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

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

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Presidential Documents

Title 3—

The President

Proclamation 5521 of September 5, 1986

Federal Lands Cleanup Day, 1986

By the President of the United States of America

A Proclamation

America is blessed with a great wealth of natural resources—magnificent land, water, fish, and wildlife—as well as historic resources, places associated with the memories of great individuals, cultures, events, and structures of great historic or esthetic importance.

Many of our most prized natural and cultural resources are preserved as public sites for the benefit of all Americans. From national and State parks, forests, and shores to local playgrounds and urban open spaces, public lands provide recreational and educational opportunities for persons from every walk of life.

Although most people treat these treasured common possessions with the respect they deserve, some visitors to our public lands are thoughtless. Their litter, vandalism, theft, wildlife poaching, and other abuses are taking a toll on the legacy we will be passing on to future generations. With over 700 million acres of Federal public land and millions more of State and local public land, government cannot protect each acre without the support of the people who use these lands.

Fortunately, citizens and organizations all over America have taken it upon themselves to make a difference—to make these lands better for all of us. These voluntary cleanup and restoration activities have been conducted in cooperation with organizations such as Keep America Beautiful and Federal land managing agencies. Those who participate in this worthy endeavor have not only improved these lands and waters, but also have set an example for others to follow. Such stewardship embodies the spirit of commitment we hope to inspire with our "Take Pride in America" campaign, a partnership of Federal agencies, State and local governments, and private organizations to promote such voluntary efforts by individual Americans.

To celebrate and encourage these efforts on behalf of our public lands, the Congress, pursuant to Public Law 99–402, has designated the first Saturday after Labor Day of each year as "Federal Lands Cleanup Day" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim September 6, 1986, and the first Saturday after Labor Day in each successive year as Federal Lands Cleanup Day and urge all Americans to observe this day with appropriate activities that reflect our continuing dedication to the wise use and loving preservation of our natural and cultural resources.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of September, 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 eleventh.

Ronald Reagan

[FR Doc. 86-20441
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota Regulations for the 1986 Through 1990 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule promulgates regulations for the 1986–1990 crops of peanuts governing producer marketing cards, producer penalties, collection by peanut buyers of amounts due the United States upon the marketing of peanuts, the treatment of foundation and breeder stock peanuts, and other related matters. Some changes from the rules applicable to the 1983–85 crop peanuts have been made, principally to (1) permit a producer to leave the producer's peanut marketing card with a peanut handler between marketings; (2) provide that the commingling of peanuts between farms will be treated as a false identification of peanuts if such peanuts are marketed as the peanuts of one farm; (3) allow for the correction of schemes or devices designed to defeat the purposes of the program; and (4) treat the production of breeder and foundation seed peanuts as experimental production in certain circumstances.

DATES: This rule is effective August 1, 1986; comments must be received on or before November 10, 1986.

ADDRESS: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in Room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Tonye Gross (ASCS), 202–447–4319. The Final Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION: This Interim Rule has been reviewed under USDA procedures, Executive Order 12291, and Departmental Regulations No. 1512–1, and has been classified "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, industries, federal, State or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The information collection requirements contained in this regulation and information requests authorized by the regulation have been reviewed and approved by OMB under OMB Number 0560–0006.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—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 rule since the Agricultural Stabilization and Conservation Service 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 rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

Since the marketing year for 1986 crop peanuts begins on August 1, 1986, it is necessary that these regulations be published immediately and that the rule become effective as of that date. The principal purpose of the regulations is to codify statutory penalties in the regulations.

Comments are requested on all aspects of this interim rule for 60 days after publication of this document in the **Federal Register.** This interim rule will be scheduled for review at the end of that period so that a final document discussing comments received, and any amendments of this interim rule, which may be required, may be published in the **Federal Register** as soon as possible.

The Food Security Act of 1985 amended the Agricultural Adjustment Act of 1938 (the "1938 Act") and the Agricultural Act of 1949 (the "1949 Act") for the 1986–1990 crops of peanuts. This rule implements a portion of those amendments and specifically covers the issuance and handling of producer marketing cards, the assessment of producer penalties, the collection of certain sums due the United States upon the marketing of peanuts, and other related matters. The regulations issued in this interim rule supplement regulations which were published on June 20, 1986 (51 FR 22485). Other regulations regarding the 1986–1990 crops, which covered price support and handler operations were published on June 17, 1986 (51 FR 21879). Generally, these regulations are the same as the corresponding regulations that applied to the 1983–1985 crops of peanuts, 7 CFR 729.265 through 729.306. The salient provisions of this regulations are:

(1) *Marketing Cards*—Under this interim rule, as with previous crops, all marketings of peanuts by producers must be accompanied by a producer marketing card issued by a county Agricultural Stabilization and Conservation Service (ASCS) Office. Unlike with previous crops, however, the regulations specifically provide that a producer may leave the marketing card with a handler between marketings. The marketing card may not be left in the possession of the handler after the producer has completed marketings for the season. This adjustment recognizes that in the past a number of producers have customarily left their marketing cards at the buying point. Since it is the responsibility of the producer to review and certify the marketings before the marketing card is returned to the issuing office, it has been

determined that specifically recognizing this practice is appropriate.

(2) *Penalties*—(a) Statutory Provisions. Section 359 of the 1938 Act provides that the marketing of any peanuts for domestic edible use in excess of the farm poundage quota for the farm on which such peanuts are produced shall be subject to a penalty at a rate equal to 140 percent of the support price for quota peanuts for the marketing year in which such marketing occurs. That section provides that for purposes of such penalties, the marketing year for peanuts shall be the 12-month period beginning August 1 and ending July 31. It is also provided in section 359 of the Act that the marketing of any additional peanuts from a farm shall be subject to the same penalty unless such peanuts are, in accordance with regulations issued by the Secretary, either placed under loan at the additional loan rate in effect for such peanuts, marketed through an area marketing association designated pursuant to the Agricultural Act of 1949, or market under contracts between handlers and producers. Section 359 also provides that a penalty shall be paid by the person who buys or otherwise acquires peanuts from the producer or, if the peanuts are marketed by the producer through an agent, the penalty shall be paid by such agent. Under the Act, such person or agent may deduct an amount equivalent to the penalty from the price paid to the producer.

Section 359 also provides that if the person required to collect the penalty fails to collect such penalty, such person and all persons entitled to share in the peanuts marketed from the farm or the proceeds thereof shall be jointly and severally liable for the amount of the amount. The Act provides, in addition, that if any producer falsely identifies or fails to certify planted acres or fails to account for the disposition of any peanuts produced on such planted acres, an amount of peanuts equal to the farm yield times the planted acres shall be deemed to have been marketed in violation of the permissible use of quota and additional peanuts. Section 359 further provides that the Secretary shall authorize county Agricultural Stabilization and Conservation committees to waive or reduce marketing penalties in cases in which the committees determine that the violations were unintentional or without knowledge on the part of the parties concerned. It also provides that errors in weight that do not exceed one-tenth of one percent in the case of any one marketing document shall not be considered to be marketing violations except in cases of fraud or conspiracy.

(b) *Provisions of the regulations.* This rule implements the preceding statutory provisions. Penalties may be asserted against peanut producers for: (1) The marketing of peanuts for domestic edible use in excess of the effective farm poundage quota; (2) mismarketing of additional peanuts; (3) failure to certify planted acreage accurately; (4) failure to properly account for the disposition of peanuts; and (5) false identification of peanuts. As in the past and as prescribed by the statute, the basic penalty rate is equal to 140 percent of the basic quota support rate multiplied by the quantity of peanuts involved in the violation. The basic quota support rate is set by the Secretary pursuant to section 108B of the 1949 Act. As compared with the regulations which applied in the 1983 through 1985 crops, the regulations have been amended to provide that peanuts marketed from a particular farm which have in fact been commingled with peanuts from another farm will be peanuts which will be treated as having been falsely identified and therefore be subject to a penalty.

(3) *Breeder and foundation seed peanuts*—(a) *Statutory provisions.* Breeder peanuts are peanuts which are grown to produce foundation seed peanuts. Foundation seed peanuts are peanuts used to create a stock of seed peanuts which can be used as the foundation for producing more seed peanuts. Foundation and breeder seed peanuts are not, as such, used to produce a crop. Section 359 of the 1938 Act, as amended, provides that only quota peanuts may be retained for use as seed or for other uses on a farm. When so retained, the Act provides, such peanuts shall be considered as marketings of quota peanuts, except that the Secretary may exempt from consideration as marketings of quota peanuts seeds of peanuts that meet all of the following requirements: (i) The peanuts are "green peanuts", (ii) the peanuts are unique strains, and (iii) the peanuts are not commercially available. Section 372 of the 1938 Act provides that no penalty shall be collected with respect to the marketing of any agricultural commodity grown only for experimental purposes by any publicly-owned agricultural experiment station and no penalty shall be collected with respect to the marketing of any agricultural commodity grown on state prison farms for consumption within such state prison system.

(b) *Provisions of the regulations.* Because foundation seed and breeder stock seed are not used to produce a crop, the regulations unlike those that applied to the 1983–85 crops, provide that such production will not be treated as the production of quota peanuts in determining whether or not a farm has exceeded its poundage quotas if certain conditions are met. Those conditions include the requirement that such peanuts must be grown on behalf of, and under the auspices of, an agricultural experiment station and are not used for domestic edible use.

(4) *Schemes and Devices*—This rule differs from those which applied to the 1983–85 crop in that it is explicitly provided that, in determining whether penalties are due, such determinations will be made in such a manner as will take into account any scheme or device designed to, or having the effect of, defeating the purposes of the program.

(5) *Penalty Assessments*—As in the past, penalties against producers will be assessed by county ASCS committees but an appeal may be taken to State ASCS committees and the Deputy Administrator for State and County Operations, ASCS.

(6) *Other Provisions*—This rule specifies the conditions under which peanut buyers, when purchasing peanuts marketed by producers, must collect debts due the United States, and covers liens on peanuts resulting from debts due for producer penalties.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

Interim Rule

PART 729—PEANUTS

Accordingly, 7 CFR Part 729 is amended as follows:

1. The statement of authorities for Part 729, Subpart—Poundage Quotas and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts continues to read as follows:

Authority: Secs. 301, 357, 358, 358a, 359, 372, 373, 375, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, as amended, 55 Stat. 90, as amended, 52 Stat. 65, as amended, 66 as amended (7 U.S.C. 1301, 1357, 1358, 1358a, 1359, 1372, 1373, 1375, as amended); Section 108B of the Agricultural Act of 1949 as added by section 705 of the Food Security Act of 1985 (Pub. L. No. 99–198).

2. The Table of Contents for the Subpart entitled "Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts" of Part 729 is amended by adding at the end thereof the following:

* * * * *

Marketing Cards and Producer Identification Cards

Sec.
729.385 Issuance of cards.
729.386 Claim stamping marketing cards.
729.387 Invalid cards.
729.388–729.392 [Reserved].

Marketing Penalties

729.393 Basic penalty rate.
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729.396 Peanuts on which penalties are not to be assessed.
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729.405–729.415 [Reserved]

Producer Identification and Designation of Peanuts Marketed

729.416 Identification of producer marketings.
729.417 Designation of peanuts.
729.418–729.419 [Reserved]

Producer Records and Reports and Handling Segregation 3 Peanuts

729.420 Report of marketing green peanuts.
729.421 Report of acquisition of seed peanuts.
729.422 Peanuts marketed to persons who are not registered handlers.
729.423 Report on marketing card.
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729.425 Handling Segregation 3 peanuts.
729.426 Persons engaged in more than one business.
729.427 Penalty for failure to keep records and make reports.
729.428 Examination of records and reports.
729.429 Length of time records and reports are to be kept.

3. The following sections are added at the end of Part 729—Subpart—Poundage Quota and Marketing Regulations for the 1986 Through 1990 Crops of Peanuts:

Marketing Cards and Producer Identification Cards

§ 729.385 Issuance of cards.

(a) *Issuance of marketing cards.* A marketing card (ASCS–1002) shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced. However, a marketing card issued for experimental peanuts shall be issued in the name of the experiment station and a marketing card issued to a successor-in-interest shall be issued in the name of the successor-in-interest. The marketing card may show the names of other interested producers.

(b) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lots of peanuts when offered for sale. Producer identification cards shall be issued at the time the marketing cards are issued.

(c) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(d) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm.

(2) Any person who succeeds, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer.

(e) *Data on marketing card and supplemental card.* (1) Before issuance, the following data and information must be entered on the marketing card in the spaces provided:

(i) The effective farm poundage quota;

(ii) The pounds of additional peanuts contracted and the handler number of the contracting handler, if applicable; and

(iii) The converted basic penalty rate determined in accordance with § 729.394(b), if applicable.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm if an original or supplemental marketing card is returned to the county office. The balance of the poundage quota for the farm from the returned marketing card shall be entered as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the amount of the poundage quota (not to exceed the balance of poundage quota available) which is to be assigned to each card.

(4) The face of the marketing card shall show the entry "Eligible for Buyback" if the farm operator authorizes the handler to purchase peanuts under the "Immediate Buyback" purchase in accordance with Part 1446 of this chapter. If the producer and handler have contracted additional peanuts in accordance with Part 1446 of this chapter, the face of the marketing card shall not show the entry "Eligible for Buyback" until all contracted peanuts have been marketed from the farm. Two or more marketing cards may be issued for a farm under the provisions of paragraph (e)(3) of this section if the producer wishes to obtain an additional card for purposes of indicating or not indicating "Eligible for Buyback."

(5) Other data specified in instructions issued by the Deputy Administrator shall be entered on the marketing card.

(f) *Data on producer identification cards.* (1) The identification card issued in the name of the farm operator shall be embossed to show the:

(i) Name and address of the farm operator, and

(ii) State, county code, and farm serial number. If an embossed identification card is not available, the above information shall be entered by the county ASCS office.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts offered for sale until such time as the peanuts are inspected and an ASCS–1007 has been executed by an approved inspector.

(3) After the identification card is returned to the farm operator, it may be used again to identify another lot of peanuts.

(g) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the country executive director who issued the card to have been lost, destroyed, or stolen, if the farm operator gives immediate written notice of such fact to the appropriate county ASCS office and furnishes a satisfactory report of the quantity of peanuts which was marketed using the marketing card prior to the time such card was lost, stolen, or destroyed.

(Approved by the Office of Management and Budget under Control No. 0560–0006).

§ 729.386 Claim stamping marketing cards.

If a person is indebted to the United States and the indebtedness is listed on the county office claim record, any marketing card issued for the farm on which the person has an interest as a producer shall bear the notation "U.S. Claim" or "PPQ" (peanut poundage quota penalty) followed by the amount of the indebtedness. The name of the indebted producer, if different from the

farm operator, shall be recorded directly under the notation. A notation showing "PPQ" as the type of indebtedness shall constitute notice to any peanut buyer that until the amount of the penalty involved plus accrued interest is paid, the United States has a lien on the crop of peanuts with respect to which the penalty was incurred and on any subsequent crop of peanuts subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota liens (PPQ amounts) shall be collected and paid to the Agricultural Stabilization and Conservation Service prior to making collection for any other lien or claim. A notation showing "U.S. Claim" shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the net proceeds from any price support loan or purchase settlement due the debtor must be paid to the Agricultural Stabilization and Conservation Service. The acceptance and use of a marketing card bearing a notation concerning indebtedness to the United States shall not constitute a waiver by the producer of any right to contest the validity of such indebtedness by appropriate administrative appeal or legal action. A lien-free or claim-free marketing card shall be issued by the county ASCS office when the lien or claim has been paid and the notated card returned.

§ 729.387 Invalid cards.

(a) *Reasons for being invalid.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, stolen, or becomes illegible.

(4) An erasure or alteration has been made and not initialed by the county executive director.

(b) *Validating invalid cards.* If a marketing card is invalid because an entry is not made as required, the farm operator or other producer shall return the marketing card to the county office. Except for an incorrect entry of the converted basic penalty rate determined in accordance with § 729.394(b), the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered. The county executive director shall initial each correction made on the marketing card. An invalid card, if not validated, shall be canceled and a replacement card issued.

§§ 729.388–729.392 [Reserved]

Marketing Penalties

§ 729.393 Basic penalty rate.

The basic penalty rate shall be 140 percent of the national average support level for quota peanuts, as determined for the marketing year in which the peanuts were produced.

§ 729.394 Peanuts on which penalties are due.

In addition to other remedies as may apply, a penalty is due at the basic penalty rate on:

(a) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(b) All peanuts marketed from the farm, if the certified acreage differs from the measured acreage by more than the tolerance provided in Part 718 of this Title: *Provided,* that such penalty shall be paid on each lot of peanuts marketed from a farm based on a converted basic penalty rate as shown on the marketing card. The converted basic penalty rate shall be determined by: (1) calculating the percentage of incorrect certification; and (2) multiplying the percentage by the basic penalty rate per pound.

(c) All peanuts produced on a farm for which the producer: (1) failed to accurately certify peanut acreage as provided in Part 718 of this Title; or (2) refused to permit entry on the farm to authorized representatives of the Secretary for the purpose of determining the acreage of peanuts on the farm.

(d) The quantity of peanuts marketed without identification by a valid marketing card.

(e) The quantity of peanuts falsely identified, as determined by the county committee with the concurrence of the State committee, pursuant to 7 CFR 729.395.

(f) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm for domestic edible use in excess of the effective farm poundage quota for that farm.

(g)(1) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted between the producer and handler as provided in Part 1446 of this title or otherwise marketed in violation of this subpart; and (2) All peanuts otherwise marketed in violation of this subpart. Any penalty collected pursuant to this paragraph may be refunded to the extent that the total of all marketings for domestic edible use from the farm for the marketing year do not exceed the farm's effective farm poundage quota.

§ 729.395 Application of false identification of peanuts.

False identification shall include the following and the peanuts so involved shall be considered to be falsely identified for purposes of 7 CFR 729.324:

(a) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production;

(b) Marketing or permitting the marketing of peanuts from a farm without identifying the peanuts with a peanut marketing card issued for the farm;

(c) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, no peanuts were marketed from the farm; or

(d) Marketing peanuts that have been commingled with those of another farm.

§ 729.396 Peanuts on which penalties are not to be assessed.

Notwithstanding other provisions in this subpart:

(a) *Error in weight.* A penalty is not due and shall not be collected if the error in net weight as reported on each ASCS–1007, Inspection Certificate and Sales Memorandum which gives rise to the penalty, does not exceed one-tenth of one percent. However, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size of the error.

(b) *Peanuts grown on State prison farms.* No penalty shall be collected on peanuts grown on State prison farms for consumption within such State prison system, and so consumed.

(c) *Peanuts grown for experimental purposes.* No penalty shall be collected on the marketings of any peanuts which are grown only for experimental purposes on land owned or leased by a publicly-owned agricultural experiment station and produced at public expense by employees of the experiment station, peanuts, including those determined by the County Executive Director in accordance with instructions of the Deputy Administrator to be breeder and foundation seed peanuts, produced by farmers for experimental purposes pursuant to an agreement with a publicly-owned experiment station, provided that such peanuts do not enter the domestic market for seed, food or any other use. However, for the

exception to apply, the director of the publicly-owned agricultural experiment station must furnish the State Executive Director a list by counties showing the following information for farms in the State on which peanuts are grown for experimental purposes only:

(1) Name and address of the publicly-owned experiment station;

(2) Name of the owner, and name of the operator if different from the owner, of each farm in the State on which peanuts are grown for experimental purposes only;

(3) The acreage of peanuts grown on each farm for experimental purposes only; and

(4) A signed statement that such acreage of peanuts was grown on each such farm only for experimental purposes and was necessary for carrying out experimentation, and that the peanuts were produced under the direction of representatives of the publicly-owned experiment station.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts shall not be subject to penalty if the county committee determines, based upon guidelines furnished by the Deputy Administrator, that such peanuts meet all of the following requirements:

(1) They are unique strains;

(2) They are not commercially available, and,

(3) They are used to plant green peanut acreage.

§ 729.397 Persons to pay penalty.

(a) *Marketings to handlers.* The handler is liable for the penalty due on marketing of excess quota peanuts which the handler buys or otherwise acquires from a producer. The handler may deduct the penalty from the price paid to the producer. If a handler fails to collect the penalty due on any marketing of peanuts from a farm, the handler and each of the producers on the farm shall be held jointly and severally liable for the amount of the penalty.

(b) *Other marketings.* The producer is liable for the penalty due on any marketings of excess quota peanuts to persons who are not peanut handlers.

(c) *Penalty for error on marketing card.* The producer and the handler are jointly and severally liable for any penalties which may be due if the handler made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in the effective poundage quota or the pounds contracted in accordance with Part 1446 of this Chapter being exceeded.

(d) *Penalty for false identification, failure to certify or failure to account for disposition.* Any producer who falsely identifies, fails to certify planted acres or fails to account for the disposition of any peanuts on the farm, shall be subject to a penalty at a rate equal to the farm yield, times the planted acres. Any penalty payable shall be paid by the producer.

(e) *Notice to affected parties.* Penalties shown on a farm marketing card shall be deemed to be notice to all affected parties of such penalties in addition to such notice as is by operation of law charged to all parties by the publication of these and all other regulations applicable to the peanut program. All affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card.

§ 729.398 Payment of penalty.

(a) *Method of payment; Due date.* A draft, money order, or check made payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, other indebtedness, or interest thereon. All methods of payment shall be received subject to collection and payment at face value. The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(b) *Interest.* The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. If the rate charged CCC by the Treasury is increased, the interest due on the penalty may be increased commensurately for the period of such increase. Interest shall accrue from the date the penalty was due if the penalty is not remitted by Monday of the third calendar week following the week in which the penalty is assessed in accordance with 7 CFR 729.404. For cases of false identification or failure to account, if the penalty is not paid within 15 days after receipt of written notice by the person liable for such penalty, interest shall accrue from the date of mailing of the written notice to such person.

§ 729.399 Lien for penalty.

A lien on the crop of peanuts on which the penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States until the penalty is paid. The lien on a subsequent crop takes precedence over all other claims as of the time the debt is entered on a county claim record in the ASCS office for the county in which the subsequent crop is grown. Each county ASCS office shall maintain a list of peanut marketing penalty liens on subsequent crops which have been entered on the county claim record. The list shall be available for examination upon written request by an interested person.

§ 729.400 Assessment of penalties.

Any person against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed has the right to appeal the assessment of the penalty in accordance with 7 CFR 729.402 and 729.405.

§ 729.401 Reduction or waiver of penalty.

(a) *Reduction of penalty.* The county committee may reduce any penalty required to be assessed by this subpart in cases in which the county committee determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned. The rate of penalty reduction shall be in accordance with instructions issued by the Deputy Administrator.

(b) *Waiver of penalty.* The county committee may in accordance with guidelines issued by the Deputy Administrator, waive any penalty assessed by this subpart in cases in which the county committee determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(c) *Time of reduction or waiver.* The county committee may reduce or waive a penalty either before or after it has been formally assessed in accordance with 7 CFR 729.400. In those instances where the county committee makes the reduction or waiver prior to formal assessment, the notice of assessment issued under 7 CFR 729.400 shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(d) *Appeal procedure.* Any person against whom a penalty is assessed under this subpart may request that the penalty be reduced or waived in accordance with instruction and guidelines issued by the Deputy

Administrator and the procedures set forth under 7 CFR § 729.402.

(e) *Review authority.* The Deputy Administrator may, either upon the Deputy Administrator's own motion or in response to appeals which are being taken under § 729.402 require that any determination of a county committee with regard to the reduction or waiver of penalties be reviewed by the State committee or the Deputy Administrator for the purpose of maintaining consistency between different counties in the application of this authority. The Deputy Administrator or the State committee may require a county committee to reverse or otherwise modify its previous determination if the Deputy Administrator or State committee determines that the county committee's previous determination was not made in accordance with the instructions and guidelines issued by the Deputy Administrator or is otherwise not proper. Any person who is adversely affected by any action of the Deputy Administrator or State committee taken under this paragraph may appeal such action by filing a request for reconsideration with the State committee or Deputy Administrator, as appropriate, in accordance with the procedures set forth in Part 780 of this Title.

(Approved by the Office of Management and Budget under Control No. 0560-0006)

§ 729.402 Appeals.

Any person who is dissatisfied with the penalties assessed by the county committee may file a written request for reconsideration with the county committee in accordance Part 780 of this Title. Such request must be filed no later than 15 days after such person receives the notice of assessment issued pursuant to 7 CFR 729.400. Adverse determinations rendered by the county committee may be appealed administratively in accordance with the procedures set forth in Part 780 of this Title.

(Approved by the Office of Management and Budget under Control No. 0560-0006)

§ 729.403 Failure to comply with program.

Any person who relied on the advice of a representative of the Secretary in rendering performance under this subpart, which the person believed in good faith met the requirements of the program as set forth in these regulations may file a request for review of an adverse county committee ruling in accordance with instructions and guidelines issued by the Deputy Administrator. This authority, however, does not extend to cases where such person knew or had sufficient reason to know that the action or advice of the representative of the Secretary upon which the person relied was improper or erroneous, or where the adverse action is based on changes made in the statutory authority of the program or changes in regulations issued for the program.

§ 729.404 Schemes and devices.

Penalties shall be assessed in such manner as will correct for and nullify any action in which a person has knowingly, whether passively or actively:

(a) Engaged in, acquiesced in, or adopted any scheme or device which tends to defeat the purpose of the regulations in this subpart,

(b) Made any fraudulent representation, or

(c) Misrepresented any fact affecting a program determination.

Such penalties as are provided for in this subpart shall be in addition to all other remedies and sanctions provided for, or permitted by, law.

§§ 729.405-729.415 [Reserved]

Producer Identification and Designation of Peanuts Marketed

§ 729.416 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card (ASCS-1003) and the peanut marketing card (ASCS-1002) which was issued for the farm on which the peanuts were produced. The producer may leave the peanut marketing card (ASCS-1002) in the custody of the handler during the period between marketing lots of peanuts to the same handler; however, the marketing card shall not be left in the possession of the handler after the producer has completed marketings for the season.

(Approved by the Office of Management and Budget under Control No. 0560-0006)

§ 729.417 Designation of peanuts.

Any marketings of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota, loan additional, or contract additional peanuts as defined in Part 1446 of this Title. The designation must be made within the time allowed by the handler but not later than the close of inspection of the first workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected. In the absence of a designation, any segregation 1 peanuts shall be marketed and deemed to be marketed in the folllowing order of priority:

(a) As quota peanuts to the extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional peanuts to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

§§ 729.418-729.419 [Reserved]

Producer Records and Reports and Handling Segregation 3 Peanuts

§ 729.420 Report of marketing green peanuts.

(a) The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form ASCS-1011 at the ASCS office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The number of acres on the farm planted from seed stocks of peanuts;

(2) The acreage on the farm from which peanuts were marketed as green peanuts; and

(3) The name and address of the buyer to, or through whom, each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed. However, if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county commitee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts produced on the farm which will subject the producer to marketing penalties as set forth in § 729.394.

(Approved by the Office of Management and Budget under Control No. 0560-0006)

§ 729.421 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were acquired by purchase or gift, the

farm operator shall file a report with the county ASCS office of the acquisition of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made in accordance with provisions of Part 718 of this Title. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmers stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquisition.

(b) Unique strains of peanuts that are not commercially available and are retained on a farm to plant 1986 through 1990 crops of green peanuts shall also be reported to the county ASCS office.

§ 729.422 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form ASCS–1011, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The ASCS–1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an ASCS–1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in 7 CFR 729.394.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§729.423 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county ASCS office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator shall execute the certification of the marketing card as to the pounds of peanuts retained for seed or other use. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for the disposition of peanuts marketed from the farm for which marketing penalties may be assessed as provided in 7 CFR 729.395, unless a satisfactory report of disposition is furnished to the county committee.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.424 Report of production and disposition.

(a)(1) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report of production and disposition of the peanuts grown on the farm to the State committee. The report must be filed on ASCS–1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show:

(i) The final acreage of peanuts on the farm;

(ii) The total production of peanuts on the farm;

(iii) The name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed:

(iv) The quantity and disposition of peanuts not marketed; and

(v) The type of peanuts.

(2) Notwithstanding paragraph (a)(1) of this section, where peanuts are marketed in small lots to persons who are not established buyers, the report otherwise required in paragraph (a)(1) of this section, may be made as either a daily or weekly summary of the number of pounds marketed and the place of marketing may be reported in lieu of the name and address of each buyer; and

(b) Failure to file the ASCS–1010 as requested or the filing of an ASCS–1010 which is found by the State committee to be incomplete, incorrect, or in violation of the requirements of paragraph (a), shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm for which marketing penalties may be assessed, as provided in 7 CFR 729.394.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.425 Handling Segregation 3 Peanuts.

(a) *Disposition of Segregation 3 peanuts.* Any producer who has a lot of farmers stock peanuts classified by the inspector as Segregation 3 peanuts shall:

(1) Deliver the peanuts to the association for a price support loan subject to such conditions as apply to eligibility for such loans including those in Part 1446 of the Title;

(2) Deliver such lot as contract additional peanuts subject to provisions of Part 1446 of this Title;

(3) Sell such peanuts as quota peanuts subject to the conditions set forth in this subpart to a handler who has signed the peanut marketing agreement or to any handler in the event that such peanuts are seed peanuts produced under the auspices of a State agency if the handler to whom the peanuts are sold has signed s supervision supplement to a warehousing contract with the area marketing association; or

(4) Retain the lot for seed in accordance with paragraph (c) of this section.

