 68.108, 68.110)

Action: Revision

Respondents: Telephone company customers

Estimated Annual Burden: 207,540

Responses: 10,377 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-4840 Filed 3-5-86; 8:45 am]

BILLING CODE 6712-01-M

**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

[FEMA-758-DR]

**California; Major Disaster and Related
Determinations**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATE: February 21, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of February 21, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of California resulting from severe storms, landslides, mudslides, and flooding, beginning on or about February 12, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the affected areas. You also are authorized to provide Public Assistance in the affected areas, if necessary and requested, once an acceptable State commitment has been provided. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Tommie C. Hamner of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of California to have been affected adversely by this declared major disaster and are designated eligible as follows:

Lake, Marin, Napa, Sacramento, Santa Clara, Santa Cruz, Solano, Sonoma, and Yuba Counties for Individual Assistance.
(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-4868 Filed 3-5-86; 8:45 am]

BILLING CODE 6712-01-M

[FEMA-758-DR]

**California; Amendment to Notice of a
Major-Disaster Declaration**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-758-DR), dated February 21, 1986, and related determinations.

DATED: February 25, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice

The notice of a major disaster for the State of California, dated February 21, 1986, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 21, 1986:

Glenn, Humboldt and Modoc Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 86-4870 Filed 3-5-86; 8:45 am]

BILLING CODE 6712-01-M

[FEMA-759-DR]

**Nevada; Major Disaster and Related
Determinations**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nevada (FEMA-

759-DR), dated February 28, 1986, and related determinations.

DATED: February 28, 1986.

FOR FURTHER INFORMATION CONTACT:

Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3616.

Notice

Notice is hereby given that, in a letter of February 28, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288), as follows:

I have determined that the damage in certain areas of the State of Nevada resulting from severe storms and flooding, beginning on or about February 15, 1986, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Nevada.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

The time period prescribed for the implementation of section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration. Notice is hereby given that, pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ms. Joan F. Hodgins of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nevada to have been affected adversely by this declared major disaster and are designated eligible as follows:

Douglas, Lyon, Storey, and Washoe Counties and Carson City eligible for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-4869 Filed 3-5-86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

The Bank of New York Co., Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 1986.

A. Federal Reserve Bank of New York (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to engage *de novo* through its subsidiaries, Capital Trust Company, Albany, New York, and Eastern Trust Company, Albany, New York, in performing functions or activities that may be performed by a trust company, pursuant to § 225.25(b)(3) of Regulation Y. These activities are to be conducted in the State of New York.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mahaska Investment Company*, Oskaloosa, Iowa; to engage *de novo* directly in providing data processing services, pursuant to § 225.25(b)(7) of Regulation Y. Comments on this application must be received not later than March 24, 1986.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *FWNB Bancshares, Inc.*, Carrollton, Texas; to engage *de novo* through its subsidiary, FWNB Mortgage Services, Carrollton, Texas, in making, acquiring, and/or servicing loans of the type made by a mortgage company for itself or for the account of others, pursuant to § 225.25(b)(1) of Regulation Y. Comments on this application must be received not later than March 25, 1986.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4847 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

Community Bankers' Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications

must be received not later than March 27, 1986.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Community Bankers' Corporation*, Marion Center, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Marion Center National Bank, Marion Center, Pennsylvania.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Advance Bancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of South Chicago Savings Bank, Chicago, Illinois. Comments on this application must be received not later than March 28, 1986.

2. *First Interstate Corporation of Wisconsin*, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Outagamie Bank Shares, Inc., Appleton, Wisconsin, thereby indirectly acquiring The Outagamie Bank, Appleton, Wisconsin. Comments on this application must be received not later than March 26, 1986.

3. *Outagamie Bankcorp, Inc.*, Sheboygan, Wisconsin; a wholly-owned subsidiary of First Interstate Corporation, to become a bank holding company by acquiring 100 percent of the voting shares of 100 percent of the voting shares of Outagamie Bank Shares, Inc., Appleton, Wisconsin, thereby indirectly acquiring The Outagamie Bank, Appleton, Wisconsin. Comments on this application must be received not later than March 26, 1986.

4. *Lincoln Financial Corporation*, Fort Wayne, Indiana; to acquire 100 percent of the voting shares of Akron Financial, Inc., Akron, Indiana, thereby indirectly acquiring Akron Exchange State Bank, Akron, Indiana.

C. Federal Reserve Bank of St. Louis (Delmer P. Welsz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *CNB Bancshares, Inc.*, Evansville, Indiana; has applied to acquire The Posey County National Bank, Mount Vernon, Indiana and Peoples First Bancorp of Madisonville, Inc., Madisonville, Kentucky and thereby indirectly acquire Peoples Bank & Trust Company of Madisonville, Madisonville, Kentucky.

In a related application, *CNB Acquisition Company*, Evansville, Indiana, a proposed wholly-owned subsidiary of CNB Bancshares, Inc., Evansville, Indiana, has applied to become a bank holding company by

merger with Peoples First Bancorp of Madisonville, Inc., Madisonville, Kentucky and thereby acquiring indirect control of Peoples Bank & Trust Company of Madisonville, Madisonville, Kentucky.

2. *Mega Bancshares, Inc.*, St. Ann, Missouri; to acquire at least 99.96 percent of the voting shares of Mega Bank of St. Charles County, St. Charles County, Missouri, a *de novo* bank.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *TN Bancshares, Inc.*, El Paso, Texas; to acquire 96.12 percent of the voting shares of Coronado Bancshares, Inc., El Paso, Texas, thereby indirectly acquiring Coronado Bank, El Paso, Texas.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4848 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

Fidelity Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than February 26, 1986.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, DC 20551:

1. *Fidelity Bank, N.A.*, Rosemont, Pennsylvania; to establish a corporation

to be known as Fidelity Overseas Investment, Inc., Wilmington, Delaware. This application may be inspected at the Federal Reserve Bank of Philadelphia.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4849 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

Manfra, Tordella, & Brookes, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 29, 1986.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, DC 20551.

1. *Manfra, Tordella, & Brookes, Inc.*, New York, New York; to become a bank holding company by acquiring 100 percent of the voting shares of MTB Bank, New York, New York.

Applicant has also applied to acquire MTB (Miami), Inc., Miami, Florida, and thereby engage in purchasing and selling bullion & bullion coins; purchasing and selling foreign currency and exchange, and money transmission. These activities would be conducted in Miami, Florida. This application may be inspected at the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4850 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

NBD Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*; to indirectly acquire 100 percent of the voting shares of Midwest Commerce Corporation, Elkhart, Indiana, and thereby indirectly acquire Midwest Commerce Banking Company, Elkhart, Indiana.

Applicant has also applied to acquire each of the following companies: Midwest Commerce Insurance Corp., Elkhart, Indiana, and thereby engage in acting as agent or broker with respect to credit related insurance, pursuant to § 225.25(b)(8) of Regulation Y; Midwest Commerce Data Corp., Elkhart, Indiana, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of Regulation Y; Midwest Commerce Leasing Corp., Elkhart, Indiana, and thereby engage in leasing personal property and equipment, pursuant to § 225.25(b)(5) of Regulation Y.

In connection with this application, *NBD Indiana, Inc.*, Detroit, Michigan, a wholly-owned subsidiary of NBD Bancorp, Inc., has applied to become a bank holding company by acquiring 100 percent of the voting shares of Midwest Commerce Corporation, thereby indirectly acquiring Midwest Commerce Banking Company, Elkhart, Indiana.

Board of Governors of the Federal Reserve System, February 28, 1986.

William W. Wiles,

Secretary of the Board.

[FR Doc. 86-4850 Filed 3-5-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Alveolar Type II Cells: Effects of Silica, etc.; NIOSH Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Alveolar Type II Cells: Effects of Silica

Date: April 4, 1986

Time: 9:00 a.m. to 10:30 a.m.

Place: Room 213, Appalachian

Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To review the project entitled "Alveolar Type II Cells: Effects of Silica."

Additional information and copies of the research protocol may be obtained from: Jean Rabovsky, Ph.D., or Jane Ma, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4591, Commercial: (304) 291-4591

Effects of Benzo(A)Pyrene in Association With Occupational Related Particulates on the Interferon System

Date: April 4, 1986

Time: 10:30 a.m.-12 noon

Place: Room 213, Appalachian

Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To review the project entitled "Effects of Benzo(a)pyrene in Association With Occupational Related Particulates on the Interferon System."

Additional information and copies of the research protocol may be obtained from: Nicholas Hahon, Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephones: FTS: 923-4516, Commercial: (304) 291-4516.

Agricultural-Immunologic Disease Studies

Date: April 4, 1986

Time: 2:00 p.m.-3:30 p.m.

Place: Room 213, Appalachian

Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To review the project entitled "Agricultural—Immunologic Disease Studies."

Additional information and copies of the research protocol may be obtained from: Stephen Olenchock, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephones: FTS: 923-4256, Commercial: (304) 291-4256.

Laboratory Comparison of a Heat Stress Dosimeter With Conventional Instrumentation

Date: April 10, 1986

Time: 9:00 a.m.—4:00 p.m.

Place: Room B-60, National Institute for Occupational Safety and Health, 4676 Columbia Parkway, Cincinnati, Ohio 45226

Purpose: To review and discuss the validation of a personal heat stress dosimeter.

Additional information may be obtained from: W. Danny Brown, M.D., Ph.D., Division of Biomedical and Behavioral Science NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8465, Commercial: (513) 533-8465.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Dated: February 27, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-4856 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-19-M

Grants and Cooperative Agreements: State Smoking Cessation During Pregnancy Demonstration and Research Project

The Centers for Disease Control (CDC) announces that competitive Cooperative Agreement applications are being accepted for a State Smoking Cessation During Pregnancy Demonstration and Research Project. The Catalog of Federal Domestic Assistance number is 13.283.

Program Objective

To (1) reduce the prevalence of smoking among pregnant women who use public prenatal clinic and WIC services and increase the birthweight of their babies; (2) demonstrate the effectiveness of a smoking cessation/maintenance intervention program to produce changes in smoking behavior; and (3) demonstrate the cost-effectiveness of the intervention as an integral part of prenatal care.

Type of Assistance

Awards resulting from this announcement will be Cooperative Agreements. One to three awards will be made.

1. Recipient Activities

a. Assess their targeted public health clinic population to determine why pregnant smokers continue to smoke and why and how patients who quit smoking did so prior to coming for prenatal care.

b. Determine the smoking cessation/maintenance package of interventions to be used and develop protocols for their use by patients and service providers.

c. Design a smoking cessation/maintenance demonstration project for implementation in public prenatal clinics and associated WIC programs to include:

(1) Measurable objectives for smoking cessation and reduction of low birthweight incidence.

(2) A research design that will allow for the evaluation of effectiveness of interventions.

(3) An inventory of public prenatal clinics and associated WIC programs including a description of the client population and size of the caseload.

(4) Selection of public prenatal clinics and associated WIC programs for inclusion in the demonstration project.

(5) Data collection methods, which may include linkage between prenatal, obstetric, and postpartum patient records and linkage to birth certificates or other sources of birthweight data.

(6) Appropriate biochemical test(s) for confirming smoking behavior of all or a sample of participants, including a pretest of quality control procedures in at least a sample of clinics.

(7) A tracking system to follow up women who use prenatal clinics and WIC services.

d. Develop and implement a plan for introducing smoking cessation into prenatal clinics and associated WIC programs, including:

(1) A training approach that builds staff support for smoking cessation/maintenance activities.

(2) A Practitioner's Guide to smoking cessation/maintenance in prenatal clinics and associated WIC programs.

e. Publish study results in appropriate medical and scientific publications.

2. CDC Activities

a. Collaborate in the design of the demonstration project and provide consultation regarding data collection instruments and procedures, data analysis of information gathered, and preparation of a final report.

b. Provide state-of-the-art information and consultation on smoking cessation interventions, biochemical testing, and the development and evaluation of protocols for their use.

c. Collaborate in the preparation of publications and dissemination of results.

Availability of Funds

It is expected that approximately \$200,000 to \$450,000 will be available in Fiscal year 1986 to fund one to three awards. The awards will range from approximately \$50,000 to \$250,000. The award(s) will be funded for a 12-month budget period. The project period will be for 2 years. The funding estimate outlined above may vary and is subject to change. Funds may not be used to pay for recurrent costs associated with service delivery.

Authority

This program is authorized under section 301 of the Public Health Service Act as amended. Regulations applicable to this program are in Title 42 of the Code of Federal Regulations, part 52, entitled "Grants for Research Projects."

Eligibility Requirements

Eligible applicants are the official health departments of any State, including the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

Applications

1. Copies—Place of Submission

The original and two copies of the application should be submitted on Form PHS 5161-1 (revised 3-79) on or before April 23, 1986: Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, Room 321, 255 East Paces Ferry Road, Atlanta, Georgia 30305.

Application forms should be available in the institution's business office or from the above address.

2. Deadlines

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly-dated U.S. Postal Service postmark or obtain a legibly-dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

3. Late Applications

Applications which do not meet the criteria in either paragraph 2.a. or b. immediately above are considered late applications and will not be considered in the current competition and will be returned to the applicant.

4. Reviews

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and are not subject to review under regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resources Development Act of 1974.

5. Content

Applications must include a narrative which details the following:

- a. Executive Summary.
- b. Background Related to State's Smoking Policies and Programs.
 - (1) Smoking policies and programs, including existing programs for pregnant women.
 - (2) Prenatal care.
 - (3) WIC programs.
- c. Proposed Demonstration Project Objectives and Research Objectives.
- d. Approach to the Development of the Package of Interventions.
- e. Evaluation/Research Design and Methods.
- f. Project Organization, Use of Staff, Delineation of Responsibilities.
- g. Proposed Implementation Plan and Schedule.
- h. Project Budget.
- i. Staff Qualifications.

Review Criteria

Applications will be reviewed and evaluated based on the evidence submitted which specifically describes the applicant's ability to meet the following criteria:

1. Project Design

- a. Evidence of the applicant's understanding of the objectives of the smoking cessation demonstration project.
- b. Measurable behavioral and programmatic objectives as well as health outcomes and the means of evaluation that are identified and feasible.
- c. A reasonable proposed schedule for accomplishing the activities of the Cooperative Agreement.
- d. An approach to the development of the package of interventions that seems plausible and appropriate for the proposed setting and target population.
- e. A feasible means of introducing smoking cessation into prenatal clinics

and WIC programs based on State resources.

f. An estimate of the potential costs of sustaining smoking cessation/maintenance activities as an integral part of prenatal care and WIC programs.

g. A proposed budget which is consistent with the intended use of the CDC funds.

2. Capability

a. The experience of the proposed staff in conducting demonstration projects and other types of research, and, in particular, the qualifications of the proposed project coordinator.

b. The proportion of the project coordinator's time that the state is willing to make available to the project, preferably full time.

c. The risk reduction/health education and research expertise among the staff of the health departments and associated organizations (e.g., community, voluntary, university) that will be available to the project.

d. Nature of the information including smoking information currently collected as part of prenatal, WIC, obstetric, birth registration, and postpartum records; the ability of the state to link these records; and evidence of the use of this information by the State.

3. State Commitment

a. Prior and current nonsmoking activities and existing plans for new activities.

b. Ability and willingness to incorporate smoking cessation as an integral part of prenatal care, including the possibility of providing needed additional State/local funds or staff time.

c. Precedent for and commitment to providing prenatal care in smokefree client contact areas.

4. Potential for Public Health Impact

a. Evidence that the State has a relatively large number of low socioeconomic pregnant women, and provides publicly funded prenatal and WIC services to a substantial proportion of these women.

b. Evidence of the State health department's ability to field test effective improvements in patient education or risk reduction programs and to institute these changes throughout the State.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Luther E. DeWeese, Grants Management Branch, Procurement and Grants Office, Centers for Disease

Control, 255 East Paces Ferry Road, NE, Room 321, Atlanta, Georgia, 30305, or by calling (404) 262-6575 or FTS 236-6575.

Technical assistance may be obtained from Michael E. Dalmat, Dr.P.H., Pregnancy Epidemiology Branch, Division of Reproductive Health, Center for Health Promotion and Education, Centers for Disease Control, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone (404) 329-1319, FTS: 236-1319.

Dated: February 28, 1986.

William E. Muldoon,
Director, Office of Program Support, Center
for Disease Control.

[FR Doc. 86-4857 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 86M-0065]

Blair Laboratories, Inc.; Premarket Approval of Blair * Sterile Saline Solution

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Blair Laboratories, Inc., Evansville, IN, for premarket approval, under the Medical Device Amendments of 1976, of the Blair * Sterile Saline Solution for use with soft (hydrophilic) contact lenses. The Blair * Sterile Saline Solution is indicated for use in the rinsing, heat disinfection and storage of soft (hydrophilic) contact lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by April 7, 1986.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On June 28, 1985, Blair Laboratories, Inc., Evansville, IN 47730, submitted to CDRH an application for premarket approval of the Blair * Sterile Saline Solution. The device is indicated for use in the rinsing,

heat disinfection, and storage of soft (hydrophilic) contact lenses.

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On January 31, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the Blairex® Sterile Saline Solution states that the solution is indicated for use in the rinsing, heat disinfection, and storage of soft (hydrophilic) contact lenses. Manufacturers of soft (hydrophilic) contact lenses that have been approved for marketing are advised that whenever CDRH publishes a notice in the *Federal Register* of approval of a new solution for use with an approved soft contact lens, the manufacturer of each lens shall correct its labeling to refer to the new solution at the next printing or at such other time as CFRH prescribes by letter to the applicant. Such labeling informs new users of soft contact lenses that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CFRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner

shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will published a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before April 7, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 27, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-4838 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

Cardiovascular and Renal Drugs Advisory Committee; Amendment of Meeting Notice

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending an advisory committee meeting notice of the Cardiovascular and Renal Drugs Advisory Committee to reflect agenda changes. Notice of the meeting was published in the *Federal Register* of February 12, 1986 (51 FR 5262). The open committee discussion of the agenda is revised to read as follows:

Open committee discussion. The committee will discuss Bepridil (NDA's 19-001 and 19-002) Carter Wallace, McNeil, for use as an anti-anginal agent; Lidoflazine (Angex) (NDA 18-228) Janssen R & D, for use as an anti-anginal agent; Terazosin HC1 (Hytrin) (NDA 19-

057) Abbott Laboratories, for use in hypertension; and Nimodipine (NDA 18-869) Miles Pharmaceuticals, for use in subarachnoid hemorrhage.

Dated: February 28, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4834 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

Small Business Participation; Open Meeting

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming small business exchange meeting to be chaired by Joseph J. Faline, Director, New York Import District.

DATE: The meeting will be held 1 p.m. to 4:30 p.m., Thursday, March 27, 1986.

ADDRESS: The meeting will be held at the Adam Clayton Powell State Office Bldg., 2nd Floor Art Gallery 163 W. 125th St., New York, NY 10027.

FOR FURTHER INFORMATION CONTACT: George R. Walden, Food and Drug Administration, 20 Evergreen Place, East Orange, NJ 07018, 201-645-6466.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between small business and FDA officials. The meeting will provide a forum for the owners and managers of small businesses to express their concerns about FDA, encourage discussion about the effects of regulation and regulatory alternatives, convey knowledge about the agency's operations and procedures, and increase participation by small business persons in FDA's decisionmaking process.

Dated: February 28, 1986.

Adam J. Trujillo,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-4833 Filed 3-5-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86N-0039]

Color Additives: D&C Red No. 8, 9, 19, and 37; D&C Orange No. 17; and FD&C Red No. 3; Report Availability

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the final report of the Color Additive Scientific Review Panel

(the Panel) on D&C Red No. 8, D&C Red No. 9, D&C Red No. 19, D&C Red No. 37, D&C Orange No. 17, and FD&C Red No. 3. FDA convened this panel of expert government scientists to evaluate the available data, views, and information on these color additives and to develop a sound assessment of the carcinogenic risk presented to the human population by their use. The Panel members were selected from FDA and other agencies in the Public Health Service. The Panel has completed its work, and it has formally submitted its final report to FDA. The final report is available to the public on request.

ADDRESS: A copy of the report is available for review at, and individual copies may be obtained from, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

FOR FURTHER INFORMATION CONTACT: Paul D. Depore, Office of Regulatory Affairs (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION: The subject color additives are provisionally listed for coloring cosmetics (externally applied as well as ingested), drugs, and externally applied drugs (and, in the case of FD&C Red No. 3, lakes for food use), pending the submission and review of data on the safety of their use. FDA's evaluation of the petitions for permanent listing of these additives and other information raised questions that created doubts about whether a valid risk assessment could be performed on the basis of the chronic testing that has been done on these color additives (see 50 FR 26377, 26379; June 26, 1985). To address these questions, FDA convened the Panel. The Panel was charged to evaluate the available data, information, and views on FD&C Red No. 3, D&C Red Nos. 8, 9, 19, and 37, and D&C Orange No. 17 and to provide answers to the following questions:

- (1) Can valid quantitative risk assessments be performed for these color additives?
- (2) Does the available information support the data analyses and risk assessments that have been performed and are before the agency?

The agency's decision to establish the scientific peer review panel is consistent with the recommendations contained in several recent publications (see, e.g., (1) National Academy of Sciences, "Risk Assessment: Managing the Process," NAS Press, Washington, DC, 1983; (2) Office of Science and Technology

Policy, "Chemical Carcinogens: A Review of the Science and Its Associated Principles," published in the *Federal Register* of March 14, 1985 (50 FR 10371); (3) Committee to Coordinate Environmental and Related Programs, "Risk Assessment and Risk Management of Toxic Substances, a Report to the Secretary, April, 1985").

The Panel has completed its work and has formally submitted its final report to FDA. The report summarizes the available data on the color additives and presents risk estimates for their current uses. FDA is making the report available to the public on request.

A copy of the report is available for review at, and individual copies of the report may be obtained from, the Dockets Management Branch (address above). Requests for copies should be identified with the docket number found in brackets in the heading of this document.

Dated: March 3, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-4956 Filed 3-4-86; 11:36 am]

BILLING CODE 4160-01-M

National Institutes of Health

Consensus Development Conference on the Integrated Approach to Pain Management; Meeting

Notice is hereby given of the NIH Consensus Development Conference of the "Integrated Approach to Management of Pain," sponsored by the Warren Grant Magnuson Clinical Center, the National Cancer Institute, the National Institute of Neurological and Communicative Disorders and Stroke, the National Institute of Dental Research, and the Office of Medical Applications of Research, NIH. The conference will be held May 19-21, 1986, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Health professionals and patients alike are concerned with the optimal approach to pain management. Contemporary perspectives on pain management combine pharmacological and nonpharmacological interventions, and are planned and implemented in a multidisciplinary effort. The conference will focus on such interventions and explore types of professional collaboration designed to provide significant benefit to patients.

The conference will bring together biomedical investigators, internists, surgeons, nurses, epidemiologists, and

representatives of the public. Following two days of presentations by medical experts and discussions by the audience, a consensus panel, drawn from the medical and lay communities, will formulate a draft statement responding to the following key questions:

How should pain be assessed?

How should pharmacological agents be used in an integrated approach to pain management?

How should nonpharmacological interventions be used in an integrated approach to pain management?

What is the role of the nurse in the integrated approach to pain management?

What are the directions for future research in pain management?

Evidence relating to pain management will be presented by experts in the field and evaluated by a panel composed of scientists, medical professionals, nurses, clinical investigators, and public representatives. Presentations will include discussions of pharmacological agents as well as nonpharmacological interventions and how these approaches may be integrated. The information presented will be discussed by the panel and there will be opportunity for questions and comments from the audience.

On the third and final day of the conference, Consensus Panel Chairman, Dr. Laurel Copp, Dean, University of North Carolina School of Nursing, will read the draft consensus statement before the conference audience and invite comments and questions.

Information on the program may be obtained from Mr. Peter Murphy, Prospect Associates, 2115 East Jefferson Street, Suite 401, Rockville, Maryland 20852, (301) 468-6555.

Dated: Feb. 26, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-4871 Filed 3-5-86; 8:45 am]

BILLING CODE 4140-01-M

Dental Research Programs Advisory Committee; Meeting

Pursuant to Pub. L. 92-463 notice is hereby given of the meeting of the Dental Research Programs Advisory Committee from 1:00 p.m. to recess on April 17 and from 9:00 a.m. to adjournment on April 18, 1986, Conference Room #8, Building 31, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public to discuss research progress and ongoing plans and programs.

Attendance by the public will be limited to space available.

Dr. Marie Nysten, Director for Extramural Programs, NIDR, NIH, Westwood Building, Room 503, Bethesda, MD 20892 (telephone: 301/496-7723) will provide a summary of the meeting, roster of committee members and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.121—Diseases of the Teeth and Supporting Tissues: Caries and Restorative Materials; Periodontal and Soft Tissue Diseases; 13.122—Disorders of Structure, Function, and Behavior, Craniofacial Anomalies, Pain Control, and Behavioral Studies; 13-845—Dental Research Institutes, National Institutes of Health)

Dated: February 26, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86-4872 Filed 3-5-86; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Riverside County et al.,
Riverside, CA 92501-3656—PRT-698685

The applicant, Riverside County and nine cities therein, request a permit to take Coachella Valley Fringe-toed Lizards (*Uma inornata*), a species listed as threatened; incidental to certain development and conservation activities proposed to be conducted in the area pursuant to a multi-party agreement (Agreement) implementing the Coachella Valley Fringe-toed Lizard (CVFTL) Habitat Conservation Plan (HCP). The permit is being applied for in accordance with section 10(a)(1)(8) of the Endangered Species Act of 1973, as amended and 50 CFR 17.22(b)(1).

A basic element of the application is the Agreement which legally binds all parties to carry out the elements of the HCP. In addition, the Agreement creates a funding mechanism that is able to support the research, enhancement, maintenance, management monitoring and other conservation and mitigation measures provided for in the HCP. Funding is to be provided through mitigation fees, assessments and other devices. The Agreement would establish a permanent institutional structure to insure uniform protection and

conservation of the habitat throughout the area despite the division of the habitat by the overlapping jurisdictions and complex pattern of public and private ownership.

The HCP was developed to insure the long term conservation of the species by minimizing and mitigating the impacts development would have on the CVFTL by permanently preserving the species habitat through transfer of private lands to the public, providing funding in perpetuity through the limited development which would be allowed, improving existing habitat and reclaiming former habitat and researching and monitoring various aspects of the areas ecology.

Copies of this application, its supporting documents, Habitat Conservation Plan and implementing Agreement are on file at the following locations and are available for inspection by the public during normal business hours: Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, VA 22201 (703/235-10903); U.S. Fish and Wildlife Service, Region 1, Office of Federal Assistance; Lloyd 500 Building, Suite 550, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6134); U.S. Fish and Wildlife Service Sacramento Office of Endangered Species, 2800 Cottage Way, Room #1823, Sacramento, CA 95825 (916/484-4935) and Riverside County Planning Department, 4080 Lemon Street, 9th Floor, Riverside, CA 92501 (714/787-6181).

Interested persons may comment on this application within 30 days of the date of this publication by submitting written views, arguments, or data to the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 28, 1986.

Bob Kavetsky,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 86-4817 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Exotic Animals Tarzana, CA—PRT-704301

The applicant requests a permit to export and reimport a pair of leopards (*Panthera pardus*), one male tiger (*Panthera tigris*), and one male jaguar (*Panthera onca*), all captive-born, for the

purpose of enhancement of propagation.

Applicant: Steven Beissinger,

Smithsonian Institute, Washington, D.C.—PRT-704278

The applicant requests a permit to trap, band, and radio-tag adult snail kites (*Rostrhamus sociabilis*) to obtain behavioral data in an aquatic environment manipulated by man and to capture nestlings for obtaining growth data.

Applicant: Nichols/Hendrix-Post Corp.,
Key Largo, FL—PRT-691992

The applicant requests a permit for the incidental taking of Key Largo woodrats (*Neotoma floridana smalli*) and Key Largo cotton mice (*Peromyscus gossypinus allapaticola*) during the clearing on one acre of endangered species habitat, for the construction of a building and related site improvements.

Applicant: U.S. Fish & Wildlife Service,
Regional Director, Region 4, Atlanta, GA—PRT-697819

The applicant requests a permit to amend their current permit to allow take of additional species of wildlife and plants for scientific purposes and the enhancement of propagation or survival in accordance with Recovery Plans, listing or other Service work for those species.

Applicant: National Zoological Park,
Washington, D.C.—PRT-704377

The applicant requests a permit to receive an interstate shipment of one female Cuban crocodile (*Crocodylus rhombifer*) for the enhancement of propagation of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested person may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: February 28, 1986.

R.T. Kavetsky,

Acting Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 86-4818 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Indian Affairs**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Department Desk Officer, Washington, DC 20503, telephone (202) 395-7340.

Title: Education Contracts Under Johnson-O'Malley Act, Application and Regulatory Requirements, CFR 273, Monitoring Requirements 62 BIAM 1.

Abstract: Eligible contractors must meet application, reporting and other regulatory requirements for educational program funding which is supplemental to other sources of funding. Contractors and Indian education committees develop education programs to meet the special and unique needs of eligible Indian students. The Bureau also monitors projects and provides technical assistance.

Bureau Form Numbers: 62116, 62117, 62118

Frequency: Annually

Description of Respondents: Tribes, tribal organizations, public school districts and state education departments.

Annual Responses: 1,236

Annual Burden Hours: 28,644

Bureau clearance officer: Cathie Martin, (202) 343-1676

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

[FR Doc. 86-4866 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management**Realty Action; Recreation and Public Purposes Classification; Michigan**

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Classification for Recreation and Public Purposes, Cass

County, Michigan, ES-32083.

SUMMARY: The following public island has been examined and found to be suitable for classification and sale under the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869):

Michigan Meridian, Michigan

T. 6 S., R. 14 W., Tract 37 (a 1.90 acre island in Donnell Lake)

Penn Township has applied for this island. They plan to manage it for recreational purposes as Donnell Island Park.

The island is physically suited to the proposed use and is not of national significance. Since the island is valuable for a local governmental program, it is considered chiefly valuable for public purposes and therefore suitable for classification and sale under the Recreation and Public Purposes Act. This action is consistent with local and Federal government plans, programs and policies.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the patent, title to the land shall revert to the United States.

The classification of the island will segregate it from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. Segregation will terminate upon issuance of a patent; or eighteen (18) months from the date of this notice; or upon publication of a notice of termination, whichever occurs first.

Comments

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this application is available for review at the Milwaukee District Office, Suite 225, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203, or by calling Priscilla McLain at (414) 291-4427

Bert Rodgers,

District Manager.

[FR Doc. 86-4867 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-PN-M

Filing of Plats of Survey; Colorado

February 26, 1986.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., February 26, 1986.

The plat representing a corrective survey of a portion of the subdivision of section 7, T. 46 N., R. 11 W., New Mexico Principal Meridian, Colorado, Group No. 715, was accepted February 12, 1986.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

The supplemental plat correcting erroneous acreage in previous lot 10 and now showing amended lottings and areas in N $\frac{1}{2}$ SE $\frac{1}{4}$ of section 35, T. 48 N., R. 11 E., New Mexico Principal Meridian, Colorado, was accepted February 13, 1986.

The supplemental plat showing a new lot and area in the S $\frac{1}{2}$ S $\frac{1}{2}$ of section 18, T. 1 N., R. 71 W., Sixth Principal Meridian, Colorado, was accepted February 13, 1986.

The supplemental plat correcting an erroneous lot in the SW $\frac{1}{4}$ of section 18, T. 42 N., R. 10 E., New Mexico Principal Meridian, Colorado, was accepted February 13, 1986.

These supplemental plats were prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Marlin G. Livermore,
Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-4873 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-84-M

[OR-39055]**Partial Termination of Proposed Withdrawal and Reservation of Lands; Oregon**

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army has cancelled its application in part to withdraw certain public lands for the U.S. Army Central Oregon Test Facility. This action will open approximately 144.43 acres to surface entry and mining.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State

Office P.O. Box 2965, Portland, Oregon 97208 (Telephone: 503-231-6905).

SUPPLEMENTARY INFORMATION:

1. Notice of Department of the Army application OR 39055 for withdrawal and reservation of lands was published as FR Doc. 85-17597 on page 30240 of the issue of July 24, 1985. The purpose of the proposed withdrawal is to protect the Central Oregon Test Facility of the U.S. Army Electronics Research and Development Command involving two separate parcels located near Bend and Redmond in central Oregon. The applicant agency has cancelled the application insofar as it affects the following described land:

Willamette Meridian

T. 15 S., R. 14 E.,

Sec. 31 SE $\frac{1}{4}$, except the westerly 273 feet.

The area described contains approximately 144.43 acres in Crook County, Oregon.

2. Pursuant to the regulations contained in 43 CFR 2320.2-1 (c) at 8:30 a.m. on April 14, 1986, the land be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on April 14, 1986, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. Pursuant to the regulations contained in 43 CFR 2320.2-1 (c), at 8:30 a.m. on April 14, 1986, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: February 26, 1986.

B. LaVelle Black,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 86-4877 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-33-M

[AA-50578; AA.6650-B]

Alaska Native Claims Selection; Belkofski Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Belkofski Corporation, notice of which was published in the Federal Register, 50 FR 231, on December 2, 1985, is modified by adding the provisions of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(c).

A notice of the modified DIC will be published once in the *Aleutian Eagle* and once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision shall have until April 7, 1986 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given December 2, 1985, is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-4889 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-JA-M

Minerals Management Service

Outer Continental Shelf; Development Operations Coordination

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Mobil Producing Texas & New Mexico Inc. has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 2393 and 2757. Blocks A-573 and A-382, High Island Area, offshore Texas. Proposed plans for the

above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject DOCD was deemed submitted on February 25, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT:

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.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979. (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: February 27, 1986.

J. Rogers Percy,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-4858 Filed 3-5-86; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7 notice is hereby given that on January 22, 1986, a proposed consent decree in *United States v. Wedtech Corp., et al.*, Civil Action No. 86 Civ. 0573 (PKL) was lodged with the United States District Court for the Southern District of New York. The proposed consent decree concerns the violations of the Clean Air Act at two facilities owned by defendant which either emitted or had the potential to emit volatile organic compounds (VOCs). The proposed consent decree requires defendant to

pay the United States \$28,000 as a civil penalty for past violations of the Clean Air Act with regard to these facilities. The consent decree also obliges the defendant to apply for a federally-enforceable permit from the New York State Department of Environmental Conservation, with conditions that will prevent the facility from becoming a major potential source of VOCs.

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, Washington, DC, 20530, and should refer to *United States v. Wedtech Corp. et al.*, D.J. Ref. 90-5-2-844.

The proposed consent decree may be examined at the Office of the United States Attorney, Southern District of New York, One Saint Andrews Plaza, New York City, New York 10007 and at the Region II Office of the United States Environmental Protection Agency, Office of Regional Counsel, 26 Federal Plaza, New York City, New York 10278. Copies of the consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 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. If requesting a copy of the consent decree, please enclose a check in the amount of \$1.10 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, U.S. Department of Justice, Land and Natural Resources Division.

[FR Doc. 86-4867 Filed 3-5-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management Renewals

The National Science Foundation is renewing the following committees:

- Advisory Committee for Science and Engineering Education
- NSF Advisory Council

The Assistant Director for Science and Engineering Education and the NSF Director have determined that these committees are necessary and in the public interest in connection with the

performance of duties imposed upon the Director, National Science Foundation (NSF), and other applicable law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Dated: March 3, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-4902 Filed 3-5-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations; Bi-Weekly Notice

Correction

In FR Doc. 86-4030 beginning on page 6818 in the issue of Wednesday, February 26, 1986, make the following correction: The entries for Florida Power Corporation et al. and GPU Nuclear Corporation beginning on page 6822 were incorrect and are correctly set forth below:

Florida Power Corporation, et al.,
Docket No. 50-302, Crystal River Unit
No. 3 Nuclear Generating Plant, Citrus
County, Florida

Date of amendment request: January 16, 1986.

Description of amendment request: The proposed amendment would remove from the Technical Specifications (TSs) the tabular listing of hydraulic snubbers, as suggested by Generic Letter 84-13 dated May 3, 1984.

The licensee had previously requested (July 25, 1984) TS changes to the tabular listing of snubbers to add new snubbers and to revise the classification of several snubbers to "accessible" or "inaccessible" as applicable. That request was previously noticed (50 FR 47862), but has not yet been acted upon. In view of the licensee's request of January 16, 1986, which is the subject of this notice, the licensee has withdrawn that portion of its July 25, 1984 request dealing with snubbers, by letter dated January 24, 1986.

Basis for proposed no significant hazards consideration determination: Generic Letter 84-13, May 3, 1984, "Technical Specifications for Snubbers" concludes that the tabular listing of snubbers included in Technical Specifications may be deleted by any licensee submitting a license amendment.

The removal of the tabular listing of snubbers from the Technical

Specifications is of an administrative nature and does not in itself affect plant design or operation, involve modifications to plant equipment, or make changes that would affect plant safety analyses. The Technical Specifications will continue to require the snubbers to be operable. Appropriate actions to be taken if the snubbers are inoperable will also remain in Technical Specifications. Additionally, the NRC staff has determined that inclusion of snubber listings in Technical Specifications is not necessary because any changes in snubber quantities, type or locations are controlled under the provisions of 10 CFR 50.59 as a change to the facility.

The proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the removal of the snubber listing does not impact the existing snubber operability requirements.
2. Create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new mode of plant operation nor does it require physical modification to the plant.
3. Involve a significant reduction in the margin of safety because it does not involve changes in plant design or operation or affect plant safety analyses. The purpose of the change is to conform to the NRC guidance in Generic Letter 84-13. Any proposed changes to the snubbers would be subject to the provisions of 10 CFR 50.59 and, as a result, should any proposed change significantly reduce the margin of safety, an application for a license amendment would be submitted.

Based on the above, the Commission's staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Project Director: John F. Stolz.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 10, 1982, and April 15, 1985, as

superseded by the submittal of November 13, 1985.

Description of amendment request: Request approval of changes to the Appendix A Technical Specifications (TS) pertaining to shock suppressors (snubbers). These changes are to Section 3.5 and 4.5, Containment, and to Section 6.10.2, Administrative Controls-Record Retention, and the Basis for these Sections in the TS.

The changes to TS Section 3.5A.8, revise the existing limiting conditions for operation on snubbers to (1) delete Table 3.5.1, which lists the safety-related snubbers by number and location and (2) revise the existing requirements on when snubbers have to be operable and the actions to be taken if snubbers are inoperable. The existing requirements are in terms of the snubbers themselves with the requirements being that, if a snubber is inoperable in all modes of operation except cold shutdown and refueling and cannot be made operable within 72 hours, an orderly shutdown of the plant shall be initiated and the reactor shall be in cold shutdown within 36 hours. The proposed requirements are in terms of the systems containing the safety-related snubbers. The new requirements would be that, if a snubber is inoperable and cannot be made operable within 72 hours, the system is declared inoperable and the appropriate action statement for that system in the TS is followed.

The changes to TS Section 4.5.Q would (1) revise the existing surveillance requirements on safety-related hydraulic snubbers to add surveillance requirements for mechanical snubbers, (2) revise the existing surveillance requirements for hydraulic snubbers and (3) add a requirement for a record to be kept of the service life of each snubber. The record would be maintained as required by proposed TS 6.10.2.1. The revision to the surveillance requirements would delete the distinction in the existing surveillance requirements between hydraulic snubbers whose seal material has been demonstrated by operating experience, lab testing or analysis to be compatible with the operating environment and hydraulic snubbers whose seal material has not been demonstrated to be compatible. In the proposed TS, all hydraulic snubbers meet the same acceptance criteria and are tested on the same schedule. The proposed TS include a specific Visual Inspection Acceptance Criteria, Hydraulic Snubbers Functional Test Acceptance Criteria and Mechanical Snubbers Functional Test Acceptance Criteria. The proposed frequency of

visual inspection and functional tests of snubbers is similar to that existing for hydraulic snubbers with seal material demonstrated to be compatible with the operating environment. The proposed acceptance criteria for hydraulic snubbers is similar to the existing acceptance criteria for hydraulic snubbers. The proposed TS delete existing TS 4.5.Q.2 which states that the initial inspection shall be performed within 12 months from the date of issuance of these TS and it shall be assumed that the facility had been on a 12-month inspection schedule. This existing TS is not needed because this initial inspection has already been performed.

On December 10, 1982, in accordance with 10 CFR 50.59 and 50.90, the licensee submitted proposed changes to the TS pertaining to shock suppressors (48 FR 33080). These changes were to TS Section 3.5.A.8 and Bases, Section 4.5.Q and Bases, Section 6.10.2 and Table 3.5.1. The proposed changes were to incorporate revision 1 of the inservice inspection surveillance requirements for snubbers which were transmitted by the Commission to the licensee on March 23, 1981, and to revise Table 3.5.1 to add mechanical snubbers and to reword the table to conform to the then existing NRC Standard TS.

On May 3, 1984, the Commission issued Generic Letter (GL) 84-13, Technical Specifications for Snubbers. The licensee reviewed GL 84-13. It submitted by letter dated April 15, 1985, (1) the proposed changes in its request dated December 10, 1982, with one exception and (2) its proposed changes in response to GL 84-13 (50 FR 20980). (The one exception was that the licensee proposed in its letter dated December 10, 1982, to only revise Table 3.5.1, and in its letter dated April 15, 1985, the proposed action was to delete Table 3.5.1.)

After discussions with NRC Region I in IE Inspection 85-27, the licensee has again revised its proposed TS change for snubbers. This revision is dated November 13, 1985, which supersedes its submittals of December 10, 1982, and April 15, 1985. This latest revision will bring the TS closer to the requirements in the staff's Boiling Water Reactor Standard Technical Specifications, NUREG-0123, (BWR-STs). The BWR-STs are based on the Standard Review Plans. For snubbers, it is appropriate for the TS to conform to the BWR-STs.

Basis for proposed no significant hazards consideration determination: The commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing

certain examples (48 FR 14870). One of the example (vi) of amendments not likely to involve significant hazards considerations is a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

For TS Section 3.5.A.8 and Bases and Table 3.5.1, the licensee has requested approval to delete Table 3.5.1 which lists the safety-related snubbers in the plant and to reword the TS to conform to the BWR-STs. The Commission stated in GL 84-13 that a snubber listing within the TS was not necessary provided the TS are modified to specify which snubbers are required to be operable. The staff's acceptance criteria for snubbers is in Standard Review Plan (SRP) 3.9.3, ASME Code Class 1, 2, and 3 Components, Component Supports and Core Support Structures. The BWR-STs and GL 84-13 provide criteria in the SRP on inspection and testing of snubbers. Therefore, this proposed change is one which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but the results of this change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

For TS 4.5.Q and Bases, the licensee has requested approval to revise the existing surveillance requirements on hydraulic snubbers, add surveillance requirements on mechanical snubbers and delete the reference to Table 3.5.1. The revision to the existing surveillance requirements on snubbers is to reword the TS to conform to the BWR-STs. Therefore, this proposed change is a change which may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan.

Finally, the revision to TS 6.10.2 would add a requirement that the licensee maintain records of service lives of all safety-related snubbers. Because this is an additional control not currently in the TS, this change is encompassed by the Commission example (ii) of actions not likely to involve significant hazards consideration.

Because the proposed changes fall within examples (ii) or (vi), provided by the Commission in 48 FR 14870, of amendments that are not likely to involve significant hazards consideration, the staff proposes to determine that the requested action involve no significant hazards consideration.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

Attorney for licensee: G. F. Trowbridge, Esquire, Shaw, Pittman, Potts, and Trowbridge, 1800 M Street, NW, Washington, DC 20036.

NRC Project Director: John A. Zwolinski.

BILLING CODE 1505-02-M

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Co., et al.; Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF-4 and No. NPF-7, issued to Virginia Electric and Power Company and Old Dominion Electric Cooperative (the licensee), for operation of the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2) located in Louisa County, Virginia, in accordance with the licensee's application for amendment dated February 6, 1986.

The proposed changes would revise the NA-1&2 Technical Specifications (TS), Section 3/4.6.3, Table 3.6-1, Containment Isolation Valves. The proposed changes reflect the planned installation of new containment isolation valves in the letdown line of the Charging and Letdown System (CLS). The new valve will function as the inside containment isolation valve and is designed to meet the operating criteria of three (3) existing parallel isolation valves, an in-line relief valve and a remote manual valve. The existing valves will not be physically removed but will no longer serve as isolation valves and, thus, would be deleted from Table 3.6.1 which specifies Containment Isolation Valves. The new valves would be added to Table 3.6.1.

The Commission has made a proposed determination that the request for amendments involves no significant hazards consideration. Under the Commission's regulation in 10 CFR

50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed change as discussed above does not increase the probability of occurrence or the consequences of an accident of malfunction of equipment important-to-safety as previously evaluated in the NA-1&2 Final Safety Analysis Report (FSAR). The new valve to be installed for each unit is functionally equivalent to and designed consistent with the original design criteria for the containment isolation valves which are being replaced. The proposed change does not affect any existing accident analyses specified in the NA-1&2 FSAR.

Also, the change does not create a possibility for an accident or malfunction of a different type than any previously evaluated in the FSAR. The modification does not functionally change the operation of the Letdown System or change the containment isolation function, and thus, the proposed change does not affect any existing accident analyses.

And, finally, the change does not reduce the margin of safety as defined in the basis of any TS. The safety limits as defined in the Technical Specifications are not changed. Therefore, based on these considerations and the criteria given above, the Commission has made a proposed determination that the amendment request does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Records Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By April 4, 1986, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a

hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If a final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lester S. Rubenstein: (petitioner's name and telephone number), (date petition was mailed), (plant name), and (publication date and page number of this *Federal Register* notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555,

and to Michael W. Mauphin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated February 6, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093 and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 27th day of February, 1986.

Lester S. Rubenstein,
Director, PWR Project Directorate #2,
Division of PWR Licensing-A.
[FR Doc. 4926 Filed 3-5-86; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of section 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 13-15, 1986 in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the *Federal Register* on February 25, 1986.

Thursday, March 13, 1986

8:30 A.M.-8:45 A.M.: *Reports of ACRS Chairman* (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-11:00 A.M.: *Quantitative Safety Goals* (Open)—The members will hear and discuss the report of its subcommittee regarding the evaluation of the two-years trial period for use of quantitative safety goals as a regulatory requirement. Representatives of the NRC Staff and the nuclear industry will make presentations and participate in the discussion, as appropriate.

11:00 A.M.-1:00 P.M.: *ACRS Effectiveness* (Open)—The members will discuss proposed

implementation of the recommendations of the Panel on ACRS Effectiveness.

2:00 P.M.-4:30 P.M.: *Perry Nuclear Power Plant, Unit 1* (Open)—The members will hear and discuss the report of its subcommittee regarding the impact of the recent earthquake on the Perry Nuclear Plant, Unit 1. Representatives of the NRC Staff and the Licensee will make presentations and participate in the discussion to the degree considered appropriate.

4:30 P.M.-5:00 P.M.: *Future ACRS Activities* (Open)—The members will discuss anticipated ACRS subcommittee activities. Topics proposed for consideration by the full Committee will also be discussed.

5:00 P.M.-6:00 P.M.: *Safety Considerations in Future Reactors* (Open)—The members of the Committee will discuss proposed ACRS comments and recommendations regarding safety considerations in the design of future reactors.

6:00 P.M.-6:30 P.M.: *Discuss Topics for Meeting with NRC Commissioners* (Open)—The members will discuss topics schedules for discussion with the NRC Commissioners, including the scope and procedures for conduct of ACRS activities; requirements for the GESSAR II standardized nuclear plant and safety considerations in future nuclear plants; and comments regarding the need/desirability for a federal facility to train nuclear power plant operators.

Friday, March 4, 1986

8:30 A.M.-9:45 A.M.: *Quantitative Safety Goals* (Open)—The members will continue discussion of the proposed ACRS report to the NRC regarding evaluation and implementation of quantitative safety goals in the regulation of nuclear facilities.

10:00 A.M.-11:30 A.M.: *Meeting with NRC Commissioners* (Open)—The members of the Committee will meet with members of the Commission to discuss items noted above.

11:45 A.M.-1:30 P.M. and 2:30 P.M.-3:00 P.M.: *Integrity of Primary Coolant Systems* (Open)—The members will hear and discuss reports from its subcommittee, representatives of the NRC Staff, and the nuclear industry, as appropriate, regarding proposed changes in NRC regulations on primary system design and inspection, and on pressurized thermal shock of reactor pressure vessels.

3:15 P.M.-5:15 P.M.: *Severe Accident Policy* (Open)—The members will discuss the proposed NRC implementation plan for the NRC severe accident policy regarding nuclear power plants. Members of the NRC and nuclear industry will participate, as appropriate.

5:15 P.M.-7:00 P.M.: *Advanced Reactor Designs* (Open/Closed)—The members will hear and discuss the reports of its subcommittee, representatives of the NRC Staff, and the Department of Energy regarding proposed advanced reactor designs for both gas cooled and liquid metal cooled nuclear plants.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this matter.

Saturday, March 15, 1986

8:30 A.M.-12:30 P.M.: Preparation of ACRS Reports (Open/Closed)—The members will discuss proposed reports to the NRC regarding items discussed during this and previous ACRS meetings, including proposed Committee reports on the evaluation and implementation of proposed quantitative safety goals, proposed changes in NRC policies and regulations regarding reactor pressure vessel pressurized thermal shock, and safety considerations in future reactors.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the facilities being discussed.

1:30 P.M.-3:00 P.M.: ACRS Subcommittee Activities (Open/Closed)—The members will hear and discuss reports of recent and anticipated ACRS subcommittee activities in designated areas, including the nomination of candidates proposed for appointment to the ACRS, licensing requirements for the storage of spent reactor fuel in independent storage facilities, and resolution of unresolved generic issue A-46, Seismic Qualification of Equipment in Operating Nuclear Power Plants.

Portions of this session will be closed as required to discuss information of a personal nature, the disclosure of which would represent a clearly unwarranted invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 2, 1985 (50 FR 191). In accordance with these procedures, oral or written statements may be presented by members of the public, 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 Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R.F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss

Proprietary Information [5 U.S.C. 552b(c)(4)] applicable to the matters being discussed and information the release of which would represent a clearly unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

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 can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M.

Dated: March 3, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86-4930 Filed 3-5-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. SS86-1]

Preferred Rate Study; Schedule of Hearings on Nonprofit Mail

March 3, 1986.

Notice is hereby given that following an opening hearing on March 12, 1986, at the Commission's Washington, D.C., headquarters, 1333 H Street, N.W., to obtain views and comments on federally subsidized mail, pursuant to Notice dated January 24, 1986 (51 FR 3867-3969), hearings will be held in:

Atlanta, Georgia: March 18, 1986, 9:00

a.m., L.D. Strom Auditorium, Lower Plaza, Richard B. Russell Federal Building, 75 Spring Street, S.W.;

Denver, Colorado: March 18, 1986, 9:30 a.m., Denver Museum of Natural History, West Auditorium, City Park, 2001 Colorado Boulevard;

Los Angeles, California: March 24, 1986, 9:00 a.m., Veterans Administration Medical Center, West Los Angeles, Building 211, Brentwood Theatre, Wilshire & Sawtelle Boulevards;

Dallas, Texas: March 25, 1986, 9:00 a.m., Central Library, Ground Floor, Central Dallas Public Library, 1515 Young Street;

New York, New York: March 27, 1986, 9:30 a.m., Court of International Trade, Ceremonial Court Room, 2nd Floor, 1 Federal Plaza, Lafayette and Duane Streets;

Chicago, Illinois: April 2, 1986, 9:30 a.m., Everett McKinley Dirksen Building, Room 2525, 219 South Dearborn Street;

Minneapolis, Minnesota: April 2, 1986, 10:00 a.m., Hennepin County Government Center, Auditorium—A Level, 300 South 6th Street.

Persons interested in submitting a written statement for the record, or in presenting a five minute oral statement as well as written testimony, should promptly write the Office of the Secretary, Postal Rate Commission, 1333 H Street, N.W., Suite 300, Washington, DC 20268, or call (202) 789-6840, for further details. The Commission will attempt to accommodate, on a first come first served basis, those wishing to testify at a specific time, if requests are received at least seven days before the hearing in which they would like to participate. Written statements will be accepted through April 21, 1986.

Cyril J. Pittack,

Assistant Secretary.

[FR Doc. 86-4835 Filed 3-5-86; 8:45 am]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14962; 812-6204]

Allied Capital Corp., et al.; Application for Order Authorizing Joint Transactions

February 27, 1986.

Notice is hereby given that Allied Capital Corporation, 1625 Eye Street, N.W., Washington, DC 20006, a registered closed-end management investment company ("Allied Capital"); Allied Investment Corporation and Allied Financial Corporation (together with Allied Capital, "Allied"), both registered closed-end management investment companies and wholly-owned subsidiaries of Allied Capital which are licensed as small business investment companies under the Small Business Investment Act of 1958 (together, "SBIC Subsidiaries"); Allied Advisory, Inc. ("Advisory") a wholly-owned subsidiary of Allied Capital; Allied Management Partners, a limited partnership of which Advisory is the general partner ("Management"); and Allied Venture Partnership ("Venture"), a limited partnership of which Management is the general partner, and certain limited partners ("Venture Partners") of Venture (collectively, "Applicants"), have filed an application on September 20, 1985, for an order of the Commission, pursuant to sections 6(c) and 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, to permit certain co-investments with affiliates. 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 complete text of the applicable provisions.

Applicants state that Allied Capital, originally organized in 1958 as a SBIC, is now a holding company over 95% of the assets of which consist of all of the outstanding capital stock of four subsidiaries, two of which are the SBIC subsidiaries. Applicants further state that the SBIC subsidiaries are principally engaged in the business of making venture capital-type investments in small business concerns, and normally seek out other venture capital investment entities to participate in the transactions.

According to the application, the Venture Partners with which Allied or Venture may co-invest are the following: (1) Affiliates of Entreprises Quilmes S.A. ("EQ"), a European holding company whose affiliates are affiliated persons of Allied both because one of its affiliates holds approximately 14% of the outstanding shares of Allied Capital (an executive of EQ is a director of Allied Capital and of Advisory) and because another of its affiliates is a copartner with Management in Venture; (2) Acacia Mutual Life Insurance Company, which owns shares in Allied Capital and an executive of which is a director of Allied and of Advisory, but which is an affiliate of Allied Capital solely because it is a copartner with Management in Venture; (3) Security Pacific Capital Corporation, an SBIC which is an affiliate of Allied solely because it is a copartner with Management in Venture; (4) Capital for Business, Inc., a subsidiary and affiliate of Commerce Bankshares, Inc., which is a bank holding company that is an affiliate of Allied solely because it is a copartner with Management in Venture; and (5) The First National Bank of Chicago as Trustee for the Institutional Venture Capital Fund, a national banking association which is an affiliate of Allied solely because, in its capacity as trustee for a fund other than the commingled trust fund for which it may desire to co-invest with Allied or Venture, it is a copartner with Management in Venture.

Applicants state that by a Commission order dated September 17, 1985 (Investment Company Act Release No. 14725), Allied Capital, Advisory, Management and Venture, and certain other affiliates were permitted to establish Venture as a venture capital limited partnership. Applicants further state that by an earlier Commission order (Investment Company Act Release No. 13461, August 23, 1983), co-investment transactions on the part of

Allied and affiliates of EQ were permitted subject to certain conditions ("EQ Order"). Applicants, however, state that because of the organization of Venture and the participation as limited partners therein by an EQ affiliate as well as by the other Venture Partners, the EQ Order conditions can no longer be literally complied with. Therefore, Applicants seek a new order, pursuant to section 17(d) of the Act, and Rule 17d-1 thereunder, to permit the EQ affiliates to continue to co-invest with Allied as well as with Venture and to permit the other Venture Partners individually to co-invest with Allied or Venture or both. Applicants also seek relief from section 6(c) of the Act because relief from section 17(d) involves only individual, prospective transactions and applicants seek exemption for a class of transactions.

Applicants undertake, however, that they will be subject to the following rules: (i) Allied's board of directors will determine in the first instance the extent to which Allied and Venture combined will participate in any investment opportunity originated by Allied and the extent to which participations therein will be offered to others, or the extent to which Allied and Venture combined will participate in investment opportunities originated by others in which Allied is invited to participate; (ii) if the board of directors determines that any participations in investment opportunities originated by Allied are to be offered to others, the persons to whom such participations are to be offered may include one or more of the Venture Partners or their affiliates. Before, however, an offer of a participation may be made to any Venture Partner or an affiliate of a Venture Partner, the board of directors must specifically approve such offer, and such approval must be based on findings by the board of directors that the participation in the transaction of that Venture Partner (or affiliate) would be advantageous because of the specific contribution that such Venture Partner (or affiliate) is expected to make to the quality of the transaction; (iii) if Allied is invited to participate in an investment opportunity originated by others and the board of directors determines that the participation therein by Allied or Venture is in the best interests of Allied and Venture, then, if the other participants in the proposed transaction include one or more of the Venture Partners or their affiliates, the board of directors must specifically approve the amount of Allied's and Venture's participation and the amount of the proposed participation by each

participant which is one of the Venture Partners or an affiliate of one of the Venture Partners; (iv) if the combined participation to be retained by Allied and Venture, is in an amount less than the then applicable combined prudential limit for Allied and Venture for exposure in a single risk, then, if the other participants in the proposed transaction include one or more of the Venture Partners or their affiliates, the board of directors must make a specific determination that such lesser participation is in the best interests of Allied and Venture; (v) the board of director's approval of the participation by Allied or Venture in any transaction in which any of the Venture Partners or their affiliates is also to be a participant must be based on findings by the board of directors that: (a) The terms of the proposed transaction including the consideration to be paid and received, and including specifically any fees to be paid by any participant to any other participant in the transaction, are reasonable and fair to the shareholders of Allied Capital and do not involve overreaching of Allied, Venture or Allied Capital's shareholders on the part of any person concerned; and (b) the proposed transaction is consistent with the interests of the shareholders of Allied Capital and is consistent with the policy of Allied and Venture as recited in filings made by Allied with the Commission under the Securities Act of 1933 ("1933 Act") or the Act, the registration statements and reports filed by Allied Capital under the Securities Exchange Act of 1934, Allied Capital's reports to shareholders and the limited partnership agreement of venture; (vi) the board of directors will record in its minutes and preserve in its records, for such periods as records are required to be maintained under section 31(a) of the Act, a description of each transaction in which Allied or Venture participates and in which any of the Venture Partners or their affiliates is also a participant, the findings on which any determination pursuant to paragraph (ii), (iii), (iv) or (v) is based, the information and materials on which such findings are based, and the basis therefor; (vii) no member of the board of directors will be a party to or have a financial interest in such transaction other than: (a) As the owner of securities of which Allied Capital is the issuer, or (b) as the owner, directly or indirectly, of a limited partnership interest in Venture, or (c) as the owner of securities of which any of the Venture Partners or their affiliates is the issuer; provided, however, that any member of the board of directors who is a director or officer of, or owner of

securities issued by, any of the Venture Partners or an affiliate thereof will not take part in any determination pursuant to paragraphs (ii), (iii), (iv) or (v) with respect to the participation by such Venture Partner or an affiliate thereof. For the purpose of this paragraph, a director, officer or employee of Allied or Advisory or a Venture Partner or an affiliate thereof who receives his usual and ordinary compensation for usual and customary services as a director, officer, employee or professional consultant to any such entity shall not be deemed to have a financial interest or in the transaction solely by reason of his receipt of such compensation; (viii) neither Allied nor Venture will make any investment in an entity in which a Venture Partner or a affiliate of a Venture Partner, but not Allied or Venture, has previously invested; (ix) the basis as to time of investment and unit prices on which any Venture Partner or an affiliate thereof participates in the propose transaction will be identical to the basis on which Allied or Venture participates therein. For this purpose, the payment to Allied or Advisory or the Venture Partner or an affiliate thereof, by any participant in the transaction other than Allied Capital, any subsidiary of Allied Capital, Venture, any of the Venture Partners or any affiliate thereof, of any reasonable fee will not be considered as differentiating the basis of the Venture Partner's or its affiliate's participation from that of Allied or Venture; (x) Allied and Venture, on the one hand, and any Venture Partner or its affiliates, on the other, will exercise any warrants, conversion privileges, or other rights to acquire equity securities of an issuer, or affiliate of an issuer, which were acquired by Allied and or Venture on the one hand, and such Venture Partner or an affiliate thereof on the other, in a transaction in which they both participated, only at the same time and in amounts proportionate to their respective holdings of such rights; (xi) Allied and Venture on the one hand, and any Venture Partner or its affiliates on the other, will sell, exchange, or otherwise dispose of an interest in any security of a class held by Allied and or Venture, only at the same times and for the same unit consideration and in amounts proportionate to their respective holdings of such securities, unless at the time of sale there exists a public trading market in securities of such class and the sale by the respective holder is made in such market; (xii) the expenses, if any, of the distribution of any securities registered under the 1933 Act and sold by Allied, Venture and any

of the Venture Partners at the same time will be shared by the sellers in proportion to the respective amounts they are selling.