(b) *Failure to properly dispose of Segregation 3 peanuts.*

(1) *Loss of price support.* If the producer does not, on the date of inspection, dispose of Segregation 3 peanuts in the manner specified in this section, such producer shall be ineligible for continued quota price support for the remainder of the marketing year.

(2) *Liquidated damages.* Any peanut producer participating in the price support loan program shall be deemed to have agreed that: (i) CCC will incur serious and substantial damage to its program to support the price of peanuts if Segregation 3 peanuts are disposed of other than in the manner prescribed by this subpart or by the CCC; (ii) the amount of such damages will be difficult, it not impossible, to ascertain; and, (iii) with respect to any lot of peanuts which is pledged as collateral for a quota price support loan but which is ineligible for such loan, or any lot of peanuts which is pledged as collateral for a quota price support loan by a producer after the producer has disposed of any lot of Segregation 3 peanuts in any manner other than in the manner prescribed in this section, such producer shall pay to CCC as liquidated damages and not as a penalty, the difference between the quota loan rate and the additional loan rate (on a per pound basis) per net pound of such peanuts. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer. This remedy shall be in addition to any other remedy or

sanction available against the producer, including penalties.

(c) *Retention of Segregation 3 peanuts for seed.* If the producer elects to retain a lot of Segregation 3 peanuts for seed, the producer shall designate such peanuts as quota peanuts, have the net weight of such peanuts determined and deducted from the farm marketing card, and advise the inspector that the peanuts are being retained for seed. The producer shall be given a copy of the ASCS–1007 as a record showing the quantity and quality factors of the peanuts and must store such peanuts separate from other peanuts on the farm. The producer shall notify CCC when such peanuts are used and otherwise account for the disposition of such peanuts. Should it later be determined that such peanuts are unfit for seed use, the producer may, after receiving prior approval from the county office, sell such peanuts without benefit of price support in accordance with such restrictions as may apply.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.426 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each such business.

(Approved by the Office of Management and Budget under Control No. 0560–0006)

§ 729.427 Penalty for failure to keep records and make reports.

Any person, who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut picking or peanut threshing machine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record as required under this subpart or who makes any false report or record shall be deemed to have improperly handled peanuts for the quantity of peanuts to which such failure applies for which a penalty may be assessed under the provisions of this Part or Part 1446 of this Title, as applicable. Such liability is in addition to criminal penalties or other remedies permitted by law.

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

§ 729.428 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the State Executive Director, or their designees and all auditors and agents of the Office of Inspector General, United States Department of Agriculture (USDA) or the General Accounting Office are authorized to examine any records of any producer, or handler, or person buying or processing peanuts as deemed needed to enforce the peanut poundage quota program. Upon a request for such examination, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut-picking or peanut-threshing machine, shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under the control of the person receiving the request which any person hereby authorized to examine records has reason to believe are relevant to any matter under investigation which relates to the provisions of this subpart.

§ 729.429 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be required in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.

(Approved by the Office of Management and Budget under Control Nos. 0560–0003 and 0560–0014)

Signed at Washington, DC, on September 3, 1986.

Milton J. Hertz,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 86–20214 Filed 9–8–86; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues to suspend through October 1986 portions of the Eastern Colorado Federal milk order that relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Also suspended for the same period is the "touch-base" requirement that each producer's milk be received at least three times each month at a pool distributing plant. Continued suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: September 9, 1986.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued July 29, 1986; published August 1, 1986 (51 FR 27554).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 1, 1986 (51 FR 27554) concerning

a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the proposed suspension were received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that for the months of August through October 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant".

2. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing".

Statement of Consideration

This action continues for the months of August through October 1986 suspension of the limit on the amount of producer milk that a cooperative association may divert from pool plants to nonpool plants, and the requirement that three deliveries of each producer's milk be received at a pool distributing plant each month. Earlier actions suspended these provisions for the months of September 1985 through July 1986.

The order provides that a cooperative may divert a quantity of milk not in excess of 20 percent of the cooperative association's member milk received at pool distributing plants. The suspension allows up to 50 percent of a cooperative's member milk supply to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

The continued suspension was requested by Mid-America Dairymen, Inc., (Mid-Am) a cooperative association of producers supplying the market. Mid-Am also requested the earlier suspensions. The cooperative association stated that the volume of producer milk pooled on the Eastern Colorado order began to increase following the conclusion of the Milk Diversion Program in 1985, and has continued to increase during 1986. According to the cooperative, Eastern Colorado producer milk during the first 5 months of 1986 increased 14.4 percent over the same period in 1985. At the same time, producer milk used in Class I increased only 1.3 percent. Mid-Am stated that as a result of increased milk production, there are ample supplies of local milk available to meet the fluid requirements of Denver-area distributing plants. The cooperative estimated that approximately 15 loads of producer milk produced in Kansas and Nebraska would have to be shipped to Eastern Colorado pool distributing plants each month in order to qualify Mid-Am producers for continued pool status. The cooperative stated that these shipments would displace Denver-area milk, which would have to be moved to surplus handling plants. Both movements, according to Mid-Am, would represent uneconomic movements of milk. Without the requested continued suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

No comments in opposition to the proposed action were received. Comments supporting the proposed action were filed by Mountain Empire Dairymen's Association (MEDA), a cooperative association representing most of the producers pooled under the order. Mid-Am also filed comments that provided additional information in support of the suspension.

Milk production is significantly above year-earlier levels and consequently a greater proportion of the available milk supplies will have to be shipped to manufacturing plants for surplus uses. Favorable weather conditions and ample feed supplies provide strong indications that the current production trends will continue, without offsetting increases in Class I use. In view of these circumstances, it is concluded that the diversion limits and "touch-base" requirements of the Eastern Colorado milk order should be suspended for the months of August through October 1986 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No views in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions of § 1137.12(a)(1) of the Eastern Colorado order are hereby suspended for the months of August through October 1986:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

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

§ 1137.12 [Amended]

2. In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing plant" are suspended.

3. In the second sentence of § 1137.12(a)(1), the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of" and "distributing" are suspended.

Effective Date: September 9, 1986.

Signed at Washington, DC, on September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 86–20068 Filed 9–8–86; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 84–019F]

Deletion of Labeling Requirements for Pork with Barbecue Sauce or Beef with Barbecue Sauce

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On February 24, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend the standard in the Federal meat

inspection regulations for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce." The rule deletes the requirement that the product name be qualified whenever thickeners, binders or extenders are used in the barbecue sauce. This action would result in consistent labeling provisions for all meat and poultry products made with barbecue sauce. This proposed rule was the result of a petition submitted by the Pillsbury Company. Six comments were received on the proposal and all supported it. Therefore, FSIS is adopting the proposed rule as published.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this rule is not a "major rule" under Executive Order 12291. This rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets because no mandatory labeling changes are required.

Effects on Small Entities

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601) because no mandatory labeling changes are required.

Background

On February 24, 1986, FSIS published in the **Federal Register** (51 FR 6415) a proposed rule to delete the requirement in the current standard for "Beef with Barbecue Sauce" and "Pork with Barbecue Sauce," that the product name be qualified whenever thickeners, binders or extenders are added to the barbecue sauce. The present standard in the Federal meat inspection regulations for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" (9 CFR 319.312) was adopted in 1952. The standard provides, among other things, that when cereal, vegetable flour, soy flour, or similar substances are used to prepare the barbecue sauce, they must be prominently identified in the product name such as "Pork with Barbecue Sauce—Cereal Added."

Information on file with the Standards and Labeling Division shows that the use of barbecue sauce and labeling of products containing it was addressed by the Department as early as 1930. Approval for a pork sausage product with barbecue sauce was granted in December 1930. The records show that the approval was granted on the basis that the barbecue sauce was used as a type of dressing rather than a cooking process. The approval also noted the ingredients of the barbecue sauce—a traditional recipe containing no thickeners, binders or extenders. At that time, these added thickening ingredients were not expected ingredients in barbecue sauce.

The records indicate that the Agency considered barbecue sauce to be "a hot sauce composed of combinations of spices, flavorings, with or without tomato, and with or without fat." The records also show an approval for "Pork Sausage, Barbecue Sauce Added" with a sauce consisting of red pepper, Worchestershire sauce, sugar, salt, allspice, black pepper, paprika and onion powder. In 1944, a sketch label for "Cooked Beef, Barbecue Sauce Added" was approved. The barbecue sauce consisted of beef fat, paprika, pepper and salt.

The present standard for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" (9 CFR 319.312), adopted in 1952, requires special labeling of thickeners, binders or extenders when added to the barbecue sauce because at that time they were not common or usual ingredients in that product. Present day barbecue sauce recipes in several leading cookbooks call for only traditional ingredients without the use of thickeners, binders or extenders. However, some barbecue sauces are available to consumers in retail stores that do contain vegetable gums and thickening agents.

The Pillsbury Company has petitioned the Agency to amend the standard for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" contained in § 319.312 of the Federal meat inspection regulations by deleting the requirement that the product name be qualified whenever thickeners, binders or extenders are used in the barbecue sauce. The petitioner asserts that the requirement is not consistent with the labeling policy for all other meat and poultry products prepared with barbecue sauce and is also not consistent with the Food and Drug Administration's (FDA) labeling requirements for barbecue sauce.

The standardized products "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" are the only meat or poultry products that, when made with a barbecue sauce containing a thickening agent, must be labeled to identify the presence of the thickening agent in the product name such as "Pork with Barbecue Sauce—Cereal Added." For example, "Barbecue Sauce with Beef" and "Chicken in Barbecue Sauce" may be made with a barbecue sauce that contains a thickening agent without further identification in the product name. These products are considered different from the standardized products and have not been subject to the labeling requirements of § 319.312 of the Federal meat inspection regulations. In addition, the FDA regulations do not provide a standard for barbecue sauce and, therefore, thickeners, binders or extenders may be used in barbecue sauce under the FDA regulations without any further identification in the product name.

A review of approved labels for "Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" revealed that 313 establishments have approved labels for these products. Of these, 147 establishments produce the products without thickening agents while 166 establishments produce the products with and without thickening agents. There appears to be a market both for the traditional barbecue sauce without thickeners and for the nontraditional barbecue sauce with thickeners.

This final rule removes the labeling distinction that is now required when a nontraditional barbecue sauce, i.e., one containing thickening agents, is used in the standardized products "Pork with Barbecue Sauce" or "Beef with Barbecue Sauce." This action results in consistent labeling of all meat and poultry products made with barbecue sauce and eliminates any confusion resulting from different labeling requirements. Consumers who desire to purchase barbecue sauce products without thickening agents can still do so by examining the list of ingredients on the label. The rule also benefits processors by eliminating a burdensome labeling requirement and permits fair competition among all products made with a barbecue sauce.

Presently, the standard for "Pork with Barbecue Sauce and Beef with Barbecue Sauce" (9 CFR 319.312) reads as follows:

"Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" shall contain not less

than 50 percent meat of the species specified on the label, computed on the weight of the cooked and trimmed meat. Mechanically Separated (Species) may be used in accordance with § 319.6. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the uncooked weight of the meat. If uncooked meat is used in formulating the products, they shall contain at least 72 percent meat computed on the weight of the fresh uncooked meat. When cereal, vegetable flour, soy flour, soy protein concentrate, isolated soy protein, nonfat dry milk, dry or dried whey, reduced lactose whey, reduced mineral whey, whey protein concentrate, calcium reduced dried skim milk, or similar substances are used in preparing products, there shall appear on the label in a prominent manner, the name of the product, the name of each such added ingredient as, for example, "Cereal Added" or "With Cereal and Nonfat Dry Milk."

FSIS is amending Part 319 of the Federal meat inspection regulations (9 CFR 319.312) by deleting the last sentence. The requirement that the product name be on the label, although deleted from this section, is still required under § 317.2(c)(1) of this subchapter.

Comments on the Proposed Rule

FSIS received six comments in response to the proposal: four from industry members, one from a trade association and one from a university. All of the commenters supported the proposed change and cited the need for consistency in labeling requirements for all products made with a barbecue sauce.

Final Rule

After careful consideration of all relevant information available to FSIS, the Administrator has determined that the proposed rule should be published as a permanent regulation as set forth below.

List of Subjects in 9 CFR Part 319

Meat and meat food products, Standards of identity, Food labeling.

PART 319—[AMENDED]

Accordingly, Part 319 of the Federal meat inspection regulations is amended as follows:

1. The authority citation for Part 319 continues to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 601 et seq.); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 et seq.); 76 Stat. 663 (7 U.S.C. 450 et seq.).

2. Section 319.312 (9 CFR Part 319) is revised to read as follows:

§ 319.312 Pork with barbecue sauce and beef with barbecue sauce.

"Pork with Barbecue Sauce" and "Beef with Barbecue Sauce" shall contain not less than 50 percent meat of the species specified on the label, computed on the weight of the cooked and trimmed meat. Mechanically Separated (Species) may be used in accordance with § 319.6. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the uncooked weight of the meat. If uncooked meat is used in formulating the products, they shall contain at least 72 percent meat computed on the weight of the fresh uncooked meat.

Done at Washington, DC, on August 26, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86-20300 Filed 9-8-86; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 201

[Docket No. R-86-1178, FR-1656]

Mortgage and Loan Insurance Programs; Title I Property Improvement and Manufactured Home Loans; Corrections

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

ACTION: Final rule; correction.

SUMMARY: This Notice amends the final rule published in the **Federal Register** on October 25, 1985 (50 FR 43516) to correct errors. The errors are in provisions relating to credit, security, conditions for loan disbursement, flood insurance and coastal barriers properties, FHA insurance charges, curing of defaults, and insurance claims for property improvement and manufactured home loans.

DATE: Effective January 15, 1986. For a statement of compliance see the document published February 11, 1986 (51 FR 5068).

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Acting Director, Title I Insurance Division, Room 9160, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755-6880 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department published a final rule on October 25, 1985 (50 FR 43516), which restated and reorganized the then-current property improvement and manufactured home loan regulations appearing in 24 CFR Part 201 and implementing Title I, section 2 of the National Housing Act. On January 14, 1986 the Department published in the **Federal Register** a Notice announcing that the effective date for the new regulations was January 15, 1986.

Since the effective date, the Department has determined that the regulations as published in the final rule contain several errors and hereby makes technical corrections to the appropriate provisions. The affected provisions are § 201.22(a)(2), relating to verifications of employment and income; § 201.22(b), relating to income requirements for manufactured home loans; § 201.24(b) and § 201.26(a)(1), relating to security and title evidence requirements, respectively; § 201.26(b) (2)(iv) and (4)(iii), relating to conditions for manufactured home loan disbursements; § 201.28, relating to flood insurance and coastal barriers properties; § 201.31(c), relating to charges for late insurance payments; § 201.50(b), relating to repayment plans; and § 201.54(d), relating to recordation of assignments of security interests to the Secretary.

The corrections to § 201.22(a)(2) clarify the Department's intention that lenders be able to check on the present employment and income of borrowers and any co-makers or co-signers through written verification or by obtaining other documentation. The Department recognizes that written verification from employers may not always be obtainable within the time constraints on making the loan, and lack of such verification should not prevent borrowers from obtaining Title I loans if other documentation is available.

Section § 201.22(b) is corrected to clarify that "it" in the second sentence refers to housing expenses and other recurring expenses, and not to the borrower's income. In addition, the list of housing expense payments in the fourth sentence is corrected to change "mortgage insurance premium" to "loan insurance charge" and to clarify that utilities are included.

The corrections to § 201.24(b) delete the parenthetical phrase "(mortgage or deed of trust, chattel mortgage, or conditional sales contract)" and the term "security agreement", as they are included in the definition of "security instrument" in § 201.2(ee). They also clarify that the phrase "executed by the borrower and any other owner of the property" is applicable only to a security instrument, and that evidence of a lien may be a document not executed by the borrower, such as a

certificate of title issued by a State and showing that there is a lien on the property. A number of States issue certificates of title for manufactured homes in the same manner as for automobiles, and such certificates of title indicate the lienors, if any.

The corrections to § 201.26 (a) change "the title interest" to "the interest" and eliminate redundant or confusing terminology, so as to clarify that it is the borrower's property interest for which the Department requires evidence. Section 201.20(a)(1) of the regulations makes it clear that a borrower may have other than a title interest in the property to be improved, i.e., a leasehold interest or an interest in a land installment contract.

In § 201.26(b)(2)(iv), a typographical error is rectified by changing "of" to "or", and in § 201.26(b)(4)(iii), a superfluous "that" is deleted.

In § 201.28, paragraph headings were omitted from paragraphs (a) and (c), and the Department hereby corrects those omissions by adding the appropriate headings.

In § 201.31(c), a typographical error is rectified by changing "no later charge" to "no late charge", and in § 201.50(b), "payment" is changed to "repayment".

The corrections to § 201.54 (d) clarify the Department's intention to require the recordation of an assignment of the lender's rights when submitting a claim only when the security interest has been assigned to the United States.

PART 201—[AMENDED]

Accordingly, the Department of Housing and Urban Development corrects Part 201 of Title 24, Code of Federal Regulations as follows:

1. The authority citation for Part 201 continues to read as follows:

Authority: Sec. 2, National Housing Act, 12 U.S.C. 1703; sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

2. Section 201.22 is amended by revising paragraphs (a)(2) and (b) to read:

§ 201.22 Credit requirements for borrowers.

(a) * * *

(2) The lender shall obtain a separate dated credit application on a HUD-approved form from and executed by the borrower and by any co-maker or co-signer under applicable criminal and civil penalties for fraud and misrepresentation for each loan made. The lender shall conduct a credit investigation based on the credit application, and shall obtain written verification of or otherwise document the current employment and current income of the borrower and of any co-maker or co-signer. If the borrower or any co-maker or co-signer has changed employment within the past two years, the lender shall obtain written verification of or otherwise document the person's prior employment and prior income during the two-year period. If the borrower or any co-maker or co-signer was self-employed during any period of the previous two years, the lender shall obtain documentation of the person's income during such period of self-employment.

* * * * *

(b) *Income requirements for manufactured home loans.* For any manufactured home loan, the credit application and review must establish that the borrower's income will be adequate to meet both the periodic payments required by the loan and to meet other recurring charges. For a borrower's income to be considered adequate, housing expenses and other recurring charges generally may not exceed maximum percentages of net effective income which the Secretary will publish by Notice in the **Federal Register** based upon generally prevailing interest rates and upon HUD's experience of claims/loan ratios, for prospective use by lenders in approving manufactured home loan applications. Net effective income includes continuing income from all sources which may reasonably be expected to continue during the first two years of the loan obligation. The income percentage limitations will apply to the borrower's total prospective housing expense payments related to the loan (principal, interest, loan insurance charge, ground rent or leasehold, utilities, hazard insurance, extended warranty or service contract, and realty taxes), as well as the sum of the prospective housing expense payments and other recurring charges. If either of the published income percentage limitations is exceeded, the borrower's income may be considered adequate only if the lender determines and documents in the loan file the existence of other factors with respect to the borrower's income and creditworthiness which support approval of the loan.

* * * * *

3. Section 201.24 is amended by revising paragraph (b) to read:

§ 201.24 Security requirements.

* * * * *

(b) *Manufactured home loans.* Any manufactured home loan shall be secured by a recorded lien on the property. The lien shall be a first lien, superior to any other lien on that property, and shall be evidenced by a properly recorded financing statement, a properly recorded security instrument executed by the borrower and any other owner of the property, or another acceptable instrument, such as a certificate of title issued by the State and containing a recitation of the lender's lien interest in the manufactured home.

* * * * *

4. Section 201.26 is amended by revising paragraph (a)(1) to read:

§ 201.26 Conditions for loan disbursement.

(a) * * *

(1) The lender shall ensure that the borrower is eligible for a property improvement loan in accordance with § 201.20(a), and shall ensure that the interest of the borrower in the property is valid, through such title or other evidence as is acceptable to prudent lending institutions and leading attorneys generally in the community in which the property is situated.

* * * * *

5. Section 201.26 is also amended by removing the phrase "manufacturer of" and adding in its place "manufacturer or" in paragraph (b)(2)(iv), and by removing "that" where it appears as the first word in paragraph (b)(4)(iii)(D).

§ 201.28 [Amended]

6. Section 201.28 is amended by adding *"Flood insurance."* and *"Coastal barriers properties."* as titles for paragraphs (a) and (c), respectively.

§ 201.31 [Amended]

7. Paragraph (c) of § 201.31 is amended by removing the word "later" and adding in its place the word "late" in the last sentence.

§ 201.50 [Amended]

8. Paragraph (b)(3) of § 201.50 is amended by revising the phrase "modification agreement or payment plan" to read "modification agreement or repayment plan".

9. Section 201.54 is amended by revising the last sentence of paragraph (d) to read as set forth below:

§ 201.54 Insurance claim procedure.

* * * * *

(d) * * * If the security interest has been assigned to the United States, the assignment shall be recorded in that jurisdiction prior to filing the insurance claim.

* * * * *

Dated: August 28, 1986.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 86-20222 Filed 9-8-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8099]

Income Tax, Taxable Years Beginning After December 31, 1953; Allocations of Loss and Deduction Attributable to Nonrecourse Debt

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations under section 704(b) of the Internal Revenue Code of 1954, relating to allocations of loss and deduction attributable to nonrecourse debt of the partnership. In addition, certain clarifying amendments are made to the existing final regulations under section 704(b). This Treasury decision reflects certain changes made to the law by the Tax Reform Act of 1976.

DATE: The amendments are effective for partnership taxable years beginning after December 31, 1975, except as otherwise provided in existing §1.704-1 (b)(1)(ii), as modified by this Treasury decision.

FOR FURTHER INFORMATION CONTACT: John G. Schmalz of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Attn: CC:LR:T 202-566-3297.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 1983, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 704(b) of the Internal Revenue Code of 1954. Those amendments were proposed to conform the regulations to section 213(d) of the Tax Reform Act of 1976 (95 Stat. 1548). Numerous written comments were received during the comment period, and a public hearing was held on May 4, 1983. On December 31, 1985, the **Federal Register** (50 FR 53420) published final regulations (T.D. 8065) under section 704(b). That Treasury decision adopted the proposed rules as revised by the Treasury decision, except that §1.704-1 (b)(4)(iv), relating to allocations of loss and deduction attributable to nonrecourse debt, was reserved. The proposed regulations remained outstanding on that issue. Since December 31, 1985, the Treasury Department has continued to consider the public comment concerning this issue. After consideration of all the public comments concerning the issue of the allocation of loss and deduction attributable to nonrecourse debt, the proposed rules on this issue are finalized as revised by this Treasury decision.

In addition, certain clarifying changes are made to the final regulations that were published on December 31, 1985.

Explanation of Provisions

Nonrecourse Debt

The final regulations provide that allocations of loss and deduction attributable to nonrecourse debt shall be deemed to be made in accordance with the partners' interests in the partnership so long as four requirements are met. First, requirements (*1*) and (*2*) of §1.704-1 (b)(2)(ii)(*b*), relating to the requirements to maintain capital accounts and have liquidation distributions made in accordance with capital account balances, must be satisfied. Second, the partnership agreement must provide that allocations of such loss and deduction are made in a manner that is reasonably consistent with allocations, which have substantial economic effect, of some other significant partnership item attributable to partnership property securing the nonrecourse liabilities (other than minimum gain recognized by the partnership). Third, either requirement (*3*) of § 1.704-1(b)(2)(ii)(*b*), relating to the restoration of partners' deficit capital account balances, must be satisfied, or the partnership agreement must contain a "minimum gain chargeback." Fourth, all other material partnership allocations and capital account adjustments must be recognized under § 1.704-1(b). Allocations not qualifying under this safe harbor must be made in accordance with the partners' overall economic interests in the partnership.

In addition, the final regulations clarify that the amount of a partner's share of minimum gain shall be treated as a limited deficit make-up obligation for purposes of the alternative economic effect test of existing § 1.704-1 (b)(2)(ii)(*d*). In addition, the regulations give guidance on the application of section 704(c) and section 704(c) principles in cases where nonrecourse debt is involved. Finally, the regulations clarify the treatment of deductions attributable to nonrecourse loans made to the partnership by a partner of the partnership but reserve §1.704-1 (b)(4)(iv)(*h*) for rules to be proposed concerning the treatment of nonrecourse deductions attributable to nonrecourse loans made to the partnership by a person related to a partner of the partnership.

Other Clarifying Changes

The final regulations also contain several corrective and clarifying changes to the final regulations under section 704(b) that were published in the **Federal Register** on December 31, 1985.

Public Comments and Changes Made in Response to Public Comments

Nonrecourse Debt

Section 704(b), as amended by the Tax Reform Act of 1976, provides that a partner's distributive share of income, gain, loss, deduction, or credit (or item thereof) is determined in accordance with such partner's interest in the partnership (determined by taking into account all facts and circumstances) if either the partnership agreement does not provide for the distributive share, or the allocation to the partner under the partnership agreement does not have substantial economic effect.

Allocations of loss and deduction attributable to nonrecourse debt cannot have substantial economic effect since no partner of the partnership can bear the economic loss corresponding to the loss and deduction attributable to such nonrecourse debt. Such economic loss can only be borne by the nonrecourse lender. Because allocations of loss and deduction attributable to nonrecourse debt cannot have economic effect, section 704(b) mandates that such items must be allocated in accordance with the partners' interests in the partnership.

The proposed regulations published in March of 1983 provided that loss and deduction attributable to nonrecourse debt would be deemed to be in accordance with the partners' interests in the partnership if the partnership maintained capital accounts in accordance with the regulations, liquidating distributions were made in accordance with positive capital account balances, and either: (1) Partners were obligated to restore the deficit balances in their capital accounts upon liquidation of their interests in the partnership, or (2) the deficit capital account balances attributable to such loss and deduction did not exceed the amount of minimum gain and such minimum gain was allocated to the partners who were allocated such loss and deduction.

This rule was criticized by certain members of the public on conceptual grounds. These commentators contended that a partner's obligation to bear the burden of taxation on the minimum gain that resulted from loss and deduction attributable to nonrecourse debt was not necessarily a good indication of a partner's interest in the partnership. For example, under the proposed rule, so long as the partnership agreement contained a minimum gain chargeback provision, 100 percent of the loss and deduction attributable to nonrecourse debt could be allocated to a partner even though such partner's interest in every other partnership item was substantially less than 100 percent.

The Treasury Department has fully considered all of the public comment and agrees that a partnership should not be allowed to allocate loss and deduction attributable to nonrecourse debt in the manner described in the example in the preceding paragraph. Accordingly, the proposed rule has been modified to preclude this and similar types of tax-motivated arrangements.

In addition, several other changes were made in response to the public comment. Several commentators asked for examples that explained the interaction between section 704(c) and the nonrecourse debt provision. Other commentators asked for more limited partnership examples and examples where partnership assets secure more than one partnership liability and where nonrecourse liabilities are secured by more than one partnership asset. Additional examples have been added in response to these comments.

Similarly, in response to commentators who asked for clarification of the rule in a case where partnership assets are subject to both recourse and nonrecourse liabilities, new rules and examples have been added to address so-called "stacking" problems.

Certain commentators asked for clarification of the rules where a partner made a purported nonrecourse loan to the partnership. The final regulations provide that allocations of loss and deduction attributable to such loans are not governed by the nonrecourse debt rules. Instead, such losses and deductions must be allocated to the lending partner under § 1.704–1(b)(3). The Treasury Department is studying whether transactions involving loans to the partnership by persons related to partners should be governed by similar rules. If it determines that similar rules should be applicable to such cases, those rules will be proposed as part of another regulation project.

Regulatory Flexibility Act and Executive Order 12291

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

Drafting Information

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

List of Subjects in 26 CFR 1.701–1 Through 1.771–1

Income taxes, Partnerships.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

PART 1—[AMENDED]

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

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

Par. 2. Section 1.704–1(b) is amended by revising the paragraph heading of (b)(4)(iv) and adding text and by adding examples (20) through (23) immediately after example (19) in paragraph (b)(5) to read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) *Determination of partner's distributive share.* * * *

(4) *Special rules.* * * *

(iv) *Nonrecourse deductions—(a) Allocation of nonrecourse deductions.* An allocation of loss, deduction, or section 705(a)(2)(B) expenditure (or item thereof) attributable to nonrecourse liabilities of the partnership ("nonrecourse deductions") cannot have economic effect because, in the event there is an economic burden that corresponds to such an allocation, the creditor alone bears that burden. Thus, nonrecourse deductions must be allocated in accordance with the partners' interests in the partnership. Paragraph (b)(4)(iv)(*d*) of this section, however, provides a test under which certain allocations of nonrecourse deductions will be deemed to be in accordance with the partners' interests in the partnership. If that test is not satisfied, the partners' distributive shares of nonrecourse deductions will be determined, under paragraph (b)(3) of this section, according to the partners' overall economic interests in the partnership.

(b) Determination of nonrecourse deductions. The amount of nonrecourse deductions for a partnership taxable year equals the net increase, if any, in the amount of partnership minimum gain during that taxable year. See Examples (20)(i), (21), and (22) of paragraph (b)(5) of this section. In determining such net increase for any partnership taxable year in which the capital accounts of the partners are increased pursuant to paragraph (b)(2)(iv)(*f*) of this section to reflect a revaluation of partnership property subject to one or more nonrecourse liabilities of the partnership, any decrease in partnership minimum gain attributable to each such revaluation shall be added back to the net decrease or increase otherwise determined. See example (22)(iii) of paragraph (b)(5) of this section. The nonrecourse deductions for a partnership taxable year shall consist first of depreciation or cost recovery deductions with respect to items of partnership property subject to one or more nonrecourse liabilities of the partnership to the extent of the increase in minimum gain attributable to the nonrecourse liabilities to which each such item of property is subject, with the remainder of such nonrecourse deductions, if any, made up of a pro rata portion of the partnership's other items of deduction, loss, and section 705(a)(2)(B) expenditure for that year. If, however, such depreciation or cost recovery deductions exceed the net increase in partnership minimum gain, a proportional share of each such deduction shall constitute a nonrecourse deduction. See example (23) of paragraph (b)(5) of this section. In addition, if the net increase in partnership minimum gain during a partnership taxable year exceeds the total amount of items of partnership loss, deduction, and section 705(a)(2)(B) expenditure for such year, then an amount of partnership loss, deduction, and section 705(a)(2)(B) expenditure for the partnership's next succeeding taxable year (or years) equal to such excess shall constitute nonrecourse deductions, as if there had been a net

increase in partnership minimum gain during such succeeding year (or years) in the amount of such excess.