Applicants contend that the proposed transactions are consistent with the applicable standards under sections 6(c) and 17(d) of the Act and Rule 17d-1 thereunder. Applicants state that Allied and Venture would participate in these transactions on a basis identical to that of Venture Partners of their affiliates. Applicants further state that the payment to Advisory or a participating Venture Partner (or an affiliate thereof) of a financing fee for services in structuring and negotiating any specific transaction does not make the basis of its participation more or less advantageous than that of any other participant.

Applicants indicate that the board of directors of Allied capital, the SBIC subsidiaries and Advisory are identical. Applicants assert that all of the members of the board of directors have a personal financial stake (often substantial) in either Allied or Venture or both so that in any dealings with third persons, including Venture Partners, their interests are wholly congruent with those of Allied and Venture and adverse to those of the third person. Exceptionally, a possible conflict could arise where there is under consideration a participation in an investment transaction with a Venture Partner (or an affiliate thereof) of which one of the members of the board of directors is an executive or in which he otherwise has an interest, and in any such case, Applicants propose that that member may not take part in any determination with respect to such participation. Subject to that exception, Applicants undertake that any determination of the board of directors contemplated in the proposed co-investment rules be made by a majority of its members, regardless of whether they are interested persons of Allied Capital or have a personal financial interest in Venture.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 22, 1986, 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 Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by

certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-4885 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14964; 812-6257]

Applications, Hearings, Determinations, etc.: Pactel Capital Resources

February 28, 1986.

Notice is hereby given that Pactel Capital Resources, a California corporation ("Applicant"), 140 New Montgomery Street, San Francisco, CA 94105, filed an application on December 10, 1985, and an amendment thereto on February 28, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act and the rules thereunder for a complete text of the applicable provisions.

According to the application, Applicant is a wholly-owned subsidiary of Pacific Telesis Group ("PTG"), a Nevada corporation and one of the seven regional holding companies formed pursuant to the consent decree ("Consent Decree") which arose out of anti-trust litigation by the Department of Justice ("DOJ") and which was agreed to by the American Telephone and Telegraph Company ("AT&T") and the DOJ with certain modifications required by the United States District Court for the District of Columbia ("Court"). Applicant states that PTG owns Pacific Bell and Nevada Bell, telephone operating companies subject to regulation by the California Public Utilities Commission and the Public Service Commission of Nevada, respectively. Both Pacific Bell and Nevada Bell are regulated as to authorized rates of return on their rate bases by the Federal Communications Commission and by the California and Nevada State Commissions. Applicant also states that PTG engages in other business activities through the activities

of various subsidiaries ("Diversified Subsidiaries"), as permitted under the Consent Decree and pursuant to waivers obtained thereunder from the Court. The application indicates that PTG may establish additional subsidiaries in the future. Applicant represents that neither PTG nor any of the Diversified Subsidiaries which is to obtain financing through Applicant is an investment company under section 3(a) of the Act.

The applicant states that at December 31, 1984, PTG had total assets of \$18.1 billion and at September 30, 1985, PTG's total assets were \$19.5 billion. For the year ended December 31, 1984, PTG had net income of \$829 million on revenue of \$7.8 billion, and for the nine month period ended September 30, 1985, PTG's net income and revenue were \$721 million and \$6.3 billion, respectively. In the year ended December 31, 1984, Pacific Bell and Nevada Bell collectively declared payable \$685.1 million in cash dividends to PTG, and an additional \$174.1 million in net income was available for such dividends if required.

The Applicant states that its sole business will be to provide funds which PTG will use to finance its diversification activities and those of the Diversified Subsidiaries. The Applicant will issue debt instruments for sale in the United States and foreign commercial paper and debt markets ("Securities"), and, in turn, loan the proceeds of those issuances to PTG and the Diversified Subsidiaries. Applicants represents that all loans by it to PTG and the Diversified Subsidiaries will bear interest equal to that which Applicant is required to pay to obtain funds through its corresponding borrowings, plus a small mark-up sufficient to cover operating costs. Applicant further states that the amount and maturity of such loans will allow Applicant to make timely payments of principal and interest on its borrowings. According to the application, the Applicant will remit to PTG and/or the Diversified Subsidiaries at least 85% of the cash or cash equivalents raised by the Applicant as soon as practicable after receipt thereof, but in no event later than six months after the Applicant receives such as or cash equivalents. The Applicant represents that it will not issue voting securities to any person other than PTG, and that it will not hold securities other than government securities and other securities as permitted by Rule 3a-5(a)(6) under the Act.

Applicant states that the Consent Decree limits the lines of business which may be engaged in by the regional holding companies such as PTG.

Applicant further states that, pursuant to the Consent Decree, the Court has held that regional holding companies may be permitted to engage in certain ventures (such as many of the activities of the Diversified Subsidiaries), so long as any guarantee of obligations owed on Securities issued to finance the activities thereof would not grant recourse against the stock or assets of the telephone operating companies. Applicant represents that PTG is therefore prohibited from guaranteeing obligations owed on Securities issued by or for the benefit of Diversified Subsidiaries if the guarantee would permit recourse against the stock or assets of Pacific Bell or Nevada Bell.

The Applicant states that before it issues any Securities, PTG and the Applicant will enter into a Support Agreement ("Support Agreement") pursuant to which PTG will agree to cause the Applicant to maintain a positive tangible net worth (as determined in accordance with generally accepted accounting principles) and, if the Applicant is unable to pay when due principal, interest and premium, if any, owed by it in connection with the Securities, PTG will then provide funds to the Applicant to assure that the Applicant will be able to meet its obligations in connection with the Securities. The Support Agreement will also provide that in the event of any default by PTG in meeting its obligations under the Support Agreement, or in the event of default by the Applicant in the timely payment of principal, interest, and premium, if any, owed on any Securities, holders of Securities or, if applicable, a trustee acting on their behalf shall be entitled to proceed directly against PTG, so long as no holder of Securities or trustee acting on their behalf will have recourse to or against the stock or assets of Pacific Bell or Nevada Bell. The Support Agreement will also provide that PTG shall own all of the outstanding voting capital stock of the Applicant throughout the term of the Support Agreement, that without the written consent of all of the holders of the then outstanding Securities the Support Agreement may not be modified or amended in ways less favorable to holders of Securities than the existing agreement, and that it may be terminated only after all outstanding Securities have been retired.

Applicant represents that the Securities are expected to consist of short-term, intermediate-term and long-term debt securities to be offered and sold either in transactions exempt from the registration requirements of the Securities Act of 1933 ("1933 Act") or in

public offerings of securities registered under the 1933 Act. The Applicant further represents that, in the case of a public offering of any of its securities not exempt from the registration requirements of the 1933 Act, the Applicant and PTG will, prior to offering such securities, file a registration statement under the 1933 Act with the Commission and will not sell such securities until the registration statement is declared effective by the Commission and any related indenture is qualified under the Trust Indenture Act of 1939 to the extent required thereunder. The Applicant further represents that it and PTG will comply with the prospectus delivery requirements of the 1933 Act in connection with the offering and sale of such securities.

Applicant states that, in the case of an offering of securities not requiring registration under the 1933 Act, the Applicant will provide each offeree with disclosure materials which will include a description of the business of PTG and other data of the character customarily supplied in such offerings. In the event of subsequent offerings, those materials will be updated at the time thereof to reflect material changes in the financial condition of PTG and its subsidiaries, taken as a whole.

Applicant represents that prior to any issuance and sale of its Securities in the United States capital market, those Securities shall have received one of the three highest investment grade ratings from at least one nationally recognized rating organization. No such rating shall be required to be obtained, however, if in the opinion of counsel for Applicant an exemption from registration is available with respect to such issue and sale under section 4(2) of the 1933 Act.

The Applicant represents that it was formed to function as a financing conduit for the diversification activities of PTG and PTG's Diversified Subsidiaries, and to advance the efficient administration and management of financing activities for PTG and certain of the Diversified Subsidiaries. The Applicant states that it meets all of the requirements for the Rule 3a-5 exemption under the Act except for the rule's requirement that the securities issued by a finance subsidiary be unconditionally guaranteed by its parent company. The Applicant argues that PTG's execution and delivery of the Support Agreement provides a satisfactory alternative to an unconditional guarantee of the Securities since the Support Agreement enables purchasers of the Securities to proceed directly against PTG in the

event of a failure by the Applicant to pay principal, interest or premium, if any, when due on the Securities, limited only so as to exclude the stock or assets of Pacific Bell and Nevada Bell. Applicant states that, despite this limitation, funds available to satisfy PTG's obligations under the Support Agreement include net income available for payment of dividends to PTG by Pacific Bell and Nevada Bell, as well as the assets of PTG and the Diversified Subsidiaries other than the stock or assets of Pacific Bell and Nevada Bell. Therefore, Applicant argues that the Support Agreement enables purchasers of Applicant's debt instruments to look ultimately to PTG, not the Applicant, for repayment. In addition, the Applicant points out that, given the limitations of the Consent Decree and the subsequent orders in which the Court has restricted the kind of guarantee that PTG is able to provide to the Applicant, by means of the Support Agreement PTG intends to support the Securities with all legally available assets. By means of the Support Agreement, PTG will make available to the holders of the Securities the same assets which would be available to the holders of PTG's own securities used to fund PTG's similar diversification activities, and thus Applicant argues that the Support Agreement will put the purchasers in the same position as if PTG itself had issued the Securities directly.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 24, 1986, 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 Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-4933 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22957; File Nos. SR-CBOE-85-49, SR-Amex-86-2, SR-NYSE-86-6]

**Self-Regulatory Organizations;
Chicago Board Options Exchange,
Inc., American Stock Exchange, Inc.,
New York Stock Exchange, Inc.; Order
Approving Proposed Rule Change and
Granting Accelerated Approval to
Proposed Rule Changes**

The Chicago Board Options Exchange, Incorporated ("CBOE") submitted on December 13, 1985 and the American Stock Exchange, Inc. ("Amex") and the New York Stock Exchange, Inc. ("NYSE") submitted on January 16, and February 4, 1986 respectively, copies of proposed rule changes pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to extend the close of trading in index options traded on the above-named exchanges from 4:10 p.m. to 4:15 p.m. (New York time).¹

Notice of the proposed rule changes together with their terms of substance was given by the issuance of Commission releases (Securities Exchange Act Release Nos. 22790, January 13, 1986, 22842, January 27, 1986, and 22881, February, 1986, respectively) and by publication in the *Federal Register* (51 FR 2614, January 17, 1986, 51 FR 4253, February 3, 1986, and 51 FR 5626, February 14, 1986, respectively). No comments have yet been received with respect to the proposed rule changes.

The CBOE is amending its Rules 6.1 (Days and Hours of Business), 6.2 (Trading Rotations), 11.1 (Exercise of Option Contracts) and 24.6 (Days and Hours of Business for Index Options) to extend the closing and exercise cut-off time for CBOE index options from 3:10 p.m. to 3:15 p.m. (Chicago time).² The Amex is amending its Rules 1 (Hours of Business) and 903C (Series of Stock Index Options) to extend the trading hours in its Major Market Index ("XMI") options from 4:10 p.m. to 4:15 p.m. (New York time), and to similarly extend the cut-off time for exercising XMI options.³

¹ The CBOE rule change would effectively extend trading in CBOE index options from 3:10 p.m. to 3:15 p.m. (Chicago time).

² Changes to CBOE Rule 6.2 clarify that open trading on expiring series of index options shall be permitted on the last business day prior to expiration until 3:15 p.m. (Chicago time), but a closing rotation for such expiring series of index options shall not be employed. Changes to Rule 11.1 extend to 3:15 p.m. the deadline for submission of exercise memoranda and advices.

³ Amex Rule 903c clarifies that on the business day prior to expiration, index options shall trade until 4:10 p.m., unless the Board of Governors has established different hours of trading for certain index options.

The NYSE also plans to extend the closing and exercise time in its index options from 4:10 p.m. to 4:15 p.m. by amending Rules 717 (Trading Rotations, Halts and Suspensions), 780 (Exercise of Option Contracts), and Rule 792 (Days and Hours for Options Trading).⁴

Futures contracts and options on identical or substantially similar indexes allow investors and traders to hedge their positions in one contract with positions in the other. The purpose of the proposed rule changes is to coordinate the close of trading in index options on the CBOE, Amex and NYSE with the close of trading in broad-based stock index futures contracts traded elsewhere thus enhancing their ability to use these instruments for hedging purposes.

For example, at present on the CBOE, market makers in the Standard & Poor's ("S&P's") 100 Stock Index ("OEX") frequently assume positions in the S&P's 500 Index Future ("SP") traded at the Chicago Mercantile Exchange ("CME") to hedge their positions in OEX. Conversely, investors and traders with positions in SP often rely upon OEX to hedge their futures positions. Because trading at CBOE ceases at 3:10 p.m. (Chicago time) while trading at CME continues until 3:15 p.m., investors and market makers with positions in both OEX and SP are unable to adjust their positions in the former in response to price movements in the latter during the last five minutes of trading.

On the NYSE, investors with positions in NYSE Composite Index futures traded on the New York Financial Futures Exchange ("NYFE") frequently offset those positions with options positions on the NYSE Composite and Double Indexes. Conversely, positions held in NYSE index options are offset with positions in NYSE Composite Index futures. NYSE indicates that the current difference in closing times hobbles the adjustment of risk by investors and traders with futures-options offsetting positions. NYSE believes that synchronizing the closing times for the options and futures contracts will solve this problem.

On the Amex, market participants frequently assume positions in the Major Market Index ("XMI") futures contracts traded on the Chicago Board of Trade

⁴ Changes to NYSE Rule 717.10(c) clarify that open trading in all index option series continues until the close of trading, even on the business day prior to expiration, and that should be closing rotation in index options be necessary, it should commence at 4:15 p.m. as well. Amendments to Rule 780.10 extend the deadline for submission of exercise memoranda and advices to 4:15 p.m. to coincide with the end of trading.

("CBT") to hedge their positions in XMI options. Amex desires to coordinate the daily close of trading in XMI options with the 4:15 p.m. (3:15 p.m. Chicago time) close of trading in the CBT's XMI futures contracts. As present, market participants who assume positions in both XMI futures and options contracts are unable to adjust their positions in the XMI options in response to price movements in the XMI futures during the last five minutes of trading.

In addition to providing market participants with the opportunity to more fully hedge their positions, identical index option and futures closing times should provide a proportional increase in trading volume and add to the depth and liquidity of the market in index options.

The rule changes will also benefit market participants by ensuring the availability of last sale information of the respective indexes' component stocks. Currently, the tape "run-off" showing the last sales of the various indexes' component stocks occasionally continues beyond 4:10 p.m. (3:10 p.m. Chicago time). Extending the index option trading day by five minutes will enable market participants to take such information into account in their trading activity.

For these reasons, the Commission finds that the CBOE's 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.

The Commission finds good cause for approving the Amex and NYSE proposed rule changes prior to the thirtieth day after the date of publication of the proposals in the *Federal Register* in that both proposed rule changes are substantially identical to the CBOE proposal which was noticed for comment for the full 21 day comment period and is being approved herein by the Commission. No comments on the CBOE proposal were received by the Commission. The Commission believes that extending the trading hours of index options to coordinate with the hours of trading of similar futures indexes will provide index options market participants with the opportunity to adjust index options positions to reflect price changes in corresponding futures indexes, thereby promoting fair hedging opportunities, enhanced last sale information and adding to the depth and liquidity of the market in index options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the

proposed rule changes are approved. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 27, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-4886 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Heating; Cincinnati Stock Exchange, Inc.

February 25, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Triangle Industries, Inc., Cumulative Preferred Stock, \$1.00 Par Value, (File No. 7-8845).

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 19, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,
Secretary.

[FR Doc. 86-4931 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22948; File No. SR-MSRB-86-2]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street NW., Washington, DC 20036-2491, submitted on January 2, 1986, 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 establish a new rule governing transfer of customer accounts from one municipal security broker or dealer to another.

Notice of the proposed rule change was given by the issuance of Securities Exchange Act Release No. 22810 (January 17, 1986) and by publication in the *Federal Register* (51 FR 3288, January 24, 1986). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B(b)(2)(c) 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: February 25, 1986.

John Wheeler,
Secretary.

[FR Doc. 86-4932 Filed 3-5-86; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements 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.

DATE: Comments should be submitted within 21 days of this publication in the *Federal Register*. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Copies of the forms, request for clearance (S.F. 83), supporting statement, instructions, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency clearance officer: Richard Vizachero, Small Business Administration, 1441 L Street, NW., Room 200 Washington, DC 20416 Telephone: (202) 653-8538

OMB Reviewer: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget New Executive Budget New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-3785

Title: Application for a Certificate of Competency

Form Nos. SBA 74, 74A, 74B, 183 Frequency: On occasion

Description of Respondents: The information obtained from the completed forms, will be used by the Small Business Administration to determine if the applicant (small concern) has the responsibility to perform a specific Government contract.

Annual Responses: 1900

Annual Burden Hours: 5700

Type of Request: Extension

Dated February 27, 1986.

Richard Vizachero,
Chief, Administrative Procedures and Documentation Section, Small Business Administration.

[FR Doc. 86-4839 Filed 3-5-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/947]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee will conduct an open meeting on March 27, 1986 at 9:30 AM in Room 6319 of U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington.

The purpose of the meeting is to review the results of the 55th Session of the International Maritime Organization Legal Committee, and to consider the U.S. position for the 56th Session. The 56th Session will be held in London on April 7-11, 1986.

At the 56th Session, the Legal Committee will continue its preparation of a draft Convention on salvage. The Legal Committee will also consider an UNCTAD proposal to establish a joint IMO/UNCTAD working group to address the international regime of maritime liens and mortgages. Finally, the Committee will consider a proposed resolution regarding participation in official inquiries into maritime casualties.

Members of the public may attend up to the seating capacity of the room.

For further information, contact Captain Frederick F. Burgess, Jr., U.S. Coast Guard (G-LMI), Washington, D.C., Telephone (202) 426-1527.

Dated: February 26, 1986.

Richard C. Scissors,

Director, Shipping Coordinating Committee.

[FR Doc. 86-4918 Filed 3-5-86; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION**Coast Guard****Seminar on Annex II of the 1973 International Convention for the Prevention of Pollution From Ships (MARPOL 73/78)**

AGENCY: Coast Guard, DOT.

ACTION: Notice of Annex II seminar.

SUMMARY: The purpose of this notice is to inform the public of a seminar that will be conducted by the Coast Guard on April 9, 1986 to discuss Annex II of MARPOL 73/78. Annex II controls operational and accidental pollution from ships carrying hazardous chemicals in bulk and affects the ports and terminals at which the vessels are loaded and unloaded. Written comments and questions concerning Annex II requirements submitted during the comment period will be responded to at this seminar.

DATES: The seminar will take place on April 9, 1986 from 9:30 A.M. to 3:30 P.M. Any questions and comments to be responded to at this seminar must be submitted by March 26, 1986.

Place: Room 2415, 2100 Second Street SW., Coast Guard Headquarters, Washington, DC.

ADDRESSES: Persons interested in attending or in submitting any questions and comments should write to U.S. Coast Guard (G-MTH-1), 2100 Second Street SW., Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT:

For any questions regarding the Annex II Seminar or this notice, contact Ms. Barylski, Hazardous Materials Branch (G-MTH-1), Room 1214, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593; (202) 426-1217, from 7:00 a.m. to 3:30 p.m., Monday through Friday, except federal holidays.

SUPPLEMENTARY INFORMATION: This seminar is open to the public, but attendees must pre-register. Those interested in attending must notify Ms. Barylski (see **FOR FURTHER INFORMATION**) by April 2, 1986.

The Coast Guard will hold this seminar to inform the marine chemical transportation industry of impending

requirements of Annex II of the MARPOL Protocol (MARPOL 73/78) (International Convention for the Prevention of Pollution from Ships, 1973 (done at London November 2, 1973), as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (done at London February 17, 1978). The purpose of Annex II of MARPOL 73/78 is to control operational and accidental pollution from ships carrying hazardous polluting chemicals in bulk. Annex II will affect ocean going chemical vessels that transport polluting chemicals in bulk and the ports and terminals at which these chemicals are loaded and unloaded. These requirements will be discussed at this seminar, however, primary emphasis will be on vessel requirements. A public meeting is planned for discussing Annex II requirements for reception facilities. This meeting will be announced in a future Federal Register. The following IMO (International Maritime Organization) Papers will be included in discussions:

1. MARPOL Annex II as amended by the 22nd session of the IMO Marine Environment Protection Committee;
2. Unified interpretations of Annex II;
3. Standards for the Procedures and Arrangements for the Discharge of Noxious Liquid Substances;
4. Amendments to the Bulk Chemical Code and the International Bulk Chemical Code that include pollution concerns;
5. IMO Guidelines on the Provisions of Adequate Reception Facilities in Ports, Part II (Noxious Liquid Substances).

Members of the U.S. SOLAS Working Group on Bulk Chemicals will be mailed copies of these IMO papers. Others interested in obtaining copies in advance of the meeting may do so by a telephone or written request (see **FOR FURTHER INFORMATION**). Additional copies will be available at the meeting. Seminar Outline:

1. Introduction and opening remarks.
2. Introduction to IMO papers.
3. Requirements for ocean going chemical tank vessels.
4. Question and answer period on vessel requirements for comments received prior to March 26, 1986.
5. As time permits, verbal comments and questions will be answered.

Dated: March 3, 1986.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 86-4912 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration**Radio Technical Commission for Aeronautics (RTCA); Special Committee 151—Airborne Microwave Landing Systems (MLS) Area Navigation Equipment; Meeting**

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing Systems (MLS) Area Navigation Equipment to be held on April 2-4, 1986, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of the Minutes of the Committee Meeting Held on December 16-18, 1985; (3) Review and Discuss Special Committee 137 (Airborne Air Navigation Systems) and the European Organization for Civil Aviation Electronics (WG-27) Activities; (4) MLS Program Status Report; (5) Technical Presentations; (6) Report of Working Group Activities; (7) Review Sixth Draft of Committee Report on Minimum Operational Performance Standards for Airborne MLS Area Navigation Equipment; (8) Working Groups Meeting in Separate Sessions; (9) Committee Meeting in Plenary Session; (10) Assignment of Tasks; (11) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC on February 26, 1986.

Karl F. Bierach,

Designated Officer.

[FR Doc. 86-4828 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration**Environmental Impact Statement; Madison Co., Illinois**

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a four-lane highway from Federal-Aid Interstate 270 (FAI-270) at the northern terminus of FAI-255 to U.S. Route 67 north of Alton in Madison County, Illinois. The proposed project would be designated Federal-Aid Primary Route 413 (FAP 413).

FOR FURTHER INFORMATION CONTACT: Mr. P.L. Olson, District Engineer, Federal Highway Administration, 320 West Washington Street, 7th Floor, Springfield, Illinois 62701, Telephone: (217) 492-4627. Mr. M.J. Macchio, Engineer of Location and Environment, Division of Highways, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62764, Telephone: (217) 782-1959.

SUPPLEMENTARY INFORMATION: The Proposed Action is to construct a divided, multi-lane highway facility within Madison County, Illinois, beginning at a point of intersection with I-270 at the northern terminus of I-255, and running in north and northwesterly directions to terminate at U.S. Route 67 north of Alton, Illinois. The project corridor is located generally in the urbanizing fringe of several cities and villages in the Illinois portion of the St. Louis Standard Metropolitan Statistical Area (SMSA).

The facility has been designated as Federal-Aid Primary (FAP) Route 413 and will be approximately 20 miles in length.

The need for construction of FAP 413 is based on several major factors including transportation demands, safety considerations, enhancement of economic development, and improved traffic circulation among communities in the project area.

At this time, it has not been determined if the facility will be a fully access controlled freeway or a limited access expressway. However, regardless of the nature of the highway, interchanges or intersections likely will be provided at all State routes and other major high-volume highways. Numerous alignment alternatives are presently being evaluated for the proposed project including the no-action alternative.

A formal scoping process will be undertaken as a part of this project. The process will include meetings, informal coordination, and review sessions as appropriate. The first scoping meeting with interested agencies is scheduled on March 12, 1986. Further details and a scoping information packet may be obtained from Mr. Max Landes, Illinois Department of Transportation, 2300

South Parkway, Springfield, Illinois 62764, Telephone: (217) 785-4315.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on February 24, 1986.

D.L. Merida,

Staff Specialist for Environment.

[FR Doc. 86-4859 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY**Customs Service**

[T.D. 86-55]

Customhouse Broker's License No. 5932; Suspension

Effective upon publication date of this notice, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and Part 111 of the Customs Regulations, as amended (19 CFR Part 111), the individual customhouse broker's license No. 5932 issued to Paul V. McCormack, for the Customs District of New York, New York is hereby suspended for a period of not less than four years. Pursuant to a negotiated settlement between the U.S. Customs Service and Paul V. McCormack, after the four year period has expired, Mr. McCormack may apply for reissuance of customhouse broker's license No. 5932.

Alfred R. DeAngelus,

Acting Commissioner of Customs.

February 27, 1986.

[FR Doc. 86-4909 Filed 3-5-86; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION**Agency Form Under OMB Review**

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C.

Chapter 35). This document contains extensions and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Nancy C. McCoy, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389-2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7316.

Dates: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: February 28, 1986.

By direction of the Administrator.

Randall H. Bryant,

Executive Assistant to the Associate Deputy Administrator for Management.

Extension

1. Department of Veterans Benefits.
2. Compliance Report of Proprietary Institutions.
3. VA Form 27-4274.
4. On occasion.
5. Non-profit institutions; Small businesses or organizations.
6. 367 responses.
7. 367 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Annual Farm and Home Plan for Institutional On-Farm Course of Training (Chapter 31).

3. VA Form 28-1905p.
4. Annually.
5. Individuals or households; Farms.
6. 50 responses.
7. 150 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Request for Leader for Information RE: Status of Loan-Veteran Applied for Subsequent Loan.
3. VA Form Letter 26-247.
4. On occasion.
5. Businesses or other for-profit.
6. 113,268 responses.
7. 9,439 hours.
8. Not applicable.

Extension

1. Office of Construction.
2. Architect-Engineer Fee Proposal.
3. VA Form 08-6298.
4. On occasion.
5. Businesses or other for-profit; Small businesses or organizations.
6. 200 responses.
7. 800 hours.
8. Not applicable.

Extension

1. Department of Veterans Benefits.
2. Request for Identifying Information RE: Veteran's Loan Records.
3. VA Form Letter 26-626.
4. On occasion.
5. Individuals or households; Businesses or other for-profit.
6. 2,400 responses.
7. 200 hours.
8. Not applicable.

[FR Doc. 86-4901 Filed 3-5-86; 8:45 am]

BILLING CODE 8320-01-M

PRESIDENTIAL COMMISSION ON THE SPACE SHUTTLE CHALLENGER ACCIDENT

[Notice 86-18]

Presidential Commission on the Space Shuttle Challenger Accident; Meeting

AGENCY: Presidential Commission on the Space Shuttle Challenger Accident.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the Commission announces a forthcoming meeting.

DATE AND TIME: March 6, 1986, beginning at 9:30 a.m.

ADDRESS: NASA Kennedy Space Center, Galaxy Theater, Visitor's Center, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Dr. Alton G. Keel, Executive Director, Presidential Commission on the Space Shuttle Challenger Accident (202/453-1797).

Purpose of meeting: To review photographic and film evidence of the Space Shuttle Challenger launch and accident and to receive testimony on the results of failure analysis.

SUPPLEMENTARY INFORMATION: The Presidential Commission on the Space Shuttle Challenger Accident was established as a group of distinguished leaders of the government and the scientific, technical and management communities to investigate the accident of the Space Shuttle Challenger which occurred on January 28, 1986.

Exceptional circumstances requiring less than 15 days notice: the meeting is required to be held promptly due to the Presidential direction that the Commission investigate the January 28, 1986, Space Shuttle Challenger accident and submit a final report to the President and the Administrator of the National Aeronautics and Space Administration within 120 days of issuance of Executive Order 12546, dated February 3, 1986.

Type of meeting: Open.

March 5, 1986.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 86-5110 Filed 3-5-86; 12:22 pm]

BILLING CODE 7510-01-M

Sunshine Act Meetings

Federal Register

Vol. 51, No. 44

Thursday, March 6, 1986

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

COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Washington, DC, Room 512.

DATE AND TIME: Friday, March 7, 1986, 9:00 a.m.-5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of Last Meeting
- III. Staff Director's Report for January
 - A. Status of Funds
 - B. Personnel Report
 - C. Office Directors' Reports
- IV. Resolution Authorizing Further Hearing on Protection of Handicapped Infants
- V. Consideration of the Statement on Indian Rights in Northern Wisconsin
- VI. Consideration of the Central States SAC report, *State Enforcement of Nondiscrimination Requirements in Education programs*
- VII. Further Discussion of Project Concepts
- VIII. Panel Presentation on Religious Discrimination Issues
- IX. Civil Rights Developments in the Rocky Mountain Region

PERSON TO CONTACT FOR FURTHER

INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376-8312.

Lawrence B. Glick,
Solicitor.

[FR Doc. 86-4934 Filed 3-3-86; 4:39 pm]

BILLING CODE 6335-01-M

2

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 11, 1986 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437, and 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, March 13, 1986 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of Minutes
Draft AO 1986-7

William B. Dosland, American Crystal Sugar Company
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer,
Telephone: 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 86-5039 Filed 3-4-86; 3:53 pm]

BILLING CODE 6715-01-M

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PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: March 12-13, 1986, 9:00 a.m.

PLACE: Council Offices, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

1. Staff Presentation on Bonneville Power Administration, Corps of Engineers, Bureau of Reclamation, and Federal Energy Regulatory Commission Fiscal Year 1987 Budget.
2. Modeling of Salmon and Steelhead Life Cycles.
3. Public Comment on Issue Paper on Wildlife Mitigation for Hungry Horse Dam.
4. Council Business.
5. Public Comment.

FOR FURTHER INFORMATION CONTACT:

Ms. Bess Atkins at (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 86-4953 Filed 3-4-86; 10:15 am]

BILLING CODE 0000-00-M

4

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 6199 February 20, 1986].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, February 11, 1986.

CHANGE IN THE MEETING: Additional item.

The following item was considered at a closed meeting held on Thursday, February 20, 1986, following the 10:00 a.m. open meeting.

Consideration of *amicus* participation.

Chairman Shad and Commissioners Cox, Peters, Grundfest and Fleischman determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ronald A. Schy at (202) 272-2468.

John Wheeler,

Secretary.

February 28, 1986.

[FR Doc. 86-5040 Filed 3-4-86; 3:58 pm]

BILLING CODE 8010-01-M

5

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [51 FR 6613 February 25, 1986].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, February 20, 1986.

CHANGE IN THE MEETING: Additional item/meeting.

The following additional item was considered at a closed meeting held on Tuesday, February 25, 1986, at 2:30 p.m. Litigation matter.

The following items were considered at a closed meeting held on Thursday,

February 27, 1986, following the 10:00 a.m. open meeting.

Consideration of *amicus* participation.

Subpoena enforcement action.

Chairman Shad and Commissioners Cox, Peters, Grundfest and Fleischman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272-2092.

John Wheeler,

Secretary.

February 28, 1986.

[FR Doc. 5041 Filed 3-4-86; 3:59 pm]

BILLING CODE 8010-01-M

14 CFR Part 36

**Thursday
March 6, 1986**

Part II

**Department of
Transportation**

Federal Aviation Administration

14 CFR Part 36

**Noise Standards for Helicopters in the
Normal, Transport, and Restricted
Categories; Proposed Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. 24929; Notice No. 86-3]

Proposed Noise Standards for Helicopters in the Normal, Transport, and Restricted Categories**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to revise noise certification standards for aircraft to add provisions applicable to helicopters. These proposals would apply to civil helicopters in the normal, transport, and restricted categories, and would provide noise level limits and test procedures for the issuance of original and amended type certificates. The notice also proposes to prohibit changes in type design of helicopters that might increase their noise levels beyond certain limits. While this notice contains several provisions similar to those contained in an earlier notice withdrawn in 1981, it differs from that notice in several important aspects. One of these is the absence of any proposal to limit the further manufacture of older non-complying helicopter types; another is the commonality between the proposed standards and those adopted by the International Civil Aviation Organization (ICAO). The FAA believes that these rules are necessary to provide current and future relief and protection to the public health and welfare from the noise of affected helicopters.

DATE: Comments must be received on or before June 5, 1986.**ADDRESSES:**

Send comments on the proposed rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24929, 800 Independence Avenue, SW., Washington, D.C. 20591;

Or deliver comments in duplicate to: FAA Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591

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

FOR FURTHER INFORMATION CONTACT: Mr. Richard Tedrick, Noise Policy and Regulatory Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755-9027.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasonable regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposals. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24929." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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

Synopsis of the Proposal

Part 36 of the Federal Aviation Regulations (14 CFR Part 36) contains noise standards for aircraft type and airworthiness certification. As the part is currently organized, Subparts B and C and Appendices A, B, and C apply to

transport category large airplanes and subsonic turbojet powered airplanes regardless of category. Appendix F contains the provisions applicable to propeller-driven small airplanes. This notice proposes to prescribe noise levels and test procedures for civil helicopters certificated in the normal, transport, and restricted categories. These proposals include rules governing the issuance of original and amended type certificates for helicopters for which application is made on and after the adoption date of this proposed amendment. The proposed rule would prohibit certain growth or other design changes if those changes might result in noise levels beyond prescribed limits. The proposed rule also provides the test conditions and procedures for conducting helicopter noise tests to demonstrate compliance with the prescribed noise levels, including the technical noise measurement and evaluation specifications employing Effective Perceived Noise Level (EPNL) as the evaluation unit.

The proposed helicopter noise standards, if adopted, would have the following effects:

A. Certification Procedure Provisions

FAR Part 21, as amended would prescribe the procedural requirements for noise certification of civil helicopters certificated in the normal, transport, and restricted categories. Those proposed amendments apply to issuance of new type certificates in the normal, transport, or restricted categories for which application is made on or after the publication date of this notice. The effect of these provisions would be to prohibit issuance of the affected certificates after the effective date of the amendments for helicopters which have not been shown to comply with the applicable noise requirements of Part 36. Thus, newly type certificated helicopters (except those for which application was made before the publication date of this notice) would be required to comply with Part 36 noise standards. Further, proposed "acoustical change" provisions would prescribe requirements for certain changes in type design of helicopters which might increase their noise levels. Appropriate references to Part 36 acoustical change requirements would be contained in Part 21. The proposed acoustical changes for helicopters would apply to any type design change (including operational limitations) that the Administrators determines might increase noise levels of that helicopter, such as changes in rotor size or trim, rpm, number of blades, weight or power. Under the

proposal, test procedures, conditions, and noise limits for acoustical changes would be prescribed under Part 36.

B. Noise Standard Provisions

FAR Part 36 would be amended to prescribe noise standards for civil helicopters certificated in the normal, transport, and restricted categories. Those provisions are similar to those currently applicable to many other aircraft under Part 36 and are summarized as follows:

1. *General.* The general provisions of Part 36, Subpart A, would be amended to provide applicability, definitional, and acoustical change provisions covering civil helicopter noise certification. For example, the word "aircraft" is substituted for "airplane" in those provisions whose applicability simply would be expanded to include helicopters. Under the proposal, definitions identify two "stages" or levels of noise ("Stage 1" and "Stage 2" helicopter noise levels). Stage 2 helicopters are those which have been shown to comply with the proposed Stage 2 noise levels. Stage 1 helicopters are those which have not been shown to comply.

A new section would be added to prescribe noise requirements for those changes in type design defined as "acoustical changes" under FAR Part 21. Those provisions would apply to acoustical change approvals applied for on and after the publication date of this notice. Specifically, Stage 1 helicopters would be prohibited from increasing any noise level (takeoff, flyover, or approach) after a change in the type design. For acoustical changes in Stage 1 helicopters, the proposed tradeoff provisions could not be used to increase any Stage 1 noise level. A Stage 2 helicopter before a change in type design could not be a Stage 1 helicopter after the design change. It should be noted that the ICAO standards applying to acoustical changes of Stage 1 helicopters are more stringent than those proposed herein. Under ICAO Annex 16, all helicopters must meet the Stage 2 limits after such a change.

As proposed, the helicopter noise standards would apply to all helicopters, as defined under FAR Part 1, except helicopter configurations designated exclusively for agricultural aircraft operations, for dispensing fire fighting materials, or for carrying external loads. This exception is similar to the one for small propeller-driven airplanes, but it is especially important for helicopters since nearly every type has provisions for at least occasionally carrying external loads. Such loads would make it extremely difficult to

meet either the weight or performance requirements; thus, the proposed noise standards would only apply to internal load configurations. On the other hand, an exclusion of all helicopters with external load capability would defeat the entire purpose of the regulation, unless that exclusion applies only to those aircraft type certificated exclusively for external load operation. It should be noted that it is proposed to make these standards applicable to type certification actions for which applications are received on or after the date of this notice. The intent here is to preclude premature applications by those seeking to avoid compliance with the proposed standards.

At a May 1983 ICAO meeting in Montreal, U.S. helicopter manufacturers suggested excluding helicopters "designed for mineral exploration and recovery, off shore, ranching, or similar remotely located purposes." ICAO did not accept the proposal and FAA has not included it in this notice, since it is felt that the wording is too broad and might reasonably include every current and future helicopter type. The FAA solicits public comment on this issue.

2. *Manuals, Markings, and Placards.* The Part 36 provisions regarding requirements for operating limitations in manuals, markings, and placards under current Subpart G would be redesignated under Subpart H and amended to extend their applicability by including approved Rotocraft Flight Manuals, manual materials, or placards, as appropriate.

3. *Helicopter Noise Rule.* A proposed new Subpart H to Part 36 would prescribe the basic requirements for demonstrating compliance with the helicopter noise rules. The technical standards, conditions, and procedures for conducting helicopter noise tests and the helicopter noise limits under the proposed new Appendix H are specifically referenced.

4. *Noise Measurement and Evaluation.* The proposed new Subpart H to Part 36 would contain, among other things, the technical noise measurement and evaluation specifications for conducting helicopter noise tests. With exceptions necessary to account for the unique operating characteristics of helicopters, the FAA proposes to apply the specifications currently applicable to tests of transport category large airplanes and turbojet-powered airplanes under Appendices A and B of Part 36 (as amended by FAR Amendment 36-9; 43 FR 8731, March 2, 1978 and as may be amended as a result of Notice 85-2, 50 FR 4172, January 29, 1985).

Highlights of the proposed differences for helicopter noise test under Appendix H from the requirements of Appendices A and B may be summarized as follows:

(a) Three noise test series would be used—takeoff, flyover, and approach noise series with simultaneous measurements for each test series at a flight-track noise measuring station and two sideline noise measuring stations, one on each side of the reference flight track.

(b) The helicopter's height and lateral position over the noise measuring station would be relative to the center line of the reference flight path rather than the runway.

(c) The approach angle for the helicopter approach noise test would be $6^\circ (\pm 0.5^\circ)$ rather than $3.0^\circ \pm 0.5^\circ$.

(d) Numerous symbols and units for helicopter noise certification would be substituted for airplane noise symbols under the § A36.7 "Flight Profile Identification Positions" and "Distance-Unit-Meaning" descriptions used in Part 36. The proposal includes graphic depictions and textual descriptions of the various helicopter test profiles.

Comments are specifically invited on the appropriateness of the proposed flight procedures. While it is necessary to specify rigid reference flight path profiles so that the corrected data may be compared to the standard (and to each other), some leeway in test profiles is necessary to allow realistic variations in aircraft performance and piloting techniques.

Another issue upon which the FAA solicits comments is the need for a "no-correction window." The ICAO standard does not require adjustment of the reported noise levels for small variations from reference conditions of flight path, airspeed, weight, ambient temperature and relative humidity, and rotor rpm. This notice would not exclude these corrections. The FAA believes that since the measurements have to be made anyway, either to make corrections or to determine which are inside the "window", it serves no purpose to avoid making all appropriate corrections. Cost savings, if any, would be negligible and would be far outweighed by the quality of the data available to the applicants.

5. *Noise Levels.* The proposed new Appendix H to Part 36 would also contain the provisions governing helicopter noise levels for which compliance must be shown by actual flight tests. Those provisions include: (1) "Stage 1" and "Stage 2" noise limits for each test series (related to the maximum certificated takeoff weight of the helicopter); (2) tradeoff provisions

(governing limited "exceedances" of noise levels for one or two test series when completely offset by reductions in the noise levels of the other required noise levels); and (3) separate test conditions for each of the three noise test series (including requirements for airspeed, altitude, or operational profile over the noise measuring station, power, and helicopter position relative to the flight-track noise measuring station).

"Stage 1" noise limits represent the prohibition on noise level increases prescribed for "acoustical changes" of those helicopters which cannot achieve Stage 2 noise levels before a change in type design. "Stage 2" noise limits would be prescribed separately for the three test series (takeoff, flyover, and approach). The respective noise levels would range, according to maximum certificated weights of the helicopter, between 89 and 109 Effective Perceived Noise Level in decibels (EPNdB) for takeoff, between 88 and 108 EPNdB for flyover, and between 90 and 110 EPNdB for approach. Under the proposal, the highest noise limit applies to maximum weights of 176,370 pounds or more, which is reduced by 3.01 EPNdB for incremental, 50% reduction ("halving") of the 176,370-pound weight down to the lowest noise limit, which applies to maximum weights of 1,764 pounds or less.

Tradeoffs of any "exceedances" would be limited to a sum not greater than 4 EPNdB with no single exceedance greater than 3 EPNdB consistent with the ICAO standard. For turbojet powered airplanes, these numbers are 3 and 2, respectively. The exceedances must be completely offset by noise levels below those required at the other two points.

As proposed, the noise level limits would apply to helicopters of all weights, just as the noise level limits for other categories of aircraft are applied. However, few United States civil helicopters have maximum weights above 50,000 pounds. Therefore, the FAA is considering a proposal from the Helicopter Association International for an alternative limit. Under this alternative, the noise level limits proposed in this notice for takeoff, approach, and sideline would end at an upper weight of 56,000 pounds. Accordingly, comments are specifically invited regarding the appropriate upper bound to the weight versus noise standards proposed herein.

For the purposes of considering compliance with the acoustical change provisions, this notice would allow the first civil derivative of a military helicopter to be treated as though the military "parent" were a Stage 1 civil

helicopter whose noise levels are more than two decibels above the Stage 2 noise level limit. This would have the effect of removing the requirement for noise data from the parent aircraft. Among the reasons for proposing this are: (1) Lack of availability of noise level data for military aircraft and; (2) the costs associated with performing tests on both versions. It should also be noted that the term military aircraft includes those operated by the U.S. Coast Guard.

6. *Applicability to current production types.* As mentioned earlier, the rule proposed in this notice would not be applicable to helicopter types currently in production as long as they are not changed to increase their noise (an "acoustical change"). However, public comment is invited on the economic reasonableness and technological practicability of adding such a provision. Specifically, comments are sought on the following questions:

(a) Would such a rule be appropriate for application to helicopters currently in production.

(b) What effective date (such as January 1, 1990) would best balance the legitimate concerns of all affected parties?

(c) Should such a rule be applied across the board to all helicopter types of should military derivatives be exempted?

Regulatory History

On December 28, 1973, the FAA published an advanced notice of proposed rulemaking (ANPRM) (Notice No. 73-32; 38 FR 35487) in which it announced that it was considering proposing noise standards for aircraft that were expected to be developed for efficient short stage length operations. It was anticipated that such a class of aircraft, referred to as "short-haul," would include aircraft having short, reduced, or vertical (or near vertical) takeoff and landing capabilities. Since the noise technologies appropriate to those aircraft as a separate class required further study, original FAR Part 36 in 1969 did not prescribe separate rules for those aircraft; some, such as helicopters, were not covered by any regulation. Notice No. 73-32 (ANPRM) was issued as part of an additional study to invite early public participation in the identification and selection of a course, or alternative courses, of action concerning development of proposed noise standards which would provide relief and protection to the public health and welfare from aircraft noise.

On July 9, 1979, a notice of proposed rulemaking (NPRM) (Notice No. 79-13; 44 FR 42410) was published by the FAA. This notice proposed helicopter noise

certification standards and limits on further production of older, noisier helicopter types. The procedures proposed for noise testing were similar (although not identical) to those proposed in this notice; however, the proposed noise level limits were significantly more stringent. Information submitted to the Docket revealed that the economic impact of limiting future production of existing helicopter types might result in an impact of several hundred million dollars, due to the general unavailability of an effective noise abatement technology to meet the specified noise levels. After careful consideration of the economic impacts of the proposed rule and of the Docket comments on the effects of those impacts, Notice No. 79-13 was withdrawn (December 17, 1981; 46 FR 61486). At the time of withdrawal, the FAA stated that the action neither precluded consideration of similar proposals in the future nor committed the agency to any further or future course of action on this subject.

In the time period since Notice No. 79-13 was withdrawn, the FAA has continued to study the issues surrounding noise level certification of helicopters. One of these is the ICAO rule, contained in Annex 16, Chapter 8. The United States has been an active participant in modifications to that rule (including raising the allowable noise levels) with the aim of bringing into better balance the economic costs and the environmental benefits.

Aircraft Noise Rules

Public Laws 90-411 and 92-574 were enacted to provide the statutory basis under the Federal Aviation Act of 1958, (the Act) for relief and protection to the public health and welfare from noise and sonic boom from civil aircraft. Under the Act, the Federal Aviation Administrator, after consultation with the Secretary of Transportation and the Administrator of The Environmental Protection Agency, is responsible for the adoption and amendment of rules which prescribe the necessary standards and regulations. On November 3, 1969, the Administrator adopted FAR Part 36 entitled "Noise Standards: Aircraft Type Certification" (34 FR 18355; November 18, 1969). That regulation initiated the FAA noise abatement regulatory program under the new statutory authority. It prescribed noise type certification standards for subsonic transport category large airplanes and for subsonic turbojet powered airplanes regardless of category. Part 36 also prescribed the technical specifications for measuring and evaluating flight test

noise data in demonstrating compliance with prescribed noise level limits.

In promulgating proposals and amendments under the authority of § 611 of the Act, factors which the FAA must consider include the following:

1. Available data relating to aircraft noise, including results of research, development, testing, and related evaluation activities.
2. The views and position of other Federal, state and interstate agencies.
3. Whether the proposed regulations are consistent with the highest degree of safety in the air commerce or air transportation in the public interest.
4. Whether proposed regulations are:
 - a. Economically reasonable;
 - b. Technologically practicable; and
 - c. Appropriate for the particular type of aircraft, aircraft engines, appliances, or certificates to which they would apply.

5. The extent to which the proposed regulations contribute to providing protection to the public health and welfare by carrying out the purposes of section 611 of the Act. The overall environmental impacts of the proposed regulations (including environmental factors other than noise) must be assessed in accordance with the National Environmental Policy Act of 1969, and implementing Federal guidelines and directives.

Need for Regulation

The latest industry directory of helicopter operators in the United States, Canada, and Puerto Rico lists 2,441 U.S. (including Puerto Rico) operators in 1982 using a fleet of 7,388 helicopters. The number of U.S. business/executive operators of helicopters in 1982 increases to 1,575 craft and U.S. commercial helicopters accounted for 4,627 craft. A 1984 industry directory of helicopters also indicated that there are 4,020 public and private heliports and helistops in the United States. Approximately 9 percent of these heliports are rooftop facilities located in urban areas.

Heliports are being used for emergency, automobile traffic control, and law enforcement vehicles. Victims of traffic accidents, natural disasters, or other emergencies are frequently transported by helicopter directly from the scene to hospitals or shock trauma centers. There were 1,071 hospital heliports in the United States listed in the industry directory.

The emergency rescue capability of helicopters is fully recognized by responsible officials in several major metropolitan areas today. For example, city ordinances in Chicago and Los Angeles require that buildings above a

certain height be provided with rooftop emergency landing facilities for helicopters because modern fire-fighting apparatus cannot reach above eight floors. As other governments recognize the need to provide increased protection for high-rise inhabitants, the number of heliports for both routine and emergency uses may increase significantly.

The growing civil helicopter fleet combined with increased and more diversified uses of helicopters has intensified the demand for establishing additional heliports. However, environmental concerns have slowed the rate of heliport establishment and, in some instances, has caused various restrictions to be imposed on heliport operations.

In other cases, environmental pressure has forced closing of certain heliports with the resultant loss of helicopter services at those locations. The FAA believes that the adoption of appropriate helicopter noise standards will help alleviate the adverse impacts on the public by reducing both the noise levels of helicopters and the trends toward impairing or losing the benefits of their services in the air transportation system.

One of the key issues in the withdrawal of Notice 79-13 was the general unavailability of effective noise abatement technology. As a result, an accelerated joint research program was set up in 1982 by the National Aeronautics and Space Administration (NASA), the FAA, and American helicopter manufacturers. This National Rotorcraft Noise Research Program is a five-year twenty-million dollar cooperative effort under the technical guidance of NASA. It has two major goals: The development of noise abatement technology for reducing helicopter external noise levels and the development of detailed parametric noise prediction techniques. This program is expected to furnish the technological basis for helicopter noise reduction into the twenty-first century and could significantly lower the cost impacts of the application of that technology. At the conclusion of the program, the FAA will consider the appropriateness of lowering the noise certification levels of helicopters.

The FAA, however, does not consider it appropriate in light of the considerations listed in section 611 of the Act to delay all rulemaking on noise standards for helicopters until such times as the cooperative research program is completed.

The FAA has reviewed the helicopter as a noise source affecting persons and property in the areas in which they operate. As a result, the FAA believes

that it should now adopt appropriate helicopter noise regulations to provide the necessary relief and protection to the health and welfare contemplated by section 611 of the Act. The proposals contained in this notice, if adopted, will achieve that objective by preventing further escalation of helicopter noise levels and laying the regulatory foundation for assuring that future helicopter types and eventually all newly produced helicopters of older type designs comply with firm but realistic noise standards. The FAA has determined that sufficient noise control technology exists to meet the considerations under section 611(d) of the Act. Economic aspects of the need for the proposed regulations are discussed in more detail in the regulatory assessment prepared in conjunction with this notice, and placed in the Docket. However, it should be noted that U.S. manufacturers of rotorcraft are already subject to the ICAO noise certification standards for each heliport type that they wish to export. Since exports account for approximately 40 percent of the civil sales of U.S. helicopter manufacturers and since the standards proposed in this notice (except for "acoustical changes" of older, Stage 1 aircraft) are nearly identical to ICAO's, only minimal costs impacts are expected from this standard. Offsetting these minimal costs are savings which will accrue to American manufacturers by certifying in the U.S. rather than in foreign countries.

Rule Structure

As part of this proposal, the FAA is considering some reorganization and restructuring of certain portions of current Part 36 without any change in their substance. In order to improve their usefulness and understandability, the FAA believes that the technical provisions governing the measurement and evaluation of aircraft noise test data under Appendices A and B should contain only those matters that apply generally to all noise tests for all regulated classes of aircraft which employ EPNL as the qualifying unit. Those provisions which affect each particular regulated class should be prescribed separately in provisions that apply only to that class. In that way, the FAA believes that potential confusion over which portions of Appendices A and B apply in measuring and evaluating noise levels in terms of Effective Perceived Noise Levels (EPNL) would be eliminated since those provisions would apply generally unless otherwise expressly provided in those

provisions applicable to the particular regulated class of aircraft.

Since Appendices A and B currently apply to only one regulatory class, transport category large airplanes and turbojet powered airplanes under Subpart C of Part 36, the current regulation achieves that objective. However, if a proposed noise standard for helicopters or any future regulatory class is adopted, the technical specifications would apply to additional regulatory classes and, thus, the statement of regulation would become more complex. Accordingly, comments are specifically invited regarding whether those provisions should be restructured, and, if so, specifically how should it be done in order to improve the presentation and the statement of the rules while retaining their substantive content. In order to indicate those substantive areas under the proposal which differ from the requirements of current Appendices A and B (as applied to transport category large airplanes and turbojet powered airplanes), the proposed helicopter noise rule contained in this notice states that the provisions of Appendices A and B apply, except as otherwise provided under proposed requirements that apply only to noise tests for helicopters.

Regulatory Impact Evaluation

The FAA conducted a detailed regulatory evaluation which is included in the regulatory docket. This evaluation reviews all proposed changes to Parts 21 and 36. The FAA determined that the NPRM is consistent with the objectives of Executive Order 12291 and does not impose an unnecessary or unreasonable regulatory burden on the private sector or on the public.

The amendments proposed in the NPRM would provide benefits in the aggregate that would outweigh the costs associated with compliance. Specifically, the benefits would be associated with the greater acceptability of helicopters and heliports in urban environments and the increased markets for helicopters and helicopter services that would ensue. Thus, the economic benefits would accrue not only to the manufacturers and operators, but to the general public as well. The environmental benefits would accrue mainly to those working or residing near heliports, although some noise level improvements can be expected near helicopter flight corridors.

Costs would result from increased development and certification expenses borne originally by the manufacturers but which would be passed on to the operators of helicopters and eventually on to the aviation public. These costs

would be mitigated by three factors: (1) The proposed noise levels are more realistic than earlier proposals and they represent attainable goals with today's technology; (2) the National Aeronautics and Space Administration has underway a joint helicopter noise reduction technology program with U.S. manufacturers and the FAA to improve the state-of-the-art and to lower the cost of application; and (3) all helicopter models for export will be required to comply with the ICAO noise standards even if the U.S. does not adopt the proposals contained in this notice.

Regulatory Flexibility Determination

As detailed in the evaluation, the only cost associated with the proposed changes to FAR Part 36 will be the cost to manufacturers related to the noise certification test. However, no domestic helicopter manufacturer is considered a small entity as is currently defined. Therefore, it is certified that the proposal, if enacted, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Analysis

Pursuant to Department of Transportation "Policies and Procedures for Considering Environmental Impacts" (FAA Order 1050.1D), the FAA has determined that this proposal would not constitute a major federal action significantly affecting the quality of the human environment. The proposed amendment would have the effect of limiting the growth of noise from new helicopter types and derivatives of existing types. This, in turn, would reduce noise levels around heliports and, to some extent, under helicopter flight corridors when compared to unconstrained growth. Since it would take from five to fifteen years after adoption for a significant number of affected aircraft to enter the nation's fleets, little noticeable short-term general effect is expected. However, some helicopter operations and heliports are expected to be designed based upon the lower noise capabilities of newer aircraft, making site-specific improvements in the noise environment. Therefore, no environmental assessment or environmental impact statement was prepared.

Trade Impact Analysis

There would be little or no impact on U.S. or foreign trade if this proposal were adopted. Absent the rule, U.S. helicopter exports may be placed at a comparative cost disadvantage since each helicopter model would be

required to meet ICAO standards. The cost of multiple certifications would result in either higher selling prices or lower profits to U.S. manufacturers.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Parts 21 and 36 of the Federal Aviation Regulations (14 CFR Parts 21 and 36) as follows:

PART 21—[AMENDED]

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

Authority: 49 U.S.C. 1341(a), 1343(d), 1348, 1354(a), 1357(d)(2), 1373, 1421 through 1430, 1432, 1443, 1472, 1510, 1522, 1652(c), 1655(c), 1657(f), 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. In § 21.93 by revising paragraph (b) introductory text and by adding a new paragraph (b)(4) to read as follows:

§ 21.93 Classification of changes in type design.

(b) For the purpose of complying with Part 36 of this Chapter, and except as provided in paragraphs (b)(2), (b)(3), and (b)(4) of this section, any voluntary change in the type design of an aircraft that may increase the noise levels of that aircraft is an "acoustical change" (in addition to being a minor or major change as classified in paragraph (a) of this section) for the following aircraft:

(4) Helicopters, as defined under Part 1 of this chapter, except helicopter configurations that are type certificated exclusively for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or designated for dispensing fire fighting materials or for carrying external loads as defined in § 133.1(b) of this chapter, as effective on December 20, 1976. For helicopters to which this paragraph applies "acoustical changes" include the following type design changes:

(i) Any changes to, or removal of, a muffler or other component designed for noise control.

(ii) Any other design or configuration change (including a change in the operating limitations of the aircraft) that, based on approved analytical or test data, the Administrator determines might result in any increase in noise level.

§ 21.115 [Amended]

3. By amending § 21.115 at the end of paragraph (a) by removing the words "§ 36.7 and 36.9 of this chapter" and

substituting for them the words "§§ 36.7, 36.9, or 36.11 of this chapter."

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

4. The authority citation for Part 36 continues to read as follows:

Authority: 49 U.S.C. 1344, 1348, 1354(a), 1355, 1421, 1423, 1424, 1425, 1426, 1429, 1430, 1431(b), 1651(b)(2), 2121 through 2125; 42 U.S.C. 4321 et. seq.; Sec. 124 of Pub. L. 98-473; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 36.1 [Amended]

5. By amending § 36.1 as follows:

a. By adding a new paragraph (a)(4) to read as follows:

(a) * * *

(4) Type certificates, and changes to those certificates, for helicopters, as defined under Part 1 of this chapter, except helicopter configurations designated exclusively for "agricultural aircraft operations" as defined in § 137.3 of this chapter, as effective on January 1, 1966, or for dispensing fire fighting materials or for carrying external loads as defined in § 133.1(b) of this chapter, as effective on December 20, 1976.

b. By amending paragraph (c):

(1) By removing the word "airplane" and substituting for it the word "aircraft"; and

(2) By removing the words "the applicable provisions of § 36.7 or § 36.9 of this part" and substituting for them the words "the applicable provisions of §§ 36.7, 36.9, or 36.11 of this part."

c. By adding a new paragraph (g) to read as follows:

(g) For the purpose of showing compliance with this part, for helicopters in the normal, transport, and restricted categories, the following terms have the specified meanings:

(1) A "Stage 1 noise level" means a takeoff, flyover, or approach noise level greater than the Stage 2 noise limits prescribed in § H36.305 of Appendix H of this part.

(2) A "Stage 1 helicopter" means a helicopter that has not been shown under this part to comply with the takeoff, flyover, and approach noise levels required for Stage 2 helicopters.

(3) A "Stage 2 noise level" means a takeoff, flyover, or approach noise level at or below the Stage 2 noise limits prescribed in section H36.305(a)(2) of Appendix H of this part.

(4) A "Stage 2 helicopter" means a helicopter that has been shown under this part to comply with Stage 2 noise levels (including applicable tradeoffs)

prescribed in section H36.305 of Appendix H of this part.

§ 36.2 [Amended]

6. By revising § 36.2(a) to read as follows:

(a) Notwithstanding § 21.17 of this chapter, irrespective of the date of application in the case of airplanes and on and after (date of publication of this NPRM) in the case of helicopters, each person who applies for a type certificate for an aircraft covered by this part must show compliance with the applicable provisions of this part.

§ 36.3 [Amended]

7. By amending § 36.3 by removing the word "airplane" wherever it appears and substituting for it the word "aircraft".

8. By amending Subpart A by adding a new § 36.11 to read as follows:

§ 36.11 Acoustical change: Helicopters.

This section applies to all helicopters in the normal, transport, and restricted categories for which an acoustical change approval is applied for under § 21.93(b) of this chapter on and after March 6, 1986.

(a) *General requirements.* Except as otherwise provided, for helicopters covered by this section, the acoustical change approval requirements are as follows:

(1) In showing compliance, noise levels must be measured, evaluated, and calculated in accordance with the applicable procedures and conditions prescribed in Parts B and C of Appendix H of this Part.

(2) Compliance with the noise limits prescribed in section H36.305 of Appendix H must be shown in accordance with the applicable provisions of Part D of Appendix H of this Part.

(b) *Stage 1 helicopters.* Except as provided in § 36.805(c), for each Stage 1 helicopter prior to the change in type design, the helicopter may not, after the change in type design, exceed the noise levels specified in section H36.305(a)(1). The tradeoff provisions under section H36.305(b) may not be used to increase any Stage 1 noise level beyond these limits.

(c) *Stage 2 helicopters.* For each Stage 2 helicopter prior to the change in type design, the helicopter must be a Stage 2 helicopter after the change in type design.