(c) Partnership minimum gain. The amount of partnership minimum gain is determined by computing, with respect to each nonrecourse liability of the partnership, the amount of gain (of whatever character), if any, that would be realized by the partnership if it disposed of (in a taxable transaction) the partnership property subject to such liability in full satisfaction thereof, and by then aggregating the amounts so computed. See examples (20) (i) and (iv), (21), and (22) of paragraph (b)(5) of this section. For the purpose of determining the amount of such gain, (*1*) the adjusted basis of partnership property subject to two or more liabilities of equal priority shall be allocated among such liabilities in proportion to the respective outstanding balances of such liabilities, and (*2*) the adjusted basis of partnership property subject to two or more liabilities of unequal priority shall be allocated to the liabilities of an inferior priority (in accordance with (*1*) above) only to the extent of the excess, if any, of the adjusted tax basis of such property over the aggregate outstanding balance of the liabilities of superior priority. Only the portion of the property's adjusted basis allocated to nonrecourse liabilities of the partnership shall be used in computing minimum gain. See example (20) (v) and (vi) of paragraph (b)(5) of this section. If partnership property subject to one or more nonrecourse liabilities of the partnership is, under paragraph (b)(2)(iv)(*d*) or (b)(2)(iv)(*f*) of this section, properly reflected on the books of the partnership at a book value that differs from the adjusted tax basis of such property, the determinations under this paragraph (b)(4)(iv) shall be made with reference to such book value. See example (22) of paragraph (b)(5) of this section.

(d) Requirements to be satisfied. Allocations of nonrecourse deductions shall be deemed to be made in accordance with the partners' interests in the partnership if, and only if—

(*1*) Throughout the full term of the partnership, requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied,

(*2*) Beginning in the first taxable year in which there are nonrecourse deductions and thereafter throughout the full term of the partnership, the partnership agreement provides for allocations of nonrecourse deductions among the partners in a manner that is reasonably consistent with allocations, which have substantial economic effect, of some other significant partnership item attributable to the property securing nonrecourse liabilities of the partnership (other than minimum gain recognized by the partnership),

(*3*) Beginning in the first taxable year of the partnership in which the partnership has nonrecourse deductions and thereafter throughout the full term of the partnership, (*i*) requirement (*3*) of paragraph (b)(2)(ii)(*b*) of this section is satisfied, or (*ii*) the partnership agreement contains a "minimum gain chargeback" (as defined in paragraph (b)(4)(iv)(*e*) of this section), and

(*4*) All other material allocations and capital account adjustments under the partnership agreement are recognized under this paragraph (b) (without regard to whether allocations of adjusted tax basis and amount realized under section 613A(c)(7)(D) are recognized under paragraph (b)(4)(v) of this section).

(e) Minimum gain chargeback. A partnership agreement contains a "minimum gain chargeback" if, and only if, it provides that, if there is a net decrease in partnership minimum gain during a partnership taxable year, all partners with a deficit capital account balance at the end of such year (excluding from each partner's deficit capital account balance any amount that such partner is obligated to restore under paragraph (b)(2)(ii)(*c*) of this section, as well as any addition thereto pursuant to the next to last sentence of paragraph (b)(4)(iv)(*f*) of this section computed with respect to the amount of partnership minimum gain after such net decrease) will be allocated, before any other allocation is made under section 704(b) of partnership items for such taxable year, items of income and gain for such year (and, if necessary, subsequent years) in the amount and in the proportions needed to eliminate such deficits as quickly as possible. For purposes of the preceding sentence, partners' capital accounts shall be reduced for the items described in paragraphs (b)(2)(ii)(*d*) (*4*), (*5*), and (*6*) of this section. Allocations of items of income and gain made pursuant to a minimum gain chargeback shall be deemed to be made in accordance with the partners' interests in the partnership if requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied. The minimum gain chargeback allocated in any taxable year shall consist first of gains recognized from the disposition of items of partnership property subject to one or more nonrecourse liabilities of the partnership to the extent of the decrease in minimum gain attributable to the disposition of such items of property, with the remainder of such minimum gain chargeback, if any, made up of a pro rata portion of the partnership's other items of income and gain for that year. If, however, such gains exceed the amount of the minimum gain chargeback, a proportional share of each such gain shall constitute a part of the minimum gain chargeback. For purposes of paragraph (b)(2)(ii)(*d*)(*6*) of this section, offsetting increases to a partner's capital account taken into account under that paragraph shall not include income and gain that is expected to be allocated to such partner pursuant to a minimum gain chargeback.

(f) Partner's share of partnership minimum gain. A partner's share of partnership minimum gain at the end of any partnership taxable year equals the aggregate nonrecourse deductions allocated to such partner (and such partner's predecessors in interest) up to that time, less such partner's (and such predecessors') aggregate share of the net decreases in partnership minimum gain up to that time. A partner's share of the net decrease in partnership minimum gain during a partnership taxable year equals an amount that bears the same relation to the net decrease in partnership minimum gain during such year as such partner's share of partnership minimum gain at the end of the prior taxable year of the partnership (or, if later, at the time immediately following the last time that the capital accounts of the partners are increased pursuant to paragraph (b)(2)(iv)(*f*) of this section to reflect a revaluation of partnership property subject to one or more nonrecourse liabilities of the partnership) bears to the amount of partnership minimum gain at the end of such prior taxable year (or such later date). See examples (20) (i) and (iv) and (21) of paragraph (b)(5) of this section. In addition, if there is a decrease in partnership minimum gain in a taxable year of the partnership (whether or not there is a net decrease in partnership minimum gain during such year) attributable to the revaluation of partnership property subject to one or more nonrecourse liabilities of the partnership, each partner's share of partnership minimum gain as of the time of such revaluation shall be reduced by the amount of the increase in such partner's capital account attributable to such revaluation to the extent of the reduction in minimum gain caused by such revaluation. See example (22)(ii) of paragraph (b)(5) of this section. For purposes of paragraph (b)(2)(ii)(*d*) of this section, the amount of a partner's share of minimum gain shall be added to the limited dollar amount, if any, of the deficit balance in such partner's capital account that such partner is obligated to

restore. See examples (20)(i) and (22)(i) of paragraph (b)(5) of this section.

(g) Nonrecourse liabilities of the partnership where a partner has economic risk of loss. The rationale for the special rule contained in this paragraph (b)(4)(iv) is that, in the event there is an economic burden that corresponds to the nonrecourse deductions, none of the partners will bear that burden. Accordingly, for purposes of this paragraph, a nonrecourse liability of the partnership is a liability of the partnership (or portion thereof) with respect to which none of the partners has any economic risk of loss (other than through their interests as partners in the partnership assets subject to the liability). Therefore, to the extent a partner may bear the burden of an economic loss corresponding to a loss, deduction, or section 705(a)(2)(B) expenditure attributable to a partnership liability that would be considered nonrecourse for purposes of § 1.1001–2 (*e.g.*, a purported nonrecourse loan made by such partner to the partnership or guaranteed by such partner), allocations of such loss, deduction, or section 705(a)(2)(B) expenditure are not governed by this paragraph (b)(4)(iv). Instead, allocations of such loss or deduction shall be made in accordance with the partners' interests in the partnership under paragraph (b)(3) of this section. This will require allocations of such loss or deduction to be made to the partner or partners who bear the burden of an economic loss corresponding to such loss or deduction. See examples (20) (vii) and (viii) of paragraph (b)(5) of this section.

(h) Nonrecourse liabilities of the partnership where a person related to a partner has economic risk of loss. [Reserved]

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(5) *Examples.* * * *

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Example (20). (i) RM and HB form a limited partnership to acquire and operate a commercial office building. RM, the limited partner, contributes $180,000, and HB, the general partner, contributes $20,000 to the partnership, which obtains an $800,000 nonrecourse loan and purchases the building (on leased land) for $1,000,000. The nonrecourse loan is secured only by the building, and no principal payments are due for 5 years. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), HB will be required to restore any deficit balance in his capital account following the liquidation of his interest (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section), and RM will not be required to restore any deficit balance in his capital account following the liquidation of his interest. The partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section), and, as of the end of each partnership taxable year discussed herein, the items described in paragraphs (b)(2)(ii)(*d*) (*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in RM's capital account. In addition, the agreement contains a minimum gain chargeback (in accordance with paragraph (b)(4)(iv)(*e*) of this section). The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, (a) all partnership items will be allocated 90 percent to RM and 10 percent to HB until the first time when the partnership has recognized items of income and gain that exceed the items of loss and deduction it has recognized over its life, and (b) all further partnership items will be allocated equally between RM and HB. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made 90 percent to RM and 10 percent to HB until a total of $200,000 has been distributed, and thereafter all such distributions will be made equally to RM and HB. In each of the partnership's first 2 taxable years, it generates rental income of $95,000, operating expenses (including land lease payments) of $10,000, interest expense of $80,000, and a cost recovery deduction of $90,000, resulting in a net taxable loss of $85,000 in each of those years. The allocations of these losses, 90 percent to RM and 10 percent to HB, have substantial economic effect.

	RM	HB
Capital account upon formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Capital account at end of year 2	$27,000	$3,000

In the partnership's third taxable year, it again generates rental income of $95,000, operating expenses of $10,000, interest expense of $80,000, and a cost recovery deduction of $90,000, resulting in a net taxable loss of $85,000. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize $70,000 of gain ($800,000 amount realized less $730,000 adjusted tax basis). Since the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $70,000, the amount of partnership nonrecourse deductions for that year is $70,000, consisting of cost recovery deductions allowable with respect to the building of $70,000. Pursuant to the partnership agreement all partnership items comprising the net taxable loss of $85,000, including the $70,000 nonrecourse deduction, are allocated 90 percent to RM and 10 percent to HB. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	RM	HB
Capital account at end of year 2	$27,000	$3,000
Less: net loss in year 3 (without nonrecourse deduction)	(13,500)	(1,500)
Less: nonrecourse deduction in year 3	(63,000)	(7,000)
Capital account at end of year 3	($49,500)	($5,500)

This allocation of the $70,000 nonrecourse deduction, 90 percent, to RM and 10 percent to HB, satisfies requirement (2) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which have substantial economic effect, of other significant partnership items attributable to the building. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's third taxable year, RM's and HB's shares of partnership minimum gain are $63,000 and $7,000, respectively. Therefore, pursuant to the next to last sentence in paragraph (b)(4)(iv)(*f*) of this section, RM is treated as obligated to restore a deficit balance in his capital account of $63,000, so that in the succeeding year RM could be allocated up to an additional $13,500 of partnership deductions, losses, and section 705(a)(2)(B) expenditures that are not nonrecourse deductions, and that allocation would be considered to have economic effect under the alternate economic effect test contained in paragraph (b)(2)(ii)(*d*) of this section even though such an allocation would increase a deficit capital account balance. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the beginning of the partnership's fourth taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero. RM's and HB's shares of that net decrease would be $63,000 and $7,000, respectively. Upon such a disposition the minimum gain chargeback would require that RM be allocated an amount of that gain equal to $49,500 (the deficit balance in his capital account before any allocation is made to him under section 704(b) with respect to partnership items for the partnership's fourth taxable year).

(ii) Assume the same facts as originally stated in (i) except that the partnership agreement provides that all nonrecourse deductions of the partnership will be allocated equally between RM and HB. Furthermore, at the time the partnership agreement is entered into, there is a reasonable likelihood that over the partnership's life it will recognize amounts of income and gain significantly in excess of amounts of loss and deduction (other than nonrecourse deductions). The allocation of such excess equally between the partners

pursuant to the partnership agreement will have substantial economic effect. The allocation of all items, other than the nonrecourse deductions, 90 percent to RM and 10 percent to HB, has substantial economic effect.

	RM	HB
Capital account upon formation	$180,000	$20,000
Less: net loss in years 1 and 2	(153,000)	(17,000)
Capital account at end of year 2	27,000	3,000
Less: net loss in year 3 (without nonrecourse deduction)	(13,500)	(1,500)
Less: nonrecourse deduction in year 3	(35,000)	(35,000)
Capital account at end of year 3	($21,500)	($33,500)

The allocation of the $70,000 nonrecourse deduction equally between RM and HB satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which will have substantial economic effect, of other significant partnership items attributable to the building. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. The allocation of the nonrecourse deductions, 75 percent to RM and 25 percent to HB (or in any other ratio between 90 percent to RM/10 percent to HB and 50 percent to RM/50 percent to HB), also would satisfy requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section.

(iii) Assume the same facts as originally stated in (i) except that the partnership agreement provides that RM will be allocated 99 percent, and HB 1 percent, of all nonrecourse deductions of the partnership. This allocation of the $70,000 nonrecourse deduction does not satisfy requirement (2) of paragraph (b)(4)(iv)(*d*) because it is not reasonably consistent with allocations, which have substantial economic effect, of any other significant partnership item attributable to the building. Therefore, the allocation of nonrecourse deductions will be disregarded, and the nonrecourse deductions of the partnership will be reallocated according to the partners' overall economic interests in the partnership, determined with reference to the factors set forth in paragraph (b)(3)(ii) of this section.

(iv) Assume the same facts as originally stated in (i) except that, at the beginning of the partnership's fourth taxable year, RM contributes $144,000 and HB contributes $16,000 of additional capital to the partnership, which the partnership uses to reduce the amount of its nonrecourse liability from $800,000 to $640,000. In addition, in the partnership's fourth taxable year, it again generates rental income of $95,000, operating expenses of $10,000, and a cost recovery deduction of $90,000, resulting in a net taxable loss of $85,000. If the partnership were to dispose of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize no gain ($640,000 amount realized less $640,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of the year is zero, which represents a net decrease in partnership minimum gain of $70,000 during the year. RM's and HB's shares of this net decrease are $63,000 and $7,000, respectively, so that at the end of the partnership's fourth taxable year, RM's and HB's shares of partnership minimum gain are zero. Therefore, pursuant to the next to last sentence in paragraph (b)(4)(iv)(*f*) of this section, RM is no longer treated as being obligated to restore any deficit balance in his capital account. Assuming the sum of the reductions to RM's capital account described in paragraph (b)(2)(ii)(*d*) (*4*), (*5*), and (*6*) of this section do not exceed $94,500, the minimum gain chargeback does not require that either RM or HB be allocated items of income and gain in the partnership's fourth taxable year even though there is a net decrease in partnership minimum gain during that year. This is true because at the end of the year, before any allocation is made under section 704(b) to RM with respect to partnership items for the fourth taxable year, RM's capital account balance is $94,500 (his capital account balance at the end of the partnership's third taxable year increased by his $144,000 capital contribution), and HB has a full deficit makeup obligation.

	RM	HB
Capital account at end of year 3	($49,500)	($5,500)
Plus: contribution	144,000	16,000
Less: net loss in year 4	(76,500)	(8,500)
Capital account at end of year 4	$18,000	$2,000

(v) Assume the same facts as originally stated in (i) except that the partnership incurred only a $700,000 nonrecourse loan and, in addition, incurred a $100,000 recourse loan, subordinate in priority to the nonrecourse loan, to which the partnership's building is also subject. Under paragraph (b)(4)(iv)(*c*) of this section, $700,000 of the adjusted basis of the building at the end of the partnership's third taxable year is allocated to the nonrecourse liability (with the remaining $30,000 allocated to the recourse liability) so that if the partnership disposed of the building in full satisfaction of the nonrecourse liability at the end of that year, it would realize no gain ($700,000 amount realized less $700,000 adjusted tax basis). Therefore, there is no minimum gain at the end of the partnership's third taxable year (and no increase in partnership minimum gain in such year). If, however, the $700,000 nonrecourse loan were subordinate in priority to the $100,000 recourse loan, under paragraph (b)(4)(iv)(*c*) of this section, only $630,000 of the adjusted basis of the building would be allocated to the $700,000 nonrecourse loan (the excess of the $730,000 adjusted tax basis of the building at the end of the partnership's third taxable year over the balance of the superior $100,000 recourse liability). In that case the balance of the $700,000 nonrecourse liability would exceed the adjusted tax basis of the building so allocated by $70,000 so that there would be $70,000 of minimum gain (and a $70,000 increase in partnership minimum gain) in the partnership's third taxable year.

(vi) Assume the same facts as originally stated in (i) except that RM and HB personally guarantee the "first" $100,000 of the $800,000 nonrecourse loan (*i.e.*, only if the building is worth less than $100,000 will they be called upon to make up any deficiency). Under paragraph (b)(4)(iv)(*c*) of this section, only $630,000 of the adjusted tax basis of the building is allocated to the $700,000 nonrecourse portion of the loan because the collateral will be applied first to satisfy the $100,000 guaranteed portion, in effect making it superior in priority to the remainder of the loan. On the other hand, if RM and HB were to guarantee the "last" $100,000 (*i.e.*, if the building is worth less than $800,000, they will be called upon to make up the deficiency up to $100,000), $700,000 of the adjusted tax basis of the building would be allocated to the $700,000 nonrecourse portion of the loan because the guaranteed portion in effect would be inferior in priority to it.

(vii) Assume the same facts as originally stated in (i) except that the $800,000 loan is made by HB, the general partner. Under paragraph (b)(4)(iv)(*g*) of this section, the $800,000 obligation does not constitute a nonrecourse liability of the partnership for purposes of this paragraph (b)(4)(iv). To the extent that such obligation constitutes a nonrecourse liability under § 1.1001–2, $70,000 of the $90,000 cost recovery deduction in the partnership's third taxable year must be allocated in accordance with the partners' interests in the partnership, under paragraph (b)(3) of this section. HB bears the burden of any economic loss corresponding to that $70,000 deduction. Therefore, HB must be allocated the entire amount of such deduction.

(viii) Assume the same facts as in (vii) except that the $800,000 loan from HB to the partnership is a purchase money loan that "wraps around" a $700,000 underlying nonrecourse note (also secured by the building) issued by HB to an unrelated person in connection with HB's acquisition of the building. Under these circumstances if the partnership were to convey the building to HB in satisfaction of the partnership's $800,000 liability, HB would bear the economic risk of loss with respect to only $100,000 of the liability. Therefore, for purposes of this paragraph (b)(4)(iv), the $800,000 liability will be treated as a $700,000 nonrecourse liability of the partnership and a $100,000 liability (inferior in priority to the $700,000 liability) of the partnership to HB. Under paragraph (b)(4)(iv)(*g*) of this section, the $100,000 liability does not constitute a nonrecourse liability of the partnership for purposes of this paragraph (b)(4)(iv). To the extent that such obligation constitutes a nonrecourse liability under § 1.1001–2, $70,000 of the $90,000 cost recovery deduction realized in the partnership's third taxable year must be allocated to HB.

Example (21). (i) RD and PK form a general partnership to acquire and operate residential real properties. Each partner contributes $150,000 to the partnership. The partnership obtains a $1,500,000 nonrecourse loan and

purchases 3 apartment buildings (on leased land) for $720,000 ("Property A"), $540,000 ("Property B"), and $540,000 ("Property C"), respectively. The nonrecourse loan is secured only by the 3 buildings, and no principal payments are due for 5 years. In each of the partnership's first 3 taxable years, it generates rental income of $225,000, operating expenses (including land lease payments) of $50,000, interest expense of $175,000, and cost recovery deductions on the 3 properties of $150,000 ($60,000 on Property A, $45,000 on Property B, and $45,000 on Property C), resulting in a net taxable loss of $150,000 in each of those years. If the partnership were to dispose of the 3 apartment buildings in full satisfaction of its nonrecourse liability at the end of its third taxable year, it would realize $150,000 of gain ($1,500,000 amount realized less $1,350,000 adjusted tax basis). Since the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $150,000, the amount of partnership nonrecourse deductions for that year is $150,000, consisting of cost recovery deductions allowable with respect to the 3 apartment buildings of $150,000. The result would be the same if the partnership obtained 3 separate nonrecourse loans that were "cross-collateralized" (*i.e.*, if each separate loan were secured by all 3 of the apartment buildings).

(ii) Assume the same facts as originally stated in (i) and that at the beginning of the partnership's fourth taxable year, the partnership (with the permission of the nonrecourse lender) disposes of Property A for $835,000 and uses a portion of the proceeds to repay $600,000 of the nonrecourse liability, reducing the balance to $900,000. As a result of the disposition, the partnerhips recognizes gain of $295,000 ($835,000 amount realized less $540,000 adjusted tax basis). Also during the partnership's fourth taxable year it generates rental income of $135,000 and operating expenses of $30,000, interest expense of $105,000, and cost recovery deductions of $90,000 ($45,000 on each remaining building). If the partnership were to dispose of the remaining 2 buildings in full satisfaction of its nonrecourse liability at the end of the partnership's fourth taxable year, it would realize gain of $180,000 ($900,000 amount realized less $720,000 aggregate adjusted tax basis), which represents the amount of partnership minimum gain at the end of such year. Since the amount of partnership minimum gain increased from $150,000 to $180,000 during the partnership's fourth taxable year, the amount of partnership nonrecourse deductions for such year is $30,000, consisting of cost recovery deductions allowable with respect to the 2 remaining apartment buildings.

Example (22). (i) OC and DR form a limited partnership to acquire and lease machinery that is 5-year recovery property. OC, the limited partner, and DR, the general partner, contribute $100,000 each to the partnership, which obtains an $800,000 nonrecourse loan and purchases the equipment for $1,000,000. The partnership elects under section 48(q)(4) to reduce the amount of investment tax credit in lieu of adjusting the tax basis of such machinery. The nonrecourse loan is secured only by the machinery. The principal amount of the loan is to be repaid $50,000 per year during each of the partnership's first 5 taxable years, with the remaining $550,000 of unpaid principal due on the first day of the partnership's sixth taxable year. The partnership agreement provides that the partners' capital accounts will be determined and maintained in accordance with paragraph (b)(2)(iv) of this section, distributions in liquidation of the partnership (or any partner's interest) will be made in accordance with the partners' positive capital account balances (as set forth in paragraph (b)(2)(ii)(*b*)(*2*) of this section), DR will be required to restore any deficit balance in his capital account following the liquidation of his interest (as set forth in paragraph (b)(2)(ii)(*b*)(*3*) of this section), and OC will not be required to restore any deficit balance in his capital account following the liquidation of his interest. The partnership agreement contains a qualified income offset (as defined in paragraph (b)(2)(ii)(*d*) of this section), and, as of the end of each partnership taxable year discussed herein, the items described in paragraphs (b)(2)(ii)(*d*)(*4*), (*5*), and (*6*) of this section are not reasonably expected to cause or increase a deficit balance in RM's capital account. In addition, the agreement contains a minimum gain chargeback (in accordance with paragraph (b)(4)(iv)(*e*) of this section). The partnership agreement provides that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, all partnership items will be allocated equally between OC and DR. Finally, the partnership agreement provides that all distributions, other than distributions in liquidation of the partnership or of a partner's interest in the partnership, will be made equally between OC and DR. In the partnership's first taxable year, it generates rental income of $130,000, interest expense of $80,000, and a cost recovery deduction of $150,000, resulting in a net taxable loss of $100,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $750,000. Allocations of these losses equally between OC and DR have substantial economic effect.

	OC	DR
Capital account upon formation	$100,000	$100,000
Less: net loss in year 1	(50,000)	(50,000)
Capital account at end of year 1	$50,000	$50,000

In the partnership's second taxable year it generates rental income of $130,000, interest expense of $75,000, and a cost recovery deduction of $220,000, resulting in a net taxable loss of $165,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $700,000, and distributes $2,500 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of that year, it would realize $70,000 of gain ($700,000 amount realized less $630,000 adjusted tax basis). Therefore, the amount of partnership minimum gain at the end of that year (and the net increase in partnership minimum gain during that year) is $70,000, and the amount of partnership nonrecourse deductions for that year is $70,000, consisting of cost recovery deductions allowable with respect to the machinery of $70,000. Pursuant to the partnership agreement all partnership items comprising the net taxable loss of $165,000, including the $70,000 nonrecourse deduction, are allocated equally between OC and DR. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect.

	OC	DR
Capital account at end of year 1	$50,000	$50,000
Less: net loss in year 2 (without nonrecourse deduction)	(47,500)	(47,500)
Less: nonrecourse deduction in year 2	(35,000)	(35,000)
Less: distribution	(2,500)	(2,500)
Capital account at end of year 2	($35,000)	($35,000)

This allocation of the $70,000 nonrecourse deduction equally between OC and DR satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which have substantial economic effect, of other significant partnership items attributable to the machinery. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, the allocation of nonrecourse deductions is deemed to be made in accordance with the partners' interests in the partnership. At the end of the partnership's second taxable year, OC's and DR's shares of partnership minimum gain are $35,000 each. Therefore, pursuant to the next to last sentence in paragraph (b)(4)(iv)(*f*) of this section, OC is treated as obligated to restore a deficit balance in his capital account of $35,000. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the beginning of the partnership's third taxable year (and had no other economic activity in that year), the partnership minimum gain would be decreased from $70,000 to zero. OC's and DR's shares of that net decrease would be $35,000 each. Upon such a disposition the minimum gain chargeback would require that OC be allocated an amount of that gain equal to $35,000 (the deficit balance in his capital account before any allocation is made to him under section 704(b) with respect to partnership items for the partnership's third taxable year). The minimum gain chargeback would not require that DR be allocated any amount of such gain, since he has a full deficit makeup obligation.

(ii) Assume the same facts as originally stated in (i) and that DT is admitted to the partnership at the beginning of the partnership's third taxable year. At the time of DT's admission, the fair market value of the machinery is $900,000. DT contributes $100,000 to the partnership (which amount the partnership invests in undeveloped land) in exchange for an interest in the partnership. Pursuant to paragraph (b)(2)(iv)(*f*) of this

section, the capital accounts of OC and DR are adjusted upward to $100,000 each. This reflects the manner in which the partnership gain of $270,000 ($900,000 fair market value minus $630,000 adjusted basis) would be shared if the machinery were sold for its fair market value immediately prior to DT's admission to the partnership.

	OC	DR
Capital account before DT's admission	($35,000)	($35,000)
Deemed sale adjustment	135,000	135,000
Capital account adjusted for DT's admission	$100,000	$100,000

The partnership agreement is modified to provide that, except as otherwise required by its qualified income offset and minimum gain chargeback provisions, partnership income, gain, loss, and deduction, as computed for book purposes, will be allocated equally among the partners, and such allocations will be reflected in the partners' capital accounts. The partnership agreement also is modified to provide that depreciation and gain or loss, as computed for tax purposes, with respect to the machinery will be shared among the partners in a manner that takes account of the variation between such property's $630,000 adjusted tax basis and its $900,000 book value, in accordance with paragraph (b)(2)(iv)(*f*) of this section and the special rule contained in paragraph (b)(4)(i) of this section. Finally, the partnership agreement is modified to provide that DT will not be required to restore any deficit balance in his capital account following the liquidation of his interest. Since the requirements of paragraph (b)(2)(iv)(*g*) of this section are satisfied, the capital accounts of the partners (as adjusted) continue to be maintained in accordance with paragraph (b)(2)(iv) of this section. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability immediately following the revaluation of the machinery, it would realize no book gain ($700,000 amount realized less $900,000 book value). Thus, as a result of the revaluation of the machinery upward by $270,000, the partnership minimum gain is reduced from $70,000 immediately prior to such revaluation to zero. OC's and DR's shares of that decrease are $35,000 each.

(iii) Assume the same facts as in (ii) and that also during the partnership's third taxable year the partnership generates rental income of $130,000, interest expense of $70,000, a cost recovery deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result the partnership has a net taxable loss of $150,000 and a net book loss of $240,000. In addition, the partnership repays $50,000 of the nonrecourse liability (after the date of DT's admission), reducing that liability to $650,000, and distributes $3,333 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the year, $50,000 of book gain would result ($650,000 amount realized less $600,000 book value). Therefore, the amount of partnership minimum gain at the end of the year is $50,000, which represents a net decrease in partnership minimum gain of $20,000 during the year. (This is so even though there would be an increase in partnership minimum gain in the partnership's third taxable year if minimum gain were computed with reference to the adjusted tax basis of the machinery.) Nevertheless, pursuant to the second sentence of paragraph (b)(4)(iv)(*b*) of this section the amount of nonrecourse deductions of the partnership for its third taxable year is $50,000 (the net increase in partnership minimum gain during the year determined by adding back the $70,000 decrease in partnership minimum gain attributable to the revaluation of the machinery to the $20,000 net decrease in partnership minimum gain during the year). The $50,000 of partnership nonrecourse deductions for the year consist of book depreciation deductions allowable with respect to the machinery of $50,000. Pursuant to the partnership agreement all partnership items comprising the net book loss of $240,000, including the $50,000 nonrecourse deduction, are allocated equally among the partners. The allocation of these items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $210,000 cost recovery deduction for the partnership's third taxable year is, in accordance with section 704(c) principles, shared $55,000 to OC, $55,000 to DR, and $100,000 to DT.

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 2	($35,000)	$100,000	($35,000)	$100,000	$100,000	$100,000
Less: nonrecourse deduction	(9,166)	(16,666)	(9,166)	(16,666)	(16,666)	(16,666)
Plus: items other than nonrecourse deduction in year 3	(25,834)	(63,334)	(25,834)	(63,334)	(63,334)	(63,334)
Less: Distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 3	(75,000)	(15,000)	(75,000)	(15,000)	(15,000)	(15,000)

The allocation of the $50,000 nonrecourse deduction equally among OC, DR, and DT satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section because the allocation is consistent with allocations, which have substantial economic effect, of other significant partnership items attributable to the machinery. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, such allocation is deemed to be made in accordance with the partners' interest in the partnership. At the end of the partnership's third taxable year, OC's, DR's, and DT's shares of partnership minimum gain are $16,666 each.

(iv) Assume the same facts as in (iii) and that during the partnership's fourth taxable year the partnership generates rental income of $130,000, interest expense of $65,000, a cost recovery deduction of $210,000, and a book depreciation deduction (attributable to the machinery) of $300,000. As a result the partnership has a net taxable loss of $145,000 and a net book loss of $235,000. In addition, the partnership repays $50,000 of the nonrecourse liability, reducing that liability to $600,000, and distributes $5,000 of cash to each partner. If the partnership were to dispose of the machinery in full satisfaction of the nonrecourse liability at the end of the year, $300,000 of book gain would result ($600,000 amount realized less $300,000 book value). Therefore, the amount of partnership minimum gain as of the end of the year is $300,000, which represents a net increase in partnership minimum gain during the year of $250,000. Thus, the amount of partnership nonrecourse deductions for that year equals $250,000, consisting of book depreciation deductions of $250,000. Pursuant to the partnership agreement all partnership items comprising the net book loss of $235,000, including the $250,000 nonrecourse deduction, are allocated equally among the partners. That allocation of all items, other than the nonrecourse deductions, has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $210,000 cost recovery deduction for the partnership's fourth taxable year is, in accordance with section 704(c) principles, shared $55,000 to OC, $55,000 to DR, and $100,000 to DT.

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 3	($75,000)	$15,000	($75,000)	$15,000	$15,000	$15,000
Less: nonrecourse deduction	(45,833)	(83,333)	(45,833)	(83,333)	(83,333)	(83,333)
Plus: items other than nonrecourse deduction in year 4	(12,449)	5,000	12,449	5,000	5,000	5,000

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Less: Distribution	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)	(5,000)
Capital account at end of year 4	(113,334)	(68,333)	(113,334)	(68,333)	(68,333)	(68,333)

The allocation of the $250,000 nonrecourse deduction equally among OC, DR, and DT satisfies requirement (*2*) of paragraph (b)(4)(iv)(*d*) of this section. Since the remaining requirements of paragraph (b)(4)(iv)(*d*) of this section are satisfied, such allocation is deemed to be made in accordance with the partners' interest in the partnership. At the end of the partnership's third taxable year, OC's, DR's, and DT's shares of partnership minimum gain are $100,000 each.

(v) Assume the same facts as (iv) and that at the beginning of the partnership's fifth taxable year it sells the machinery for $650,000 (using $600,000 of the proceeds to repay the nonrecourse liability), resulting in a taxable gain of $440,000 ($650,000 amount realized less $210,000 adjusted tax basis) and a book gain of $350,000 ($650,000 amount realized less $300,000 book basis). The partnership has no other items of income, gain, loss, or deduction for such year. As a result of the sale, partnership minimum gain is reduced from $300,000 to zero, reducing OC's DR's and DT's shares of partnership minimum gain to zero from $100,000 each. The minimum gain chargeback requires that OC and DT each be allocated an amount of that gain equal to $68,333 (the deficit balance in each of their capital accounts at the end of the partnership's fifth taxable year before any allocation is made to them under section 704(b) with respect to partnership items for that year). Thus, the allocation of the first $136,666 of book gain $68,333 to OC and $68,333 to DT is deemed to be made in accordance with the partners' interests in the partnership under paragraph (b)(4)(iv)(*e*) of this section. The allocation of the remaining $213,334 of book gain in a manner such that the total book gain is allocated equally among the partners has substantial economic effect. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the $440,000 taxable gain is, in accordance with section 704(c) principles, shared $161,667 to OC, $161,667 DR, and $116,666 to DT.

	OC		DR		DT	
	Tax	Book	Tax	Book	Tax	Book
Capital account at end of year 4	($113,334)	($68,333)	($113,334)	($68,333)	($68,333)	($68,333)
Plus: minimum gain chargeback	94,691	68,333	0	0	68,333	68,333
Plus: additional gain	66,976	48,333	161,667	116,666	48,333	48,333
Capital account before liquidation	48,333	48,333	48,333	48,333	48,333	48,333

Example 23. (i) A partnership owns 4 properties, each of which is subject to a nonrecourse liability of the partnership. During a taxable year of the partnership, the following events take place. First, the partnership generates a cost recovery deduction (for both book and tax purposes) with respect to Property W of $10,000 and repays $5,000 of the nonrecourse liability secured only by that property, resulting in an increase in minimum gain with respect to that liability of $5,000. Second, the partnership generates a cost recovery deduction (for both book and tax purposes) with respect to Property X of $10,000 and repays none of the nonrecourse liability secured by that property, resulting in an increase in minimum gain with respect to that liability of $10,000. Third, the partnership generates a cost recovery deduction (for both book and tax purposes) of $2,000 on Property Y and repays $11,000 of the nonrecourse liability secured only by that property, resulting in a decrease in minimum gain with respect to that liability of $9,000 (although at the end of that year, there remains minimum gain with respect to that liability). Finally, the partnership borrows $5,000 on a nonrecourse basis, giving as the only security for that liability Property Z, which is a parcel of undeveloped land with an adjusted tax basis (and book value) of $2,000, resulting in a net increase in minimum gain with respect to that liability of $3,000. The net increase in partnership minimum gain during that year is $9,000, so that the amount of nonrecourse deductions of the partnership for that taxable year is $9,000. Those nonrecourse deductions consist of $3,000 of cost recovery deductions with respect to Property W and $6,000 of cost recovery deductions with respect to Property X. The amount of nonrecourse deductions consisting of cost recovery deductions is determined as follows. With respect to the nonrecourse liability secured by Property Z, with respect to which there is no cost recovery deduction, the amount of cost recovery deductions that constitutes nonrecourse deductions is zero. Similarly, with respect to the nonrecourse liability secured by Property Y, for which there is no increase in minimum gain, the amount of cost recovery deductions that constitutes nonrecourse deductions is zero. With respect to each of the nonrecourse liabilities secured by Properties W and X, which are (i) secured by property with respect to which there are cost recovery deductions and (ii) for which there is an increase in minimum gain, the amount of cost recovery deductions that constitutes nonrecourse deductions equals the product obtained by multiplying the net increase in partnership minimum gain ($9,000) times a fraction, the numerator of which is the total cost recovery deductions with respect to the partnership property securing that particular liability to the extent of the increase in minimum gain with respect to that liability and the denominator of which is the sum of the numerators for each such liability. Thus, for the liability secured by Property W, the amount is $9,000 times $5,000/$15,000. For the liability secured by Property X, the amount is $9,000 times $10,000/$15,000. (If one depreciable property secured 2 partnership nonrecourse liabilities, the amount of cost recovery or book depreciation with respect to that property would be allocated among such liabilities in accordance with the method by which adjusted basis is allocated under paragraph (b)(2)(iv)(*b*) of this section.)

(ii) Assume the facts as in (i) except that the loan secured by Property Z is $15,000 (rather than $5,000), resulting in a net increase in minimum gain with respect to that liability of $13,000. Thus, the net increase in partnership minimum gain is $19,000, and the amount of nonrecourse deductions of the partnership for that taxable year is $19,000. Those nonrecourse deductions consist of $5,000 of cost recovery deductions with respect to Property W, $10,000 of cost recovery deductions with respect to Property X, and a pro rata portion of the partnership's other items of deduction, loss, and section 705(a)(2)(B) expenditure for that year. The method for computing the amounts of cost recovery deductions that constitute nonrecourse deductions is the same as in (i) for the liabilities secured by Properties Y and Z. With respect to each of the nonrecourse liabilities secured by Properties W and X, the amount of cost recovery deductions that constitutes nonrecourse deductions equals the total cost recovery deductions with respect to the partnership property securing that particular liability to the extent of the increase in minimum gain with respect to that liability.

Par. 3. Section 1.704–1(b) is further amended as follows:

1. Paragraph (b)(1)(i) is amended by inserting the word "three" immediately after the phrase "there are" in the second sentence thereof.

2. Paragraph (b)(1)(ii) is amended by inserting immediately after the phrase

"May 1, 1986" the first time it appears in the second sentence thereof, the parenthetical phrase "(January 1, 1987, in the case of allocations of nonrecourse deductions as defined in paragraph (b)(4)(iv)(*a*) of this section)" and by deleting the phrase "as that term has" in the last sentence of that unit and adding in its place the phrase "or is in accordance with the partners' interests in the partnership as those terms have."

3. Paragraph (b)(1)(iii) is amended by adding a new sentence immediately before the last sentence to read as follows: "A deduction that appears to be a nonrecourse deduction deemed to be in accordance with the partners' interests in the partnership may not be such because purported nonrecourse liabilities of the partnership in fact constitute equity rather than debt."

4. Paragraph (b)(2)(ii)(*b*) is amended by inserting immediately before the last sentence thereof the following two new sentences: "Requirements (*2*) and (*3*) of this paragraph (b)(2)(ii)(*b*) are not violated if all or part of the partnership interest of one or more partners is purchased (other than in connection with the liquidation of the partnership) by the partnership or by one or more partners (or one or more persons related, within the meaning of section 267(b) (without modification by section 267(e)(1)) or section 707(b)(1), to a partner) pursuant to an agreement negotiated at arm's length by persons who at the time such agreement is entered into have materially adverse interests and if a principal purpose of such purchase and sale is not to avoid the principles of the second sentence of paragraph (b)(2)(ii)(*a*) of this section. In addition, requirement (*2*) of this paragraph (b)(2)(ii)(*b*) is not violated if, upon the liquidation of the partnership, the capital accounts of the partners are increased or decreased pursuant to paragraph (b)(2)(iv)(*f*) of this section as of the date of such liquidation and the partnership makes liquidating distributions within the time set out in that requirement (*2*) in the ratios of the partners' positive capital accounts, except that it does not distribute reserves reasonably required to provide for liabilities (contingent or otherwise) of the partnership and installment obligations owed to the partnership, so long as such withheld amounts are distributed as soon as practicable and in the ratios of the partners' positive capital account balances."

5. Paragraph (b)(2)(ii)(*d*) is amended by adding the parenthetical phrase "(other than increases pursuant to a minimum gain chargeback under paragraph (b)(4)(iv)(*e*) of this section)" to the end of the only sentence in (*6*) thereof, by adding the parenthetical phrase "(consisting of a pro rata portion of each item of partnership income, including gross income, and gain for such year)" in the penultimate sentence of that unit immediately after the phrase "income and gain", and by adding immediately before the last sentence of such unit a new sentence to read as follows: "Allocations of items of income and gain made pursuant to the immediately preceding sentence shall be deemed to be made in accordance with the partners' interests in the partnership if requirements (*1*) and (*2*) of paragraph (b)(2)(ii)(*b*) of this section are satisfied."

6. Paragraph (b)(2)(ii)(*f*) is amended by replacing the cross-reference to "(*4*), and (*5*), and (*6*) of paragraph (b)(2)(iv)(*d*) of this section" in the first sentence thereof with the cross-reference to "(*4*), (*5*), and (*6*) of paragraph (b)(2)(ii)(*d*) of this section".

7. Paragraph (b)(2)(ii)(*h*) is amended by adding the following new sentence immediately after the second sentence thereof: "(Thus, for example, if one partner who assumes a liability of the partnership is indemnified by another partner for a portion of such liability, the indemnifying partner (depending upon the particular facts) may be viewed as in effect having a partial deficit makeup obligation as a result of such indemnity agreement.)", and by adding at the end of the last sentence a new phrase to read as follows: "or partnership."

8. Paragraph (b)(2)(ii)(*i*) is amended by revising the first sentence thereof to read as follows: "Allocations made to a partner that do not otherwise have economic effect under this paragraph (b)(2)(ii) shall nevertheless be deemed to have economic effect, provided that as of the end of each partnership taxable year a liquidation of the partnership at the end of such year or at the end of any future year would produce the same economic results to the partners as would occur if requirements (*1*), (*2*), and (*3*) of paragraph (b)(2)(ii)(*b*) of this section had been satisfied, regardless of the economic performance of the partnership."

9. Paragraph (b)(2)(iii)(*c*)(*2*) is amended by adding immediately after the parenthetical "(under this paragraph (b)(2)(iii)(*c*))" a new clause to read as follows:" and, for purposes of paragraph (b)(2)(iii)(*a*), it will be presumed that there is a reasonable possibility that the allocations will affect substantially the dollar amounts to be received by the partners from the partnership" and by deleting the phrase "(i) and (iv)" after "(*7*)".

10. Paragraph (b)(2)(iv)(*b*) is amended by deleting the word "securing" in the two places that it appears and by adding the phrase "secured by" in each such place.

11. Paragraph (b)(2)(iv)(*c*) is amended by revising the last sentence thereof to read as follows: "For purposes of this paragraph (b)(2)(iv)(*c*), liabilities are considered assumed only to the extent the assuming party is thereby subjected to personal liability with respect to such obligation, the obligee is aware of the assumption and can directly enforce the assuming party's obligation, and, as between the assuming party and the party from whom the liability is assumed, the assuming party is ultimately liable."

12. Paragraph (b)(2)(iv)(*d*)(*3*) is amended by revising the parenthetical phrase in the first sentence thereof to read "(see paragraph (b)(1)(vi) of this section)."

13. Paragraph (b)(2)(iv)(*f*) introductory text is amended by inserting the parenthetical phrase "(including intangible assets such as goodwill)" in the first sentence thereof immediately after the phrase "partnership property".

14. Paragraph (b)(2)(iv)(*f*)(*5*)(*ii*) is amended by inserting the phrase "the liquidation of the partnership or" immediately after the phrase "connection with".

15. Paragraph (b)(2)(iv)(*g*)(*3*) and (*m*)(*4*) is revised to read as set forth below:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) *Determination of a partner's distributive share.* * * *

(2) *Substantial economic effect.* * * *

(iv) *Maintenance of capital accounts.* * * *

(*g*) *Adjustments to reflect book value.* * * *

(*3*) *Determining amount of book items.* The partners' capital accounts will not be considered adjusted in accordance with this paragraph (b)(2)(iv)(*g*) unless the amount of book depreciation, depletion, or amortization for a period with respect to an item of partnership property is the amount that bears the same relationship to the book value of such property as the depreciation (or cost recovery deduction), depletioin, or amortization computed for tax purposes with respect to such property for such period bears to the adjusted tax basis of such property. If such property has a zero adjusted tax basis, the book depreciation, depletion, or amortization may be determined under any

reasonable method selected by the partnership.

* * * * *

(*m*) *Section 754 elections.* * * *

(*4*) *Section 734 adjustments.* Except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, in the case of a distribution of property in liquidation of a partner's interest in the partnership by a partnership that has a section 754 election in effect for the partnership taxable year in which the distribution occurs, the partner who receives the distribution that gives rise to the adjustment to the adjusted tax basis of partnership property under section 734 shall have a corresponding adjustment made to his capital account. If such distribution is made other than in liquidation of a partner's interest in the partnership, however, except as provided in paragraph (b)(2)(iv)(*m*)(*5*) of this section, the capital accounts of the partners shall be adjusted by the amount of the adjustment to the adjusted tax basis of partnership property under section 734, and such capital account adjustment shall be shared among the partners in the manner in which the unrealized income and gain that is displaced by such adjustment would have been shared if the property whose basis is adjusted were sold immediately prior to such adjustment for its recomputed adjusted tax basis.

* * * * *

16. Paragraph (b)(2)(iv)(*j*) is amended by removing the sentence "See example (2)(iii) of paragraph (b)(5) of this section".

17. Paragraph (b)(2)(iv)(*r*) is revised to read as follows:

(*r*) *Restatement of capital accounts.* With respect to partnerships that began operating in a taxable year beginning before May 1, 1986, the capital accounts of the partners of which have not been determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) since inception, such capital accounts shall not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) for taxable years beginning after April 30, 1986, unless either—

(1) such capital accounts are adjusted, effective for the first partnership taxable year beginning after April 30, 1986, to reflect the fair market value of partnership property as of the first day of such taxable year, and in connection with such adjustment, the rules contained in paragraph (b)(2)(iv)(*f*) (*2*), (*3*), and (*4*) of this section are satisfied, or

(*2*) the differences between the balance in each partner's capital account and the balance that would be in such partner's capital account if capital accounts had been determined and maintained in accordance with this paragraph (b)(2)(iv) throughout the full term of the partnership are not significant (for example, such differences are solely attributable to a failure to provide for treatment of section 709 expenses in accordance with the rules of paragraph (b)(2)(iv)(*i*)(*2*) of this section or to a failure to follow the rules in paragraph (b)(2)(iv)(*m*) of this section), and capital accounts are adjusted to bring them into conformity with the rules of this paragraph (b)(2)(iv) no later than the end of the first partnership taxable year beginning after April 30, 1986.

However, compliance with the previous sentence will have no bearing on the validity of allocations that relate to partnership taxable years beginning before May 1, 1986.

18. Paragraph (b)(3)(i) is amended by deleting the phrase "with respect" in the first sentence thereof and adding in its place the phrase '(if any) corresponding", and by adding the phrase "Except with respect to partnership items that cannot have economic effect (such as nonrecourse deductions of the partnership)," at the beginning of the second sentence thereof, and by adding immediately after the third sentence thereof a new sentence to read as follows: "(For example, in the case of an unexpected downward adjustment to the capital account of a partner who does not have a deficit make-up obligation that causes such partner to have a negative capital account, it may be necessary to allocate a disproporationate amount of gross income of the partnership to such partner for such year so as to bring that partner's capital account back up to zero.)"

19. Paragraph (b)(3)(iii) is amended by deleting the phrase "(i), (ii), and (iv)" after "(7)".

20. Paragraph (b)(4)(i) is amended by deleting the word "made" immediately before the phrase "in accordance with" in the third sentence thereof and by adding in its place the word "determined".

21. The second sentence of paragraph (b)(4)(v) is amended by deleting the word "are" the first time it appears and inserting in its place the word "is", by inserting the word "material" immediately after the phrase "and (*b*) all other", and by deleting the phrase "this paragraph" and by inserting in its place "this paragraph (b)."

22. *Example* (1)(ix) of paragraph (b)(5) is amended by adding the word "negotiable" immediately before the term "promissory note" in the first sentence thereof.

23. *Example* (7)(i) of paragraph (b)(5) is amended by adding a parenthesis after the phrase "deficit to the partnership" in the fourth sentence thereof.

24. *Example* (7)(iii) of paragraph (b)(5) is amended by deleting the phrase "general rules" and inserting in its place the phrase "second sentence" in the parenthetical phrase of the penultimate sentence thereof.

25. *Example* (13)(i) of paragraph (b)(5) is amended by adding immediately after the fourth sentence thereof a new sentence to read as follows: "The partnership uses the interim closing of the books method for purposes of section 706."

26. *Example* (14)(i) of paragraph (b)(5) is amended by adding immediately after the fourth sentence thereof a new sentence to read as follows: "The partnership uses the interim closing of the books method for purposes of section 706."

27. *Example* (18(iii), is amended by in changing WN to WM in penultimate sentence thereof.

28. *Example* (18)(vii) of paragraph (b)(5) is modified by deleting the phrase "under those principles MK must" in the last sentence thereof and adding in its place the phrase "under these facts those principles require MK to".

29. *Example* (18)(viii) of paragraph (b)(5) is amended by deleting the last two sentences thereof and by adding in their place two new sentences to read as follows: "Assume further that upon MK's admission WM and JL have adjusted capital account balances of $110,000 and $100,000, respectively. Consistent with the special partners' interests in the partnership rule contained in paragraph (b)(4)(i) of this section, the partnership agreement provides that the excess $10,000 cost recovery deduction ($110,000 less $100,000 included in MK's distributive share) is, in accordance with section 704 (c) principles, shared equally between WM and JL and is so included in their respective distributive shares for the partnership's third taxable year."

Par. 4. Section 1.704–1 (b)(0) is amended by adding, each on a separate line, the following lines to the table immediately after the line reference to §1.704–1 (b)(4)(iv):

Allocation of nonrecourse deductions.	1.704-1(b)(4)(iv)(*a*)
Determination of nonrecourse deductions.	1.704-1(b)(4)(iv)(*b*)
Partnership minimum gain	1.704-1(b)(4)(iv)(*c*)
Requirements to be satisfied	1.704-1(b)(4)(iv)(*d*)
Minimum gain chargeback	1.704-1(b)(4)(iv)(*e*)
Partner's share of partnership minimum gain.	1.704-1(b)(4)(iv)(*f*)
Nonrecourse liabilities of the partnership where a partner has economic risk of loss.	1.704-1(b)(4)(iv)(*g*)
Nonrecourse liabilities of the partnership where a person related to a partner has economic risk of loss.	1.704-1(b)(4)(iv)(*h*)

Lawrence B. Gibbs,

Commissioner.

August 27, 1986.

J. Roger Mentz,

Assistant Secretary of the Treasury.

[FR Doc. 86-20100 Filed 9-8-86; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 20

Income Taxes; Qualified Conservation Contributions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final rule; technical amendments.

SUMMARY: This document contains technical amendments to Estate Tax Regulations § 20.2055-2, which relates to transfers not exclusively for charitable purposes.

EFFECTIVE DATE: These amendments are effective December 18, 1980.

FOR FURTHER INFORMATION CONTACT: Ada S. Rousso of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone 202-566-3287 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1986, the **Federal Register** published final regulations relating to Qualified Conservation Contributions, as adopted by T.D. 8069 (51 FR 1496). The provisons set forth in those regulations reflected changes made by the Tax Reform Act of 1984 and the Temporary Tax Provisions, Extensions.

Revisions for Title 26 of the Code of Federal Regulations were published for April 1, 1986, with the inclusion of T.D. 8069. T.D. 8069 amended regulations § 20.2055-2 but inadvertently failed to revise cross references contained in paragraphs (e)(2), (f)(1) and (f)(2) of § 20.2055-2.

Need For Amendments

As published, Title 26 of the Code of Federal Regulations contains technical errors in § 20.2055-2 (e)(2), (f)(1) and (f)(2). Accordingly, technical amendments are being published to correct these errors.

List of Subjects in 26 CFR Part 20

Estate taxes.

PART 20—[AMENDED]

Part 209 of Title 26 of the Code of Federal Regulations is amended as follows:

Paragraph 1. The authority for Part 20 continues to read in part as follows:

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

§ 20.2055-2 [Amended]

Par. 2. Section 20.2055-2 is amended as follows:

1. Paragraph (e)(2)(vi)(*a*) is amended by revising the phrase "of this subdivision (v)" to in the second sentence to read "of this subdivision (vi)".

2. Paragraph (e)(2)(vi)(*g*) introductory text is amended by revising the phrase "of this subdivision (v)" to read "of this subdivision (vi)".

3. Paragraph (e)(2)(vi)(*h*) is amended by revising the phrase "of this subdivision (v)" to read "of this subdivision (vi)".

4. Paragraph (e)(2)(vii)(*a*) is amended by revising the phrase "of this subdivision (vi)" in the second sentence to read "of this subdivision (vii)".

5. Paragraph (f)(1) is amended by revising the phrase "in paragraph (e)(2)(v)(*h*)" to read "in paragraph (e)(2)(vi)(*h*)".

6. Paragraph (f)(2) is amended by revising the phrase "in subdivision (iv), (v), or (vi)" to read "in subdivision (v), (vi), or (vii)".

7. Paragraph (f)(2)(iv) is amended by revising the phrase "paragraph (e)(2)(v)" to read "paragraph (e)(2)(vi)".

8. Paragraph (f)(2)(iv), Examples (1)-(3), are amended by revising the phrase "(as defined in paragraph (e)(2)(v) of this section)" to read "(as defined in paragraph (e)(2)(vi) of this section)".

9. Paragraph (f)(2)(iv), Example (4), is amended by revising the phrase "paragraph (e)(2)(v)(*f*)" to read "paragraph (e)(2)(vi)(*f*)".

10. Paragraph (f)(2)(v) is amended by revising the phrase "described in paragraph (e)(2)(vi)" to read "described in paragraph (e)(2)(vii)".

Donald E. Osteen,

Director, Legislation and Regulations Division.

[FR Doc. 86-20304 Filed 9-8-86; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is making a number of interpretive clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to remove ambiguities, to conform to other parts in the guidelines, and to make the guidelines more comprehensive.

EFFECTIVE DATE: October 9, 1986.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION:

A. The Proposed Rules and Their Purposes

On June 12, 1986, the U.S. Parole Commission published in the **Federal Register** (51 FR 21386) a set of proposed revisions to 28 CFR 2.20 and 2.36 that fell into three categories: (a) Revision of an offense example in the Offense Severity Index of § 2.20 and revision of the rescission guidelines in § 2.36, both to clarify and make the guidelines more comprehensive; (b) Revision to the notes accompanying one chapter of the Offense Severity Index of § 2.20 by incorporating, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures Manual; and (c) A request for public comment on the desirability for, and the potential content of, an offense example to become part of the Offense Severity Index of § 2.20.

(a) First, Offense Example 212 in Chapter 2, Subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 contains gradings for various assault

offenses, including assaults on law enforcement, judicial or correctional officials. To clarify this offense example, a new grading level was proposed to cover assaults committed while resisting arrest or detention. Next, there was a proposed addition to the Notes accompanying the Rescission Guidelines of 28 CFR 2.36. Previously, the Parole Commission had revised these guidelines by establishing, as Category Three, the offense severity for possession of a weapon other than a firearm or explosives in a prison facility or a community treatment center. The proposed revision would have graded possession of a firearm or explosives in a prison facility or a community treatment center as Category Five.

(b) Chapter 9 of the Offense Behavior Severity Index of 28 CFR 2.20 contains several subchapters and notes regarding the grading of offenses involving illicit drugs. For heroin, opiate and cocaine offenses, offense severity grading is derived from weight and purity figures. To make the guidelines more comprehensive, the Commission proposed to incorporate, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures Manual that provides the grading levels where drug weight, but not purity, is available.

(c) 21 U.S.C. 845(a) contains penalties for offenders who distribute controlled substances "in or on, or within one thousand feet of, the real property comprising a public or private elementary school . . . ." Such penalties can be up to twice that authorized by 21 U.S.C. 841(b) and "at least twice any special parole term" so authorized; the penalties for second offenders include a three year minimum sentence, a prohibition against sentence suspension and/or probation, and a requirement for the service of the minimum sentence before parole eligibility. The Parole Commission proposed to add an offense example covering this behavior to the Offense Behavior Severity Index of § 2.20 and requested public comment on the need for and the potential content of such an offense example.

B. Public Comment

In response to the proposed rule changes, the Parole Commission received three comments, two from Chief U.S. Probation Officers and one from a Regional Administrator from the U.S. Parole Commission.

One Chief U.S. Probation Officer noted approval of the proposal to incorporate, as part of the rules, the instructional material providing grading levels when drug weight, but not purity, is available. The second Chief U.S. Probation Officer counseled against the development of separate guidelines for 21 U.S.C. 845(a) offenses; he argued that, since there probably would be infrequent prosecutions under this statute, such offenses could be treated as aggravating case factors leading to decisions above the appropriate guideline ranges.

The Parole Commission Regional Administrator commented on the proposed grading of firearm and explosives possession in a correctional institution. He noted his belief that such offenses were quite serious and deserved a stronger deterrent sanction; he argued that the "only purpose for possessing a firearm in an institution is to commit murder or to effect an escape." He would grade such possesssion, therefore, as no less than Category Seven. And finally, he indicated that his views on this matter were shared by several U.S. Parole Commission hearing examiners.

C. Changes From the Proposed Rules

The Commission is revising the Note that accompanies § 2.36(a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 to more appropriately sanction the possession of a firearm or explosives in a prison facility and to distinguish such possession in a prison facility from possession in a community treatment center.

The Commission has deferred for further study the development of separate guidelines for distributing controlled substances at or near an elementary school.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

28 CFR Part 2 is amended as follows:

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Paragraph (d) of the Offense Example 212 in Chapter 2, subchapter B of the Offense Behavior Severity Index of 28 CFR 2.20 is amended by designating the existing text as paragraph (1) and adding new paragraph (2) to read as follows:

212 *Assault*

* * * * *

(d) *Exception:* * * * (2) If an assault is committed while resisting an arrest or detention initiated by a law enforcement officer or a civilian acting under color of law, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three.

* * * * *

3. The Notes to Chapter Nine of the Offense Behavior Severity Index of 28 CFR 2.20 are amended by adding a new Note 4 to read as follows:

Chapter Nine—Offenses Involving Illicit Drugs

* * * * *

Notes to Chapter Nine

* * * * *

(4) If weight, but not purity is available, the following grading may be used:

Heroin

Extremely large scale—6 kilograms or more
Very large scale—2–5.99 kilograms
Large scale—200 gms.–1.99 kilograms
Medium scale—28.35–199.99 gms.
Small scale—Less than 28.35 gms.