By redesignating Subpart G as "Subpart O.—Operating Limitations and Information" and marking Subparts: G, I, J, K, L, M, and N as "[Reserved]"

§ 36.1581 [Amended]

10. By amending § 36.1581 as follows:

a. By amending paragraph (a) after the words "Airplane Flight Manual" in each place where those words appear by adding the words "or Rotorcraft Flight Manual."

b. By amending paragraph (b) in the prescribed statement by deleting the word "airplane" and substituting for it the word "aircraft."

c. By redesignating paragraph (e) as paragraph (f) and revising it to read as follows:

(f) Except as provided in paragraphs (c), (d), and (e) of this section, no operating limitations are furnished under this part.

d. By adding a new paragraph (e) to read as follows:

(e) For normal, transport, and restricted category helicopters for which the weight used in meeting the take-off, flyover, or approach noise requirements of this part is less than the certificated maximum takeoff weight, established under either §§ 27.25(a) or 29.25(a) of this chapter. That lesser weight must be furnished, as an operating limitation, in the operating limitations section of the Rotorcraft Flight Manual, in approved manual material, or on an approved placard.

11. By adding a new Subpart H to read as follows:

Subpart H—Helicopters

Sec.

36.801 Noise measurement.

36.803 Noise evaluation and calculation.

36.805 Noise limits.

Subpart H—Helicopters

§ 36.801 Noise measurement.

For normal, transport, and restricted category helicopters, the noise generated by the helicopter must be measured under Part B of Appendix H of this part or under an FAA-approved equivalent procedure.

§ 36.803 Noise evaluation and calculation.

The noise measurement data obtained under § 36.801 must be evaluated and calculated under Part C of Appendix H of this part or an FAA-approved equivalent procedure.

§ 36.805 Noise limits.

(a) Compliance with this Subpart must be shown and demonstrated at the noise measuring points and under the test conditions prescribed under Part D of Appendix H of this part for helicopters for which application for issuance of a type certificate in the normal, transport, or restricted category is made on or after March 6, 1986.

(b) For helicopters covered by this section, except as provided in paragraph

(c), it must be shown, in accordance with this subpart, that the noise levels of the helicopter are no greater than the applicable limits prescribed under § H36.305 of Appendix H of this part.

(c) For helicopters for which application for issuance of an original type certificate in the normal, transport or restricted category is made on or after (the date of this NPRM), and which the FAA finds to be the first civil version of a helicopter which was designed and constructed for, and accepted for operational use by, an Armed Force of the U.S. on or before (date of this NPRM), it must be shown that the noise levels of the helicopter are no greater than the noise limits for a change in type design as specified in section H36.305(a)(1)(ii). Subsequent civil versions must meet the Stage 2 requirements.

Appendix B [Amended]

12. By amending Appendix B of Part 36, section B36.1 at the end of the first sentence by deleting the words "under section 36.103" and substituting them for the words "under §§ 36.103 and 36.803."

13. By adding a new Appendix H to read as follows:

Appendix H—Noise Requirements for Helicopters Under Subpart H

Sec.

Part A—General

H36.1 Scope.

Part B—Noise Measurement Under § 36.801

H36.101 Noise certification test and measurement conditions.

H36.103 Measurement of helicopter noise received on the ground.

H36.105 Reporting and correcting measured data.

H36.107 Symbols and units.

H36.109 Atmospheric attenuation of sound.

H36.111 Detailed data correction procedures.

Part C—Noise Evaluation and Calculation Under § 36.803

H36.201 Evaluation of measured noise values.

H36.203 Calculation of noise levels.

Part D—Noise Limits Under § 36.805

H36.301 Noise measurement, evaluation, and calculation.

H36.303 Noise measuring points.

H36.305 Noise levels.

H36.307 Takeoff test conditions.

H36.309 Flyover test conditions.

H36.311 Approach test conditions.

Appendix H—Noise Requirements for Helicopter Under Supart H

Part A—General

Section H36.1 Scope. This appendix prescribes noise requirements for helicopters specified under § 36.1 including:

(a) The conditions under which helicopter noise certification tests under Part H must be conducted and the measurement procedures that must be used under § 36.801 to measure helicopter noise during each test;

(b) The procedures which must be used under § 36.803 to evaluate the measured noise data and to calculate the noise evaluation quantity designated as Effective Perceived Noise Level (EPNL); and

(c) The noise limits for which compliance must be shown under § 36.805 at the prescribed noise measuring points under the prescribed test conditions.

Part B—Noise Measurement Under § 36.801

Section H36.101 Noise certification test and measurement conditions. (a)(1) Except as provided in paragraph (a)(2) of this section, the provisions of Section A36.1 Appendix A of Part 36 apply to helicopter noise certification tests conducted under this appendix. Section A36.1 includes requirements governing—

- (i) Test site requirements;
- (ii) Weather restrictions; and
- (iii) Aircraft test procedures.

(2) Notwithstanding the provisions of Section A36.1 of Appendix A to the contrary, the following apply to helicopter noise certification tests:

(i) The test site requirements of paragraph (b) of this section apply to helicopter noise tests. The temperature and relative humidity measured at aircraft altitude and at 10 meters above ground shall be averaged and used to adjust for propagation path absorption.

(ii) The takeoff and approach testing procedure requirements of paragraph A36.1(d) apply to takeoff, and approach noise tests for helicopters, respectively. The requirements of paragraph A36.1(d)(5) also apply to flyover noise tests. The helicopter height and lateral position is relative to the centerline of the reference flight track (which passes through the noise measuring point) rather than the runway.

(iii) The approach angle under paragraph A36.1(d)(6) is $6.0^\circ (\pm 0.5^\circ)$

(iv) Each takeoff must comply with the provisions under Section H36.307 of this appendix.

(v) Each fly-over test must comply with the provisions under Section H36.309 of this appendix.

(vi) Each approach must comply with the provisions under Section H36.311 of this appendix.

(b) Helicopter test site requirements. (1) Tests to show compliance with established helicopter noise certification levels must consist of a series of takeoffs, flyovers, and approaches during which measuring stations are located at the measuring points prescribed in Section H36.303 of this appendix.

(2) Each takeoff test, flyover test, and approach test includes simultaneous measurements at the flight-track noise measuring station vertically below the reference flight path and at two sideline noise measuring stations, one on each side of the reference flight track 492 feet (150m) from, and on a line perpendicular to, the flight track of the noise measuring station.

(3) The height of the ground at either sideline noise measuring station may not differ from that of the flight-track noise measuring station by more than 20 feet.

(4) Each noise measuring station must be surrounded by terrain having no excessive sound absorption characteristics, such as might be caused by thick, matted, or tall grass, shrubs, or wooded areas.

(5) The wind velocity, temperature, and relative humidity measurements required under this appendix must be measured in the vicinity of noise measuring stations 10 meters above the ground. The location of the meteorological measurements must be approved by the FAA as representative of those atmospheric conditions existing near the surface over the geological area which aircraft noise measurements are made. In some cases, a fixed meteorological station (such as those found at airports or other facilities) may meet this requirement.

(6) During the period when the takeoff, flyover, or approach noise/time record indicates the noise measurement is within 10dB of Maximum Tone Corrected Perceived Noise Level (PNLTm), no obstruction that significantly influences the sound field from the aircraft may exist—

(i) For any flight-track or sideline noise measuring station, within a conical space above the measuring position (the point on the ground vertically below the microphone), the cone being defined by an axis normal to the ground and by half-angle 80° from the axis; and

(ii) For any sideline noise measuring station, above the line of sight between the microphone and the helicopter.

Section H36.103 Measurement of helicopter noise received on the ground. The measurement of helicopter noise received on the ground during helicopter noise certification tests under this appendix must be accomplished in accordance with the provisions of Section A36.3 of Appendix A of Part 36. Section A36.3 includes requirements governing—

(a) Measurements which provide that data for determining the one-third octave band noise produced by aircraft during testing at specific noise measuring stations, as a function of time;

(b) Sound pressure level data for aircraft noise certification purposes which must be obtained with approved acoustical equipment and measurement practices;

(c) Equipment specifications and the calibration and measurement procedures which apply to each certification test series.

Section H36.105 Reporting and correcting measured data. (a) Except as provided in paragraph (b) of this section, the provisions of Section A36.5 and A36.11(a) of Appendix A of Part 36 apply to helicopter noise certification tests under this appendix. Detailed correction procedures applicable to helicopters are contained in Section H36.111 of this appendix.

(b) The following apply to helicopter noise certification tests:

(1) The reference approach angle is 6° .

(2) The provisions of paragraph A36.5(e)(1), regarding validity of tests results within the 90 percent confidence limits and each EPNL

value, apply separately to each takeoff, flyover, and approach.

(3) To comply with Sections H36.307(b), H36.309(b), and H63.111(b), a minimum of six takeoffs, six approaches, and six level flyovers is required. To be counted toward this requirement, each flight event must be validly recorded at all three noise measuring stations.

(4) The approved values of V_H and V_y used in calculating test and reference conditions and flight profiles must be reported along with measured and corrected sound pressure levels. (See Note in Section H36.111(c).)

Section H36.107 *Symbols and units.* (a) Except as provided in paragraph (b) of this section, the symbols and units described in Section A36.7 of Appendix A of Part 36 apply to this appendix.

(b) Notwithstanding the meaning to the contrary prescribed in Section A36.7, for helicopter noise certification, the following symbols and units as used in the appendix have the following meanings—

FLIGHT PROFILE IDENTIFICATION POSITIONS

Position	Description
A	Location of the noise measuring point at the flight-track noise measuring station vertically below the reference (takeoff, flyover, or approach) flight path.
C	Start of noise certification takeoff flight path.
C _r	Start of noise certification reference takeoff flight path.
D	Start of noise certification flyover flight path.
D _r	Start of noise certification reference flyover flight path.
E	Start of noise certification approach flight path.
E _r	Start of noise certification reference approach flight path.
F	Position on takeoff flight path directly above noise measuring station A.
G	Position on flyover flight path directly above noise measuring station A.
H	Position on approach flight path directly above noise measuring station A.
I	End of noise type certification takeoff flight path.
I _r	End of noise type certification corrected takeoff flight path.
J	End of noise type certification flyover flight path.
J _r	End of noise certification reference flyover flight path.
K	End of noise certification approach type flight path.
K _r	End of noise type certification reference approach flight path.
L	Position on measured takeoff flight path corresponding to PNLTM at station A.
M	Position on measured flyover flight path corresponding to PNLTM of station A.
M _r	Position reference flyover flight path corresponding to PNLTM of station A.
N	Position on measured approach flight path corresponding to PNLTM at station A.
N _r	Position on reference approach flight path corresponding to PNLTM at station A.
S	Position on measured approach path nearest to station A.
S _r	Position on reference approach path nearest to station A.
T	Position on measured takeoff path nearest to station A.
T _r	Position on reference takeoff path nearest to station A.

FLIGHT PROFILE DISTANCES

[Units in feet]

Distance	Meaning
AF	Takeoff Height. The vertical distance between the helicopter and station A.

FLIGHT PROFILE DISTANCES—Continued

[Units in feet]

Distance	Meaning
AG	Flyover Height. The vertical distance between the helicopter and station A.
AH	Approach Height. The vertical distance between the helicopter and station A.
AL	Measured Takeoff Noise Path. The distance from station A to the measured helicopter position L.
AL _r	Corrected Takeoff Noise Path. The distance from station A to the reference helicopter position L _r .
AM	Measured Flyover Noise Path. The distance from station A to the measured helicopter position M.
AM _r	Reference Flyover Noise Path. The distance from station A to helicopter position M on the reference flyover flight path.
AN	Measured Approach Noise Path. The distance from station A to the measured helicopter noise position N.
AN _r	Reference Approach Noise Path. The distance from station A to the reference helicopter position N _r .
AS	Measured Approach Minimum Distance. The distance from station A to the position S on the measured approach flight path.
AS _r	Reference Approach Minimum Distance. The distance from station A to the position S _r on the reference approach flight path.
AT	Measured Takeoff Minimum Distance. The distance from station A to the position T on the measured takeoff flight path.
AT _r	Corrected Takeoff Minimum Distance. The distance from station A to the position T _r on the reference takeoff flight path.
CI	Takeoff Flight Path Distance. The distance from position C at which the helicopter establishes a constant climb angle on the takeoff flight path passing over station A and continuing to position I at which the position of the helicopter and need no longer be recorded.
DJ	Flyover Flight Path Distance. The distance from position D at which the helicopter is established on the flyover flight path passing over station A and continuing to position J at which the position of the helicopter need no longer be recorded.
EK	Approach Flight Path Distance. The distance from position E at which the helicopter establishes a constant angle on the approach flight path passing over station A and continuing to position K at which the position of the helicopter need no longer be recorded.

Section H36.109 Atmospheric attenuation of sound.

The values of the one-third octave band spectra measured during helicopter noise certification tests under this appendix must conform, or be corrected, to the prescribed reference-day conditions in accordance with the provisions of section A36.9 of Appendix A of Part 36. Section A36.9 includes requirements governing—

(a) Correction of measured noise values to conform to reference-day conditions;

(b) Meteorological conditions at the noise measuring stations;

(c) Standards for sound attenuation rates; and

(d) Correction of noise values to account for sound attenuation rates.

Section H36.111 Detailed data correction procedures.

(a) *General.* If the test conditions do not conform to those prescribed as noise certification reference conditions under § H36.105 of this appendix, the correction procedures and requirements prescribed under section A36.11(a) of Appendix A of Part 36 apply. Section A36.11(a) includes requirements governing the correction procedures and standards for positive and

negative values resulting from any differences between reference and test conditions.

(b) *Takeoff profile.* (1) Figure H1 illustrates a typical takeoff profile, including reference conditions.

(i) The reference flight path is defined as a straight line segment inclined from the starting point (1640 feet prior to the center microphone location at 65 feet above ground level) at an angle β defined by the certificated best rate of climb and V_r for minimum engine performance. The constant climb angle β is derived from the manufacturer's data (approved by the FAA) to define the flight profile for the reference conditions. The constant climb angle β is drawn through C_r and continues, crossing over station A to the position corresponding to the end of the type certification takeoff path represented by position I_r .

(ii) The takeoff parameters are functions of the helicopter's performance and weight and the atmospheric conditions of temperature, pressure, wind velocity and direction.

(2) For the actual takeoff, the helicopter approaches position C in level flight at 65 feet (20 meters) above ground level at the flight track noise measuring station and at either $V_r \pm 5$ knots (± 9 km/hr) or the maximum speed of the curve contiguous to the ordinate of the height-speed envelope plus 3.0 knots ($+5/-3$ knots), whichever speed is greater. Rotor speed is stabilized at the normal operating RPM (± 1 percent) specified in the flight manual. The helicopter is stabilized at the best rate of climb using minimum engine specifications along a path starting from a point located 1640 feet forward of the flight-track noise measuring station and 65 feet (20 meters) above the ground. The helicopter climbs at a constant angle through point C to the end of the noise certification takeoff flight path represented by position I. The position of the helicopter shall be recorded for a sufficient distance (CI) to ensure recording of the entire interval during which the measured helicopter noise level is within 10dB of PNLT as required. Station A is the flight-track noise measuring station. The relationships between the measured and corrected takeoff flight profiles can then be used to determine the corrections which must be applied to the EPNL calculated from the measured data.

(3) Figure H1 also illustrates significant geometrical relationships influencing sound propagation. Position L represents the helicopter location on the measured takeoff flight path for which PNLT is observed at station A and L_r is the corresponding position on the reference sound propagation paths AL and AL_r , respectively, which form angle ϕ with their flight paths. Position T represents the point on the measured takeoff flight path nearest station A, and T_r is the corresponding position on the reference flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AT and AT_r , respectively, which are normal to their flight paths.

(c) *Flyover profiles.* (1) The beginning of the noise type certification level flyover profile is represented by helicopter position D (Figure H2). The helicopter approaches

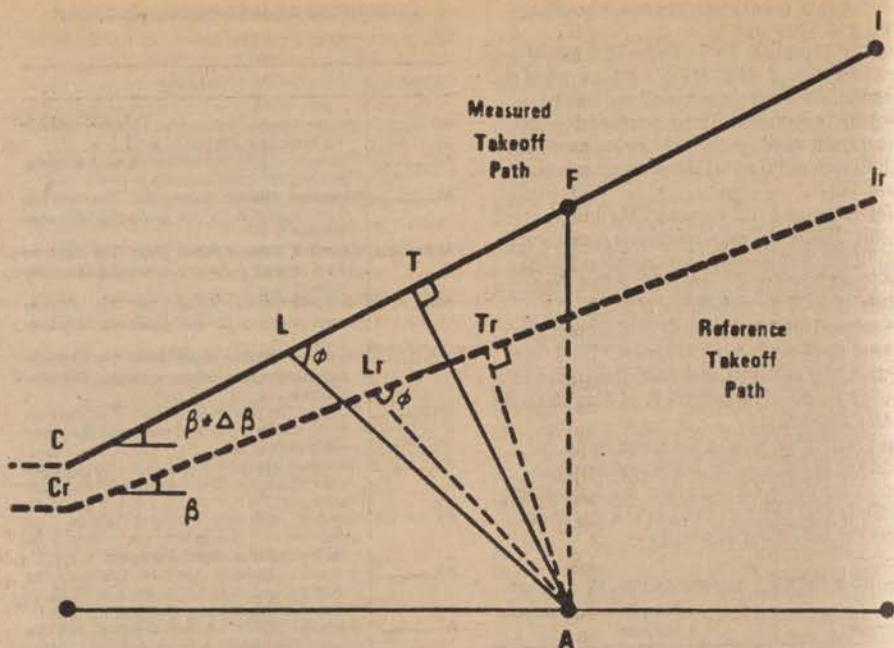


Figure H1. COMPARISON OF MEASURED AND CORRECTED TAKEOFF PROFILES

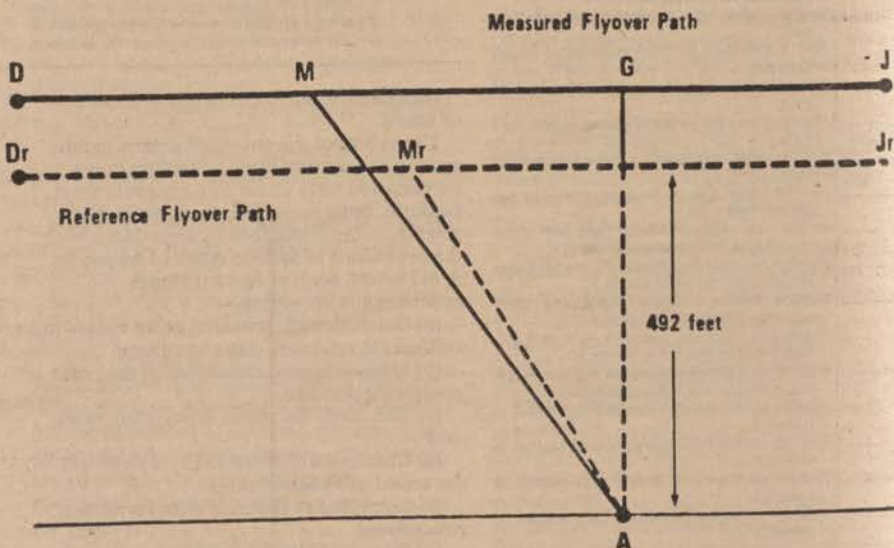


Figure H2. COMPARISON OF MEASURED AND CORRECTED FLYOVER PROFILES

position D in level flight 492 feet above ground level at station A. Airspeed is stabilized (within ± 5 , -3 knots) at either $0.9 V_H$ or $0.45 V_H + 65$ knots ($0.45 V_H + 120$ km/hr) whichever speed is lesser. For each run, the difference between airspeed and ground speed shall not exceed 10 knots between the 10dB down points. Rotor speed is stabilized at the maximum continuous RPM within one percent throughout the 10dB down time period. The helicopter crosses station A in level flight and proceeds to position J. If the test requirements are otherwise met, flight direction may be reversed for each subsequent flyover, to obtain three test runs in each direction.

(2) Figure H2 illustrates comparative flyover profiles when test conditions do not conform to prescribed reference conditions. The position of the helicopter shall be recorded for a sufficient distance (DJ) to ensure recording of the entire interval during which the measured helicopter noise level is within 10dB of PNLTm, as required. The flyover profile is defined by the height AG which is a function of the operating conditions controlled by the pilot. Position M represents the helicopter location on the measured flyover flight path for which PNLTm is observed at station A and M_r is the corresponding position on the reference flight path.

Note.—For noise certification purposes, V_H is defined as the airspeed in level flight obtained using the torque corresponding to minimum installed, maximum continuous power available for sea level, 15°C ambient conditions. The value of V_H thus defined is to be listed in the Rotorcraft Flight Manual.

(d) *Approach profiles.* (1) Figure H3 illustrates a typical approach profile, including reference conditions.

(i) The beginning of the noise type certification approach profile is represented

by helicopter position E. The position of the helicopter should be recorded for a sufficient distance (EK) to ensure recording of the entire interval during which the measured helicopter noise level is with 10dB of PNLTm, as required. EK must represent a stable flight condition in terms of torque, rpm, indicated airspeed, and rate of descent resulting in a 6° ($\pm 0.5^\circ$) approach angle.

(ii) The approach profile is defined by approach angle η passing directly over the station A at a height of AH, to position K, which terminates the approach noise certification profile.

(iii) The approach profile is defined by the approach angle and the height AH which are functions of the helicopter operating conditions controlled by the pilot. If the measured approach conditions are different from the corresponding reference conditions, corrections, if positive, must be applied to the EPNL calculated from the measured data.

(2) The helicopter approaches position H along a 6° ($\pm 0.5^\circ$) average approach slope throughout the 10dB down time period. The helicopter crosses position E and proceeds along the approach slope crossing over station A until it reaches position K. The approach procedure shall be acceptable to the FAA and shall be included in the Rotorcraft Flight Manual.

(3) Figure H3 illustrates portions of the measured and reference approach flight paths including the significant geometrical relationships influencing sound propagation. EK represents the measured approach path with approach angle η and E_r and K_r represents the reference approach angle of 6° . Position N represents the helicopter location on the measured approach flight path for which PNLTm is observed at station A and N_r is the corresponding position on the reference approach flight path. The measured

and corrected noise propagation paths and AN and AN_r respectively, which form the same angle λ with their flight paths. Position S represents the point on the measured approach flight path nearest station A and S_r is the corresponding point on the reference approach flight path. The minimum distance to the measured and reference flight paths are indicated by the lines AS and AS_r respectively, which are normal to their flight paths.

(e) *Correction of noise at source during level flyover.* (1) If any combination of the following three factors, 1) airspeed deviations from reference, 2) rotor speed deviations from reference, and 3) temperature deviations from reference, results in an advancing blade tip Mach number during level flyover which deviates from the reference Mach value, then source noise adjustments shall be determined. This adjustment shall be determined from the manufacturer supplied data approved by the FAA.

(2) Off-reference tip Mach number adjustments shall be based upon a sensitivity curve of PNLTm versus advancing blade tip Mach number, deduced from overflights carried out at different airspeeds around the reference airspeed. If the test aircraft is unable to attain the reference value, then an extrapolation of the sensitivity curve is permitted if data cover at least a range of 0.03 Mach units. The advancing blade tip Mach number shall be computed using true airspeed, onboard outside air temperature, and rotor speed. A separate PNLTm versus advancing blade tip Mach number function shall be derived for each of the three certification microphone locations, centerline, sideline left, and sideline right. Sideline left and right are defined relative to the direction of the flight on each run. PNLTm adjustments are to be applied to each microphone datum using the appropriate function.

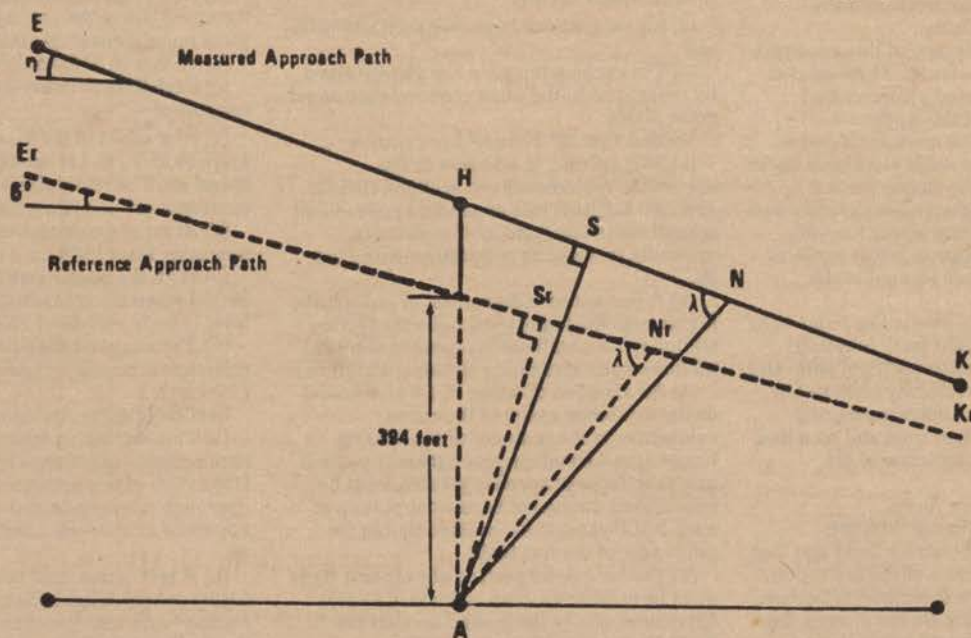


Figure H3. COMPARISON OF MEASURED AND CORRECTED APPROACH PROFILES

Part C—Noise Evaluation and Calculation Under § 36.803

Section H36.201 *Evaluation of measured noise values.*

(a) Except as provided in paragraph (b) of this section, the procedures in Appendix B of Part 36 must be used for helicopter noise certification tests under this appendix to determine the noise evaluation quantity designated as Effective Perceived Noise Level (EPNL) in units of effective perceived noise decibels (EPNdB) for noise level values under § 36.803 of Part 36. Appendix B includes requirements governing determination of noise values, including calculations of:

- (1) Instantaneous perceived noise levels;
- (2) Corrections for spectral irregularities;
- (3) Tone corrections;
- (4) Duration corrections;
- (5) Effective perceived noise levels; and
- (6) Mathematical formulation of noise tables.

(b) Notwithstanding the provisions of section B36.5(a) to the contrary, for helicopter noise certification, corrections for spectral irregularities shall start with the corrected sound pressure level in the 50Hz one-third octave band.

Section H36.203 *Calculation of noise levels.*

(a) To demonstrate compliance with the noise level provisions of § H36.305, the noise values measured simultaneously at the three noise measuring points must be arithmetically averaged to obtain a single EPNdB value for each flight.

(b) The calculated noise level for each noise test series (takeoff, flyover, or approach) must be the numerical average of at least six separate flight EPNdB values. The 90 percent confidence limit for all valid test runs under section H36.105(b)(2) of this appendix applies separately to the EPNdB values for each noise test series.

Part D—Noise Limits Under § 36.805

Section H36.301 *Noise measurement, evaluation, and calculation.*

Compliance with this part of this appendix must be shown with noise levels measured, evaluated, and calculated as prescribed under Parts B and C of this appendix.

Section H36.303 *Noise measuring points.*

Compliance with the noise standards under Section H36.305 must be shown for the arithmetic average of the values measured at the three noise measuring points for each takeoff, flyover, and approach test series at noise measuring stations located at the following points:

- (a) *Flight-track noise measuring point*—On the centerline of the flight track projected vertically below the reference flight path; and
- (b) *Sideline noise measuring points*—On each side of flight-track noise measuring point and located 492 feet from and on a line perpendicular to, the centerline of the reference flight track.

Section H36.305 *Noise levels.*

(a) *Limits.* For compliance with this appendix, it must be shown by flight test that the calculated noise levels of the helicopter, at the measuring points described in Section H36.301 of this appendix, do not exceed the following (with appropriate interpolation between weights):

- (1) *Stage 1 noise limits for acoustical changes for helicopters are as follows:*
 - (i) For takeoff, flyover, and approach calculated noise levels—each Stage 1 helicopter whose noise levels exceed the Stage 2 noise limits plus 2 EPNdB may not, after change in type design, exceed the noise levels created prior to the change in type design.
 - (ii) For takeoff, flyover, and approach calculated noise levels—each Stage 1 helicopter whose noise levels do not exceed the Stage 2 noise limits plus 2 EPNdB may not, after the change in type design, exceed the Stage 2 noise limits plus 2 EPNdB.
- (2) *Stage 2 noise limits are as follows:*

(i) *For takeoff calculated noise levels*—109 EPNdB for maximum takeoff weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the 176,370-pound maximum weight down to 89 EPNdB for maximum weights of 1,764 pounds or less.

(ii) *For flyover calculated noise levels*—108 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the 176,370-pound maximum weight down to 88 EPNdB maximum weights of 1,764 pounds or less.

(iii) *For approach calculated noise levels*—110 EPNdB for maximum weights of 176,370 pounds or more, reduced by 3.01 EPNdB per halving of the 176,370-pound maximum weight down to 90 EPNdB for maximum weight of 1,764 pounds or less.

(b) *Tradeoffs.* Except to the extent limited under § 36.11(b) of Part 36, the noise limits prescribed in paragraph (a) of this section may be exceeded by one or two of the takeoff, flyover, or approach calculated noise levels determined under section H36.203 of this appendix if—

- (1) The sum of the exceedances is not greater than 4 EPNdB;
- (2) No exceedance is greater than 3 EPNdB; and
- (3) The exceedances are completely offset by reductions in the other required calculated noise levels.

Section H36.307 *Takeoff test conditions.*

(a) This section, in addition to the applicable requirements of sections H36.101 and H36.111(b) of this appendix applies to all takeoff noise test conducted under this appendix in showing compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations) as follows:

- (1) An airspeed of either V_{H_1} (+5/-3 knots) or the maximum speed of the curve contiguous to the ordinate of the limiting height-speed envelope plus 3.0 knots (+5/-3 knots) whichever speed is greater, must be established during the horizontal portion of each test flight and maintained during the remainder of the test flight.
- (2) The horizontal portion of each test flight must be conducted at an altitude of 65 feet (20 meters) above the ground level at the flight-track noise measuring station.
- (3) Upon reaching a point 1,640 feet (500

meters) from the noise measuring station, the helicopter shall be stabilized at,

- (i) for helicopters for which the determination of takeoff performance is required by airworthiness regulations, the torque used to establish the takeoff distance for sea level, 25°C ambient conditions;
- (ii) for all other helicopters, the torque corresponding to minimum installed power available for sea level, 25°C ambient conditions;

(4) The helicopter shall be maintained throughout the takeoff reference procedure at,

- (i) for helicopters for which the determination of takeoff performance is required by airworthiness regulations, the speed used to establish takeoff distance for sea level, 25°C ambient conditions;
- (ii) for all other helicopters, the best rate of climb speed V_{H_1} , or the lowest approved speed for climb after takeoff, whichever is greater, for sea level, 25°C ambient conditions.