Cocaine

Extremely large scale—18.75 kilograms or more
Very large scale—6.25–18.74 kilograms
Large scale—1.25–6.24 kilograms
Medium scale—200 gms.–1.24 kilograms
Small scale—20 gms.–199.99 gms.
Very small scale—4 gms.–19.99 gms.
Extremely small scale—Less than 4 gms.

* * * * *

4. The Note in § (a)(2)(ii) of the Rescission Guidelines in 28 CFR 2.36 is revised to read as follows:

§ 2.36 Rescission guidelines.

(a) * * *
(2) * * *
(ii) * * *

Note: Grade unlawful possession of a firearm or explosives in a prison facility, other than a community treatment center, as Category Six. Grade unlawful possession of a firearm in a community treatment center as Category Four. Grade unlawful possession of a dangerous weapon other than a firearm or explosives (e.g., a knife) in a prison facility or community treatment center as Category Three.

* * * * *

Dated: August 15, 1986.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 86-20155 Filed 9-8-86; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1601

706 Agencies

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule; amendment.

SUMMARY: The Equal Employment Opportunity Commission amends its regulations designating certain State and local fair employment practices agencies (706 Agencies) so that they may handle employment discrimination charges, within their jurisdictions, filed with the Commission. Publication of this amendment extends the 706 agency charge processing jurisdiction of the Commonwealth of Puerto Rico Department of Labor to include national origin basis.

EFFECTIVE DATE: September 9, 1986.

FOR FURTHER INFORMATION CONTACT: Mike Torres, Equal Employment Opportunity Commission, Office of Program Operations, Systemic Investigations and Individual Compliance Programs, 2401 E Street NW., Washington, DC 20507, telephone 202/634–6922.

SUPPLEMENTARY INFORMATION: The Commission has determined that the Commonwealth of Puerto Rico Department of Labor has the statutory jurisdiction to investigate charges of employment discrimination based on national origin. Jurisdiction over the national origin basis was effectuated by Puerto Rico Public Law 67 of June 3, 1983, which amended Puerto Rico Public Law 100 of June 30, 1959.

Accordingly, the Director of Program Operations hereby issues a final determination extending the 706 Agency jurisdiction of the Commonwealth of Puerto Rico Department of Labor to include the processing of charges alleging a violation of Title VII on the basis of national origin. Publication of this amendment updates Footnote No. 4 of § 1601.74 by rescinding Exception No. (1).

List of Subjects in 29 CFR Part 1601

Administrative practice and procedure, Equal Employment Opportunity, Intergovernmental relations.

PART 1601—[AMENDED]

1. The authority citation for Part 1601 continues to read as follows:

Authority: Secs. 709, 713; 78 Stat. 263, 265; 42 U.S.C. 2000e–8, 2000e–12.

§ 1601.74 [Amended]

Accordingly, 29 CFR Part 1601 is amended in § 1601.74(a) by removing Exception No. (1) of Footnote No. 4. Exceptions (2), (3), (4) and (5) become (1), (2), (3) and (4), respectively.

Signed at Washington, DC this third day of September, 1986.

For the Commission.

Joseph S. Bennett,

Acting Director, Office of Program Operations.

[FR Doc. 86–20199 Filed 9–8–86; 8:45 am]

BILLING CODE 6570–06–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NC–011; A–4–FRL–3076–8]

Approval and Promulgation of Implementation Plans; North Carolina; Malfunction, Startup and Shutdown Regulation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: In response to EPA's request that States define their policy for handling excess emissions during periods of equipment malfunction, startup and shutdown, North Carolina had adopted a new regulation, 15 NCAC 2D.0535. EPA is approving the major part of this regulation, that which deals with excess emissions during equipment malfunctions. The approvable portion of the rule (15 NCAC 2D.0535(a)–(f)), was submitted to EPA on January 24, 1983, and is consistent with EPA's policy on excess emissions caused by malfunctioning equipment. Paragraph (g) of the rule deals specifically with startups and shutdowns and was submitted to EPA on April 17, 1984. EPA is disapproving 2D.0535(g) because it provides for automatic exemptions of excess emissions occurring during equipment startup and shutdown. Such automatic exemptions are not consistent with the provisions of the Clean Air Act. EPA is also approving the repeal of 2D.0904, which covered malfunctions, breakdowns and upsets for VOC sources. The essence of 2D.0904 has been incorporated into the new malfunction regulation. The effect of the portion of the new regulation concerning malfunctions will be to require sources in the State to report excess emissions to the State agency and provide a demonstration that those exceedances could not have been avoided. In the event an adequate justification is not submitted, the excursions will be treated as violations of the State Implementation Plan (SIP) and enforcement action could ensue.

EFFECTIVE DATE: October 9, 1986.

ADDRESSES: Copies of the State's submittal are available for public inspection during normal business hours at the following locations:

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

Division of Environmental Management, North Carolina Department of Natural Resources and Community Development, Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina 27611

The Office of the Federal Register, 1100 L Street, NW., Room 8301, Washington, DC

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

FOR FURTHER INFORMATION CONTACT: Janet Hayward of the EPA Region IV Air Programs Branch at the above address and telephone (404) 347–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION: Occasionally air pollution sources may experience excessive emissions due to unforeseen malfunctions, equipment breakdowns, routine maintenance, startups or shutdowns. EPA recognizes that some types of exceedances are unavoidable and has enunciated a policy which permits States to use discretion when pursuing enforcement actions for excess emissions if they occurred under certain circumstances. Memoranda from former Assistant Administrator Kathleen Bennett to the Regional Administrators, dated September 28, 1982, and February 15, 1983, describe that policy as well as the rationale behind it. The policy interprets the Clean Air Act as allowing the exercise of enforcement discretion with respect to excess emissions during malfunctions, provided the source adequately shows that the criteria specified in the policy have been satisfied. The policy also reflects the requirements of the Act, in that excess emissions during startup and shutdown should be defined as violations. Enforcement discretion is allowed only if the source adequately shows that the excess emissions could not have been prevented through careful planning and design, and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury or severe property damage.

Submittal and Regulatory History

In response to EPA's request that the State define its policy for handling excess emissions, North Carolina has developed a new regulation titled 15 NCAC 2D.0535—Malfunction, Startup and Shutdown. This rule was submitted to EPA for approval on January 24, 1983. At that time North Carolina also requested that EPA approve the repeal of regulation 2D.0904 (Malfunctions, Breakdowns and Upsets for VOC sources) which would be superseded by the new malfunction rule.

On December 21, 1983 (48 FR 56412), EPA proposed to disapprove the entire regulation because paragraph (g) was not consistent with EPA's "Policy on Excess Emissions During Startup and Shutdown, Maintenance and Malfunction." Paragraph (g) dealt solely with excess emissions during periods of startup and shutdown and stated that those emissions would not be considered violations. This automatic exemption was clearly unapprovable by EPA.

Because North Carolina desired to have a fully approvable regulation, the State developed alternative language to address excess emissions during startups and shutdowns. A revised version of paragraph (g) was adopted by the Environmental Management Commission and submitted to EPA for approval on April 17, 1984. This new paragraph superseded the original version previously submitted on January 24, 1983.

The revised paragraph (g) continued to provide for automatic excusal of excess emissions occurring during startup and shutdown, and was still unapprovable.

EPA communicated this position to North Carolina and the State indicated they would again attempt to revise paragraph (g) to satisfy EPA's concerns. For this reason, action on 2D.0535 was deferred in the October 17, 1984, notice of proposed rulemaking (49 FR 40607).

On October 4, 1984, North Carolina sent a letter to EPA which stated they would not further revise their malfunction rule. The State felt that changing their startup and shutdown provisions to make them acceptable to EPA, would render them unmanageable at the State level. Therefore, the State asked that EPA reverse its original proposed disapproval of the entire regulation. If EPA could not approve the regulations as a whole, North Carolina requested that EPA approve all of 2D.0535 with the exception of paragraph (g).

Malfunction Provisions

EPA has reconsidered its original proposed disapproval of 2D.0535. The Agency finds that paragraphs (a) through (f) of the malfunction rule are largely consistent with the provisions of the Clean Air Act as applied in EPA's policy on excess emissions. (See Kathleen M. Bennett's September 28, 1982, and February 15, 1983, memoranda to the Regional Administrators.) Paragraphs (a) through (f) of 2D.0535, as submitted on January 24, 1983, are thus approvable. However, it should be noted that EPA is not approving in advance any determination made by the State under paragraph (c) of the rule, that a source's excess emissions during a malfunction were avoidable and excusable, but rather is approving the procedures and criteria set out in paragraph (c). Thus, EPA retains its authority to independently determine whether an enforcement action is appropriate in any particular case. EPA is also approving the repeal of 2D.0904, which is replaced by the new regulation 2D.0535.

Startup and Shutdown Provisions

Paragraph (g) of 2D.0535, as submitted on April 17, 1984, is not approvable by EPA. The paragraph provides sources with an automatic exemption for excess emissions which occur during startup and shutdown. The exemption is automatic because paragraph (g) does not make excess emissions violations of the applicable emission limit unless: (1) The director requests the source to explain the cause of the excess, and (2) the director determines that the excess could in fact have been avoided.

Thus, paragraph (g) not only describes how the State will respond to excess emissions during startup and shutdown, it defines those excess emissions as not being violations of the applicable emission limitation. Such automatic exemptions are not consistent with section 110(a)(2)(B) or section 110(a)(2)(D) of the Clean Air Act. These sections of the Clean Air Act require states to adopt and enforce emission limitations to ensure the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). An emission limitation is defined in section 307(k) as "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction." The effect of paragraph (g), in the absence of a request by the director (a request which is discretionary and which presumes knowledge of excess emissions), is to negate the existing requirements of the North Carolina SIP, which must require its various emission regulations to be met on a continuous basis, if the State's requirements are to remain consistent with section 110(a)(2)(B) of the Act.

It should be noted that although SIPs are not required to have provisions specifying how a state may exercise its enforcement discretion with respect to excess emissions during malfunctions, startups and shutdowns, such provisions must meet the requirements of the Clean Air Act in order to be approved by EPA as part of the federally-approved SIP.

Further details supporting EPA action on North Carolina's malfunction, startup and shutdown rule are discussed in the technical support document which is available for public inspection at EPA's regional office in Atlanta, Georgia.

Public Comment

Numerous comments were received in response to the proposed rulemakings on December 21, 1983 (48 FR 56412), and August 28, 1985 (50 FR 34864). These comments expressed both support for and opposition to EPA's position. A summary of the major comments follows; interested parties may consult the technical support document for a detailed response to each individual comment received.

Several commenters argued that EPA should not disapprove 2D.0535 (g) on the basis of an internal policy memorandum. EPA is disapproving 2D.0535(g) because it defines excess emissions during startup and shutdown as not being violations of applicable emission limitations unless there is a request by the director to define the cause of those emissions and a subsequent finding of inexcusability. Such automatic exemptions are contrary to the language and intent of the Clean Air Act.

Several commenters claimed that 2D.0535(g) meets EPA's policy regarding excess emissions during startup and shutdown and should therefore be approved. Paragraph (g) does not conform to the policy or the Act because it does not use the enforcement discretion approach with regard to excess emissions during startup and shutdown. It defines, by rule, excess emissions during startup and shutdown as not being violations of the applicable emission limitation unless the director requests an explanation from the source and finds the excess emissions were avoidable. The effect of such a rule is to negate the continuous emission

reduction requirements of the North Carolina SIP. Such continuous emission limitations are required by sections (110)(a)(2)(B) and 302(k) of the Clean Air Act.

One commenter stated that there is no way to completely eliminate excess emissions during the startup and shutdown of large electric utility boilers without causing severe damage to operating equipment. EPA maintains that the startup and shutdown of process equipment must be considered part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedures for process and pollution control equipment. Equipment should at all times be operated so as to minimize air pollution and to stay within the applicable emission standards. If excess emissions occur during startup and shutdown and those emissions could not have been avoided by careful planning and design, then the source could present their case to the state agency or EPA and attempt to have the excess emissions excused. EPA does recognize that excess emissions may not be completely eliminated during periods of startup and shutdown and has acknowledged that the exceedances that could not have been avoided may be excused in certain instances. However, this determination must be made on a case-by-case basis taking into account the cause of each individual exceedance. Under no circumstances can those excess emissions be automatically excused, as is allowed under 2D.0535(g).

Severability

EPA has determined that 2D.0535(g) is severable from the remainder of the rule because it is completely independent of paragraphs (a)–(f). The State concurs with this determination and has requested EPA to approve paragraphs (a)–(f), even if it will not approve paragraph (g).

Final Action

EPA is today approving North Carolina's malfunction provisions (15 NCAC 2D.0535, paragraphs (a)–(f)), as submitted on January 24, 1983. EPA is also approving the repeal of 2D.0904. The Agency is disapproving North Carolina's startup and shutdown provisions (15 NCAC 2D.0535(g)).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 10, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Incorporation by reference.

Incorporation by reference of the State Implementation Plan for the State of North Carolina was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 3, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

Subpart II—North Carolina

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1770 is revised by adding paragraph (c)(42) as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(42) A new regulation covering malfunctions, (2D.0535 (a)–(f)), and the repeal of a malfunction rule for VOC sources (2D.0904) which were submitted to EPA on January 24, 1983. (2D.0535(g) covering startups and shutdowns as submitted on April 17, 1984, is disapproved.)

(i) *Incorporation by reference.*

(A) New malfunction regulation 15 NCAC 2D.0535 paragraphs (a)–(f), as adopted by the Environmental Management Commission on December 9, 1982.

(ii) *Additional material.*

(A) Letter from Robert F. Helms, Director, Division of Environmental Management, dated January 24, 1983.

3. A new § 52.1775 is added as follows:

§ 52.1775 Rules and regulations.

Paragraph (g) of regulation 2D.0535 is disapproved because its automatic exemption for excess emissions during startup and shutdown is inconsistent with the Clean Air Act.

[FR Doc. 86–20255 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[A–5–FRL–3076–9]

Approval and Promulgation of Implementation Plans; Wisconsin

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

ACTION: Final rule.

SUMMARY: USEPA is approving a revision to the Wisconsin State Implementation Plan (SIP) for ozone. The revision allows the Continental Can Company to use internal offsets in conjunction with daily weighted emission limits at its Milwaukee and Racine can manufacturing plants. This revision to the Wisconsin SIP was submitted by the Wisconsin Department of Natural Resources (WDNR) on August 20, 1985. USEPA is approving the revision because it meets USEPA's requirements for can coating operations (December 8, 1980; 45 FR 80824), and does not interfere with the attainment of the National Ambient Air Quality Standards (NAAQS) for ozone in southeastern Wisconsin.

EFFECTIVE DATE: This action will be effective on November 10, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Colleen W. Comerford, at (312) 886–6034, before visiting the Region V office.)

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

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

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster, Madison, Wisconsin 53707.

Copies of this revision to the Wisconsin SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Colleen W. Comerford, (312) 886–6034.

SUPPLEMENTARY INFORMATION:

Background

The Continental Can Company has can manufacturing plants in two cities in Wisconsin, Milwaukee and Racine. Both facilities are subject to the requirements for can coating operations identified at NR 154.13(4)(c) of the Wisconsin Administrative Code. On November 14, 1984, Continental Can requested permission from the State to use internal offsets as a method of compliance for both the Milwaukee and Racine facilities. The internal offset would be applicable to six can coating lines at the Milwaukee plant and two can coating lines at the Racine plant. The Wisconsin Department of Natural Resources (WDNR) approved the use of internal offsets for both plants, subject to certain conditions, and submitted the offsets to USEPA as a State Implementation Plan (SIP) revision on August 20, 1985. A discussion of the SIP revision is presented below.

Internal Offset

Continental Can Company has proposed the use of internal offsets at both its Milwaukee and Racine facilities, meaning that the VOC emissions from each facility would be limited to a daily weighted average emission limit from all can coating lines, as determined by the formula identified at NR 154.13(13)(b) of the Wisconsin Administrative Code. As such, there would likely be some actual increase in emissions over that which would have resulted had compliance been achieved continuously on a per line basis. The daily weighted average changes daily as production levels change. The combined emissions from all the coating lines at each facility have to meet that facility's computed daily weighted average for that day. The daily weighted average is computed using the allowable emission rate for each coating or printing line, as defined in Section NR 154.13(4)(c) of the Wisconsin Administrative Code. The proposed compliance plan also specifies maximum hourly VOC emission limits for each coating line, as required by NR 154.13(13)(b) 2.a. of the Wisconsin Administrative Code. These limits cannot be exceeded regardless of changes in production.

In addition, Continental Can is required to keep records of coating and solvent characteristics, as well as daily consumption of solvent and coatings, for both plants. The daily weighted average is federally enforceable based upon this recordkeeping requirement, which specifies that these records be available for inspection, as well as the emission limits contained in NR 154.13(4)(c). Continental Can has developed a computer program to aid the calculation of actual and allowable emissions and the scheduling of production, in order to comply with the emission limits contained in NR 154.13(4)(c). This computer program was developed based on the December 8, 1980 (45 FR 80824), **Federal Register**, which contains USEPA's policy regarding compliance with VOC emission limitations for can coaters.

The proposed compliance plan is subject to the following conditions:

(1) Continental Can will perform tests to determine the efficiencies of the capture system and emission reduction equipment of the sheet coating line at the Milwaukee plant.

(2) Continental Can will maintain records of coating and solvent characteristics, as well as daily consumption of coatings and solvents, for both plants. The records will contain sufficient detail for the WDNR to determine compliance with the daily allowable emission rate. These records will be maintained at each facility and will be available for inspection.

This internal offset became effective in the State of Wisconsin on September 11, 1985, when the civil enforcement action filed by USEPA against Continental Can was resolved. A consent decree was lodged on that date.

Conclusion

USEPA has reviewed a compliance plan for the Continental Can Company which consists of internal offsets for two can manufacturing plants located in Milwaukee and Racine, respectively. The compliance plan incorporates the use of a daily weighted average at each plant, a computer program to aid in emission calculation and production scheduling, as well as specified testing and recordkeeping conditions. USEPA has determined that the proposed compliance plan meets USEPA's requirements for air pollution control from can coating operations. USEPA has also determined that the use of internal offsets at the two facilities will not increase allowable VOC emissions and, consequently, will not interfere with attainment of the ozone NAAQS in southeastern Wisconsin.

USEPA considers today's action noncontroversial and routine. Therefore, it is being approved today without prior proposal. This action will become effective on November 10, 1986. However, if USEPA receives notice by October 9, 1986, that someone wishes to submit adverse comments, then USEPA will publish: (1) A notice that withdraws the action; and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

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

Under 5 U.S.C. section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 10, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations.

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

Dated: September 3, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

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

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.2570 is amended by adding new paragraph (c)(44) as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(44) Submittal from the State of Wisconsin dated August 20, 1985, requesting internal offsets for two can manufacturing plants owned by Continental Can.

(i) *Incorporation by reference.* (A) On August 20, 1985, the State of Wisconsin submitted a SIP revision pertaining to the use of internal offsets by the Continental Can Company at two of its can manufacturing facilities. The sources are now subject to the legally enforceable requirements stated in the August 20, 1985, letter from Mr. Donald Theiler, Director of the Bureau of Air Management, Wisconsin Department of Natural Resources, to Mr. Richard Torrito, Director of Governmental Affairs at Continental Can Company. The facilities are located in Milwaukee

and Racine. The revision allows the use of internal offsets in conjunction with a daily weighted average emission limit at each facility, hourly emission limits for each coating line, a computer program to aid in emission calculation and production scheduling, and specified testing and record keeping conditions.

[FR Doc. 86-20256 Filed 9-8-86; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 721

[OPTS-50545A; FRL-3076-4]

Pentachloroethane; Determination of Significant New Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of TSCA that requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of pentachloroethane (CAS Number 76-01-7) for any use. EPA believes that this action is necessary because pentachloroethane may be hazardous to human health, and any use of pentachloroethane may result in significant human exposure. The notice will furnish EPA with the information needed to evaluate an intended use, and the opportunity to protect against potentially adverse exposure to the chemical substance before it can occur.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on September 23, 1986. This rule becomes effective on October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

II. Applicability of General Provisions

In the **Federal Register** of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in that **Federal Register** document, and interested persons should refer to that document for further information. These general provisions apply to this SNUR, except as provided in § 721.497(b)(1). On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions, some of which would apply to this SNUR.

III. Summary of This Rule

EPA is designating any use of pentachloroethane as a significant new use of the substance. This rule requires persons who intend to manufacture, import, or process pentachloroethane for this significant new use to notify EPA at least 90 days before such manufacture, import, or processing.

IV. Discussion of the Chemical Substance

A. Production and Use Data

The primary use of pentachloroethane has been as an intermediate in the production of tetrachloroethylene. Reporting for the TSCA Chemical Substances Initial Inventory showed that 1977 U.S. manufacture and import of pentachloroethane was between 10 and 50 million pounds.

The high toxicity of pentachloroethane, as well as the development of a new process for the manufacture of tetrachloroethylene has resulted in a rapid decline in demand for pentachloroethane. In 1984, EPA's Office of Toxic Substances surveyed those persons who reported production of pentachloroethane for the TSCA inventory. All firms who reported manufacturing or importing pentachloroethane for the TSCA inventory reported that they no longer manufactured or imported the substance as of the date of the survey. EPA is concerned that the chemical characteristics of pentachloroethane could lead to its use as a solvent (or chemical substitute such as a degreasing agent), especially as increasing attention is focused on several of the other halogenated short-chain aliphatics now in common use.

In the preamble to the proposed SNUR (March 24, 1986, 51 FR 10024) EPA noted the possibility that a new manufacturer or importer of pentachloroethane may have entered the marketplace between the time of the TSCA inventory reporting and the date the SNUR was proposed, and that there could have been an ongoing use for pentachloroethane that EPA was not aware of. No comments were received in response to the proposed rule, so the Agency assumes that there are no persons currently engaged in the manufacture, import, or processing of pentachloroethane.

B. Health Effects

Results of a National Toxicology Program (NTP) carcinogenesis bioassay on technical grade pentachloroethane published in April 1983, demonstrated limited evidence that pentachloroethane is carcinogenic in laboratory animals. Under the conditions of the bioassay, pentachloroethane was carcinogenic for male and female B6C3F_1 mice, inducing hepatocellular carcinomas in both sexes, and adenomas in females. NTP stated that the substance under test was not carcinogenic in F344/N rats, but added that the decreased survival of dosed rats

may have reduced the sensitivity for detecting a carcinogenic response.

The NTP held a Peer Review Panel and determined that the kidney was a target organ for short chain chlorinated hydrocarbons in male F344/N rats. Alerted to this, NTP reevaluated the kidneys of male rats from the pentachloroethane carcinogenesis bioassay, and found rare tubular cell adenomas, one carcinoma, and one adenocarcinoma. Because these data were discovered subsequent to peer review of the bioassay, these findings were added as a note attached to the bioassay report. Because of this finding, EPA views that pentachloroethane may also present a carcinogenic hazard for male F344/N rats by causing uncommon kidney tumors.

EPA published Proposed Guidelines for Carcinogen Risk Assessment in the Federal Register of November 23, 1984 (49 FR 46294). These proposed guidelines define as a possible human carcinogen agents exhibiting: ". . . (a) Definitive malignant tumor response in a single well-conducted experiment, (b) marginal tumor response in studies having inadequate design or reporting, (c) benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity, and (d) marginal responses in a tissue known to have a high and variable background rate. . . ."

A limited review of the results of the NTP carcinogenesis bioassay on pentachloroethane indicates that the substance has been found to induce a definitive malignant tumor response in male and female mice, and may therefore be a possible human carcinogen according to the Agency's proposed guidelines for carcinogen risk assessment.

Results from the NTP bioassay also demonstrate that pentachloroethane may be capable of causing rare renal adenomas in male rats. Studies on the chronic effects of pentachloroethane have demonstrated pathological changes in the lungs, liver, and kidneys of test animals. Two of the metabolites of pentachloroethane, trichloroethylene and tetrachloroethylene, both have evidence of carcinogenicity in animals. For these reasons, EPA has concluded that exposure to the chemical substance may present a risk of injury to human health.

C. Past and Current Exposure Data

EPA has little data on actual numbers of persons who have been exposed to pentachloroethane, or at what levels. Current exposures are limited to those resulting from any residues of previously manufactured or imported pentachloroethane in the environment.

D. Regulatory Background

Pentachloroethane is not subject to any Federal regulation that limits exposure to humans or the environment. Excluding this SNUR, no Federal regulation has been proposed or promulgated that would allow a governmental entity an opportunity to evaluate the potential human exposure to pentachloroethane originating from its manufacture, import, processing, and use and to protect human beings from potentially adverse exposures before they occur.

V. Objectives and Rationale for the Rule

Pentachloroethane is a possible human carcinogen and is not currently manufactured, imported, processed, or used for commercial purposes. Pentachloroethane is not subject to any Federal regulation that would notify the Federal government of activities that might result in adverse exposures to this substance or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occurred.

EPA believes that the resumption of any use of pentachloroethane, and the related manufacture, import, or processing, has a high potential to increase the magnitude and duration of exposure to this substance and to change the type or form of exposure from that which currently exists. Given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to pentachloroethane at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to designate any use of pentachloroethane as a significant new use of this chemical substance. Persons intending to manufacture, import, or process pentachloroethane for any use are required to notify EPA 90 days before they begin such manufacture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the intended activities and to protect against adverse exposures to pentachloroethane before they can occur. Because EPA is concerned about potential exposure during the entire life cycle of pentachloroethane, the Agency has modified § 721.5(a)(2) for this rule to require any manufacturer, importer, or processor who intends to distribute pentachloroethane in commerce to submit a notice.

VI. Alternatives

In the proposed SNUR, EPA considered alternative regulatory actions for pentachloroethane. In the absence of comments on the proposed rule, EPA has decided to proceed with the promulgation of a SNUR for this substance.

VII. Applicability of Proposal to Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the proposal date of the SNUR rather than as of the promulgation of the final rule. If uses begun during the proposal period of the SNUR were considered ongoing as of the date of promulgation, it would be difficult for the Agency to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule became final.

Thus, persons who began commercial manufacture, import, or processing of pentachloroethane for a proposed significant new use designated in this rule between proposal and promulgation of the SNUR must cease that activity before the effective date of this rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Test Data and Other Information

EPA recognizes that under TSCA section 5, persons are not required to develop any particular test data before submitting a significant new use notice. Rather, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them.

However, in view of the potential health risks that may be posed by a significant new use of pentachloroethane, EPA encourages potential SNUR notice submitters to conduct tests that would permit a reasoned evaluation of the substance's toxic potential when utilized for an intended use. SNUR notices submitted without accompanying test data may increase the likelihood that EPA would take action under section 5(e).

EPA encourages persons to consult with the Agency before selecting a protocol for testing the substance. As part of this optional prenotice consultation, EPA will discuss the test data it believes necessary to evaluate a significant new use of the substance. Test data should be developed

according to TSCA Good Laboratory Practice Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the health or environmental effects of the substance.

EPA urges SNUR notice submitters to provide detailed information on human exposure or environmental release that may result from the significant new use of pentachloroethane. In addition, EPA encourages persons to submit information on potential benefits of the substance and information on risks posed by the substance compared to risks posed by potential substitutes.

IX. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of pentachloroethane. EPA estimates that the cost of filing a significant new use notice will be between $1,400 and $8,000. The Agency's complete economic analysis is available in the public record for this rule (OPTS–50545A).

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50545A). The record includes the following basic information considered by the Agency in developing this rule:

1. Economic Analysis of Proposed Significant New Use Rule for Pentachloroethane. Economics and Technology Division, U.S.E.P.A., 1985.
2. Chemical Hazard Information Profile on Pentachloroethane. Existing Chemical Assessment Division, U.S.E.P.A., 1982.
3. National Toxicology Program Carcinogenesis Bioassay on Pentachloroethane. 1983.

A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

XI. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA estimates that the reporting cost for submitting a significant new use notice will be approximately $1,400 to $8,000. EPA believes that, because of the nature of the rule and the substance involved, there will be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact will be limited because such factors are unlikely to discourage an innovation that has a high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses. The Agency has not determined whether parties affected by this rule are likely to be small businesses. However, EPA expects to receive few SNUR notices on the substance. Therefore, the Agency believes that the number of small businesses affected by this rule will not be substantial, even if all SNUR notice submitters are small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0038.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 27, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 721—[AMENDED]

Therefore, 40 CFR Part 721 is amended as follows:

1. The authority citation for Part 721 continues to read as follows:

Authority: 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.497 to read as follows:

§ 721.497 Pentachloroethane.

(a) *Chemical substance and significant new use subject to reporting.*

(1) The chemical substance pentachloroethane, CAS Number 76–01–7, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use.

(b) *Specific requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved].

(Approved by the Office of Management and Budget under control number 2070–0038)

[FR Doc. 86–20259 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 799

[OPTS–42043A; FRL–3042–6(a)]

Toxic Substances; 1,2-Dichloropropane; Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also Agency) is issuing a final test rule under section 4(a) of the Toxic Substances Control Act (TSCA) that requires manufacturers and processors of 1,2-dichloropropane (DCP; CAS Number 78–87–5) to test this chemical for neurotoxicity, mutagenicity (chromosomal aberrations), reproductive effects, developmental toxicity, acute toxicity to marine and freshwater algae and mysid shrimp, and chronic toxicity to mysid shrimp and *Daphnia magna*. Elsewhere in this issue of the **Federal Register**, the Agency is also proposing test standards and reporting deadlines for these tests.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on September 23, 1986. This rule shall become effective October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Rm. NE–G004, 401 M St., SW., Washington, D.C. 20460. Toll free (800–424–9065). In Washington, DC: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: On January 6, 1984, the EPA proposed, under section 4(a) of TSCA that manufacturers and processors of 1,2-dichloropropane conduct health and environmental effects testing of that chemical (49 FR 899). EPA is now issuing a final rule requiring health and environmental effects testing of 1,2-dichloropropane.

I. Introduction

This notice is part of the overall implementation of section 4 of the Toxic Substances Control Act (TSCA, Pub. L. 94-469; 90 Stat. 2006 *et seq.*; 15 U.S.C. 2603 *et seq.*) which contains authority for EPA to require development of data relevant to assessing the risks to health and the environment posed by exposure to particular chemical substances or mixtures.

Under section 4(a)(1) of TSCA, EPA must require testing of a chemical substance to develop health or environmental data if the Administrator finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or to the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

For a more complete understanding of the statutory section 4 findings, the reader is directed to the Agency's first proposed test rule package (chloromethane and chlorinated benzenes, published in the **Federal Register** of July 18, 1980, (45 FR 48510)) and to the second package (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane, published in the **Federal Register** of June 5, 1981; (46 FR 30300)) for in-depth discussions of the general issues applicable to this action.

II. Background

A. Profile

1,2-Dichloropropane ($C_3H_6Cl_2$; CAS No. 78-87-5) is a highly volatile, colorless, stable liquid with a chloroformlike odor. The uses of 1,2-dichloropropane (DCP) are as a captive intermediate in the production of perchloroethylene; as a solvent in ion exchange resin manufacture, toluene diisocyanate production, photographic film manufacture, paper coating, and petroleum catalyst regeneration; and in a mixture that is marketed as a soil fumigant (pesticide).

The Dow Chemical Company is the only manufacturer of isolated DCP in the United States. The estimated annual isolated production is approximately 75 million pounds for 1982 based on information supplied by the Dow Chemical Company (Refs. 1 and 2). Over 95 percent of this isolated production is used on site by Dow as a captive intermediate in the production of perchloroethylene. Approximately 3 million pounds of DCP is marketed by Dow annually as a specialty solvent for industrial use. An estimated 20 million pounds of DCP is also produced as a byproduct in a mixture marketed as a soil fumigant; the remaining 7 million pounds is incinerated. Small quantities of DCP are also produced inadvertently during the manufacture of several other low molecular weight chlorinated aliphatic compounds. As of 1982, Dow no longer sells DCP for consumer use in paint strippers, paint, varnish, and furniture finish removers (Ref. 1).

B. ITC Recommendations

Section 4(e) of TSCA established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act. The ITC designated 1,2-dichloropropane (DCP) for priority consideration in its Third Report published in the **Federal Register** of October 30, 1978 (43 FR 50630). The ITC recommended that 1,2-dichloropropane be tested for the following health effects: carcinogenicity, mutagenicity, teratogenicity, and other toxic effects (with emphasis on reproductive and neurological effects). The ITC also recommended that an epidemiological study be performed. The following environmental effects tests were recommended by the ITC: chronic toxicity to fish and invertebrates, effects on avian and mammalian reproduction and behavior, and effects on soil invertebrates and terrestrial insects.

The ITC's testing recommendations were based on high production volume (estimated at 71 million pounds), widespread use as a solvent, and potential for high environmental and human exposure. The ITC believed insufficient information was available to characterize the carcinogenic, mutagenic, and teratogenic potential of DCP. Reproductive and neurological effects testing was recommended because of a stated structural similarity to 1,2-dibromo-3-chloropropane (DBCP), a known human reproductive toxicant. An epidemiologic study was recommended for 1,2-dichloropropane because of insufficient information about the chemical's human health effects and a potentially large exposure pattern.

The ITC recommended environmental effects tests for 1,2-dichloropropane because of its belief that the chemical's volatility and high specific gravity may result in localized impacts on those environments receiving continuous exposure associated with this chemical's use and disposal. Also, according to the ITC, the potential for DCP to bioaccumulate suggested the need for environmental effects testing to determine the biological significance of exposure.

C. Proposed Rule

EPA issued a proposed rule, published in the **Federal Register** of January 6, 1984 (49 FR 899) which would require health and environmental effects testing for 1,2-dichloropropane.

In evaluating the ITC's testing recommendations for 1,2-dichloropropane (DCP), EPA considered all available relevant information including information presented in the ITC's report recommending testing consideration; production volume, use, exposure, and release information reported by the manufacturer of DCP under TSCA section 8(a) (40 CFR Part 712—Chemical Information Rule, Subpart B—Manufacturers Reporting—Preliminary Assessment Information); unpublished health and safety studies submitted by the manufacturer and processors of DCP under the TSCA section 8(d) Health and Safety Data Reporting Rule (40 CFR Part 716); and other published and unpublished data available to the Agency. On the basis of the evaluation, as described in the proposed rule and its accompanying technical support document (included in the public record for this action), EPA proposed nervous system effects, reproductive effects, teratogenicity (developmental toxicity), and mutagenicity testing requirements, as

well as acute and chronic toxicity tests for aquatic invertebrates and an aquatic plant test for DCP under section 4(a)(1)(8) of TSCA. By these actions, EPA responded to the ITC's designation of 1,2-dichloropropane.

In basing its proposed DCP health and environmental effects testing on the authority of section 4(a)(1)(B) of TSCA, EPA found that 1,2-dichloropropane is manufactured, processed, and used in substantial quantities, and may result in substantial human exposure. EPA also found that 1,2-dichloropropane enters or may reasonably be anticipated to enter the environment in substantial quantitites. Furthermore, EPA found that there are insufficient data available to reasonably determine or predict the result of this exposure and release in the areas of mutagenic, teratogenic, reproductive, and neurotoxic effects, and acute and chronic toxicity for aquatic invertebrates and aquatic plants. Finally, EPA found that testing is necessary to develop the data needed to eva1uate the Potentia1 for DCP's exposure and release to cause these effects. These findings were based on the following information, as reported in the DCP Support Document:

1. Although Dow Chemical Company is the only manufacturer of 1,2-dichloropropane in the United States, the marketing volume (3 million pounds in 1982), the 1,2-dichloropropane production volume (an estimated 41 million pounds in 1981) and the 1,2-dichloropropane production capacity (41–144 million pounds, based on DCP co-product propylene oxide production capacity) were substantial.

2. Information available at that time indicated that a substantial number of consumers were potentially exposed to DCP, since DCP was then a component of 10 products available as paints, varnishes, and furniture finish removers. Also, a large number of workers in various occupations were potentially exposed to 1,2-dichloropropane. According to a 1972–74 National Occupational Hazard Survey, there are over 700,000 workers exposed to 1,2-dichloropropane resulting from its manufacture. This conclusion is based on the National Institute for Occupational Safety and Health's identification of 18 occupations in 17 industries, involving over 9,000 workers using 1,2-dichloropropane in nonagricultural applications. Furthermore, 1,2-dichloropropane had been identified as a contaminant of ground water and drinking water. The Suffolk County Department of Health Services, Long Island, New York, identified 1,2-dichloropropane from non-pesticidal sources in ground water. Also, the Philadelphia Water Department identified 1,2-dichloropropane in finished drinking water (6.1 μg/L). The estimated total annual load of 1,2-dichloropropane to the aquatic environment was approximately 4.9 million pounds. EPA concluded that this exposure pattern constituted "substantial exposure" as that term is used in section 4 of TSCA.

3. There were insufficient data on the teratogenic, reproductive, mutagenic, and neurotoxic effects upon which to reasonably determine or predict the effects of exposure. Health effects testing, therefore, was determined to be necessary to develop these data.

4. Acute, subchronic, and chronic effects tests and an oncogenicity test were not proposed for 1,2-dichloropropane. The Dow Chemical Company has conducted tests to determine the acute and subchronic effects of 1,2-dichloropropane by the inhalation route of exposure in rats, mice, and rabbits. NTP has performed a 90-day subchronic study, as well as a 2-year bioassay to determine the oncogenic potential of 1,2-dichloropropane. An epidemiological study was not proposed because the exposure pattern to 1,2-dichloropropane was so general EPA doubted that an exposed population could be identified that was not exposed to this chemical and other chemicals simultaneously.

5. Substantial quantities of 1,2-dichloropropane were released to the environment. The atmospheric compartment is readily contaminated with 1,2-dichloropropane because 1,2-dichloropropane is very volatile (vapor pressure = 50 mm Hg at 25 °C). Total atmospheric releases of 1,2-dichloropropane were estimated to be approximately 1.4×10^5 pounds per year. Also, quantities of 1,2-dichloropropane released to the aquatic environment were estimated to be 4.9 million pounds annually.

6. There were insufficient data to characterize the effects of 1,2-dichloropropane on aquatic invertebrates and aquatic plants. EPA proposed studies on acute and chronic toxicity to aquatic invertebrates and effects on algae. There were sufficient data to characterize the effects of 1,2-dichloropropane on soil invertebrates, terrestrial insects, and fish.

7. The Agency did not propose an avian reproduction test for 1,2-dichloropropane because then recent unpublished research at an EPA laboratory (ERL-Corvallis) had shown that a chemical as volatile as 1,2-dichloropropane is very unlikely to yield useful results if tested for avian toxicity according to available methodology.

III. Response to Public Comments

The comments received by the Agency in response to the proposed rule for 1,2-dichloropropane were from Dow Chemical Company. The Agency did not receive any comments which, in the Agency's judgment, rebutted the substantial production, human exposure, and environmental release findings for 1,2-dichloropropane. However, new information on the mutagenic effects of DCP has become available since publication of the proposed rule and has led EPA to reconsider its testing requirement for gene mutation. Major issues identified during the comment period are discussed below. All quotations are taken from Dow's written comments (Ref. 2).

A. Production, Release and Exposure

Dow concluded in its comments that there is neither substantial nor significant human exposure to 1,2-dichloropropane and that there is no substantial release to the environment, thus making the proposed testing unnecessary. This conclusion is based on "a comprehensive analysis of new information on the quantity of 1,2-dichloropropane produced, the limited amount released, and more importantly, the low exposure levels anticipated and preliminary results of recent and currently ongoing toxicological studies."

EPA disagrees with this conclusion and is now basing its section 4(a)(1)(b) finding on more recent production and exposure information (see Unit IV.A) contained in an exposure assessment document (Ref. 3) prepared by Versar, Inc. under contract with EPA. The isolated production volume cited by Dow in the comments (approximately 75 million pounds annually) is the same figure used in the Agency's analysis of release and exposure for isolated DCP. The Agency's analysis also examines releases and exposure from inadvertent production of DCP.

In discussing the aquatic release of DCP, Dow cited a figure (10,000 lbs/yr at <1 ppm) only for the release due to the propylene oxide process (DCP is a co-product of propylene oxide production). While acknowledging that "Dow cannot authoritatively comment on the releases from other ion exchange manufacturers," Dow did state that "Dow's ion exchange manufacturing process does not result in any release of 1,2-dichloropropane into the environment." The contention that DCP is released to the aquatic environment only as a result of Dow's on-site

processing is directly contradicted by the ongoing Philadelphia Geographic Area Multimedia Pollutant Survey conducted by EPA/IEMD (see Unit IV. A). This survey found levels of DCP in the ambient air of the city of Philadelphia, in air at the Northeast Water Pollution Control Plant, which receives the industrial discharge from the Rohm and Haas Company (an industrial user of DCP), and in the intake and treated water of the Baxter Water Treatment Plant, also on the Delaware River. The Agency believes that these monitoring data, along with other available exposure information, support its finding of significant release and exposure.

With regard to occupational exposure, Dow does not believe that there is significant or substantial human occupational exposure to 1,2-dichloropropane because "there are probably less than 500 persons potentially occupationally exposed to 1,2-dichloropropane." The Agency does not agree, because although that figure is probably a good estimate for the number of workers directly exposed via inhalation at DCP production and industrial use facilities, it does not take into account direct inhalation exposure to DCP due to industrial wastewater treatment, public wastewater treatment, and sewer maintenance, or indirect inhalation exposure to DCP by non-production workers employed at DCP production and use facilities (see Unit II.C).

B. Mutagenicity

1. In the proposed test rule for DCP, EPA had proposed requiring a *Drosophila* sex-linked recessive lethal test. Dow Chemical Company in its comments pointed out that the National Toxicology Program (NTP) had evaluated the mutagenic potential of DCP in *Drosophila* after injection and inhalation exposure. The Agency has reviewed the NTP *Drosophila* sex-linked recessive lethal (SLRL) test, which yielded negative results. The Agency finds that the gene mutation data on DCP are adequate to reasonably predict the potential of DCP to cause gene mutation. Therefore, EPA will not require further testing for gene mutation at this time.

2. Dow also commented on the proposed tiered testing scheme for determination of mutagenic effects, stating their belief that "EPA has not articulated which human risks are related to this testing and furthermore has not specified or described the methodology by which the data could be used to assess those risks." Dow also believes "the scheme incorporates a rigid decision tree that precludes any scientific judgement and evaluation to determine whether further testing is necessary." The Agency disagrees with these comments for the following reasons.

As described in detail in the final Phase I test rule for the C_9 aromatic hydrocarbon fraction (50 FR 20662, 20668–71), the Agency believes that there is a consensus in the scientific community on both the need for, and the manner of, identifying mammalian mutagens, and that its proposed scheme for identifying these agents is in keeping with those recommended by experts in the field of mammalian mutagenesis. Further, while EPA recognizes that there is, as yet, no generally accepted single methodology for estimating human risk from mutagenic agents, it is the Agency's view that appropriate methodologies do exist and are usable.

In the case of DCP, only the second tier of mutagenicity testing (dominant lethal assay) is being required at this time, without an automatic trigger to the end point test (heritable translocation assay). This decision is based on available information for a structurally similar chemical, 1,2-dibromo-3-chloropropane (DBCP), indicating that mice are not sensitive to DBCP in the dominant lethal assay (Ref. 5). The rat is therefore the recommended species to use in the dominant lethal assay for DCP, but cannot be recommended for the heritable translocation assay because a successful assay has not been conducted with the rat to date. Results from the dominant lethal assay will be reviewed by the Agency, and a decision made at that time concerning the need for any further chromosomal aberrations testing.

3. Dow Chemical Company believes that "if testing for chromosomal effects is to be done, the micronucleus assay is preferable to the dominant lethal test." In their written comments, Dow compares the two tests noting several "advantages" to the micronucleus assay compared to the dominant lethal test. The Agency does not believe that this substitution is acceptable, because the micronucleus assay in rats would provide information basically the same as that already provided by the NTP assays in both cytogenetic and sister chromatid exchange assays. It would not assess chromosomal effects on germ cell tissues which are measured by the dominant lethal assay.

C. Reproductive/Teratogenic Effects

Dow Chemical Co. cited several studies previously conducted or currently underway in support of their belief that "it is unnecessary to initiate an inhalation reproduction study" pending completion of a Dow subchronic (13-week) study. The other studies cited in the comments are a 10-week inhalation study of reproductive effects on male and female rats of Shell DD, a pesticide mixture, and the NTP carcinogen bioassay in which observations were made for reproductive effects.

The Agency does not agree with this comment for the following reasons. The Dow 13-week subchronic study has not yet been made available to the Agency, and the Agency does not believe a 13-week study can substitute for a two-generation study on reproduction. The comment notes that a testicular weight decrease was noted in rabbits dosed with 1,2-dichloropropane for 2 weeks; this effect had not been observed in the Dow 13-week study. Pending completion of histopathology in this latter study, Dow did not see a reason to undertake a reproduction study. The Agency does not agree because although some chemicals demonstrate testicular histopathology at lower dose levels than fertility effects, other chemicals cause fertility effects at lower dose levels than those doses which cause detectable testicular histopathology.

The test substance (Shell DD) used in the 10-week inhalation study cited by Dow is a mixture containing other compounds that are acutely toxic orally, and/or exhibit other toxicological effects that do not allow assessment of DCP by itself.

Since the carcinogen bioassay study is not a two generation study, the Agency believes it cannot substitute for a two-generation reproductive effects study, particularly in the case of DCP, a chemical with substantial release and exposure.

D. Neurotoxicity

For the proposed neurotoxicity testing, Dow commented that the only reported effects in an inhalation assay involved exposures at 1,000 and 1,500 ppm. Dow noted that no effects were seen in a 2-week study or in a NTP 2-year cancer bioassay. Lastly, Dow noted that a 13-week study is forthcoming. For the inhalation assay, the Agency believes that the methods used to assess neurotoxic effects are not sufficiently sensitive to detect possible effects. For the two other studies cited, neither was designed to detect neuropathological changes and thus the Agency believes that they are inappropriate for evaluating the possible effects.

E. Other Toxic Effects

Shell Oil Company submitted a report titled "Toxicology of five chemicals: The acute oral and percutaneous toxicity, skin and eye irritancy and skin sensitizing potential of DCP (light ends)", however, the data do not address any of the endpoints required in this test rule.

F. Environmental Effects

Dow Chemical Company believes that environmental effects testing is not necessary "because there are sufficient data already available to predict the effects of the current exposures of aquatic species to 1,2-dichloropropane." This conclusion relies on a national mean level for DCP to assert that exposure levels are 11,000 times below the no-observed-effects level (NOEL) and 26,000 times lower than the daphnid static acute LC_{50}, and on an "in general" rule of thumb to assert that algal testing is unnecessary. The Agency disagrees with this comment, however, because the daphnid test was conducted with unmeasured concentrations, thus making the results questionable if not invalid, and a "national mean" is an invalid basis for comparison. Site-specific data are needed for such a comparison, as now are available to the Agency for the Delaware River. Also, a NOEL has not been established for this chemical. The Agency does not believe that extrapolating fish or invertebrate data to estimate possible effects levels in algae is appropriate for this test rule, because although a correlation in toxic response may exist between the two groups of organisms for certain chemicals or categories of chemicals, no evidence is available to support the idea that this relationship holds true for all chemicals. The Agency is concerned in this test rule with the development of data to allow hazard assessment of a specific chemical, DCP, and does not believe data exist to support the extrapolation of fish or invertebrate data for DCP to possible effects level in algae.

IV. Final Test Rule for 1,2-Dichloropropane

A. Findings

EPA is basing its 1,2-dichloropropane health and environmental effect testing requirements on the authority of section 4(a)(1)(B) of TSCA. EPA finds that DCP is produced and released to the environment in substantial quantities, and that the manufacture, processing, use, and disposal may result in substantial human exposure to this chemical. These findings are based on the following information:

1. Although Dow Chemical Company is the only manufacturer of isolated DCP in the United States, the isolated production volume (estimated 74.9 million pounds in 1982), the marketing production volume (estimated at 3 million pounds in 1982), and the inadvertent (not isolated) production volume (estimated at 20 million pounds in 1982) are substantial (Refs. 1, 2 and 3).

2. In order to assess human and environmental exposure to 1,2-dichloropropane, the Agency contracted with Versar, Inc. to develop a comprehensive exposure assessment (Ref. 3). The document examined exposures as a result of TSCA-regulated environmental releases, including monitoring data from the Integrated Environmental Management Project for Philadelphia, Pennsylvania; releases and exposures related to the pesticidal use of DCP were not investigated. The following information is summarized from this document, and indicates the substantial release of and exposure to DCP:

a. The total estimated annual environmental releases from production and industrial use are 772,000 lbs to the air, 198,000 lbs to water, and 176,000 lbs to land disposal sites for a total of 1,146,000 lbs. These releases include process emissions to the air, secondary air emissions resulting from volatilization during wastewater treatment, releases to water in wastewater effluent, air release via incineration, and land disposal of solid waste residues, tars, and ash residues from incineration.

b. Occupational exposure to DCP involves approximately 500 workers exposed to direct inhalation (estimated to range from 31 to 410 g/person/yr) at DCP production and industrial use facilities. An estimated 900 workers may be exposed to direct inhalation (0.020 to 0.27 g/person/yr) as a result of the volatilization of DCP from wastewater during treatment operations. There is also potential for exposure (4.8 to 100 mg/yr) to DCP of non-production workers at DCP production and use facilities.

c. The general populations of five metropolitan areas are exposed to atmospheric concentrations of DCP as a result of airborne releases during production and industrial use of DCP, and volatilization of DCP during wastewater treatment. This atmospheric exposure results in doses estimated at 36 to 240 mg/person/yr. Approximately 880,000 people in the city of Philadelphia, PA are estimated to ingest an average of 0.043 μg/kg/day, or 1.1 mg/yr, and a maximum of 0.43 μg/kg/day, or 11 mg/yr, of DCP as a result of the consumption of drinking water contaminated with DCP from industrial wastewater discharge of the chemical.

d. Monitoring information has also been provided by the ongoing Philadelphia Geographic Area Multimedia Pollutant Survey, conducted by EPA/IEMD (Ref. 3). DCP was measured in Philadelphia at average levels of 0.2 to 3.5 $\mu g./m^3$ in the ambient air of various sectors of the city, and 36.7 to 569.8 $\mu g./m^3$ in air downwind of the Northeast Water Pollution Control Plant (NEWPCP), which receives the industrial discharge from the Rohm and Haas Company.

e. A monitoring study was conducted at the NEWPCP and in the Delaware River. Sampling sites were chosen (1) near the Baxter Drinking Water Plant upstream from the NEWPCP; (2) midway between the NEWPCP and the Baxter plant, to show upstream (tidal) movement of DCP from NEWPCP; and (3) two miles upstream of Baxter.

The data from the three locations indicate that diluted effluent from NEWPCP reaches the Baxter Drinking Water Plant, but that concentrations drop significantly upstream of the tidal excursion. Tidal excursion of the NEWPCP effluent affects the intake water for the Baxter Drinking Water Plant since the water is withdrawn during high tide. Data obtained from the Philadelphia Water Department during the IEMD monitoring study show that the average DCP concentration in the intake water over 1982 through 1983 was 1.6 μg/l, and the average concentration in the treated water was 1.5 μg/l.

3. There are insufficient data on the developmental, reproductive, mutagenic (chromosomal aberrations), and neurotoxic effects upon which to reasonably determine or predict the effects of exposure from the manufacturing, processing, use, and disposal of DCP. Health effects testing, therefore, is necessary to develop these data. As indicated in the proposed test rule (49 FR 899; January 6, 1984), there are sufficient data to characterize the acute, subchronic and chronic effects of DCP, and an NTP 2-year bioassay has been completed and is adequate to determine the oncogenic potential of DCP.

4. There are insufficient data to characterize the effects of DCP on aquatic invertebrates and aquatic plants from its manufacture, processing, and use. EPA is requiring that studies be conducted on acute and chronic toxicity to aquatic invertebrates and acute effects on algae. There are sufficient data to characterize the effects of DCP

on soil invertebrates, terrestrial insects, and fish.

B. Required Testing

EPA is requiring that 1,2-dichloropropane be tested for developmental, reproductive, mutagenic (chromosomal aberrations), and neurotoxic effects, as well as acute and chronic toxicity to aquatic invertebrates and acute toxicity to algae.

C. Test Substance

EPA is requiring that 1,2-dichloropropane of at least 99 percent purity be used as the test substance. DCP of this purity is available commercially. EPA has specified a relatively pure substance for testing because the Agency is interested in evaluating the effects attributed to DCP itself. This requirement will increase the likelihood that any toxic effects observed are related to DCP and not to any impurities.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which the Agency makes section 4(a) findings (manufacture, processing, distribution, use and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures giving rise to the potential risk occur during use, distribution, or disposal.

Because EPA has found that available data are inadequate to reasonably determine or predict the effects on human health and the environment as a result of the manufacturing, processing, use, and disposal of DCP, EPA is requiring that persons who manufacture or process, or who intend to manufacture or process this chemical, at any time from the effective date of this test rule to the end of the reimbursement period, be subject to the rule. The end of the reimbursement period will be 5 years after the last final report is submitted or an amount of time equal to that which was required to develop data if more than 5 years after the submission of the last final report required under the test rule. As discussed in the Agency's test rule and exemption procedures (40 CFR Part 790), EPA expects that manufacturers will conduct testing and that processors will ordinarily be exempted from testing.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to a test rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from that requirement. The Agency anticipates that the current manufacturer of DCP will sponsor the required testing. Manufacturers and processors who are subject to the testing requirements of this rule must comply with the test rule and exemption procedures in 40 CFR Part 790. Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR Part 790.

Processors subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent or exemption applications, or to conduct testing unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. The Agency expects that the manufacturers will pass an appropriate portion of the costs of testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers perform all the required tests, processors will be granted exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, the Agency will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR Part 790.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing. As noted in Unit IV. C., EPA is interested in evaluating the effects attributable to DCP itself and has specified a relatively pure substance for testing.

E. Test Rule Development and Exemptions

Elsewhere in today's **Federal Register**, the Agency is proposing that certain TSCA test guidelines be utilized as test standards for the development of data under this rule for 1,2-dichloropropane. As discussed in that notice and in previous notices (50 FR 20652), EPA has reviewed the method for development of test rules and has decided that for most section 4 rulemakings, the Agency will utilize single-phase rulemaking. In light of this decision, EPA has reevaluated the process for developing test standards for section 4 rulemakings initiated under a two-phase process and has determined that for certain of these two-phase rules, TSCA test guidelines are available for promulgation as relevant test standards. EPA has decided that where TSCA or other appropriate test guidelines are available, the Agency in most cases will propose the relevant guidelines as the test standards for those rules.

EPA believes that, in line with its commitment to expedite the section 4 rulemaking process, it is appropriate to propose the applicable TSCA test guidelines as test standards at the same time as a Phase I final test rule is issued. With regard to the rulemaking for DCP, TSCA test guidelines are available for all the testing requirements included in this Phase I final rule. Thus, in the accompanying notice, the Agency is proposing these TSCA test guidelines as test standards.

The public, including the manufacturers and processors subject to the Phase I rule, will have an opportunity to comment on the use of the TSCA test guidelines. The Agency will review the submitted comments and will modify the TSCA guidelines, where appropriate, when the test standards are promulgated.

During the development of a test rule under the two-phase process, persons subject to the Phase I final rule are normally required to submit proposed study plans within 90 days after the effective date of the Phase I rulemaking. See 40 CFR 790.50(a)(2). However, because EPA is proposing applicable TSCA test guidelines as the test standards for the studies required by this Phase I final rule, persons subject to the rule, i.e., manufacturers and processors of DCP, are not required to submit proposed study plans for the required testing at this time. Persons subject to this rule, however, are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. For the rule, once the test standards are promulgated, persons who have notified EPA of their intent to test must submit study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test. Processors of DCP subject to this rule, unless they are also manufacturers, will not be required to submit letters of intent, exemption applications, or study plans (before testing is initiated) unless manufacturers

fail to sponsor the required tests (see Unit IV. D).

Because persons subject to this rule for DCP are not required to submit proposed study plans for approval, EPA will grant conditional exemptions under this rule following EPA's receipt of a letter of intent to conduct the required tests, rather than after receipt and approval of a study plan. Notice of EPA's adoption of the proposed test standards and deadlines will be announced in a final Phase II test rule.

In the accompanying **Federal Register** notice, EPA is proposing deadlines for the submission of test data. Such deadlines are required under section 4(b)(1)(C) of TSCA. These proposed data submission deadlines are open for public comment and may be modified, where appropriate, when the final Phase II test rule is promulgated.

F. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with the EPA Good Laboratory Practice (GLP) standards pursuant to 40 CFR Part 792.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. The Agency is proposing these deadlines elsewhere in today's **Federal Register.**

TSCA section 12(b) requires that persons who export or intend to export to a foreign country any 1,2-dichloropropane subject to the testing requirements of this rule notify EPA of such exportation or intent to export. While the results of required testing may not be available for some time, a notice to the foreign government that these exported substances are subject to test rules serves to alert them to the Agency's concern about the substances. It gives these governments the opportunity to request such data that the Agency may currently possess plus whatever data may become available as a result of testing activities. Thus, upon the effective date of this rule, persons who export or intend to export DCP must submit notices to the Agency pursuant to TSCA section 12(b)(1) and 40 CFR Part 707. For additional information, see 49 FR 45581, November 19, 1984—Notification of Chemical Export; Applicability of Final Test Rules.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

G. Enforcement Provisions

The Agency considers failure to comply with any aspect of a section 4 rule to be a violation of section 15 of TSCA. Section 15(1) of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by the Act or any regulation issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or other premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce. . . ." The Agency considers a testing facility to be a place where the chemical is held or stored and, therefore, subject to inspection. Laboratory audits/inspections will be conducted periodically in accordance with the procedures outlined in TSCA section 11 by designated representatives of the EPA for the purpose of determining compliance with the final rule for DCP. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data and interpretations and evaluations thereof, and that the studies are being conducted according to the TSCA GLP standards and the test standards proposed rule of this rulemaking.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data.

These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. The Agency maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties calculated as if they had never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 per day for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors who fail to submit a letter of intent or an exemption request and who continue manufacturing or processing after the deadlines for such submissions. This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after the Agency has notified them of their obligation to submit such documents (see 40 CFR 790.48(b)). Intentional violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation and imprisonment of up to one year. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as the other factors listed in section 16. Other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Sections 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

V. Economic Analysis of Rule

To assess the potential economic impact of this rule, EPA has prepared an economic analysis that evaluates the potential for significant economic impacts on the industry as a result of the required testing. The economic analysis estimates the costs of conducting the required testing and evaluates the potential for significant adverse economic impact as a result of these test costs by examining four market characteristics of DCP: (1) Price sensitivity of demand, (2) industry cost characteristics, (3) industry structure, and (4) market expectations.