(5) The rotor speed must be stabilized at the normal operating RPM ($\pm 1\%$) during the entire period of the test flight when the measured helicopter noise level is within 10 dB of PNLTm.

(6) The helicopter must pass over the flight-track noise measuring station within $\pm 5^\circ$ from the zenith.

Section H36.309 *Flyover test conditions.*

(a) This section, in addition to the applicable requirements of section H36.101 and H36.111(c) of this appendix, applies to all flyover noise tests conducted under this appendix in showing compliance with Part 36.

(b) A test series must consist of at least six flights (three in each direction) over the flight-track noise measuring station (with simultaneous measurements at all three noise measuring stations)—

- (1) In level flight;
 - (2) At a height of 492 feet ± 30 feet (150 ± 9 meters) above the ground level at the flight-track noise measuring station; and
 - (3) Within $\pm 5^\circ$ from the zenith.
- (c) Each flyover noise test must be conducted—

- (1) At a speed of $0.9 V_{H_1}$ or $0.45 V_{H_1} + 120$ km/h (0.45 V_{H_1} 65 kt), whichever is less, which speed shall be maintained throughout the measured portion of the flyover;
- (2) At rotor speed stabilized at the normal operating rotor RPM (± 1 percent); and
- (3) With the power stabilized during the period when the measured helicopter noise level is within 10 dB of PNLTm.

(d) The airspeed shall not vary from the reference airspeed by more than ± 5 knots (± 9 km/hr).

Section H36.311 *Approach test conditions.*

(a) This section, in addition to the requirements of sections H36.101 and H36.111(d) of this appendix, applies to all approach tests conducted under this appendix in showing compliance with Part 36.

(b) A test series must consist of at least six flights over the flight-track noise measuring station (with simultaneous measurements at the three noise measuring stations)—

- (1) On an approach slope of $6^\circ (\pm 0.5^\circ)$;

(2) At a height of 394 ± 30 feet above the ground level at the flight-track noise measuring station;

(3) Within $\pm 5^\circ$ of the zenith;

(4) At a stabilized airspeed equal to the certificated best rate of climb V_y , or the lowest approved speed for approach, whichever is greater, with power stabilized during the approach and over the flight path reference point, and continued to a normal touchdown; and

(5) At rotor speed stabilized at the maximum normal operating rotor RPM (± 1 percent).

(c) The airspeed shall not vary from the reference airspeed by more than ± 5 knots (± 9 km/hr).

Note.—For reasons discussed earlier in the preamble, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, as promulgated, will not have a significant impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Issued in Washington, D.C., on February 27, 1986.

John E. Wesler,

Director of Environment and Energy.

[FR Doc. 86-4691 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-13-M

Test Report Federal Register

Thursday
March 6, 1986

Part III

Department of Transportation

Urban Mass Transportation
Administration

49 CFR Part 604
Charter Bus Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation
Administration

49 CFR Part 604

[Docket No. 82-I]

Charter Bus Operations

AGENCY: Urban Mass Transportation
Administration, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In this notice, the Urban Mass Transportation Administration (UMTA) proposes to revise its existing regulation on Charter Bus Operations which governs the permissible charter bus operations that UMTA recipients can provide. This proposed revision modifies the existing regulation to ensure that federally assisted equipment is used to meet mass transit needs as intended by the UMT Act and to increase the protections for private intercity charter bus operators. At the same time, the revision should ease the existing paperwork burdens imposed on UMTA recipients.

DATE: Comments are due on May 5, 1986.

ADDRESS: Comments must be submitted to UMTA Docket No. 82-I, 400 7th Street, SW., Room 9228, Washington, D.C. 20590. All comments and suggestions are available for examination in room 9228 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. UMTA will acknowledge the receipt of comments if the commenter includes a self-addressed, stamped postcard with the comment.

FOR FURTHER INFORMATION CONTACT: Douglas G. Gold, Office of the Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, D.C. 20590; Telephone: (202) 426-1936.

SUPPLEMENTARY INFORMATION:

Introduction

Two provisions of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.) (UMT Act), concern charter bus operations by recipients of financial assistance under the UMT Act and under 23 U.S.C. 103(e)(4) and 142(a) and (c) (the Acts). First, section 12(c)(6) defines "mass transportation" as "transportation by bus or rail, or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis." (49 U.S.C. 1608(c)(6).) (Emphasis added.) The

exclusion of school buses and charter and sightseeing service has been part of the definition of "mass transportation" since the UMT Act became law in 1964.

The Comptroller General in a 1966 opinion interpreted section 12(c)(6) to disallow the use of financial assistance under the UMT Act for the purchase of buses or other equipment for the sole purpose of providing charter service. The Comptroller General, however, stated that the "incidental" use for charter service of vehicles purchased for mass transit was permissible as long as the charter activity "does not detract from or interfere with urban mass transportation service for which the equipment is needed." Opinion of the Comp. Gen. B-160204 (Dec. 7, 1966). There is nothing in this opinion which prohibits the Secretary from prohibiting such incidental use if such a prohibition is deemed necessary.

The second provision that concerns charter bus service is section 3(f) of the UMT Act. Congress enacted section 3(f) in 1974 to protect private operators in the intercity charter bus industry from being foreclosed from this business by UMTA recipients, and operators for recipients, who use federally funded equipment. This provision requires that each recipient of Federal funds under the Acts for the purchase or operation of buses must, as a condition of such assistance, enter into a charter bus agreement with the Secretary of Transportation. As part of this agreement, each recipient must agree that it will not engage in any intercity charter bus operations (charter bus operations outside of the urban area in which it provides regularly scheduled mass transportation service) except as provided in the agreement.

Section 3(f) does not prescribe the terms that the agreement must include to protect private operators. It states, however, that the agreement shall provide for

fair and equitable arrangements, appropriate in the judgment of the Secretary, to assure that the financial assistance granted under the Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry where such private operators are willing and able to provide such service. (49 U.S.C. 1602(f)).

(For a discussion of the legislative history of this provision see 47 FR 44795 (October 12, 1982).)

Existing Rule

UMTA issued a regulation to implement these two statutory provisions on April 1, 1976 (41 FR 14123) (49 CFR Part 604). (For a detailed regulatory history of this regulation see

47 FR 44795 (October 12, 1982).) Section 604.11 of the existing rule implements the definition of mass transportation is section 12(c)(6) of the UMT Act, which excludes charter bus service, and the Comptroller General's related decision by prohibiting UMTA funded equipment and facilities to be used to provide charter bus service unless the service is incidental to the provision of mass, transportation service. (Section 604.11(a).) The rule presumes that a recipient is using its equipment and facilities incidentally if it does not conduct weekday charters: (1) during peak morning and evening rush hours; (2) requiring a bus to travel more than 50 miles beyond the recipient's urban area; or (3) requiring the use of a particular bus for more than 6 hours in any one day. (Section 604.11(b).) These presumptions apply to all charter service, both intracity and intercity, but do not apply to any weekend charter service.

The existing rule implements section 3(f)'s protections for private intercity charter operators by requiring each recipient to enter into an agreement with UMTA that it will not perform any charter services outside of its urban area except as provided in the agreement. (Section 604.12.) This requirement applies to all recipients whether or not they plan to offer any intercity charter service. Although a recipient can negotiate its own agreement with UMTA (Section 604.14), the regulation provides a standard agreement that contains fair and equitable arrangements to protect private operators. (Section 604.13.)

The standard agreement contains two key provisions. The first requires any recipient conducting intercity charter service to cover its total charter costs with charter revenues on an annual basis. The costs that must be included are listed in Appendix B and include 79 separate items. The second provision prohibits a recipient from charging a predatory rate for any charter trip. If a recipient does not provide any intercity charter service, these economic restrictions do not apply.

If a recipient provides, or proposes to provide, intercity charter service, it must include several items in any grant application. First, it must include a statement that it has provided written notice to all private operators in the existing or proposed charter service area. Second, it must include a statement that it has published a notice in a local newspaper describing its existing or proposed charter service. Third, it must include a certification of costs and a cost allocation plan if it

provides charter service. (Section 604.15.) If there are no private charter bus operators in the recipient's urban area, the recipient can make a certification in its application to that effect in lieu of including the above described documents. (Section 604.16.)

Although the charter bus regulation does not require an applicant to hold a specific public hearing on its proposed or existing charter operations, the regulation does permit private operators to comment on such operations at the public hearing required by section 3(d) of the UMT Act. (Section 604.4.) This hearing is required of all applicants for capital assistance under the UMT Act. If comments are offered, they must be submitted, with a transcript of the hearing, to the Administrator. (Section 604.17.)

The Administrator reviews the documents submitted by the applicant, including any comments by private operators. If the Administrator finds that the applicant has complied with the regulation, the Administrator may accept the certification of costs and cost allocation plan. The applicant is then permitted to enter into a charter bus agreement with UMTA. If the Administrator finds that the applicant has not complied with the regulation, the Administrator must notify the applicant and provide 30 days to submit revised documents. (Section 604.18.)

Any interested party (complainant) may file a complaint with the Administrator alleging that a recipient has violated the terms of its charter agreement. The Administrator will review the complaint to determine if probable cause of a violation exists. (Section 604.40.) If the Administrator determines that probable cause of a violation does exist, the Administrator notifies the recipient (respondent). (Section 604.41.) A respondent is provided 30 days to submit evidence and the complainant is provided with an equal amount of time to rebut the respondent's evidence. (Section 604.42.) After reviewing all of the evidence, the Administrator makes a written determination regarding whether a violation has occurred and, if so, the Administrator may order an appropriate remedy. Only when the Administrator determines that there has been a continuing pattern of violation can the respondent be barred from the receipt of further Federal assistance for mass transportation. (Section 604.43.) The Administrator's decision is deemed to be a final agency action, but may be judicially reviewed pursuant to 5 U.S.C. 701-706. (Section 604.45.)

A recipient who, together with all operators for the recipient, derived

\$15,000 or less in annual charter bus revenues, during its most recently completed fiscal year, is exempted from the scope of the regulation concerning intercity service. (Section 604.2.) Such recipients, however, must still comply with the incidental use presumptions.

Problems with the Current Regulation

The purpose of the UMTA charter bus regulations is to ensure that federally assisted equipment is used to meet mass transit needs as intended by the UMT Act and to protect the private intercity charter bus industry against subsidized and destructive competition by federally assisted grantees. The current regulation seeks to achieve this end by restricting the use of federally subsidized equipment for charter service to incidental operations and by requiring the revenues generated by such service annually to cover all costs, including subsidized costs and exempted taxes.

There are, however, a number of significant problems with the effectiveness of current regulation in either safeguarding the use of transit equipment or protecting the health of the private intercity charter industry.

First, since the charter bus regulations were first established, the economics of the intercity bus industry have become decidedly more fragile. Profitability has suffered a dramatic drop since 1970. In that year, the intercity charter bus industry enjoyed a 9.9 per centum profit margin. By 1984, however, the profit margin dropped to only 1.7 per centum. In addition, the industry net operating profit has dropped since 1970 by more than 50 percent to \$39.9 million in 1984. The revenues taken away by Federal grantees is conservatively estimated to be \$45 million annually. Loss of these revenues could endanger the continued viability of the private bus industry, particularly in the face of new economic pressures such as dramatically escalating insurance rates. Additionally, the large spare ratio (national average has risen to 46 percent) and new freedoms afforded by deregulation will encourage the public transit industry to seek an even greater share of the charter market.

Second, public transit operators are largely able to provide charter service because of the excess equipment and manpower available during off-peak hours. Peak-hour service which requires added equipment, facilities and labor, however, is generally acknowledged as the most expensive to provide. Even though revenues generated by rush-hour services are higher than other service, such revenues are not nearly enough to offset the high cost of rush hour service. The growth of such service is considered

the greatest source of escalating transit deficits. Deficits have risen from \$300 million in 1970 to \$6 billion in 1984.

Rather than continuously expanding the rush-hour fleets and then seeking to forge into charter and other markets traditionally served by the private sector with excess transit equipment available during off-peak hours, it would be economically more prudent for Federal policy to encourage localities to reduce transit rush-hour requirements by greater reliance on significantly lower cost private sector strategies. Direct operation of premium express services by private operators and the establishment of active car and vanpool programs cost the public virtually nothing and have proven extremely satisfactory to customers. Contracting services that require subsidies has also proven very effective. Private operators have consistently demonstrated a 20- to 60-percent cost savings to the public when service has been competitively contracted to them.

The current UMTA charter bus regulations, however, are grounded in philosophy which encourages the accumulation of transit equipment to meet rush-hour needs while permitting utilization of that equipment to intrude into private markets during other periods. This philosophy is economically harmful to both the transit and private charter bus industries.

Third, in effect, the policing of the current charter bus regulations is left to private operators who are expected to report violations and protest unfair pricing practices by UMTA grantees. However, private operators cannot distinguish federally assisted buses from those that are not so assisted. It is also difficult to gauge the fairness of prices being charged, since only an annual accounting of costs and revenues is required.

It is also difficult for private operators to protest public agency charter service because in many cases they may receive or desire contracts with federally assisted grantees. In a few instances, they may even be regulated by this agency.

Fourth, even UMTA recipients complain that the current economic approach, i.e., the cost allocation plan, is not effective. They argue that it is a useless accounting exercise and that it does not account for all necessary costs or permit deductions that appropriately reduce charter costs.

Fifth, the current regulation is difficult to enforce. UMTA does not have adequate personnel to effectively enforce the current regulation. Effective enforcement would require UMTA

financial audits of transit properties, evaluations of the cost allocation plans, as well as periodic audits of the manifests of transit agency's charter trips. To determine that no predatory pricing is occurring, UMTA would additionally need to review private charter bus companies' pricing structures. Given Federal budgetary constraints, UMTA cannot realistically expect to police the current regulations. Consequently, UMTA action in resolving complaints is often a very lengthy and time consuming process. Complaints have taken years to resolve and the burden of proof lies with the protesting private operator.

Sixth, the limitation in the existing regulation on the use of UMTA-assisted vehicles to incidental intracity charter service has been insufficient to safeguard the use of that equipment for mass transit purposes. The current regulation provides that the use of federally funded buses "will be presumed not to be incidental" when engaged in charter service during peak-hours, going more than fifty miles beyond the grantee's urban area, or for more than a total of six hours in any one day. Despite these presumptions, considerable confusion exists as to what constitutes incidental service. For example, varying interpretations of "peak-hours" have been made. Some recipients have narrowed their peak-hours to only the peak-of-the peak. In one such case, the peak period lasts only 14 minutes in the morning and 8 minutes in the afternoon rather than the traditional several hour period. This lack of uniformity undermines the presumption that any peak hour charter service by UMTA funded vehicles demonstrates a non-mass transit need.

The problem with incidental use is increased by the number of spare UMTA funded buses in the fleets of many transit agencies. As mentioned above, the national spare ratio has now risen to 46 per centum. Such high ratios, often far in excess of peak-hour service requirements, render the incidental use presumptions ineffective since they allow transit authorities to rebut those presumptions. This situation makes available a substantial amount of UMTA funded equipment for non-transit purposes, as well as permitting, perhaps encouraging, recipients to provide significant competition with private operators.

Seventh, it is important to note that the private charter industry, unlike UMTA's statute and regulations, is not divided into intracity and intercity segments. The same private operators providing intercity charter service also

offer intracity service. Therefore, subsidized competition, which is permitted by the regulation if only intracity service is provided, poses a threat to their financial well-being. Thus, the current regulation fails to address this serious problem.

Some of these same concerns were brought to the attention of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). As a result, the regulation was placed on the review list of the Presidential Task Force on Regulatory Relief. UMTA, therefore, expedited its review process and published an advance notice of proposed rulemaking (ANPRM) on October 12, 1982 (47 FR 44795). UMTA issued this ANPRM since there were several fundamental issues that needed exploration and many areas for which public comment was needed before an effective revision of the regulation could be proposed. Although the ANPRM also included a related UMTA regulation on School Bus Operations, we have decided to separate the two at this point and to issue this NPRM separately to hasten publication of the final charter bus regulation. Nevertheless, UMTA is still committed to issuing an NPRM for School Bus Operations in the near future.

The ANPRM

In the ANPRM, UMTA proposed four alternative approaches to the existing regulation. The first alternative would have retained the existing regulation and would have made certain modifications such as adding or deleting specific costs in the cost allocation plan. Thus, no change was proposed to the existing implementation of sections 12(c)(6) and 3(f) of the UMT Act.

The second alternative would have modified the existing implementation of section 12(c)(6) by making the incidental use presumptions conclusive. As a result, UMTA recipients' intercity charter operations generally would have been limited to the weekends. This alternative would not have modified the existing approach for implementing the section 3(f) protections for private intercity charter operators. The same cost, revenue, and rate requirements would have applied. In an attempt, however, to reduce the administrative burdens on UMTA recipients, we proposed a self-certification process. Recipients would have been able to submit a certification to UMTA stating that its charter revenues equal or exceed its charter costs rather than submitting the detailed cost allocation plan and certification of costs required now.

The third and fourth alternatives only proposed modifications to the existing provisions implementing section 3(f). UMTA proposed in the third alternative to require recipients to charge charter rates comparable to those charged by private operators. Specifically, a recipient would have been prohibited from charging intercity charter rates that were lower than the lowest rate charged by the three largest private operators providing the same or similar service in the area. This approach was suggested in legislative history (H.R. Rep. No. 553, 93rd Cong. 1st Sess. 3 (1973)) and is consistent with the requirements of certain States, including Colorado. (Colo. Rev. Stat. 32-9-103(7)(b) (1973).

The fourth proposed alternative would have restricted a recipient's intercity charter bus activities based on passenger-miles. UMTA proposed to limit a recipient's intercity charter activities to 50 percent of the average number of intercity charter passenger-miles that the recipient had provided during its last three fiscal years. Under the proposal, a recipient could have exceeded its ceiling only if the private charter operators in the service area agreed to the additional miles.

In the ANPRM, UMTA recognized that there may be other alternatives to the four described. For example, UMTA possibly could implement section 3(f) by prohibiting a recipient from conducting any intercity charter activities, but allowing the recipient to lease its equipment to private operators for such charter trips. Another approach would be to propose legislative changes that would more clearly spell out the scope of permissible charter activities. Furthermore, UMTA could enter into individual agreements with recipients rather than issuing a regulation containing an agreement.

In the ANPRM, UMTA also discussed four collateral issues that are integral to the charter bus regulation. First, UMTA asked whether the current provision that exempts recipients from the regulation if their annual charter revenues are \$15,000 or less should be retained. Second, UMTA proposed to revise the definition of "urban area" since the current expansive definition has often been criticized by private operators. Third, UMTA asked whether it might be helpful to require a recipient to limit the number of spare buses it could use in charter service. Finally, UMTA asked what revisions could be made to the current complaint process to make the resolution of complaints more meaningful and expeditious.

UMTA requested comments on each of the four alternatives and the four

collateral issues. In addition, UMTA requested that all charter bus operators, both UMTA recipients and private operators, provide UMTA with information on their charter bus operations.

Comments on the ANPRM

UMTA received 93 comments on the ANPRM. A total of 91 different commenters submitted these comments. The breakdown by category is as follows:

- 52—Public transit operators (UMTA recipients)
- 19—Private bus companies
- 3—Trade Associations representing public transit operators
- 5—Trade Associations representing private bus companies
- 3—Municipal governments
- 5—State Departments of Transportation
- 4—Others

In general, comments from public transit operators, and those trade associations representing them, favored those proposals that would ease the regulatory and administrative burdens placed on their charter bus operations. Specifically, these commenters argued that it is unfair for UMTA to further restrict their ability to provide charter service, and limit their ability to earn needed revenues to offset operating deficits, at a time when Federal operating assistance is being curtailed. These commenters also argued that restrictions proposed in several of the alternatives would prevent the best use of Federal tax dollars since they would result in federally assisted buses sitting idle when they could be put to good use.

Comments from private bus companies, and the trade associations representing them, in general urged UMTA to select the alternatives that would provide more protection for them. In several cases, these commenters urged UMTA either to prohibit charter operations by recipients or to at least apply the same requirements to intracity operations as to intercity operations.

UMTA will discuss the specific comments on the ANPRM below not by alternative, but by section of the UMT Act. Thus, there are two main sections, one on 12(c)(6) and the second on 3(f). We have taken this approach since it focuses on the philosophical differences in the proposed approaches.

A. Section 12(c)(6)

The existing rule implements the definition of mass transportation in section 12(c)(6) of the UMT Act and the related Comptroller General's decision by prohibiting a recipient from providing any charter service, whether intracity or

intercity, unless it is incidental to the provision of mass transportation service. The rule states that certain weekday charter service is presumed to be not incidental if it: (1) Occurs during peak periods; (2) involves a trip that goes 50 miles beyond a recipient's urban area; or (3) requires the use of a particular bus for more than 6 hours in one day. If a complaint is filed alleging a violation of this requirement, a recipient is permitted to rebut the presumption with factual evidence.

As described above, only the first and second alternatives in the ANPRM addressed section 12(c)(6). The first alternative would not have modified the existing presumptions. The second alternative would have made the presumptions conclusive. As a result, any charter service that was contrary to the presumptions would have automatically resulted in a violation. The recipient would not have been able to rebut the presumption once it was established that, in fact, it had operated charter service during peak periods, going 50 miles beyond the recipient's urban area, or requiring the use of a bus for more than 6 hours in any one day. UMTA's experience with charter bus complaints has been that this has been the source of many problems. In the ANPRM, we stated our opinion that by making the presumptions irrebuttable the number of alleged violations would be greatly decreased and it should be easy to determine if, in fact, a violation had occurred.

Fifty-four commenters commented on UMTA's second alternative. The majority of these comments were submitted by public operators. Seventeen, or almost one-third, of the commenters favored this alternative. These commenters represent a cross-section of the pool of commenters and include both public and private operators. The majority, however, are private operators and trade associations representing them.

More than one-half of the commenters addressing this alternative, most of whom were public operators, rejected it. These commenters provided a wide range of reasons to support their arguments against this alternative. In general, they stated that this approach would be too burdensome. Many stated that making the incidental use presumptions conclusive, and thus in effect limiting their charter operations to the weekend, decreases local flexibility and takes away needed management options as to the use of personnel, facilities, and equipment. Public operators also stated that the flat prohibition does not take into account seasonal variations in charter demand

and could leave many consumers without needed charter services in the summer and other peak demand periods. One public operator stated that making the incidental use presumptions conclusive would take away 95 percent of its charter business.

One private citizen offered a comment indicating the practical problems that this approach would create. This person stated that the only charter service available in her area that is accessible to handicapped persons is provided by the local public operator. The commenter argued that if UMTA were to make the incidental use presumptions irrebuttable, the local public operator would not be available for charter trips for local handicapped organizations who would have their mobility restricted further.

Several commenters noted that one problem with this approach, and even with the current presumptions, is that UMTA does not define peak hours. Under the current presumptions, a charter service provided during "peak morning and evening rush hours" is presumed to be not incidental as to mass transit service. These commenters stated that peak hours vary from operator to operator and can even vary within one urban area depending on the season.

Moreover, the commenters stated that their need for buses during any peak period is not constant. Peak periods, like the day in general, have certain times when more buses are needed than at others. Thus, while a peak period may last from 6:30 a.m. to 9:30 a.m., the maximum buses are in use between 7:30 a.m. and 9:00 a.m. The time on either side of this maximum period is referred to as "shoulders." Commenters argued that they could begin or end some charter service during the "shoulders" without interfering with their regular transit service. They asked UMTA to modify this second alternative to account for this phenomenon if this approach were adopted.

UMTA, however, has decided not to adopt either of these approaches in the NPRM. Instead, as will be discussed below, we believe that section 12(c)(6) provides UMTA with broader discretion to impose stricter requirements that will provide better protections for UMTA equipment to ensure that its use is for mass transportation.

B. Section 3(f)

The existing regulation implements the section 3(f) protections for private intercity charter operators with two key provisions in the standard charter bus agreement in § 904.13 of the regulation.

First, if a recipient conducts any intercity charter service, it must cover its total charter costs, both intracity and intercity, with charter revenues on an annual basis. Appendix B lists the 79 separate costs that must be accounted for. The second provision prohibits a recipient from charging a predatory rate for any charter trip.

1. The first alternative would not have altered this approach except to add or delete certain costs from the calculation in order to put a recipient's operations on a more equal footing with a private operator's operations.

A total of 49 commenters provided comments on UMTA's first alternative. A majority of these commenters, mainly public operators, favored either retaining the regulation as is or with modifications. The most commonly suggested modifications included making the cost allocation plan/certification of costs self-certifying, as UMTA proposed under the second alternative. A majority of the nine private operators that commented on this alternative also favored its retention. Only three commenters opposed the alternative outright.

By far the largest number of comments on this alternative addressed the problem with the current cost allocation plan. In general, public operators urged UMTA to eliminate this requirement on the grounds that it is too burdensome, a futile accounting exercise, and a waste of valuable personnel and resources. Several public operators, however, stated that the preparation of this plan is not burdensome and that they would, as good business practice, prepare such data even if not required to do so by UMTA.

Several private operators stated that the requirement that recipients who provide intercity charter service prepare a cost allocation plan to show that their charter revenues equal or exceed their charter costs provides little protection for them. These private operators argued that since most private charter bus operators are small companies, they do not have the money or personnel to thoroughly review or challenge a recipient's cost allocation plan.

As indicated in the ANPRM, many parties involved with the charter bus regulation have urged UMTA either to include or to permit deductions for specific costs in the current "List of Expenses" for the cost allocation plan found in Appendix B to the regulation. UMTA received many comments with specific suggestions. These suggestions include requiring recipients to add a factor for profit and to add the prorated general and administrative expenses attributable to charter operations.

Several public operators stated that the cost of complying with Federal regulations, such as the cost of preparing the cost allocation plan or defending charter bus complaints, should be deducted from the total charter costs. The public operators argued that unless these costs, which private operators do not have to incur, are deducted, the comparison of costs between the two types of operators is not comparable.

Although this alternative received wide support from commenters, we do not believe it is a workable solution to the problems facing the private charter bus industry. As indicated above, both public operators and private operators find the current cost allocation plan useless or burdensome. Not only is it burdensome to prepare, but it apparently does not serve as a protection to private operators. The suggested modification of including or deleting certain costs does not, in UMTA's opinion, address the real problem.

Furthermore, the continuation of this current approach relies primarily on the regulation of rates charged by UMTA recipients in order to protect charter operators. This Administration opposes regulation of this sort. The Bus Regulatory Reform Act (Pub. L. No. 97-261) reduced the involvement of the Federal Government in reviewing and approving the rates that interstate bus carriers can charge. This is but one example in the trend away from the economic regulation of the transportation industry. A continuation of the approach in the current charter regulation would be contrary to this policy. Thus, UMTA has decided not to adopt the first alternative approach.

2. In the second alternative, UMTA proposed to continue the existing implementation of section 3(f) except to make it a self-certification process. As indicated above, this was one modification to the existing rule that many commenters supported. UMTA feels, however, that the reasons given for not adopting the first alternative are equally applicable here. As a result, UMTA has decided not to adopt this second alternative.

3. In the third alternative, UMTA proposed to implement section 3(f) of the UMT Act by requiring a recipient to charge a rate for all charter trips no lower than the lowest rate charged by the three largest private operators providing the same or similar service in the area. Of the 42 commenters commenting on this proposal, ten favored it. Several of these commenters, however, suggested modifications such as eliminating the requirement that it be

"the same or similar service," or requiring a comparison with three private operators only if three exist.

Thirty-three of the commenters opposed this approach. Over half of these are public operators.

In the ANPRM, UMTA noted several practical problems associated with this alternative. For example, how should "largest" be determined? Should it be based on volume of business, number of passengers transported, annual revenues, number of employees, or number of buses? In addition, what should be done if there are only one or two public operators in the service area? Moreover, how should "service area" be defined? The majority of commenters opposing this alternative cited the difficulty in answering these and other questions as a reason for not adopting it.

One public operator provided a personal example of how difficult this approach would be to implement. This commenter stated that a provision in its State Public Utilities Code requires a similar rate-comparability approach. The commenter relates, however, that when it held a hearing in an attempt to establish charter rates not less than those charged by the three largest private operators operating the same or similar service in the area, "unbelievable confusion reigned." As a result, the commenter abandoned all plans to institute local charter service.

In the ANPRM, UMTA noted that the Bus Regulatory Reform Act also contributes to the problems with this approach. This Act makes it easier for private companies to enter the charter bus market and removes many restrictions on the rates they can charge. This could result in a large category of potential competitors whose rates would be unknown to a recipient. Many commenters agreed with UMTA's observations and cited them as a sufficient reason for rejecting the rate-comparability approach.

It is UMTA's opinion that these comments indicate that this approach would prove to be generally unworkable. In addition, this approach, like the first two alternatives, relies on regulating the rates UMTA recipients can charge to protect private operators. As stated above, the Administration is opposed to this form of regulation. Therefore, UMTA has not selected this approach.

4. Under the fourth alternative that UMTA proposed in the ANPRM, the protections for private intercity charter operators would have been implemented by limiting the amount of intercity charter service recipients could provide by placing a ceiling on the allowable

number of charter passenger-miles. UMTA proposed that this ceiling be set once, be recipient-specific, and that it equal 50 percent of the average number of charter passenger-miles that a recipient had provided during its past three fiscal years. UMTA also proposed that a recipient would have been able to engage in charter operations in excess of its ceiling only if it received the approval of the local private operators, through a sign-off process, for those additional miles.

As noted in the ANPRM, UMTA, recognizes that this approach represents a marked difference from the existing charter bus regulation and the other alternatives. This alternative is based on the concept of volume of business, not the rates charged for that business. Although a close monitoring of the rates a recipient charges is one way to ensure that the recipient is not foreclosing private operators, the volume of business a recipient provides may be an equally effective means of preventing overall foreclosure. It may not, however, be as effective at preventing foreclosure on specific routes.