Total direct testing costs for the final rule for DCP are projected to range from $325,620 to $416,670. Since DCP, as manufactured by the sole manufacturer,

is a byproduct of propylene oxide manufacture, the direct costs of testing have been dispersed over the annual production of propylene oxide. In addition, the costs for teratogenic effects testing for propylene oxide, required in a previous rule (Ref. 4), have been added to the corresponding costs for DCP.

The annualized test costs (using a cost of capital of 25 percent over a period of 15 years) range from $93,914 to $122,296. Based upon Dow Chemical's 1984 estimated production volume of 907 million pounds of propylene oxide, the estimated unit test costs for DCP and propylene oxide range from 0.010 to 0.013 cents per pound. These unit costs are equivalent to 0.02 to 0.03 percent of the current price of propylene oxide.

Based on these costs and the economic characteristics of the DCP industry, the economic analysis indicates that the potential for adverse economic effect due to the estimated test costs is low. This conclusion is based upon the following observations:

1. Propylene oxide, the main product in DCP production, is used mainly as a captive intermediate and has a relatively inelastic demand.

2. The market expectations for propylene oxide and many of its derivatives are favorable.

3. Dow manufactures DCP and propylene oxide at two highly integrated plants where minor cost increases can be dispersed over numerous end products.

4. The estimated total unit test costs (i.e., the test costs for DCP and propylene oxide) are negligible, or less than 0.013 cents per pound or 0.03 percent of propylene oxide price in the upper-bound case.

Refer to the economic analysis for a complete discussion of test cost estimation and the potential for economic impact resulting from these costs.

VI. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing," October, 1981, can be obtained through the National Technical Information Service, 5285 Port Royal Road, Springfield, Va. 22161 (PB 82-140773). On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this test rule.

VII. Public Record

EPA has established a record for this rulemaking (docket number OPTS-42043). This record includes the basic information the Agency considered in developing this rule, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rule on 1,2-dichloropropane (January 6, 1984; 49 FR 899).

(b) Notice containing the ITC designation of 1,2-dichloropropane to the Priority List (October 30, 1978; 43 FR 50630).

(c) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (November 29, 1983; 48 FR 53922).

(d) Notice of final rule on test rule development and exemption procedures (October 10, 1984; 49 FR 39774).

(e) Interim final rule for test rule development and exemption procedures (May 17, 1985; 50 FR 20652).

(f) Notice of final rule concerning data reimbursement (July 11, 1983; 48 FR 31786).

(g) Notice of final rule on the C_9 aromatic hydrocarbon fraction (May 17, 1985; 50 FR 20662).

(2) Support documents consisting of:

(a) 1,2-Dichloropropane technical support document for proposed test rule.

(b) Economic impact analysis of final test rule for 1,2-dichloropropane.

(3) Communications consisting of:

(a) Written public comments.

(b) Summaries of telephone conversations.

(c) Meeting summaries.

(4) Reports—published and unpublished factual materials.

B. References

(1) Dow. The Dow Chemical Company. Letter to Mr. Steven D. Newburg-Rinn, Chief. Test Rules Development Branch (TS-778). Office of Toxic Substances, USEPA. Washington, DC. (1983)

(2) Dow. The Dow Chemical Company. Comments on 1,2-dichloropropane proposed test rule, **Federal Register** 49:899. Submitted to TSCA Public Information Office (TS-793). Office of Pesticides and Toxic Substances, USEPA. Washington, DC. Control Number OPTS-42043 (1984)

(3) Versar, Inc. Exposure Assessment for test rules development for 1,2-dichloropropane. Washington, DC: U.S. Environmental Protection Agency, Office of Toxic Substances. Contract No. 68-02-3968.

(4) EPA. Notice of final rule on propylene oxide testing requirements, **Federal Register** 50:48762. (November 27, 1985).

(5) USEPA. U.S. Environmental Protection Agency. Response to TRDB request on mutagenicity data review of 1,2-dichloropropane. Intra-agency memorandum to Katherine Hart, Existing Chemical Assessment Division, from the Toxic Effects Branch, Health and Environmental Review Division. May 13, 1986.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. NE-G004, 401 M Street SW., Washington, DC.

VIII. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. The regulation for this chemical substance is not major because it does not meet any of the criteria set forth in section 1(b) of the order. First, the annual costs of testing are expected to range from $93,914 to $122,296 over the expected market life of 1,2-dichloropropane. Second, because the cost of the required testing will be distributed over a large production volume, the rule will have only very minor effects on the producer's costs or users' prices for this chemical substance. Finally, taking into account the nature of the market for this substance, the low level of costs involved, and the expected nature of the mechanisms for sharing the costs of the required testing, EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA certifies that this test rule will not have a significant impact on a substantial number of small business for the following reasons:

(1) There are no small manufacturers of 1,2-dichloropropane.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing effort.

(3) Small processors will experience only minor costs if any in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements.

EPA concludes that there will be no significant adverse economic impact of any type as a result of this rule.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2070–0033.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 2, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, 40 CFR Part 799 is amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.1550 is added, to read as follows:

§ 799.1550 1,2-Dichloropropane.

(a) *Identification of test substance.* (1) 1,2-Dichloropropane (CAS No. 78–87–5) shall be tested in accordance with this section.

(2) 1,2-Dichloropropane of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests, and submit data.* (1) All persons who manufacture or process 1,2-dichloropropane, from October 23, 1986 to the end of the reimbursement period shall submit letters of intent to test, exemption applications, and shall conduct tests in accordance with Part 792 of this chapter and submit data as specified in paragraphs (a); (b) (1), (2), (3), and (4); (c) (1), (2), (3), and (4); and (d) of this section; Subpart A of this Part; and Parts 790 and 792 of this chapter for two-phase rulemaking.

(2) Persons subject to this section are not subject to the requirements of §§ 790.50(a) (2), (5), (6), and (b) (2) and (4), and 790.87 (a)(1)(ii) of this chapter.

(3) Persons who notify EPA of their intent to conduct tests in compliance with the requirements of this section must submit plans for those tests no later than 45 days before the initiation of each of those tests.

(4) In addition to the requirements of § 790.87(a) (2) and (3) of this chapter, EPA will conditionally approve exemption applications for this rule if EPA has received a letter of intent to conduct the testing from which exemption is sought and EPA has adopted test standards and schedules in a final rule.

(c) *Health effects testing*—(1) *Neurotoxicity*—(i) *Required testing.* The following neurotoxicity testing shall be conducted for 1,2-dichloropropane:

(A) A neuropathology test.

(B) A motor activity test.

(C) A functional observational battery.

(ii) [Reserved]

(2) *Mutagenic effects*—(i) *Required testing.* A dominant lethal assay shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(3) *Developmental toxicity*—(i) *Required testing.* A developmental toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(4) *Reproductive effects*—(i) *Required testing.* A two-generation reproductive effects study shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(d) *Environmental effects testing*—(1) *Mysid acute toxicity*—(i) *Required testing.* A mysid shrimp acute toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(2) *Algal acute toxicity*—(i) *Required testing.* An algal acute toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(3) *Daphnid chronic toxicity*—(i) *Required testing.* A daphnid chronic toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved]

(4) *Mysid shrimp chronic toxicity*—(i) *Required testing.* A mysid shrimp chronic toxicity test shall be conducted with 1,2-dichloropropane.

(ii) [Reserved].

(Information collection requirements approved by the Office of Management and Budget under control number 2070–0033)

[FR Doc. 86–20260 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 73, and 74

Oversight of the Radio and TV Broadcast Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This order amends broadcast regulations in 47 CFR Parts 73 and 74. Amendments are made to delete regulations that are no longer necessary, correct inaccurate rule texts, contemporize certain requirements and to execute editorial revisions as needed for purposes of clarity and ease of understanding.

EFFECTIVE DATE: September 9, 1986, except the amendment to § 74.402 for which an effective date is pending.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, (202) 632–5414.

SUPPLEMENTARY INFORMATION: The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this document may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. In this *Order*, the Commission focuses its attention on the oversight of its radio and TV broadcast rules. Modifications are made herein to update, delete, clarify or correct broadcast regulations as described in the following amendment summaries:

(a) A number of FCC rules refer to the North American Regional Broadcasting Agreement (NARBA). Because of developments over the past several years, this Agreement is binding only as to the Bahamas and the Dominican Republic. As to the other signatories, Cuba denounced NARBA several years ago and Canada and the USA have entered into a new bilateral agreement superseding NARBA. A separate AM agreement exists between Mexico and the USA. Eventually it is anticipated that the rules will no longer need to refer to NARBA as it will be replaced by reference to the Region 2 AM Agreement reached in Rio de Janero in 1981 or to applicable bilateral/multilateral agreements. In the meantime, the rules

will be amended to reflect the changes which have already taken place. (See appendix items 2, 3, 4, 5, 6, and 12.)

(b) Pursuant to § 73.1670 broadcasters may "without further authority from the FCC, install and use *with the main antenna system* (emphasis added) one or more auxiliary transmitters . . . ".

The rule is silent on connecting the auxiliary transmitter *to an authorized auxiliary antenna.* That oversight is corrected here thus relieving licensees of filing a FCC Form 301 (340 for noncommercial educational stations) when using auxiliary transmitters with authorized auxiliary antennas. (See appendix item 7.)

(c) In July 1984, the Commission combined forms 302 (application for new commercial broadcast station license) and 341 (application for new noncommercial educational broadcast station license) into one license application, the revised Form 302, Application for New Broadcast Station License. References to Form 341 remain in the rules in §§ 73.1675, 73.3500, 73.3536 and 73.3537. Corrections are made herein. (See appendix items 8, 9, 10, and 11.)

(d) In the 2nd Report and Order in MMD 83-242, Elimination of Unnecessary Broadcast Regulation, § 73.1205, Fraudulent Billing Practices, was removed from the rules.

The policy pertaining to this rule was inadvertently allowed to remain in our listing of policies. Via this *Order*, this oversight is remedied and § 73.4115 Fraudulent Billing Practices, is removed from the listing of FCC policies. (See appendix item 13.)

(e) The opening words to § 74.402, paragraph (b)(3) are "VHS segments:" VHS is a typographical error which is corrected here to read VHF. (See appendix item 14.)

(f) Paragraph (a) of § 74.602, Frequency assignment, incorrectly cross references ". . . broadcast auxiliary stations as described in paragraph (i) of this section." The cross reference should read paragraph (g), and is corrected to state that herein. (See appendix item 15.)

2. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions will serve the public interest.

3. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure Act. 5 U.S C. 553(b)(3)(B).

4. Since a general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

5. Accordingly, it is ordered, that pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73 and 74 of the FCC Rules and Regulations are amended as set forth below, effective on the date of publication in the **Federal Register**, except the amendment to § 74.402 for which an effective date is pending.

List of Subjects

47 CFR Part 0

Government publications.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 73

Radio broadcasting.

47 CFR Part 74

Auxiliary services.

Rules Changes

1. The authority citation for Parts 0, 1, 73 and 74 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

PART 0—[AMENDED]

§ 0.432 [Removed]

2. 47 CFR 0.432, The NARBA List, is removed in its entirety.

§ 0.434 [Amended]

3. 47 CFR 0.434, Lists of authorized broadcast stations and pending broadcast applications, is amended by removing paragraph (a)(3).

PART 1—[AMENDED]

4. 47 CFR 1.201 is amended by revising the note following paragraph (b) to read as follows:

§ 1.201 Scope.

* * * * *

(b) * * *

Note.—For special provisions relating to AM broadcast station applications involving other North American countries see § 73.3570.

PART 73—[AMENDED]

§ 73.25 [Amended]

5. 47 CFR 73.25 is amended by removing Notes 1 and 3 following paragraph (a)(2)(iii) and redesignating Notes 2 and 4 as Notes 1 and 2.

§ 73.26 [Amended]

6. 47 CFR 73.26, Regional channels; Classes III-A and III-B stations, is amended by removing the note at the end of the section.

7. 47 CFR 73.1670 is amended by revising paragraph (b) to read as follows:

§ 73.1670 Auxiliary transmitters.

* * * * *

(b) Authorization to install an auxiliary transmitter for use with other than the main antenna or authorized auxiliary antenna must be obtained by filing an application for a construction permit on FCC form 301 (FCC form 340 for noncommercial educational stations).

* * * * *

8. 47 CFR 73.1675 is amended by revising paragraph (c) to read as follows:

§ 73.1675 Auxiliary antennas.

* * * * *

(c) Authority to use a formerly licensed main antenna without changes or modifications as an auxiliary antenna may be obtained by filing FCC Form 302.

§ 73.3500 [Amended]

9. 47 CFR 73.3500, Application and report forms, is amended by removing Form 341 and its title, Application for a New Noncommercial Educational Broadcast Station License; and by revising the title of Form 302 to read as follows:

Form No.	Title
302	Application for New Broadcast Station License.

10. 47 CFR 73.3536 is amended by revising paragraph (b)(1); removing paragraph (b)(5) and redesignating paragraphs (b) (6) and (7) as (b) (5) and (6):

§ 73.3536 Application for license to cover construction permit.

* * * * *

(b) * * *

(1) FCC Form 302, "Application for a New Broadcast Station License."

* * * * *

11. 47 CFR 73.3537 is revised to read as follows:

§ 73.3537 Application for license to use former main antenna as an auxiliary.

A licensee may apply on FCC Form 302 for authority to use a formerly licensed main antenna system as an auxiliary antenna.

12. 47 CFR 73.3570 is amended by revising paragraphs (a) and (d) to read

as follows and by removing Note 1 following paragraph (b)(3) and redesignating Notes 2 and 3 as Notes 1 and 2:

§ 73.3570 AM broadcast station applications involving other North American countries.

(a) *Applications involving conflicts with the U.S./Canadian Agreement, the U.S./Mexican Agreement or with countries which have ratified NARBA.* Except for applications falling within the provisions of paragraph (b) of this section, no application will be accepted for filing if authorization of the facilities requested would be inconsistent with the provisions of the U.S./Canadian Agreement, the North American Regional Broadcasting Agreement (NARBA), or the Agreement between the United States of America and the United Mexican States Concerning Radio Broadcasting in the Standard [AM] Broadcast Band (the U.S./Mexican Agreement). Any such application which has heretofore been accepted for filing or which is inadvertently accepted for filing will be dismissed.

* * * * *

(d) *Applications not involving conflict with the U.S./Canadian Agreement, NARBA or U.S./Mexican Agreement.* As a matter of general practice, applications which are consistent with the U.S./Canadian Agreement, NARBA and the U.S./Mexican Agreement and which would not involve objectionable interference to a duly notified Haitian assignment, will be considered and acted upon by the FCC in accordance with its established procedure. In particular cases, involving applications of this character but in which special international considerations require that a different procedure be followed, the applicant involved will be formally advised to this effect.

§ 73.4115 [Removed]

13. 47 CFR 73.4115, Fraudulent billing practices, is removed in its entirety.

PART 74—[AMENDED]

14. 47 CFR 74.402, Authorized frequencies, is amended by revising the introductory words of paragraph (b)(3) to read as follows:

§ 74.402 Authorized frequencies.

* * * * *

(b) * * *

(3) VHF segments: * * *

* * * * *

15. 47 CFR 74.602 is amended by revising paragraph (a) introductory text to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available for assignment to television pickup, television STL, television relay and television translator relay stations. The band segments 17,700–18,580 and 19,260–19,700 MHz are available for broadcast auxiliary stations as described in paragraph (g) of this section. Additionally, the band 38.6–40.0 GHz is available for assignment without channel bandwidth limitation to TV pickup stations on a secondary basis to fixed stations.

Federal Communications Commission.

Roderick K. Porter,

Acting Chief, Mass Media Bureau.

[FR Doc. 86–19705 Filed 9–8–86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85–340; RM–5066]

Radio Broadcasting Services; Rockledge, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 274A to Rockledge, Florida, as the community's first local FM service, at the request of George Hachman and Jacqueline Thompson d/b/a Rockledge Community Broadcasters. With this action, this proceeding is terminated.

DATES: Effective October 6, 1986; the window period for filing applications will open on October 7, 1986, and close on November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–340, adopted August 22, 1986, and released August 29, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In paragraph (b) of § 73.202, the table of allotments is amended, by adding the entry for Rockledge, Florida, Channel 274A.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–20224 Filed 9–8–86; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 50946–6132]

Foreign Fishing; Poundage Fee Schedule

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

ACTION: Final rule.

SUMMARY: NOAA revises the 1986 poundage fee schedule for foreign vessels fishing in the fishery conservation zone (FCZ). This action revises the 1986 schedule to meet the requirements of Pub. L. 99–272 which among other things amended the Magnuson Fishery Conservation and Management Act (Magnuson Act). It establishes the fees certain fishing nations may be required to pay for their catch in the last quarter of calendar year 1986. This rule will ensure that the appropriate fees required by the Magnuson Act are returned to the general fund of the Treasury of the United States.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: Send written requests for a copy of RIR on 1986 Foreign Fees to Fees, Permits, and Regulations Division, F/M12, National Marine Fisheries Service, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, 202–673–5315.

SUPPLEMENTARY INFORMATION: On January 3, 1986, NOAA published a final rule at 51 FR 202 which implemented the schedule of foreign fishing fees for 1986. That rule followed consideration of all comments received on a proposed rule published on October 11, 1985, at 50 FR 41533.

On April 7, 1986, the President signed into law Pub. L. 99–272, a budget reconciliation bill, which among other things amended section 204(b)(10) of the Magnuson Act. This amendment requires that any foreign nation

receiving an allocation of fish in the FCZ must pay fees at a higher level during the next fiscal year if the Secretary of Commerce finds that the foreign nation—

(i) Is harvesting anadromous species of United States origin at a level that is unacceptable to the Secretary; or

(ii) Is failing to take sufficient action to benefit the conservation and development of United States fisheries.

NOAA is considering procedures for assessing country performance against these criteria. The procedures will be the basis for the Secretary's findings. These procedures, however, are not the subject of this final rule; this rule is only to establish the level at which the higher fees will be assessed on a nation's catch if that nation meets either one or both of the criteria.

Section 204(b)(10), as amended by Pub. L. 99–272, specifies that the higher fees will be determined to be "at least an amount sufficient to return to the United States an amount which bears to the total cost of carrying out the provisions of this Act during that fiscal year the same ratio as the aggregate quantity of fish harvested by foreign fishing vessels within the fishery conservation zone during the preceding year bears to the aggregate quantity of fish harvested by both foreign and domestic vessels within such zone during such preceding year."

NOAA has determined that the statutory text is clear. Higher fees will be determined by a ratio which does not consider the U.S. catch "within * * * territorial waters", the phrase contained in paragraph (B) to determine the fees for the catches of nations whose actions do not meet the criteria for higher fees. Since the 1984 fishery statistics used to establish the 1986 fee schedule, and used herein, were subject to notice and comment at 50 FR 41533, NOAA is taking this action as a final rule without further notice and comments.

In order to calculate the higher fee, NOAA has utilized Table 2 as published in 50 FR 41533, and removed the U.S. catch in territorial waters to calculate the new table, Table 2a, which follows:

TABLE 2a.—ESTIMATE OF RATIO OF FOREIGN CATCH, 1984

[Excluding inside 3 miles and all International Catches]

	Metric tons
Total U.S. reported catch [1]	3,761,282
Exclusions:	
International Waters (inc. Tunas)	261,242
Tunas (3–200 miles)	15,403
All catch inside 3 miles [2]	2,157,116
Total	2,433,761

TABLE 2a.—ESTIMATE OF RATIO OF FOREIGN CATCH, 1984—Continued

[Excluding inside 3 miles and all International Catches]

	Metric tons
U.S. commercial catch in Fishery Conservation Zone (FCZ)	1,327,521
Correction for mollusks [3]	634,622
Recreational catch [4]	[5] 91,200
Total U.S. catch, FCZ	2,053,343
Foreign catch, FCZ [6]	1,353,319
Total catch, FCZ	3,406,662

[1] This figure and all following figures for U.S. commercial catch from pages 8–11, "Fisheries of the United States, 1984."

[2] Except for Florida (West Coast), Texas and Puerto Rico which are extended to 9 miles. Also any internal waters.

[3] Addition of mollusk shells. U.S. statistics for internal use include only edible portions of mollusks, but international standard is whole animal.

[4] Based on Atlantic, Gulf, Pacific 1984 data, Western Pacific 1981 data, and Caribbean 1979 data. Includes catch types A and B1, assumes average weight of B1 is similar to A.

[5] Sportfish figures per Mark Holliday (Recreational Program).

[6] From page 22, "Fisheries of the United States, 1984."

NOTE.—Ratio of foreign catch to total catch is 39.7 percent.

The data and computational results shown in Table 2a indicate that the higher level fee target is to be 39.7 percent of the $222.812 million in total Magnuson Act costs for FY85. (Decimals in subsequent computations are rounded to the nearest tenth and tenths places may not add.) Total FY85 Magnuson Act costs were listed in Table 1 of the proposed rule (50 FR 41533) and adopted as the final costs in the final rule at 51 FR 202. The hypothetical fee collection target for calendar year 1986, based on a 39.7 percent foreign catch ratio and an assumption that all countries allocated fish would be found to meet the criteria, is $88.5 million, versus the existing target of $49.7 million.

Two hundred thousand dollars of the existing target are scheduled to be recovered from foreign fishing application fees. These fees are based on the administrative costs of processing applications. Since NOAA has not experienced higher administrative costs for processing applications in 1986, the additional fees would be recovered solely from the fees assessed for foreign catches of allocated fish and no change is made in the current permit application fee of $167.00/application. Thus, the *additional* fees which should be collected in 1986 if all countries met one or both criteria are $38.9 million ($88.5 million–$49.7 million), and would be derived solely from increased poundage fees.

Foreign poundage fees are a uniform fraction of the exvessel value of each species. This fraction is determined by the ratio of the costs to be recovered to the value of the foreign estimated catch during the calendar year of the fee schedule. Taking into account the reduction in the Atlantic mackerel exvessel value made in the final rule (51 FR 202), the value of the 1986 estimated foreign catch is $138.951 million. The standard fee assessment rate adopted at 51 FR 202 was 35.6 percent of the exvessel value of each species; the higher fee assessment rate as determined by this rule would be 63.6 percent of the exvessel value ($88.314 ÷ $138.951).

Pub. L. 99–272 requires that any additional fees collected as a result of the criteria be deposited in the general fund of the U.S. Treasury rather than the fisheries loan fund. NOAA has elected to collect such additional fees as an incremental amount rather than publish a separate fee table based on fees assessed at 63.6 percent of the exvessel values. In practice, NOAA will bill countries meeting one or both of the criteria at the lower fee rate, but add an incremental amount as a percentage of the total fee bill. The amount of 78.6 percent (or 38.8/49.5×100) of the lower fees for the tonnage caught will be added to each such bill and identified as the amount to be paid to the general fund of the U.S. Treasury. Section 611.22 of the foreign fishing regulations is amended by this action to implement this fee provision of Pub. L. 99–272 in a new subparagraph (c).

Classification

NOAA prepared a draft regulatory impact review (RIR) that discussed the economic consequences and impacts of the proposed 1986 fee schedule and what alternatives were considered. Copies of the final RIR are available at the above address. Based on the RIR, the Administrator, NOAA, determined that the schedule proposed and later implemented at 51 FR 202 does not constitute a major rule under E.O. 12291. The regulatory impact review demonstrated that the fee schedule complied with the requirements of section 2 of E.O. 12291. This rule does not change the earlier conclusions because higher fees will be applied only when a nation has met the specific criteria established by law. If all nations avoid unacceptable harvesting of U.S. origin salmon and take significant actions to benefit the conservation and development of U.S. fisheries, there will be no increase in fees in 1986. The final RIR is therefore not revised.

Notice of proposed rulemaking and an opportunity for public comment upon this rule are unnecessary under 5 U.S.C.553(b)(B) because: (1) The ratio which this rule applies is fixed by statute and thus cannot be varied in response to public comment, and (2) the numerical value of the ratio contained in

this rule was calculated using the relevant 1984 fisheries statistics which were also used in formulating the 1986 fee schedule (adopted in a notice and comment proceeding at 50 FR 41533) to which the ratio is applied by this rule. Also, this rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

The proposed fee schedule had no direct effects on the fishery resources in the FCZ. This fee schedule amendment is not expected to affect the harvesting of the available total allowable level of foreign fishing (TALFF) because the incremental fees can be avoided by appropriate action by foreign fishing vessels and their flag nations. The environmental effects of harvesting the TALFF are described for each fishery management plan and no further environmental assessment is necessary.

A 30-day delay in implementation is required by the Administrative Procedure Act. This action partially waives that requirement, but provides a cooling off period because the revised fee schedule will not be made effective until October 1, 1986.

This final rule has no information collection provisions for purposes of the Paperwork Reduction Act. 44 U.S.C. 3501 et seq.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: September 4, 1986.

Carmen J. Blondin

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

PART 611—[AMENDED]

For the reasons above, 50 CFR Part 611 is amended as follows:

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq., 16 U.S.C. 971 et seq., 22 U.S.C. 1971 et seq. and 16 U.S.C. 1361 et seq.

§ 611.22 [Amended]

2. Section 611.22 is amended by redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f) respectively and inserting a new paragraph (c) to read as follows:

§ 611.22 Fee schedule.

* * * * *

(c) *Incremental amount.* An additional incremental amount will be added to the poundage fee Bill for Collection for fish harvested by a nation during the first quarter of the next fiscal year following notification under paragraph (10)(C) of section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)(10)(C)). This incremental amount will be added to all subsequent quarterly bills until the quarter specified when the Assistant Administrator notifies that nation that it has taken appropriate corrective action. The incremental amount in 1986 will be 78.6 percent of the total poundage fee in each quarter during which this provision applies.

* * * * *

[FR Doc. 86-20233 Filed 9-4-86; 12:33 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 60477-6077]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of commercial fishery closure and request for comments.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the commercial salmon fishery in the fishery conservation zone (FCZ) from Sisters Rocks to Mack Arch, Oregon, at midnight, August 29, 1986, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Directors of the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG) that the revised commercial fishery quota of 1,900 chinook salmon for the subarea will be reached by that time and date. The closure is necessary to conform to the preseason announcement of 1986 management measures. This action is intended to ensure conservation of chinook salmon.

EFFECTIVE DATE: Closure of the FCZ from Sisters Rocks to Mack Arch, Oregon, to commercial salmon fishing is effective at 2400 hours Pacific Daylight Time (PDT), August 29, 1986. Comments on this notice will be received until September 12, 1986.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, NMFS, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the Office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten at 206-526-6150, or E. Charles Fullerton at 213-514-6196.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the **Federal Register** under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Management measures for 1986 were made effective on April 30, 1986 (51 FR 15620, May 5, 1986). The 1986 commercial fishery for all salmon species except coho in the FCZ from Sisters Rocks to Mack Arch was scheduled to open the latest of August 7 or attainment of the commercial chinook quota for the area from Cape Blanco, Oregon, to Point Delgada, California, and close the earlier of September 15 or attainment of the subarea chinook quota of 7,500 fish. The commercial fishery from Cape Blanco to Point Delgada was closed effective midnight, August 26, 1986, when its quota of 75,000 chinook salmon was projected to have been reached.

Under the authority of the emergency rule which established inseason management provisions for the 1986 season (51 FR 18451, May 20, 1986; 51 FR 28717, August 11, 1986), the opening of the commercial fishery from Sisters Rocks to Mack Arch was delayed two days until 0001 hours PDT, August 29, 1986, to provide a break between the two fisheries for evaluating chinook landings in the earlier fishery (51 FR 30867, August 29, 1986). Based on the best available information through August 26, 1986, commercial landings in the earlier fishery from Cape Blanco to Point Delgada are estimated to be 85,600 chinook, exceeding its quota by 10,600 fish.

According to the 1986 preseason regulations, commercial and recreational fisheries between Cape Blanco, Oregon, and Point Delgada, California, are managed not to exceed 123,200 chinook salmon. On August 28, 1986, the Salmon Plan Development Team estimated that 27,000 chinook would be needed to complete the

recreational season in the area, leaving 5,000 chinook in the recreational quota unharvested and available to offset the commercial overquota harvest.

An additional 5,600 chinook are needed to offset the commercial overquota harvest and, in accordance with preseason regulations, are subtracted from the Sisters Rocks to Mack Arch, Oregon, subarea commercial fishery. Thus, the revised subarea chinook quota is 1,900 fish. Based on the best available information, it is projected that the subarea quota could be reached in one day of fishing.

The Regional Director consulted with the Directors of ODFW and CDFG regarding the overquota harvest in the commercial fishery between Cape Blanco, Oregon, and Point Delgada, California; the revised commercial quota for the subarea between Sisters Rocks and Mack Arch, Oregon; and the need to close the commercial fishery when the revised subarea quota is projected to be reached. The ODFW Director confirmed that Oregon will close the commercial fishery in State waters adjacent to this area of the FCZ at 2400 hours PDT, August 29, 1986.

The Secretary therefore issues this notice closing the commercial fishery in the FCZ from Sisters Rocks to Mack Arch, Oregon, at 2400 hours PDT, August 29, 1986. This notice does not apply to other fisheries which may be operating in other areas.

Other Matters

This action is taken under the authority of 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Dated: September 4, 1986.

Carmen J. Blondin,

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

[FR Doc. 86-20274 Filed 9-4-86; 3:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children; Funding Formula

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend the WIC Program Regulations by inserting language describing in greater detail the formula through which the Department shall allocate program funds to State agencies. This proposed amendment would also entail a change in the formula itself. Because it is not possible to serve all eligible persons, a formula is needed that would place greater emphasis on the efficient use of funds, and on the targeting of available resources to serve persons most in need. In accordance with this amendment, which embodies the necessary formula, the Department would henceforth allocate funds to State agencies based not only on each State agency's current operating level, but also on its success reaching persons at greatest nutritional risk. The Department expects that the use of this formula would encourage State agencies to serve the maximum number of high risk persons within the limits of available funding.