Thirty-nine commenters addressed this alternative. More than two-thirds of these commenters are public operators. Five commenters favored this approach. They stated that it would provide an easier regulation to enforce than the current rule. They suggested, however, that UMTA modify the proposal to raise the ceiling to 85 percent or 90 percent of the average past three years of charter passenger-miles and revise the ceiling every five years.

The remaining 34 commenters opposed this approach. More than 80 percent are public operators. Many of these commenters provided specific arguments against the passenger-mile ceiling. Many argued that this approach would be too inflexible and that it would force public operators out of the charter business. Others argued that setting the ceiling would be unfair to existing charter operators since it would enable operators who begin charter service to set their own ceiling by providing a certain level of charter service during the base period. Many commenters pointed out that setting the ceiling once would not accommodate areas with growing populations and, hence, expanding charter service demands. In addition, public operators stated that requiring private operators to sign off on any charter miles that exceed the ceiling would give the private operator veto power, would create a paperwork nightmare, and would harm not only the public operators but also the consumer who needs the service.

While UMTA still believes that this alternative may present a desirable approach, we believe that the administrative burden it would impose, particularly on recipients, does not justify its adoption.

5. The four approaches that were presented in detail in the ANPRM do not exhaust the range of alternatives to the current charter bus operation. In the ANPRM, UMTA briefly listed alternatives such as restricting recipients' intercity charter bus activities to leasing arrangements with private operators, entering into individual agreements with recipients in place of a regulation, and proposing amendments to the UMT Act to clarify the permissible charter activities.

Eighteen commenters addressed these alternatives. Three of these commenters favored rescinding the regulation and requiring UMTA to enter into individual charter bus agreements with recipients. The three commenters who opposed this approach argued that while it may be one way to account for the variations in the charter industry from one urban area to another, it would be administratively cumbersome for UMTA. Furthermore, these commenters stated that individual agreements would not ensure any degree of uniformity from recipient to recipient. UMTA agrees with these commenters and feels that the burdens associated with this approach outweigh its benefits.

Four commenters addressed the proposed leasing approach. These four represent both the public and private sector and all opposed this approach. Similarly, the three commenters who commented on the proposal to change the UMT Act opposed it.

Commenters also proposed a variety of other approaches. Most of these, however, involved variations of the four main alternatives. While UMTA believes that these suggestions have merit, many would further complicate the existing regulation in an attempt to provide either more protections for private operators, or ensure greater freedom for recipients.

The NPRM

In this NPRM, UMTA proposes an approach different from those proposed in the ANPRM. For the reasons discussed above, there are sufficient problems with the existing rule and with each proposal to cause UMTA to propose a different approach which UMTA believes more effectively implements the existing statutory provisions.

In this NPRM, UMTA proposes to prohibit an UMTA recipient from providing any charter bus operations to

the extent that there is a private charter but operator willing and able to provide such charter service in the area in which the recipient desires to provide charter bus operations. This general prohibition is set forth in § 604.9 and is rooted in the language of section 3(f) of the UMT Act which provides protections for willing and able private intercity charter bus operators. The NPRM proposes a definition for the key term of "willing and able." This and other proposed definitional changes will be discussed below.

For the purpose of this NPRM and this discussion, "charter bus operations" means charter service which a recipient provides using UMTA funded equipment or facilities. This proposal would not change the philosophy of the current rule that charter service provided with 100 per centum local assistance is not subject to any UMTA restrictions. As under the existing rule, UMTA operating assistance could not be used to support charter bus operations.

There are exceptions to this proposed general prohibition. Obviously, if there are no willing and able private charter bus operators, the recipient would be permitted to do any and all charter service using UMTA buses, equipment or facilities that it is requested to do. In this case, however, UMTA intends that the recipients' rates reflect the actual cost of providing the service. Under the NPRM, there would be no restrictions on the charter service provided if this exception were to apply. UMTA asks commenters to address this point. Should UMTA, for example, impose restrictions such as the current incidental use presumptions?

Proposed § 609.9 also sets forth two specific exceptions. First, a recipient would be able to provide charter bus operations if a willing and able private operator did not have the capacity requested. For example, suppose the request to A.B.C. Private Charter Co. (A.B.C.), were for 20 buses. A.B.C., however, only has 10 buses. The NPRM would permit the local UMTA recipient to provide some or all of the service if A.B.C. were unable to secure the necessary additional buses from the other private willing and able charter companies. Thus, the NPRM proposes the UMTA recipient as the charter provider of last resort. It is important to stress that the recipient would be providing the service *not* on its own, but only through a contract with, in the example, A.B.C.

The second exception is similar. A recipient would be able to provide charter bus operations if the willing and able private charter operator did not

have equipment accessible to handicapped persons. Suppose A.B.C. is requested to provide wheelchair lift-equipped buses to take a local handicapped organization on an outing. If A.B.C. did not have any lift-equipped buses, but the UMTA recipient did, the recipient could provide the service. As with the first exception, however, the private operator could only use the recipient as a last resort after it was unable to secure the equipment from other willing and able private operators. Furthermore, the recipient would be providing the service under a contract with the private operator and not directly itself.

UMTA requests comments whether the final rule should provide other exceptions. For example, should an UMTA recipient be able to directly provide charter service, as opposed to under contract with a willing and able private operator, if the request were for a total number of buses that exceeds the total fleet capabilities of all willing and able private charter operators? Similarly, would it make more sense to permit the public to contract directly with the recipient if it alone possessed the requested type of accessible equipment such as wheelchair lift-equipped buses?

Given this basic prohibition, the NPRM proposes several procedural steps that an UMTA applicant and recipient, i.e., an applicant who receives UMTA funding, would have to comply with. First, following the language in section 3(f), all applicants for UMTA assistance to provide mass transportation service would have to enter into a charter agreement with UMTA. Section 604.7 proposes this requirement. UMTA proposes that the agreement be included in each grant application, but would permit an incorporation by reference in subsequent applications once the agreement were entered into.

The text of the proposed agreement is set forth in § 604.7 and applicants would be required to use it. Deviations would not be permitted. Basically, the applicant would agree to not provide any charter bus operations to the extent there were a private charter bus operator willing and able to provide charter service in the area it desires to provide charter bus operations unless one or more of the exceptions discussed above were to apply. In addition, the applicant would agree to comply with the regulation before commencing any charter bus operations. The applicant would have to include two copies of the agreement signed by the applicant's designated official with its application.

The NPRM proposes to define the "designated official" as "the applicant's and recipient's employee authorized to execute and file applications on behalf of the applicant or to enter into agreements on behalf of the recipient." Thus, the person signing the agreement for the applicant would be the same person signing the grant application.

Under the NPRM, UMTA would only sign the agreement if it approves the grant application. Absent the type of legal relationship created by a grant agreement, it does not appear necessary for UMTA and an unsuccessful applicant to be bound in any way. The UMTA official approving the application, generally one of the Regional Administrators, would sign for UMTA and return one copy to the former applicant, now a recipient.

The second procedural section is proposed § 604.11. This is, in many respects, the heart of the NPRM since this section proposes the mechanism a recipient would have to follow to determine who are, if any, the willing and able private charter bus operators in the area in which it desires to provide charter bus operations. If a recipient did not desire to provide any charter bus operations, this and the rest of the rule would not apply to it until it were to decide it wanted to offer such service.

To make the determination of whether there were any private charter bus operators willing and able to provide charter bus service in the area within which the recipient desires to provide charter bus operations, the recipient would have to hold a public hearing. For a recipient that currently provides no charter bus operations, but desires to do so after the effective date of this rule when finalized, the public hearing would have to be held at least 60 days prior to offering to provide charter bus operations. For recipients currently providing charter bus operations under the existing regulation on Charter Bus Operations and desirous of continuing to offer such service, the public hearing would have to be held no more than 60 days after the rule as final becomes effective.

The NPRM would require the recipient to provide notice of its hearing in three distinct ways. First, the recipient would have to publish the notice in a newspaper, or newspapers, of general circulation within the proposed charter service area. UMTA has included the "or newspapers" language to provide for the situation where there is not one newspaper of general circulation that would cover the entire proposed charter service area. In such a case, the recipient would have to publish notices

in as many newspapers as necessary to cover the entire proposed charter service.

Second, the recipient would have to send a copy of the notice to any private charter bus operator requesting that it be sent copies of such notices. This would provide actual notice to any private operator that requested it. Once a private operator requested notice, the recipient would provide it with a copy of the notice for all subsequent hearings held under Section 604.11.

Third, the recipient would have to send a copy of the notice to the United Bus Owners of America (UBOA), 1275 K Street, Suite 800, Washington, D.C. 20005, and the American Bus Association (ABA) 1025 Connecticut Avenue, NW., Washington, D.C. 20036. It is UMTA's opinion that notice to these organizations would be helpful. UBOA and the ABA are the trade associations representing virtually all private charter bus companies. Consequently, notice to them would be another way to ensure that notice is received by the potential willing and able private charter operators in the proposed service area. This could be effectively done by UBOA and the ABA through their newsletters.

The NPRM lists the information that would have to be included in the notice. This would include basic information such as the date, place and time of the hearing. The critical information that would have to be included would be a description of the area and type of charter bus operations the recipient desires to provide. If the recipient only desires to provide charter bus operation within its urban area, or only on certain days, the notice would need to so state. This is important since the rule would only prohibit a recipient from providing charter bus operations to the extent there is a willing and able private operator. Therefore, if no private operator is willing and able to provide charter service in part or all of the recipient's proposed charter service area or only on some of the proposed days, the recipient's would be able to provide the rest of the charter service since there would be no willing and able private charter bus operator.

In addition, the notice would have to state the evidence a private operator would have to present at the hearing to prove that it is willing and able. The NPRM proposes to define "willing and able" as "having the physical capability to actually provide charter bus service and the legal authority and necessary safety certifications, licenses and other legal requirements to provide charter bus service." Thus, under the first part of the definition, a willing and able

private operator would be one that has the capability to provide the service. A broker who has only an office and a telephone and arranges for the recipient or private operators to provide service would not, therefore, under the NPRM, be willing and able since the broker would never itself provide the service. UMTA asks commenters to address this point. If one goal of the revised rule is to open opportunities for the private sector, should not a private sector broker be considered just as willing and able as an operator to provide charter service?

In this NPRM, UMTA does not intend to include within the concept of capability any notion of capacity. Thus, a private operator that operates one bus is as capable as a private operator that operates 100 buses. A private operator would not be considered willing and able to provide charter service only up to its own actual capacity. As a result, if one private operator meets the definition of willing and able for the entire area and for all the days the recipient desires to provide charter bus operations, even though it operates only one bus, the recipient would be limited to providing charter bus operations through a contractual arrangement with that private operator when it lacks the capacity or accessible equipment.

The second part of the definition concerns the legal authority to provide charter bus service. To be willing and able, a private operator would have to have all the required operating authority, safety certifications, insurance requirements, and any other legally required documents, to provide the charter service it alleges it can provide. The evidence, therefore, that a private operator would have to provide for the recipient at the public hearing would be a statement of its capability to actually provide charter service and copies of the necessary legal documents.

UMTA asks commenters to address this definition and the type of evidence that would have to be submitted. Specifically, UMTA wonders what additional elements, if any, should be included in the definition.

Finally, the notice would have to summarize how the recipient would process the evidence submitted. These procedures are set forth in more detail in proposed § 604.13. First, the NPRM would require the recipient to complete its review of all the evidence submitted within 30 days of the hearing. Second, the recipient would have to notify each private charter bus operator within 60 days of the public hearing whether the recipient finds the private operator to be "willing and able." The recipient would have to include with the notification a

list of all private operators that it determined were willing and able.

The NPRM states that the recipient would have to review the evidence submitted by the private operators to decide whether the evidence shows that the operator is willing and able. If the evidence proves that the operator meets the definitional requirements, the recipient must determine that it is willing and able. Thus, UMTA proposes to give recipients no discretion in making these determinations.

UMTA asks commenters to address particularly this aspect of the NPRM. For example, should a recipient be able to look behind the evidence submitted to determine if it is valid or should a recipient have to accept it on face value? Furthermore, if a recipient should be able to look behind the documents, should this extra scrutiny be permitted only in limited circumstances such as when the recipient has reason to believe the documents are falsified?

Proposed § 604.11(d) would require a recipient that desires to provide charter bus operations to annually redetermine the extent to which there are any willing and able private charter bus operators in the urban area. The recipient would have to hold a public hearing annually during the month in which it held its first hearing. The recipient would have to follow the same notice and evaluation procedures it did for the first hearing and send a copy of the notice to all previously determined willing and able private operators.

This provision is critical since it would provide an opportunity for new private operators to prove that they are willing and able and for existing willing and able private operators to extend the spheres of their operations. While the result of these reevaluations could be that the recipient would be able to provide less service, it would also enable a recipient to expand its charter bus operations if fewer private charter bus operators were in business.

It is UMTA's position that only an annual determination is necessary. More frequent public hearings would place unnecessary paperwork burdens on recipients. We would, however, be interested in comments on the frequency of hearings. For example, a hearing every other year may be adequate.

Complaint Process

UMTA proposes to modify the existing charter bus complaint procedures. In the ANPRM, UMTA proposed several modifications to the existing complaint process. First, we proposed to require that private operators attempt to settle disputes with recipients at the local level either before

filing a complaint with UMTA or as the first stage of the UMTA complaint process. Second, UMTA proposed that neutral third parties, instead of the Administrator, act as the fact-finder in complaints. This third party could also prepare proposed decisions that the Administrator would have to ratify. Third, UMTA proposed that deadlines be imposed on all parties in the complaint process in order to ensure an expeditious resolution of complaint.

Twenty-five commenters commented on the proposed revisions. Three-fifths were public operators. Several commenters stated that the complaint process should not be changed. Nearly one-half of the commenters favored a required local conciliation process. UMTA agrees with these commenters. The NPRM proposes local conciliation as the first step in the complaint resolution process. Once the UMTA Regional Administrator determines that a complaint has merit and states a claim for which relief can be granted, the Regional Administrator would notify the parties and direct them to attempt to conciliate the dispute informally and without UMTA involvement.

Nearly one-half of the commenters favored a fixed timetable for processing complaints. UMTA also agrees with these commenters, and the NPRM proposes strict guidelines for all stages of the process. UMTA seeks specific comments on the appropriateness of the proposed time periods.

Of the eight commenters who addressed the use of the neutral fact-finder, six opposed it. The commenters cited several reasons for this opposition including the argument that UMTA should not delegate its statutory responsibility to resolve complaints, and the fear that the use of a fact-finder who was not an UMTA employee would delay the complaint process.

After thorough review, UMTA had decided not to propose the use of any third parties in the complaint process. UMTA will resolve the complaints in-house in an expeditious manner.

Commenters offered a variety of other suggestions on the complaint process. These include requiring a losing recipient to pay a complainant's costs, publishing all decisions in the *Federal Register* and encouraging UMTA to impose significant penalties.

UMTA has not adopted any of these suggestions in the NPRM. We have, however, made it clear that the initial decision would be made in UMTA's Regional Offices, with Headquarters concurrence. We also propose to provide an appeals process to the Administrator. In addition, UMTA will

prepare an annual digest of charter bus decisions and publish it in the **Federal Register**. UMTA has decided to take this action in response to a recent General Accounting Office report.

The specific aspects of the complaint procedure are as follows. Under § 604.15, if an interested party believes a recipient has violated the regulation, the NPRM proposes that the party file a written complaint with the UMTA Regional Administrator for the region in which the complaint arises. If the Regional Administrator believes that the complaint is meritorious and states grounds on which some relief could be granted, the Regional Administrator notifies the parties in writing and directs them to conciliate the dispute informally. The NPRM would provide 20 days for this process. It would permit an extension of this time if the parties agreed it was needed.

If conciliation occurs, the process is complete. If not, the parties must so inform the Regional Administrator. The Regional Administrator then requests documents from the recipient as to its position in response to the complaint. The respondent has 20 days to produce the evidence. The complainant is then given 15 days to rebut the evidence.

Once the evidence is received, the Regional Administrator would either prepare a draft decision or the Regional Administrator would determine that more information is needed. This additional information could be obtained in written form or through a hearing. The preparation of the draft decision must be completed by 15 days after the complainant rebuts the respondent's evidence, after the additional information is received, or after a hearing is held.

The Regional Administrator then submits the draft decision to UMTA Headquarters for review. If Headquarters agrees with it, the decision is sent immediately to all parties. If Headquarters disagrees, it has 10 days to resolve the dispute and have the decision issued.

The NPRM, therefore, proposes a complaint process that lasts for approximately 80 days. The NPRM, however, would permit UMTA to extend any deadlines for administrative convenience.

Section 604.17 would permit the Regional Administrator to impose remedies that would be appropriate to the finding. If the Regional Administrator finds that a violation has occurred and it is one in a continuing pattern of violations, the Regional Administrator has the authority to bar the recipient from future Federal funding for mass transportation. These

provisions do not differ in substance from existing §§ 604.43(b)-604.44. UMTA requests comments on whether the rule should define "continuing pattern" and, if so, what the definition should be. Furthermore, UMTA asks commenters whether the rule should specify a specific penalty for violations including a continuing pattern of violations. For example, the rule could specify that a violation would result in a 10 per centum withholding of UMTA funds and a continuing pattern would result in a complete bar of any UMTA funds in the future.

Section 604.19 would add a new step in the complaint process. Since the initial decision would be made at the regional level, the NPRM provides for an appeal to the Administrator for review. The request for review must be made by the losing party within 10 days after the Regional Administrator issues the initial decision. The Administrator will take action on an appeal only if the losing party produces evidence that there are new matters of fact or points of law that were not available or known when the initial decision was made. If the Administrator takes action on an appeal, the NPRM provides the prevailing party with 10 days to rebut the evidence. After that evidence is received, the Administrator has 15 days to issue a final decision.

UMTA asks commenters to address whether the rule should provide an appeal prior to that proposed in Section 604.19. Such an intermediate step would permit the losing party to receive a review of the initial decision even though no new matters of fact or points of law that were not available or known when the initial decision was made have come to light.

UMTA also asks commenters to address the issue of whether it would be advantageous for the rule to set up an advisory committee made up of representatives of both recipients and private operators to review the submissions by complainants and respondents and offer advice to the UMTA decisionmaker. Such a review panel may be of particular help in the intermediate appeal process discussed in the paragraph above.

Section 604.21, like current § 604.45, provides that judicial review of a final agency action is authorized pursuant to sections 701-706 of the United States Code.

Definitions

The NPRM proposes several new definitions to the regulation. The definitions of "designated official" and "willing and able" have been discussed above. UMTA proposes a minor change

to the definition of "charter bus operations." We proposed adding the phrase "with UMTA equipment or facilities funded or operating assistance provided under the Acts." There are two reasons for this proposal. First, it makes clear that the only charter bus operations which this regulation affects are those an UMTA recipient provides using UMTA assistance. As stated above, it is UMTA's current policy, and we propose to continue it, that any charter bus services which a recipient provides with 100 per centum local funds are not touched by this rule.

The second reason is for economy of words. In the current regulation every time the phrase charter bus operations appears it must be modified by "with UMTA equipment or facilities funded under the Acts" or a similar phrase. Adding this language to the definition will make the regulatory language less cumbersome.

One definition which UMTA proposes to eliminate is "urban area." The definition of "urban area" serves a triggering function under section 3(f). Once a recipient engages in charter operations outside the "urban area" within which it provides regularly scheduled mass transportation services, its charter operations become subject to agreed upon . . . arrangements, appropriate in the judgement of the Secretary, to assure that the financial assistance granted under [the] Act will not enable public bodies and publicly and privately owned operators for public bodies to foreclose private operators from the intercity charter bus industry." (49 U.S.C. 1602(f).) So long as a recipient keeps its charter bus operations within its "urban area," it need not comply with the "fair and equitable arrangements" for the protection of private operators imposed by its section 3(f) agreement with UMTA, although it must comply with incidental use presumptions pursuant to UMTA's and the Comptroller General's interpretations of the definition of mass transportation in section 12(c)(6) of the UMT Act. Currently, the charter regulation makes all of a recipient's charter bus operations, both within and beyond its urban area, subject to the arrangements of a recipient's section 3(f) agreement when a recipient engages in charter operations outside its urban area.

The definition of "urban area" for purposes of the UMT Act is left to the Secretary's discretion. Under the UMT Act, the term "urban area" means any area "which is appropriate, in the judgement of the Secretary, for a public

transportation system to serve commuters or others in the locality." [49 U.S.C. 1608(c)(10)].

The definition of "urban area" in the existing charter bus regulation consists of three parts: (1) The area in which a recipient is authorized by local and State, or Federal law to provide regularly scheduled mass transportation services; (2) the "urbanized area" as defined by the Bureau of Census; and (3) other areas as determined by the Secretary pursuant to section 12(c)(1) of the UMT Act. This definition is broader than the "urban area" referred to in the charter bus section of the UMT Act, which refers to the area "within which [the operator] provides regularly scheduled mass transportation services." (Emphasis added).

The regulation's definition of "urban area" has been the focus of many of the charter bus complaints filed with UMTA. Various State statutes permit public bus operators to provide service anywhere within the State. Recipients in these States argue that the entire State is their "urban area" since they are authorized to provide service there. Consequently, these recipients contend that the intercity charter restrictions in the regulation do not apply to them.

Since the regulation's expansive definition has led to a number of complaints, UMTA proposed to redefine "urban area" in the ANPRM. The proposal would have limited a recipient's urban area to "the area within which it can reasonably be assumed that a recipient can provide mass transportation service, in morning and evening peak periods, to and from a central city." This proposed definition is based on a recent UMTA charter bus decision. In that decision, UMTA stated that the fact that State law may authorize a recipient to provide service on a statewide basis does not preclude UMTA from limiting its definition of the urban area to the area in which it is reasonable for the recipient to provide regularly scheduled mass transportation service. The result in this situation, without the submission of additional evidence by the recipient, was to limit the recipient's urban area to the territorial limits of the counties in which it provides service.

Thirty commenters commented on the proposed redefinition of "urban area." Nine favored the proposal. These commenters represent a range of support from both public and/or private providers. An equal number of commenters favored retention of the current definition. In general, these commenters stated that it provides the needed flexibility to apply to a variety of situations and that if a few States

have caused problems, they should be handled as exceptions to the rule and not as a reason to penalize other UMTA recipients.

An additional 11 commenters offered specific comments on the problems with the proposed definition. These commenters, mainly public operators, argued that the proposed definition is too restrictive and that it will harm the consumer by limiting the available charter service area for public operators. Other commenters stated that the proposed definition needs to be expanded so that "area" is defined, too. As proposed, a commenter asked if the "area" a bus route services is just the streets it travels on, a corridor one-mile on each side of the route, or perhaps, the entire county in which it operates.

UMTA has reviewed this whole issue and we propose to eliminate the definition from the rule. The reason for this is that the NPRM, unlike the existing rule, does not make any distinctions based on whether activities are performed within or outside of an urban area.

Commenters are invited to address these proposed changes and to suggest additional definitions that they believe are necessary or would be helpful.

Other Matters

The NPRM would not continue the existing revenue exception. Thus, the proposed requirements would apply to all applicants and only those recipients desirous of providing charter bus operations.

Section 604.2 of the existing charter bus regulation excludes from the scope of the regulation concerning intercity service any recipient who, together with all operators for the recipient, earned \$15,000 or less in charter revenues during its most recently completed fiscal year. This provision was added to the final rule in 1976 based on UMTA's opinion that \$15,000 in charter revenues is an insignificant amount and any recipient earning that amount or less would not be foreclosing willing and able private operators in the area. UMTA sought comments on this exception in the ANPRM to determine if it should be retained and, if so, whether the dollar amount should be raised.

Twenty-six commenters commented on the revenue exception. Seven comments argued that the regulation should provide no revenue exception. Several of these commenters argued that since the regulation is supposed to protect private operators, any exclusion is harmful to them because it permits some UMTA recipients to conduct unsupervised intercity charter operations.

The rest of the commenters favored the continuation of a revenue exclusion and offered many suggestions on how to calculate the dollar level. A few of these commenters suggested that it be set individually for each recipient and be based on a percentage of its operating expenses or annual revenues. Other commenters suggested that UMTA set levels but that they be tiered to the size of the operator or the size of the urban area.

The majority of the commenters, however, favored raising the dollar level to a specific amount. Suggestions of \$24,000, \$26,500, \$30,000, \$50,000 and \$100,000 were made.

UMTA's 1983 Section 15 data indicates that 168 recipients provide charter service. One hundred twenty of these also reported their annual charter revenues. Forty-nine of those 120 recipients, or 40 percent, are currently excepted. Almost all of these are small operators who claim that the administrative burden of complying with the current regulation is beyond their administrative and financial capabilities.

If UMTA were to raise the ceiling to \$50,000 or \$100,000 as some commenters suggested, the percentage of recipients excepted from the regulation would increase to 68 percent and 80 percent, respectively.

UMTA is sympathetic to the recordkeeping problems that the current exception overcomes for small operators. The NPRM would drastically reduce the paperwork burdens on recipients. Based on this and our recognition that the UMT Act requires protections for private intercity charter operators from foreclosure by all UMTA recipients, we propose to delete the current revenue exception.

One issue that UMTA raised in the ANPRM is whether the rule should set a limit on the number of spare buses (spare ratio) that a recipient could use for charter service. UMTA does not have any regulatory restrictions on the spare ratio that a recipient may have. Instead, UMTA reviews each grant for new buses on a case-by-case basis to determine if the requested additional or replacement buses are needed.

UMTA received a total of 33 comments on this issue. Two-thirds of these commenters are public operators. Ten commenters favored the imposition of a spare ratio. Over one-half of these commenters were public operators. These commenters, however, suggested that the ratio should be locally determined. Others indicated that a ratio of 5 percent or 10 percent would be acceptable, but not higher.

The remainder of the commenters opposed the imposition of any spare ratios. Many argued that it limits local flexibility in providing charter service and that any decision on the number of spare buses should be left up to the local transit operators. Other commenters argued that even if UMTA were to impose a spare ratio, UMTA should continue to monitor and limit the number of a recipient's spare buses through the grant making process.

UMTA agrees with the majority of the commenters and does not propose in the NPRM to limit the number of spare buses a recipient can have. We believe that the grant making process and the Triennial Review are the correct processes to review and determine the number of buses a recipient needs.

Legal Basis for Proposed Approach

The NPRM represents a marked change from the existing rule. One paramount concern in administrative law is that there be a sufficient legal basis to support any changes to existing regulations. This is particularly of concern here since it can be argued that section 3(f) of the UMT Act provides protections for only willing and able intercity private charter bus operators and that the NPRM's protections for private intracity charter bus operators go beyond UMTA's statutory authority. It is UMTA's opinion that the UMT Act provides the needed statutory support for the proposed changes.

Section 12(c)(6) provides an absolute prohibition on the provision of charter bus operations with UMTA assistance. The Comptroller General's Opinion in 1966 interpreted this prohibition, however, to permit a narrow exception. That opinion holds that UMTA assistance can be used to provide charter bus operations so long as that service is incidental to the provision of mass transportation service. The Comptroller General's opinion provides UMTA with the discretion to permit its recipients to provide some charter service. The provision of such service is merely a privilege granted and controlled by UMTA, not an absolute right.

To date, UMTA has limited the restrictions on charter service based on section 12(c)(6) to the incidental use presumptions in § 604.11 of the current regulation. The rest of the regulation implements the restrictions on intercity charter service enacted by Congress in section 3(f). It is UMTA's opinion that the language in section 12(c)(6) provides UMTA with the discretion to impose restrictions, in addition to those in section 3(f), if UMTA determines such restrictions are warranted. Based on our

research to date, we believe that added restrictions are needed to carry out the legislative mandates in the UMT Act.

Furthermore, even if UMTA did not have broad discretion under section 12(c)(6), an identical implementation of sections 12(c)(6) and 3(f) is permissible. It is UMTA's opinion that if private operators are given the opportunity to provide charter operations before UMTA recipients, the private operators and the mass transportation equipment will be protected. Thus, UMTA assistance would be used to provide charter operations only incidentally, i.e., when private operators are not willing and able to provide the services.

Executive Order 12291

This is not a "major" regulation as defined in Executive Order 12291.

DOT Policies and Procedures on Improving Government Regulations

This is a "significant" regulation as defined in "DOT's Policies and Procedures on Improving Government Regulations" because of substantial public interest and the effects on competition.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. No. 96-354) requires each Federal agency to prepare an initial regulatory flexibility analysis for each notice of proposed rulemaking that, if promulgated, would have a "significant economic impact on a substantial number of small entities." The Act requires that each agency also prepare a final analysis that takes into consideration those comments received on the initial analysis. If the head of the agency determines, however, that the regulation will not, if promulgated, have the requisite impact, he or she can certify that finding in the regulation and include a brief statement explaining the reasons for the certification.

Based on UMTA's analysis, to date, I certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The small entities that are UMTA recipients are mainly Section 18 recipients. The small private entities are small private charter bus operators. UMTA recognizes that the NPRM may reduce the amount of charter service that Section 18 recipients provide. Although this may affect a substantial number of Section 18 recipients, we do not believe that the negative impact will be significant.

Similarly, any decrease in charter service provided by UMTA recipients under this rule could result in an increase in service provided by private

charter operators, both large and small. UMTA believes that while a substantial number of small private operators may realize increased business, the impact will not be significant.

UMTA, however, seeks comments on this certification. If these comments and additional in-house research indicate that a Regulatory Flexibility Analysis is appropriate, such an analysis will be prepared for the final rule.

Regulatory Analysis

A copy of the regulatory analysis has been placed in the docket for public inspection. A brief summary of the benefits, and costs is provided below.

First, the proposed approach does not in any way rely on the regulation of charter rates to achieve the twin goals of the UMT Act: protection of UMTA equipment for mass transportation and protection of private intercity charter operators. A continuation of regulating rates is contrary to the Bus Regulatory Reform Act and this Administration's regulatory policies.

Second, this approach attempts to improve the economics of the private intercity charter bus industry. Although it does so at a potential cost to UMTA recipients, we believe this UMTA Act supports and calls for such action:

UMTA's research to date, however, would indicate that instead of a potential costs, the NPRM would actually improve recipients' revenues on a nationwide basis. Although a more detailed discussion can be found in the Draft Regulatory Analysis, UMTA finds that the generating of \$45 million in annual charter revenues costs recipients \$47.5 million. Consequently, recipients, nationwide, lose \$2.5 million annually. Therefore, the NPRM would, by reducing charter opportunities, improve recipients' financial situations.

Admittedly, the nationwide view does overlook some recipients who actually realize net positive cash flows from charter service. For these recipients, the NPRM would increase their operating deficits. Currently, UMTA's Section 9 and 18 programs do provide some operating assistance to offset this deficit. UMTA strongly believes, however, that operating expenses are a local concern and should not be borne by the Federal Government. To that extent, we are confident that any potential negative impacts on mass transportation operating funds resulting from a reduction in charter revenues will be made up by State and local subsidies.

Furthermore, it should be noted that modest improvements in operating efficiency could entirely offset the

revenue reductions occasioned by the NPRM. As mentioned above, significant savings could be realized by bringing down the spare ratio, reducing peak requirements, as well as by making use of more cost-efficient providers.

Third, this NPRM would shift the burden of proof from private operators and UMTA to UMTA recipients. It would do so by prohibiting a recipient from doing any charter service so long as there were a willing and able private operator. As discussed above, private operators have a difficult time enforcing the current regulation's protections for them. Not only do private operators have a difficult time distinguishing when a federally assisted bus is being used for charter service, but the difficulty in interpreting and understanding the cost allocation plan further restricts a private operator's ability to challenge a recipient's charter service. By shifting the burden of proof, UMTA believes that the protected class of private operators will be better served.

Fourth, this rule would be easier for UMTA to enforce. Not only does this NPRM propose strict deadlines for the processing of complaints, but by eliminating the need to review cost allocation plan, UMTA's staff will be able to process complaints more quickly.

Fifth, the NPRM would provide additional protections for private intracity charter operators. The NPRM would do so by making no distinction between the type of charter bus operations provided. Before a recipient could provide any charter service it must ensure that there are no willing and able private operators in the area in which it desires to provide charter service. As described above, UMTA research indicates that the private intracity charter bus operators are facing competition from UMTA recipients. It is UMTA's opinion that this problem can be appropriately remedied through the provisions imposed in this NPRM.

Based on these benefits and costs, it is UMTA's opinion that this NPRM would successfully correct many of the problems with the current regulation. UMTA is interested in comments on this approach in this NPRM and invites proposals for alternative ways of achieving UMTA's goal of correcting the problems with the existing regulations. In addition, we are interested in receiving information that will be useful in evaluating this regulation.

Collection of Information Requirements

The collection of information requirements contained in the proposed rule are being submitted to OMB for

review under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. No. 96-511). Comments on the proposed information collection requests must be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Department of Transportation. UMTA requests that the commenter also transmit an information copy of any such comments to UMTA Docket 82-1.

List of Subjects in 49 CFR Part 604

Administrative practice and procedures, Buses, Mass transportation.

List of Subjects in 49 CFR Part 604

Administrative practice and procedures, Buses, Mass transportation, Reporting and recordkeeping requirements.

In consideration of foregoing, UMTA proposes to revise Part 604 of Title 49 Code of Federal Regulations, to read as follows and to remove Appendices A and B.

PART 604—CHARTER BUS OPERATIONS

Subpart A—General

- Sec.
- 604.1. Purpose.
 - 604.3. Applicability.
 - 604.5. Definitions.
 - 604.7. Charter Bus Agreement.
 - 604.9. Charter Bus Operations.
 - 604.11. Procedures for Determining if a Private Charter Bus Operator is Willing and Able.
 - 604.13. Reviewing Evidence Submitted by Private Charter Bus Operators.

Subpart B—Complaint Process

- 604.15. Filing a Complaint.
- 604.17. Remedies.
- 604.19. Appeal.
- 604.21. Judicial Review.

Authority: Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4) and 142(a) and (c); and 49 CFR 1.51.

Subpart A—General

§ 604.1 Purpose.

The purpose of this Part is to implement section 3(f) and section 12(c)(6) of the UMT Act (49 U.S.C. 1602(f) and 1608(c)(6)).

§ 604.3 Applicability.

This part applies to all applicants and recipients of Federal financial assistance under:

- (a) Section 3 (excluding sections 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act (49 U.S.C. 1601 *et seq.*); or
- (b) Sections 103(e)(4) and 142(a) and (c) of Title 23 United States Code which

permit the use of Federal-Aid Highway funds to purchase buses.

§ 604.5 Definitions.

(a) All definitions in the UMT Act (at 49 U.S.C. 1608) are applicable to this part, except as may otherwise be provided in this section.

(b) "The Acts" means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*), and those parts of Title 23 of the United States Code, 23 U.S.C. sections 103(e)(4) and 142(a) and (c) that provide funds for assistance to public bodies purchasing buses.

(c) "Administrator" means the Administrator of the Urban Mass Transportation Administration.

(d) "Charter bus operations" means transportation using equipment or facilities funded under the Acts, by bus of a group of persons who, pursuant to a common purpose, and under a single contract, at a fixed charge for the vehicle or service, in accordance with the carrier's tariff, have acquired the exclusive use of a bus to travel together under an itinerary either specified in advance or modified after having left the place of origin. This definition includes the incidental use of buses for the exclusive transportation of school students, personnel, and equipment.

(e) "Days" means calendar days in Subpart A and Federal working days in Subpart B.

(f) "Designated Official" means the applicant's and recipient's employee authorized to execute and file applications on behalf of the applicant or to enter into agreements on behalf of the recipient.

(g) "Interested party" means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient regarding charter bus operations.

(h) "Recipient" means one that has received or is receiving Federal financial assistance under the Acts. The term includes subrecipients of a recipient and public bodies that receive or assistance that will be passed on to another public or quasi-public body, and any operator for a recipient, whether publicly or privately owned and may include lessees of federally assisted buses and other equipment.

(i) "Regional Administrator" means the Administrator of one of the Urban Mass Transportation Administration Regional Offices.

(j) "UMT Act" means the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

(k) "UMTA" means the Urban Mass Transportation Administration, United States Department of Transportation.

(l) "Willing and able" means having the physical capability to actually provide charter bus service and the legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter bus service in the area it proposes to provide such service.

§ 604.7 Charter bus agreement.

(a) Every applicant for financial assistance under sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act or 23 U.S.C. 103(e)(4) and 142 (a) and (c) must include two copies of a charter bus agreement signed by the applicant's designated official with each grant application submitted to UMTA after [insert effective date of rule]. Once the applicant and UMTA enter into a charter bus agreement, the applicant may incorporate that agreement by reference into any subsequent grant application.

(b) The text of the agreement follows:

I, (name), (title), agree that (name of applicant) will provide charter bus operations with equipment or facilities provided under the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. Section 1801 *et seq.*), or under 23 U.S.C. Sections 103(e)(4) and 142(a) and (c) (the Acts) only to the extent that there are no private charter bus operators willing and able to provide charter bus operations in the area the (name of applicant) desires to provide charter bus operations unless one or more of the exceptions in 49 CFR 604.9 applies.

I further agree that (name of applicant) will comply with the provisions of 49 CFR Part 604 before it provides any charter bus operations with equipment or facilities, provided under the Acts, that the requirements of 49 CFR Part 604 will apply to any such charter bus service that is provided, and that the definitions in 49 CFR Part 604 apply to this agreement.

Applicant

Name

Title

Date

Urban Mass Transportation Administration

Name

Title

Date

(c) If UMTA approves the grant application, the approving official shall sign the agreement when the grant application is approved. One copy of the signed agreement will be returned to the applicant.

§ 604.9 Charter bus operations.

(a) If a recipient desires to provide any charter bus operations with UMTA funded equipment or facilities it must first determine if there are any private charter bus operators willing and able to provide charter service in the area in which it desires to provide charter bus operations. To the extent that there are such private bus operators, the recipient is prohibited from providing charter bus operations unless one or more of the exceptions in § 604.9(b) applies.

(b) *Exceptions.* A recipient may enter into a contract with a willing and able private charter bus operator to provide charter bus service for the private charter bus operator if:

(1) The willing and able private charter bus operator is requested to provide charter bus service that exceeds its capacity and it is unable to obtain the additional capacity from other willing and able private charter bus operators; or

(2) The willing and able private charter bus operator is unable to provide of equipment accessible to handicapped persons itself or obtain the equipment from other willing and able private charter bus operators.

§ 604.11 Procedures for determining if a private charter bus operator is willing and able.

(a) To determine if there are any private charter bus operators willing and able to provide charter service in the area in which it desires to provide charter bus operations, a recipient must hold a public hearing:

(1) At least 60 days before it desires to begin charter bus operations; or

(2) Not more than 60 days after [insert effective date of this Part] if the recipient is providing charter bus operations in accordance with former 49 CFR Part 604 on [insert effective date of this Part] and desires to continue to provide charter bus operations.

(b) The recipient must:

(1) Publish a notice in a newspaper, or

newspapers, of general circulation within the proposed charter service area;

(2) Send a copy of the notice to each private charter bus operator that requests that it be sent copies of such notices; and

(3) Send a copy of the notice to the United Bus Owners of America, 1275 K Street, NW., Suite 800, Washington, D.C. 20005 and the American Bus Association, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

(c) The notice shall include:

(1) The name of the recipient;

(2) A statement that the recipient desires to provide charter bus operations;

(3) A description of the charter bus operations which the recipient desires to provide;

(4) A description of the area in which the recipient desires to provide charter bus operations;

(5) A statement that any private charter bus operator may attend the hearing and present evidence that it is willing and able to provide the proposed or a portion of the proposed charter bus operations;

(6) A statement that the evidence necessary for the recipient to determine if a private charter bus operator is willing and able includes only the following:

(i) A statement that the private charter bus operator has the physical capability to actually provide the charter bus operations; and

(ii) A copy of the documents to show that the private charter bus operator has the requisite legal authority to provide the proposed charter bus operation and that it meets all necessary safety certification, licensing and other legal requirements to provide the proposed charter bus operations;

(7) A statement that the recipient shall review all evidence presented at the public hearing within 30 days of the public hearing, and within 60 days of the public hearing shall notify each private charter bus operator that presented evidence of the recipient's determination whether the private operator is "willing and able"; and

(8) A statement that the recipient shall not provide any charter bus service with equipment, facilities or operating assistance funded under the Acts to the extent that there are willing and able private charter bus operators unless it qualifies for one or more of the exceptions in 49 CFR § 604.9(b).

(d) The recipient shall hold a public hearing annually during the month in

which it held its first hearing to redetermine the extent to which there are private charter bus operators willing and able to provide charter service in its desired charter bus operations service area. The recipient shall follow the procedures in 49 CFR 604.11 (b) and (c) and 604.13 for this process and include in the list of private operators receiving notice under § 604.11(b)(2), all private operators the recipient has determined under this Part are willing and able.

§ 604.13 Reviewing Evidence Submitted by Private Charter Bus Operators.

(a) The recipient shall review all evidence presented at public hearings held under 49 CFR 604.11 within 30 days of the public hearing.

(b) Within 60 days of the public hearing held under 49 CFR 604.11, the recipient shall notify each private charter bus operator that presented evidence of the recipient's determination whether the private operator is "willing and able." In addition the recipient shall provide a list of all willing and able private charter bus operators with the notification.

(c) The recipient shall review the evidence submitted by each private charter bus operator to determine if the evidence proves that the private charter bus operator has:

- (1) The physical capability to actually provide charter bus service; and
- (2) The required legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter bus service.

(d) The recipient must determine that a private charter bus operator which meets the requirements in 49 CFR 604.11(c) is a willing and able private charter bus operator.

Subpart B—Complaint Process

§ 604.15 Filing complaint.

(a) An interested party ("complainant") who believes that a recipient is in violation of the requirements of this Part may submit a written complaint to the UMTA Regional Administrator for the region in which the alleged violation has occurred. The Complainant shall also send a copy of the complaint to the recipient ("respondent").

(b) If the Regional Administrator determines that the complaint is not without obvious merit and that it states grounds on which relief may be granted, based on the information supplied by the complaint, the Regional Administrator in writing shall advise the complainant and respondent to attempt informally to conciliate the dispute. The period for informal conciliation shall

last 20 days from the date that the Regional Administrator orders it, unless an extension is mutually agreed upon by the parties.

(c) If the parties are unable to conciliate the dispute, either party shall so notify the Regional Administrator in writing. The Regional Administrator shall then give notice to the respondent in writing that it has 20 days from the date of the notice to provide written evidence to show that no violation has occurred. The respondent shall provide a copy of this information to the complainant.

(d) After the Regional Administrator receives the respondent's evidence, the Regional Administrator shall inform the complainant that it has 15 days from the date of the notice to rebut the respondent's evidence. The complainant shall provide a copy of this information to the respondent.

(e) The Regional Administrator shall review the evidence submitted by the parties and prepare a recommended written decision, including recommended remedies, on the complaint based on the written record within 15 days after the time period provided in paragraph (d) of this section expires. If, however, the Regional Administrator determines within this 15-day period that further investigation is necessary, including the submission of additional information or the holding of an informal evidentiary hearing, the Regional Administrator shall so inform the parties in writing. In addition, either party may request an informal evidentiary hearing prior to the Regional Administrator's recommended written decision. The Regional Administrator may grant or deny such request. The date and location of the hearing shall be arranged by the Regional Administrator in consultation with the parties. If a hearing is held, the parties shall submit in writing any new evidence introduced at the hearing to the Regional Administrator within 10 days after the hearing. The notice to the parties of the need for additional information or a hearing shall stop the running of 15-day time period required in this paragraph. The Regional Administrator shall, however, prepare a recommended written decision based on the written record within 15 days after the additional information is received or 15 days after the hearing is held or the new evidence introduced at the hearing is submitted in writing, whichever is later.

(f) The Regional Administrator's recommended written decision shall include a statement on whether a violation has been found and an analysis and explanation of the findings upon which the decision is based.

(g) The Regional Administrator shall submit each recommended written decision to UMTA Headquarters for concurrence. Absent special circumstances, UMTA Headquarters shall inform the Regional Administrator of its concurrence or nonconcurrence 10 days after receipt. If UMTA Headquarters concurs in the recommended decision, it shall so inform the Regional Administrator who immediately will send a copy of the decision to the parties. If UMTA Headquarters nonconcurs, the disagreement will be worked out internally within 10 days. After an agreement on the decision is reached, the Regional Administrator shall immediately send a copy of the decision to the parties.

(h) UMTA may extend the deadlines imposed in this part for administrative convenience by notifying all parties in writing of the extensions.

§ 604.17 Remedies.

(a) If the Regional Administrator determines that a violation of this part has occurred, the Regional Administrator may order such remedies as the Regional Administrator determines are appropriate.

(b) If the Regional Administrator determines that there has been a continuing pattern of violations of the terms of this part, the Regional Administrator, with UMTA Headquarters' concurrence, may bar the respondent from the receipt of further financial assistance for mass transportation facilities and equipment.

§ 604.19 Appeal.

(a) The losing party may appeal the decision to the Administrator within 10 days of its issuance. The losing party shall include in its appeal the basis for the appeal and evidence to support the position. A copy of the appeal shall be sent to the prevailing party by the losing party.

(b) The Administrator will only take action on an appeal if the losing party presents evidence that there are new matters of fact or points of law that were not available or known during the investigation of the complaint. If action is taken on an appeal, the Administrator shall provide the prevailing party with 10 days to rebut the evidence contained in the request and make a final determination of the complaint within 15 days of the receipt of such evidence.

§ 604.21 Judicial review.

The Regional Administrator's decision, or the Administrator's decision on appeal if so requested, shall be final

and conclusive on all parties, but is subject to judicial review pursuant to sections 701-706 of Title 5 of the United States Code.

Issued on: March 3, 1986.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 86-4854 Filed 3-5-86; 8:45 am]

BILLING CODE 4910-57-M

Test Report

Thursday
March 6, 1986

Part IV

Department of Education

Office of Vocational and Adult Education

34 CFR Parts 400, 401, and 415

Vocational and Adult Education: State
Vocational Education and Discretionary
Programs; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

34 CFR Parts 400, 401, and 415

Vocational and Adult Education: State Vocational Education Discretionary Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend regulations governing the State Vocational Education Program and make a technical amendment in the regulation governing one of the Secretary's Discretionary Programs of Vocational Education. These proposed regulations would implement statutory changes contained in Pub. L. 99-159 and make minor technical and typographical corrections.

DATE: Comments on these proposed regulations must be received on or before April 21, 1986.

ADDRESSES: Comments should be addressed to Dr. Thomas L. Johns, Acting Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202-5609. Telephone: (202) 732-2237.

FOR FURTHER INFORMATION CONTACT: Mrs. Sharon A. Jones, Chairperson, Vocational Education Regulations Task Force, U.S. Department of Education, (Room 620, Reporters Building), 400 Maryland Avenue SW., Washington, DC 20202-5609. Telephone: (202) 732-2237.

SUPPLEMENTARY INFORMATION:

Background

These proposed amendments implement recent changes to the Carl D. Perkins Vocational Education Act (Act), 20 U.S.C. 2301 *et seq.*, made by Title VII of the National Science, Engineering, and Mathematics Authorization Act of 1986, Pub. L. 99-159.

The regulations being amended affect the State Vocational Education Program which assists States in conducting, directly or through awards to local recipients, vocational education programs. The regulations that govern the State Vocational Education Program are in 34 CFR Parts 400 and 401, and were published in the *Federal Register* on August 16, 1985 (50 FR 33226).

Summary of Major Provisions

(a) Section 401.15(d) is revised to implement the new statutory requirement that States certify to the

Secretary the establishment and membership of State councils by the beginning of each State plan period. Under the existing regulations State councils must be certified at least 90 days prior to the beginning of each State plan period.

(b) Section 401.19 is revised by eliminating the requirement that the State plan include a description of the manner in which the State reserves funds for services an activities for individuals with limited English proficiency. This requirement is unnecessary in light of the new statutory formula for reserving funds for such persons.

(c) Sections 400.4(b) and 401.30(b)(1) are revised to reflect the new statutory requirement that the Secretary provide funds to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands for State councils on vocational education. The Territories were not provided funds to establish State councils under the current regulations.

(d) Section 401.96(b) is revised to implement the new statutory formula for utilizing funds to provide vocational education services and activities for individuals with limited English proficiency under the Vocational Opportunities Program for disadvantaged individuals. These proposed regulations interpret the statute as distributing funds based on the number of individuals with limited English proficiency enrolled in vocational education. Because of interpretive difficulties with the original statutory formula, the existing regulations permit States to implement the formula in several ways.

(e) Section 401.97 is revised to reflect the new statutory provisions which authorizes the use, under certain conditions, of in-kind contributions to meet the matching requirement under the Vocational Education Opportunities Program for disadvantaged individuals. The current regulations allow for the use of cash expenditures only. The proposed regulations would authorize an eligible recipient to make an in-kind contribution to the extent it determines that it cannot otherwise contribute. Additional guidance regarding the permissible use of in-kind contributions in connection with projects, services, and activities under the Vocational Education Opportunities Program for disadvantaged persons may be found in Subpart G of 34 CFR Part 74.

(f) Sections 401.102 and 401.105 implement the new statutory requirements that a State may not expend for State administration of its

Consumer and Homemaking Education Program and its Comprehensive Career Guidance and Counseling Program under Titles III-B and III-D, respectively, more than six percent of its allotment for each program. The existing regulations impose a six percent cap on expenditures for State leadership.

Executive Order 12291

These proposed regulations have been reviewed by the Department in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Under the State Vocational Education Program, grants for vocational education purposes are available only to States and State agencies. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. To the extent that these regulations have an impact on small entities, they repeat statutory requirements. Federal regulations governing the State grant program do not impose any non-statutory requirements that will have a significant economic impact on the small entities affected. States are authorized to establish individual application requirements under the State program.

Intergovernmental Review

The State Vocational Education Program and Secretary's Discretionary Programs of Vocational Education in 34 CFR Parts 401 and 415 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Invitation to Comment

General Comments

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments, suggestions, and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 45th day from the date of

publication of these proposed regulations will be considered.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 620, Reporters Building, 300 7th Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is also invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Special Issues

(a) Section 203(a)(3) of the Act, as amended, contains a new formula for utilizing funds for programs, services, and activities for individuals with limited English proficiency under the Vocational Education Opportunities Program for disadvantaged individuals. Comments are invited on the Secretary's interpretation of the formula (§ 401.96(b)). Of particular interest is whether the interpretation that funds are distributed on the basis of the number of individuals with limited English proficiency enrolled in vocational education raises special problems.

(b) Section 502(b) of the Act now permits the use of in-kind contributions in satisfying the matching requirement in Vocational Education Opportunities Programs serving disadvantaged individuals. However, section 201(c)(2) of the Act continues to require that Federal and matching funds reserved for disadvantaged individuals be used solely for the supplemental or additional costs of programs, services, and activities for such individuals. The Secretary is therefore inviting comments on—

- (1) Whether additional guidance is needed on the use of in-kind contributions; and
- (2) What problems users foresee in the implementation of this provision, including recommendations on how the problems might be solved.

(c) Sections 401.102 and 401.105 of the regulations now restrict expenditures under the Consumer and Homemaking Education Program and the Comprehensive Guidance and Counseling Program for State administration to six percent. Section 400.4(b) defines the term "administration," and the Secretary interprets "State leadership" activities

to include, but not be limited to, curriculum development activities, personnel development, technical assistance, or research activities. Comments are requested on whether the regulations should provide more explicit guidance on State leadership activities.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Parts 400 and 401

Adult education, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Private schools, Reporting and recordkeeping requirements, Schools, School construction, Vocational education, Women.

34 CFR Part 415

Educational facilities, Reporting and recordkeeping requirements, Vocational education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Numbers 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), and 84.053 (State Councils on Vocational Education). Catalog of Federal Domestic Assistance Numbers have not been assigned for the Comprehensive Career Guidance and Counseling Program)

Dated: March 3, 1986.

William J. Bennett,
Secretary of Education.

The Secretary proposes to amend Title 34 of the Code of Federal Regulations by amending Parts 400, 401, and 415 as follows:

PART 400—VOCATIONAL EDUCATION PROGRAMS—GENERAL PROVISIONS

1. The authority statement for 34 CFR Part 400 is revised to read as follows:

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.4 [Amended]

2. In § 400.4, paragraph (b) is amended by removing the definition of "Insular Area."

PART 401—STATE VOCATIONAL EDUCATION PROGRAM

3. The authority statement for 34 CFR Part 401 is revised to read as follows:

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

4. in § 401.13, paragraph (a) introductory text is revised, paragraph (b) is revised, and a new paragraph (c) is added to read as follows:

§ 401.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 401.12(d) to administer vocational education programs within the State, to work full time to assist the State board to fulfill the purposes of the Act by—

(b) A State shall, in accordance with § 401.91(b), reserve at least \$60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0030) (Sec. 111(b); 20 U.S.C. 2321(b))

5. Section 401.14 is revised to read as follows:

§ 401.14 Must a State establish a State council on vocational education?

A State that desires to participate in the State Vocational Education Program shall establish a State council on vocational education, which must be appointed—

- (a) By the Governor; or
- (b) In the case of States in which the members of the State board of education are elected, including election by the State legislature, by the State board of education.

(Sec. 112(a); 20 U.S.C. 2322(a); House Report No. 98-1129, 98th Cong, 2d Sess, p. 89 (1984))

6. In § 401.5, paragraph (d) is revised to read as follows:

§ 401.15 What are the membership requirements of the State council on vocational education?

(d) Each State shall certify to the Secretary the establishment and membership of the State council by the beginning of each State plan period described in § 401.17.

(Sec. 112 (a), (b); 20 U.S.C. 2322 (a), (b))

7. In § 401.16, paragraph (b)(1) is revised to read as follows:

§ 401.16 What are the responsibilities of the State council on vocational education?

(b) Each State council on vocational education, during each State plan period described in § 401.17 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

(Sec. 112 (c)-(f); 20 U.S.C. 2322 (c)-(f))

8. In § 401.19, paragraph (b)(6) is revised and paragraph (b)(14) is removed to read as follows:

§ 401.19 What must the State plan contain?

(b) * * *

(6) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act, Chapter 1 of the Education Consolidation and Improvement Act of 1981, the Education of the Handicapped Act, and the Rehabilitation Act of 1973, and with apprenticeship training programs.

(Sec. 113(b)(10); 20 U.S.C. 2323(b)(10))

§ 401.22 [Amended]

9. In § 401.22(b)(1), "national" is revised to read "natural".

10. In § 401.30, paragraph (b)(1) is revised to read as follows:

§ 401.30 How does the Secretary make allotments under the State Vocational Education Program?

(b)(1) From funds appropriated under section 3(c) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

11. In § 401.73, paragraph (c)(2)(xi) is revised to read as follows:

§ 401.73 What activities does the Secretary support under the Consumer and Homemaking Education Program?

(c) * * *

(2) * * *

(xi) State administration and leadership, including the activities of

student organizations, subject to § 401.102(c).

(Secs. 311, 312 (a), (b); 20 U.S.C. 2361, 2362 (a), (b))

12. In § 401.76, paragraph (c)(2)(ix) is revised to read as follows:

§ 401.76 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Program?

(c) * * *

(2) * * *

(ix) State and local administration, including supervision, subject to §§ 401.93(b) and 401.105(c);

13. In § 401.93, paragraph (b)(1) is revised to read as follows:

§ 401.93 What are the administrative cost requirements under the State Vocational Education Program?

(b) *Special Programs.* To administer—

(1) Each of the Special Programs under its State plan (other than the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Industry-Education Partnership for Training in High-Technology Occupations Program) a State may use, in addition to funds reserved under § 401.91, no more than the amount of funds from its allotment for each program that is necessary and reasonable for the proper and efficient State administration of that program; and

14. In § 401.96, paragraph (b) is revised to read as follows:

§ 401.96 How does a State allocate funds for disadvantaged individuals under the Vocational Education Opportunities Program?

(b) A State shall ensure that funds allocated among participating eligible recipients under paragraph (a) of this section are used by each participating eligible recipient to provide vocational education services and activities for individuals with limited English proficiency at least in proportion to the number of individuals with limited English proficiency enrolled in vocational education in that eligible recipient in the program year preceding the program year in which the determination is made, compared to the total number of disadvantaged individuals, including individuals with limited English proficiency, so enrolled in the preceding program year.

Example: Assume that eligible recipient X enrolls 100 economically disadvantaged individuals and serves in its vocational education program 50 disadvantaged and limited English proficient individuals. Assume further that among all participating eligible recipients, there are 1000 of those persons enrolled and 400 of those individuals served, respectively. In the succeeding program year, eligible recipient X is eligible to receive under the Vocational Education Opportunities Program an amount for disadvantaged individuals equal to 1/10 (or 100 economically disadvantaged individuals enrolled in eligible recipient X/1000 economically disadvantaged individuals enrolled in the State) of 1/2 of the amount reserved for those individuals under § 401.92(b) and 1/4 (or 50 disadvantaged and limited English proficient individuals served by eligible recipient X/400 disadvantaged and limited English proficient individuals served in the State) of 1/2 of that same amount.

In addition to the assumptions made in the preceding paragraph, assume further that eligible recipient X serves 25 individuals with limited English proficiency in its vocational education program. In the succeeding program year, if eligible recipient X receives an award of \$1,000 for disadvantaged individuals under the Vocational Education Opportunities Program, eligible recipient X must use \$500 (or 25 individuals with limited English proficiency served by eligible recipient X/50 disadvantaged and limited English proficient individuals served by eligible recipient X times \$1,000) for individuals with limited English proficiency.

15. Section 401.97 is revised to read as follows:

§ 401.97 How does a State match funds for handicapped individuals and disadvantaged individuals under the Vocational Education Opportunities Program?

(a) A State shall provide the non-Federal share of the cost of projects, services, and activities for handicapped individuals and for disadvantaged individuals under the Vocational Education Opportunities Program equitably from State and local sources, except that the State shall provide the non-Federal share of the cost from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide for these costs from local sources.

(b) Contributions from local sources towards the non-Federal share of the costs of projects, services, and activities for disadvantaged individuals under the Vocational Education Opportunities Program must be in cash or, to the extent the eligible recipient determines that it cannot otherwise provide the contribution, in the form of in-kind contributions, fairly valued, including

facilities, overhead, personnel, equipment, and services.

(Sec. 502(b); 20 U.S.C. 2462(b))

16. In § 401.102, paragraph (b)(2) is revised and a new paragraph (c) is added to read as follows:

§ 401.102 How must funds be used under the Consumer and Homemaking Education Program?

(b) * * *

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and preparation in home economics education.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under this program for State administration of

projects, services, and activities under this program.

(Secs. 312(c), 313; 20 U.S.C. 2362(c), 2363)

17. In § 401.105, paragraph (b)(2) is revised and a new paragraph (c) is added to read as follows:

§ 401.105 How must funds be used under the Comprehensive Career Guidance and Counseling Program?

(b) * * *

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(c) A State may use, in addition to funds reserved under § 401.91, not more than six percent of its allotment under

this program for State administration of projects, services, and activities under this program.

(Secs. 332(c), 333; 20 U.S.C. 2382(c), 2383)

PART 415—MODEL CENTERS FOR VOCATIONAL EDUCATION FOR OLDER INDIVIDUALS

18. The authority statement for 34 CFR Part 415 is revised to read as follows:

Authority: 20 U.S.C. 2417, unless otherwise noted.

§ 415.31 [Amended]

19. In § 415.31, paragraph (i)(2)(ii), "to the types" is revised to read "of the types".

[FR Doc. 86-4921 Filed 3-5-86; 8:45 am]

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Thursday, March 6, 1986

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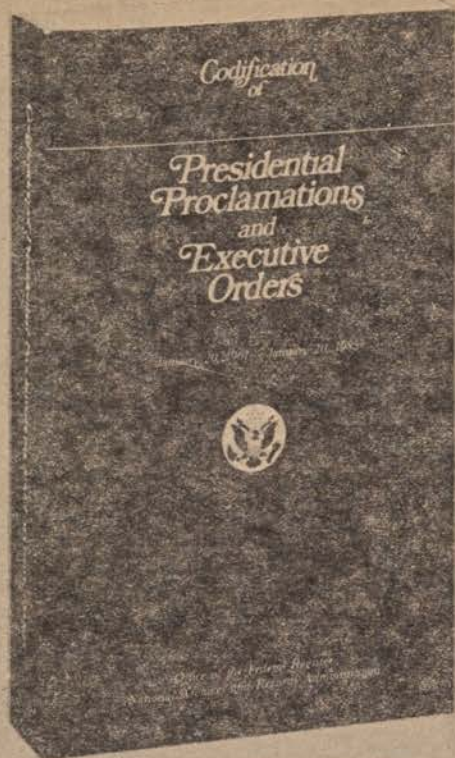
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