DATE: Comments on the proposed rule must be received on or before October 9, 1986.

ADDRESS: Comments may be mailed to Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 407, Alexandria, Virginia 22302, (703) 756–3746.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12297, and has been determined to be *not major*. The Department does not anticipate that this rule would have an impact on the economy of $100 million or more. This rule would not result in a major increase in costs or prices for consumers; individual industries; Federal, State or local government agencies, or geographic regions. Nor would this rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, the Administrator of the Food and Nutrition Service has determined that this proposed rule does not have a significant economic impact on a substantial number of small entities. This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule related notice published June 24, 1983 (48 FR 29114)).

Background

Statutory Requirements

The Department's authority to prescribe a WIC funds allocation formula is found in section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786). Section 17(i) requires the Department to ". . . divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary." Section 17(g) authorizes the Secretary to use one-half of 1 percent of the funds appropriated each fiscal year for the WIC Program, not to exceed $3 million, ". . . for the purpose of evaluating program performance, evaluating health benefits, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians and rural populations." Section 17(h)(1) then requires the Secretary to "make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency administrative costs." In summary, the authorizing legislation permits the Department to deduct "evaluation funds" from the total funding available, and requires that the balance be allocated to State agencies in a ratio of 80 percent for food and 20 percent for administration and program services.

Current Funding Formula

The formula currently in use emerged from extensive consultations between the Department and the State agencies, held during the latgter portion of Fiscal Year 1983. The State agencies generally agreed that the most equitable type of funds allocation would be one based on each State's relative number of potential WIC eligibles but that existing program operations should not be disrupted in order to achieve that objective. For example, a State agency that had already extended program benefits to a relatively large number of its potential eligibles should not be required to terminate paricipants solely to make funds available for program expansion in States which had not. These considerations led to the formulation of two basic funding principles: program stability and directed program growth. These principles form the basis for the two part formula currently in use.

1. Stability funding

In allocating funds to State agencies, first priority is given to maintaining each State agency's existing operating level to the extent that funds are available. Accordingly, every State agency receives an amount of founds for food costs based on the amount it received the prior year adjusted for anticipated inflation. This amount is reduced for any State agency that failed to use at least 95 percent of its prior year food funding

(stability and growth combined), as an inducement for State agencies to use all funds allocated to them (without overspending). The reduction is calculated by subtracting the State agency's actual, prior-year food cost from 95 percent of the food funds it received for the prior fiscal year. Funding for administration and program services costs is calculated as a percentage of the State agency's food funding level. Every State agency must be funded at the full stability level before any funds are allocated through the growth formula.

2. Growth funding

Once the stability funding requirements have been satisfied, any funds remaining available are allocated through the growth formula. This formula was designed to move the WIC Program toward the long-term objective of enabling each State agency to serve the same proportion of its eligible women, infants and children. Accordingly, the growth formula is based on each State's relative number of persons below 185 percent of the Poverty Income Guidelines, its infant mortality and its low-weight births. The Department uses the formula to determine what each State agency's proportionate share of the funds available for allocation would be if all such funds were allocated solely on the basis of these factors. A State agency qualifies for growth funding to the extent that (1) its share of the funds under the growth formula exceeds what is provided under the stability formula; and (2) funds are available for growth funding. As with the stability formula, each State agency receives an amount of food funds generated by the formula, plus a related amount of administrative funding.

As this discussion makes clear, the growth formula is based on the number of persons in each State who are *income eligible* for the WIC Program. The income-eligible population (i.e., the number of women, infants and children below 185 percent of the Poverty Income Guidelines) is derived from 1980 Census data. While more recent data on family incomes has been collected for some States, the 1980 Census data remains the only valid national, uniform dataset drawn from the universe of all States. Therefore, all operations discussed in this preamble in which the income-eligible population would be a factor would use the 1980 Census data.

Concerns About the Existing Formula

The Department first used the allocation formula described above to determine each State agency' Fiscal Year 1984 funding level, and has retained it in substantially the same from since that time. While the use of this formula has generally promoted the twin objectives of program stability and controlled program growth, it has not discriminated between those State agencies that have used their funds efficiently and effectively and those have not. All States have received stability grant increases based solely on an economic indicator (inflation). In addition, growth States received grant increases based on demographic data only. In neither case has consideration been given to how efficiently and effectively each State agency utilized the grant it received. There is one dimension of State efficiency and effectiveness that the Department considers most reflective of a State agency's management of its grant. This is the targeting of benefits to the highest risk eligibles.

Changes in the Formula

It is the Department's intent to initiate a revised formula when allocating Fiscal Year 1987 funds to State agencies. The revisions are intended to factor each State agency's performance in reaching the most high risk persons in an efficient fashion.

The Department does not contemplate developing a new formula for allocating administrative funds at this time. While the Department recognizes the need to allocate funds for administrative and program services costs on a basis that reflects efficiency in administrative expenditures, the allocation of funds for food is more immediate concern. As such, it must be addressed first. Therefore, the proposed formula described below pertains only to the allocation of food funds, and the existing formula for allocating administrative and program services funds would remain in place for Fiscal Year 1987. The Department will, however, consider revising the latter formula for Fiscal Year 1988. Consequently, the Department requests not only comments on the proposed food funds allocation formula, but also recommendations for future revisions to the forumla currently used to allocate administrative and program services funds. Commentators are requested to identify the points they passed as pertaining to the administrative funding formula or to the proposed food funding formula.

The revised formula would retain the stability funding concept, as the Department recognizes the importance of a certain guaranteed funding level to State planning and management efforts. However, stability would be redefined to exclude the annual adjustment for anticipated inflation. For Fiscal Year 1987, each State agency would receive stability food funding based on its unadjusted Fiscal Year 1986 food funding level, provided that sufficient funds are made available for allocation. In addition, the proposed formula would provide State agencies with an incentive to return unneded funds for reallocation. The Department would include 50 percent of the food funds returned by any State agency during the prior fiscal year in the calculation of that State agency's stability food funding level for the next fiscal year. Beyond these modifications to the stability funding process, all proposed formula revisions pertain to the allocation of residual funds (i.e., funds remaining available for allocation after every State agency has been funded at its full stability level).

The basis for allocating residual funds would be revised to reflect the Departmemt's concern that resources be used as efficiently and effectively as possible. Under the current arrangement, all residual funds are directed by the growth formula to certain States, with the long-term objective of giving every State agency the opportunity to serve the same proportion of its eligible population. By contrast, the revised formula would allocate the residual funds among *all* State agencies on the basis of their relative success in identifying and serving the highest risk person within their eligible populations. Every State agency would have the opportunity to "compete" for the available pool of residual funds.

In designing this funding formula the Department has had to address the question of what constitutes "relative success in identifying and serving the highest risk persons within their eligible populations." What measureable dimension of program performance can be used to determine "relative success," and hence be used as a factor in calculating States' shares in the residual funds? The Department believes that the participant priority system presented in § 246.7(d)(4) provides a sound framework for identifying eligibles who are at highest risk and are enrolled in the program. Under § 246.7(d)(4), local program operators assign applicants and participants to nutritional risk *priority groups* based on their assessment of each applicant's/participant's current nutritional status. The six mandatory *priority groups* recognized under that regulatory provision are described below:

Priority I. Pregnant women, breastfeeding women and infants at

nutritional risk as demonstrated by hematological or anthropometric measurements, or other documented nutritionally related medical conditions which demonstrate the person's need for supplemental foods.

Priority II. Except those infants who qualify for Priority I, infants up to 6 months of age of WIC participants who participated during pregnancy, and infants up to 6 months of age born of women who were not WIC participants during pregnancy but whose medical records document that they were at nutritutional risk during pregnancy due to nutritional conditions detectable by biochemical or anthropometric measurements or other documented nutritionally related medical conditions which demonstrate the person's need for supplemental foods.

Priority III. Children at nutritional risk as demonstrated by hematological or anthropometric measurements or other documented medical conditions which demonstrate the child's need for supplemental foods.

Priority IV. Pregnant women, breastfeeding women, and infants at nutritional risk because of an inadequate dietary pattern.

Priority V. Children at nutritional risk because of an adequate dietary pattern.

Priority VI. Postpartum women at nutritional risk.

In addition to prescribing the use of the six priority groups listed above, the regulations give State agencies several options in classifying their caseloads. Breastfeeding women and their infants may both be assigned the highest priority for which either qualifies; postpartum women deemed to be at high risk may be assigned to Priorities III, IV or V; and persons certified solely to prevent regression in their nutritional status may be classified in a separate Priority VII. States report semi-annually to the Food and Nutrition Service the number of persons enrolled by category (i.e., pregnant, breastfeeding, and postpartum women; infants; and children) within each of these priority levels. This is required under § 246.25(b). The States also report participation on a monthly basis. Participation is reported only under the categories of "women," "infants," and "children." The Department believes that it can gauge the "relative success" of each State in identifying and serving the highest risk persons within their eligible populations from this data.

How well targeted a State's program is may be determined by comparing the distribution of its caseload among the priority groups to the distribution of other States' caseloads. However, there are factors which make such a simple determination of how well each State targets its program problematic. These aer the relative amount of each State's grant to its income eligible population, and differences in how each State determines the existence of nutritional risk.

The first factor, the relative grant level, is a primary determinant of how many eligibles will be served. States are currently funded at levels which permit degrees of penetration into income eligible populations ranging from 18 percent to 76 percent, based on 1980 Census data.

This factor can best be explained by way of an example. Consider two States, each of which has 100,000 income eligibles. State A is funded at a level which would permit service to 18 percent of income eligibles. State B is funded at a level permitting 76 percent service. Their respective caseloads are 18,000 and 76,000.

Assume that infants at medical risk comprise 28 percent of all income eligibles. States A and B would each have 28,000 such eligibles. Logically State B, with 4 times as many participants, would be able to achieve a greater penetration into this category. It is unlikely, however, that State B would serve 4 times as high a proportion of infants. As funding increases, there is likely to be a diminishing rate of increase in service to this category, since it would become a saturated market for service. However, it is clear that expectations of service to targeted populations must be different due to the relative size of programs. Success is clearly a relative term. In advancing a funding formula to allocate funds to States on the basis of targeting success, the relative size of programs must be a consideration.

The second factor, differences in determination of nutritional risk, relates to the phenomenon of State agencies using different standards for determining placement in priority groups and the existence of nutritional risk. We must consider this lack of consistency in States' standards for determining the presence of nutrition-related medical conditions.

Having identified these factors as affecting assessment of States' relative success, we sought to identify data elements which would be least affected by these factors.

In response to the first consideration, the relative grant level, the Department believes that the number of persons in a State in a given priority group, compared to the number of such persons nationally, would serve as a fair gauge of how successfully each State was targeting that group. Using the absolute number of persons enrolled in that priority group would weight for relative grant level. One may logically expect to find a comparable frequency of persons *eligible for* Priority I in every State agency's potentially eligible population, despite variations in such State-specific factors as grant level, population or program size. While differential grant levels would figure prominently in generating different degrees of penetration into the total population of potential eligibles, the subset of that population that would qualify for Priority I in each State would be a constant. If, for example, State A and State B had 300,000 potential eligibles a piece but were funded to serve 100,000 and 50,000 persons, respectively, State A would in all probability show a higher absolute number of persons enrolled in Priority I. However, State B would not be disadvantaged by operation of the new formula. Even though it would be granted residual funds on the basis of a lower absolute number, the residual funds could be greater relative to State B's total grant than State A's residual funds might be relative to its total grant. A larger proportionate share of State B's caseload could be contributing to that State's earnings of residual funds because it would signify a higher level of service to Priority I persons relative to the total number of persons State B had been funded to serve. Therefore, use of the absolute Priority I figure would appropriately factor each State agency's performance relative to its grant level and related circumstances.

In response to the second consideration, differences in determination of nutritional risk, we sought to identify the data element which would be least impacted by this diversity and which would still reflect success in targeting benefits.

The General Accounting Office (GAO) report *Need to Foster Optimal Use of Resources in the Special Supplemental Food Program for Women, Infants and Children* (GAO/RECD-85-105, September 27, 1985) devoted an entire chapter to the relative merits of different classes of nutritional risk criteria. After interviewing officials involved in WIC at the Federal, State and local levels, the GAO reported finding "considerable agreement. . . that certain factors—particularly inadequate dietary pattern and risk of regressing to a previous 'risk' condition—are less reliable as indicators of nutritional risk." As we noted above, these criteria form the basis of eligibility for Priorities IV, V and VII, as well as for many postpartum women certified in Priority VI. Among the weaknesses cited were: Applicants'

difficulty recalling accurately and completely the types and quantities of foods they or their children had consumed in a prior time period; the lack of requisite training, specialized knowledge, and/or expert supervision of some of the WIC staff who interpret dietary information the applicants provide; and pressures on local agency officials to expand or maintain caseload levels through the use of inadequate diet as a basis for certification. The GAO also reported that "no agreed-upon standard exists against which to measure the adequacy of dietary intake. In addition, no individual dietary data collection method exists that can be shown to be consistently reliable, tolerant of untrained individual variability and changes therein, and usable by relatively untrained and inexperienced interviewers, including nonnutritionists." The GAO also recognized the lack of consensus in the application of hematological and anthropometric measurements and other medical criteria, used to certify applicants for Priorities I through III; however, it was pointed out that inadequate diet is a more subjective criterion whose application depends heavily upon the individual applicants' assertions. Given the foregoing discussion, the Department believes that the nature of the criteria used to assign participants to Priorities I through III limits the risk of bias from State by State variations in risk determination. Also, the Department plans to achieve even more consistency in determining placement in priority groups I, II and III through development and implementation of standard criteria for establishing the existence of nutrition-related medical conditions.

In addition, the *Study of WIC Participants and Program Characteristics* (USDA, 1986) reported that "about three-quarters (70 to 75 percent) of participants were in the first three priority levels. Almost all the pregnant women and infants were in the first two priority levels and most of the children were in Priority III." The high percentages of participants in these categories which the study authors inputed should be appropriately assigned to Priorities I through III also limits the effects of varying State risk criteria. Using enrollment in these priority groups as our measure of targeting success recognizes that women, infants and children who are deemed to be at nutritional risk on the basis of a nutrition-related medical condition are in the greatest need of the Program intervention. For these reasons and those discussed above, the Department has concluded that using the numbers of persons enrolled in the first three priority groups constitutes the best relative measure of States' success in targeting benefits.

Revised Formula for Allocating Residual Funds

Each State agency's enrollment in Priorities I, II and III would be weighted as described below, then expressed as a percentage of the national aggregate enrollment in these priority groups. This percentage would be applied to the pool of residual food funds to determine the dollar amount allocated to the State agency. Before this operation was performed, however, the enrollment of persons in Priorities I through III would be weighted by a factor that reflected the State agency's relative participation rate. This weighting is deemed appropriate because each State agency's ability to use it WIC grant efficiently is directly influenced by the extent to which participants keep their appointments to receive the food instruments prepared for them. The participation rate would be calculated by dividing the State agency's participation level by its enrollment, thus reflecting the State agency's success in serving the participants for whom it has obligated funds.

The following example illustrates how a State agency's Fiscal Year 1987 food funding level would be calculated under the formula discussed above. This illustration uses the following set of facts:

	State Agency	Nation
Total funds available for Fiscal Year 1987 food funding		$1,299,753,736
Fiscal Year 1986 food funding	$3,952,660	1,272,434,252
Residual funds available for Fiscal Year 1987 food funding		27,319,484
Persons enrolled in Priorities I, II and III	8,225	2,798,459
Participation	10,377	3,137,987
Weighted enrollment in Priorities I, II, and III		2,471,185
Total enrollment	10,577	3,553,569

Given the foregoing facts, the State agency's Fiscal Year 1987 food funding level would be calculated as follows:

Step a: Calculation of the adjustment for the State agency's participation rate:
$(10,377 \div 10,577) = 0.98109$

Step b: Calculation of the State agency's weighted enrollment in Priorities I, II and III:
$8,225 \times 0.98109 = 8,069$

Step c: Calculation of the State agency's share of the residual food funds:
$(8,069 \div 2,471,185) \times \$27,319,484 = \$89,204$

Step d: Calculation of the State agency's Fiscal Year 1987 food funding:
$\$3,952,660 + \$89,204 = \$4,041,864$

For commentors who are interested in reviewing the full formula database and mathmatical operations, an information package is available. Copies of the document will be forwarded to all State agencies administering the WIC Program and to all FNS regional offices. Copies will also be made available to other interested parties upon their request. Requests should be submitted in writing to the addressee identified at the opening of this preamble.

Other Considerations

Provision for a Formula Cap

There is one aspect of the existing growth formula that has relevance for the proposed formula: provision for a formula cap. Such a control is necessary to avoid allocating more funds to any State agency than that State agency can realistically expect to use. Accordingly, the amount generated for each State agency under the new formula would be subjected to the following test: The State agency's prior year food cost per person would be adjusted for anticipated inflation (as is currently done for stability funding); the adjusted food cost would be divided into the funding level generated by the new formula to obtain the number of persons supportable at the funding level; and the supportable caseload would be compared to the State agency's potentially income-eligible population (as estimated from 1980 Census data). The funding level for any State agency whose supportable caseload exceeded its potentially income-eligible population would be adjusted downward to a level commensurate with the latter figure. In this way, no State agency would be held accountable under the 95 percent performance standard for failing to use funds it truly did not need.

Consultations With the State Agencies

Concerns have been expressed about the Department's intent to implement the new food funding formula in Fiscal Year 1987. It had been suggested that: (1) The Department has not obtained sufficient State agency input to proceed with the new formula; and (2) It would be unfair to proceed without first announcing a grace period, during which State agencies could improve their current positions with respect to Priorities I, II and III enrollment in anticipation of receiving funds on that basis.

The Department believes that there has already been long term communication with State agencies on

matters pertinent to the proposed food funding formula. In September 1984, all State agencies were requested to furnish data on the composition of their caseloads by participant category and priority group; some also submitted comments which reflected awareness that such data might eventually be used for funding purposes. The revised WIC Program Regulations, published February 13, 1985, not only refinded the priority system but also included a new requirement for semiannual reporting of the categorical and priority breakdown of State agencies' caseloads. In providing feeback on these developments, the State agencies drew the Department's attention to the wide range of criteria used from State to State in applying the priority system. The commentors correctly noted that data generated under varying criteria could not be validly compared. Accordingly, the Department encouraged the State WIC Directors to launch a program of reevaluating the nutritional risk criteria currently in use and moving them toward a greater measure of standardization. This effort was initiated in June 1985. The first official reports submitted under the new reporting requirement presented the composition of State agencies' caseloads as of October 1985. These events, taken as a whole, evidence an increased emphasis on the use of the priority system in Program management.

These events alone may have signalled to State agencies to anticipate the incorporation of the priority system into the funding process. However, the Department has also explicitly communicated this intent on a number of occasions. In March 1986, Associate FNS Administrator Sonia Crow announced to a meeting of the State WIC Directors that the Department had begun developing a funding formula based on service to particular priority groups. In May 1986, National WIC Director Patrick J. Clerkin delivered a presentation to the National Association of WIC Directors, in which he explained the Department's concerns about the existing funding formula, discussed the objectives the Department hoped to achieve by revising it, and outlined possible approaches to the problem then under consideration. Similar presentations were made to groups of State directors at regional meetings in Denver, Colorado; Atlanta, Georgia; and Dallas, Texas. These presentations precipitated extensive discussions with their audiences, which yielded valuable feedback to the Department.

As the result of these and other consultations, the Department has concluded that the interest of the WIC Program would best be served by a more systematic solicitation and analysis of imput from all State WIC Directors and other interested parties before the Department begins allocating funds on any basis other than the existing formula. In this way, the Department would not depart from a formula designed with systematic State participation until the replacement formula could meet that same standard. While this standard was achieved with respect to the existing formula by assembling a task force on which State officials were well represented, the Department believes it can be achieved equally well through the rulemaking process. Accordingly, the transition to the new formula will be made upon the effective date of a final rule promulgating it. Until that date, the Department intends to allocate funding using the existing formula.

Application of the Priority System

The Department would expect State agencies to adopt strategies for promoting the active recruitment of persons qualifying for Priorities I, II and III. One approach they could take would involve incorporating into their caseload management practices a procedure for periodically reassigning caseload slots among local agencies based on reviews of their service to such persons. Slots would be shifted from local agencies that had not demonstrated reasonable expectations of reaching additional highest risk persons to those that had. Such an approprach would provide an incentive for local agencies to seek out persons in their service areas that would qualify for these priority groups. State agencies need not, however, restrict their strategies to the management of caseload slots; their creative energies should be directed toward formulating innovative approaches to reaching the highest risk persons.

As the foregoing discussion makes clear, the proposed revision to the WIC funding formula would greatly enhance the importance of the priority system. The system would serve as a tool for reaching the persons at greatest nutritional risk in the populations served by all local agencies, rather than only those that had already reached their maximum authorized caseload levels. Directing active recruitment efforts toward the persons in the local population eligible for Priorities I, II and III would increase the volume of applications from such persons. The proposd rule would thus encourage State agencies to supplement the relatively passive waiting list system (prescribed by 7 CFR 246.7(d)(4)) with an active process of targeting, in order to direct Program benefits toward those most able to benefit from program intervention.

List of Subjects in 7 CFR Part 246

Food Assistance Programs, Food donations, Grant Programs—Social Programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public Assistance Programs, WIC, Women. Accordingly, it is proposed to amend 7 CFR Part 246 as follows:

PART 246—[AMENDED]

1. The authority citation for Part 246 continues to read as follows:

Authority: Sec. 3, Pub. L. 95–627, 92 Stat. 3611 (42 U.S.C. 1786); sec. 203, Pub. L. 96–499, 94 Stat. 2599; sec. 815, Pub. L. 97–35, 95 Stat. 521.

2. In § 246.16, paragraphs (b) and (e) are revised to read as follows:

§ 246.16 Distribution of funds

* * * * *

(b) *Distribution of funds to State agencies.* (1) Funds made available to the Department for the Program in any fiscal year will be distributed by FNS on the basis of a funding formula which allocates funds to all State agencies for food costs and for administrative and program services costs. However, up to one-half of one percent of the sums appropriated for each fiscal year, not to exceed $3,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. Each fiscal year, to the extent that funds are made available for allocation to State agencies, FNS shall allocate funds to each State agency in accordance with the following four-part formula:

(i) For food costs, the amount obtained by adding together all funds allocated to the State agency for food costs incurred in the preceding fiscal year, and subtracting therefrom 50 percent of any food funds recovered by FNS in the preceding fiscal year for reallocation under paragraph (e) of this section; *Provided, however,* that such amount shall be reduced for any State agency whose food costs for the preceding fiscal year did not equal or exceed 95 percent of the amount such State agency had been authorized to expend for such costs. Such reduction shall equal the difference between the State agency's preceding year food costs

and 95 percent of the amount the State agency had been authorized to expend for such costs.

(ii) For administrative and program services costs, the product obtained by applying, to the amount allocated to the State agency for food costs under paragraph (b)(1)(i) of this section, the lesser of (A) twenty-one (21) percent; or (B) the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year.

Funds returned by any State agency in the preceding fiscal year for reallocation under paragraph (e) of this section shall not be considered in the calculation of the ratio of administrative and program services funds to food funds allocated to the State agency for the preceding fiscal year. FNS will allocate additional funds based on the individual needs of each State agency; *Provided, however,* that the aggregate amount allocated to all State agencies under this paragraph for administrative and program services costs shall not exceed twenty-five (25) percent of the aggregate amount allocated for food costs under paragraph (b)(1)(i) of this section.

(iii) Eighty (80) percent of any funds remaining after the allocations required by paragraphs (b)(1)(i) and (b)(1)(ii) of this section have been completed, shall be awarded as food funds based on the State agency's enrollment in Priorities I, II and III, adjusted by a factor that reflects the extent to which persons enrolled in the Program under the State agency's jurisdiction actually participate in the Program; *Provided, however;* that the sum of the amount allocated to any State agency for food costs under this paragraph and paragraph (b)(1)(i) of this section shall not exceed the amount required to serve all persons potentially income-eligible for the Program under the jurisdiction of such State agency.

(iv) Twenty (20) percent of any funds remaining after the allocations required by paragraphs (b)(1)(i) and (b)(1)(ii) of this section have been completed shall be awarded for administrative and program services costs. The amounts so awarded shall be based on a percentage of the funds awarded for food costs under paragraph (b)(1)(iii) of this section, in accordance with procedures to be determined by FNS.

(2) Each State agency's funds will be provided by means of a Letter of Credit unless another funding method is specified by FNS. State agencies shall use funds to cover those allowable and documented program costs, as defined in § 246.14, which are incurred by the State agency and participating local agencies within their jurisdictions.

* * * * *

(e) *Reallocation of Funds.* Any funds recovered under paragraph (d) of this section will be reallocated by FNS through application of the formulas set forth in paragraphs (b)(1)(iii) and (b)(1)(iv) of this section.

Dated: September 3, 1986.

Robert E. Leard,

Administrator.

[FR Doc. 86-20314 Filed 9-8-86; 8:45 am]

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket Nos. AO-267-A10 and AO-254-A9]

Limes Grown in Florida, Avocados Grown in South Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rules and referendum orders.

SUMMARY: This decision would amend the Federal marketing agreements and orders for limes grown in Florida and avocados grown in South Florida. Florida lime and avocado producers will be given the opportunity to vote in separate referenda to determine if they favor the proposed changes in the respective marketing orders. The proposed amendments would: (1) Broaden handler representation on the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production area; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertain if producers favor continuation of the lime and avocado marketing orders; and (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels.

DATE: The voting period for purposes of the referenda herein ordered is September 22 through October 3, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued December 24, 1984, and published in the December 31, 1984, issue of the **Federal Register** (49 FR 50731). Notice of Recommended Decision issued September 12, 1985, and published in the September 17, 1985, issue of the **Federal Register** (50 FR 37669).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

The Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) As stated in the notice of hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposals on small business for purposes of the RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in this decision.

During the fiscal year ending April 30, 1984, 26 handlers shipped limes under M.O. 911 for fresh market with an estimated crop value of $16.0 million, and 34 handlers shipped avocados under M.O. 915 for fresh market with an estimated crop value of $12.4 million. The average value per handler for limes and avocados was $615,385 and $364,706, respectively. Given the applicable definition of a small business concern, almost all of the handlers of limes and avocados would fall within that definition. Thus, few handlers can be considered large or predominant in a relative or absolute sense.

The Agricultural Marketing Agreement Act of 1937, as amended, requires the application of uniform rules to regulated handlers. Since handlers covered under M.O.'s 911 and 915 are predominantly small businesses, the orders themselves are tailored to the size and nature of small businesses.

The testimony presented at the hearing indicated that the proposal to broaden handler representation on the lime and avocado committees would benefit smaller handlers as it would afford them a greater opportunity to serve on these committees and participate in decision making. Adding a requirement to each order that a referendum be conducted every six years beginning in 1990 to ascertain if the orders continue to have the support of growers, would benefit lime and avocado growers, most of whom are small businesses, by providing such persons an opportunity to periodically evaluate and express support or

disapproval for the orders. The testimony indicated that adding authority to the order to require the dyeing of undersized limes would benefit lime growers and handlers, as such requirements would tend to prevent the sale of small, immature, unpalatable limes which bring low returns and fail to provide consumer satisfaction, thus damaging the market for good quality fruit. Such requirements should assure marketing of acceptable sizes of limes which would benefit all levels of the marketing chain.

Preliminary Statement

On January 15, 1985, a public hearing was held on proposed further amendment of the marketing agreements, as amended, and Order Nos. 911 and 915, as amended (7 CFR Parts 911 and 915). The hearing was held in Homestead, Florida, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereafter referred to as the "act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Notice of this hearing was published in the **Federal Register** on December 31, 1984, (49 FR 50731).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on September 12, 1985, filed with the Hearing Clerk, U.S. Department of Agriculture, the Recommended Decision containing the notice of the opportunity to file written exceptions thereto. That Recommended Decision was published in the **Federal Register** on September 17, 1985 (50 FR 37669). No exceptions were filed. However, material issue 2, as contained in the Recommended Decision; required some clarification as to the basis for producer approval in referenda. Accordingly, the findings and conclusions for material issue 2, and §§ 911.64 and 915.64 are revised. In addition a revision to the language contained in § 911.48 regarding the marketing of undersized limes is made for clarity. A new paragraph is added to the end of the findings and conclusions of material issue 3 and § 911.48 is revised. In addition, miscellaneous non-substantive changes are made to the findings and conclusions for clarity.

The material issues, findings and conclusions, rulings, and general findings of the Recommended Decision set forth in the September 17, 1985, issue of the **Federal Register** (50 FR 37669), revised and supplemented as specified above, are approved and adopted and are hereby set forth in full herein.

Material Issues

The material issues of record addressed in this decision are to: (1) Broaden handler representation on the Florida Lime Administrative Committee and the Avocado Administrative Committee by limiting each handler organization to one handler member and alternate from each of the two districts within the respective production areas; (2) provide that the Secretary conduct a referendum every six years under each order starting in 1990 to ascertain if producers favor continuation of the lime and avocado marketing orders; (3) add authority in the lime order to require that handlers mark undersized limes with an approved food dye to prevent such fruit from entering regulated marketing channels; and (4) make conforming changes.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on the evidence adduced at the hearing and record thereof, are as follows:

(1) Sections 911.20 and 915.20 of the lime and avocado marketing orders should be amended to provide that no handler may be represented on the Florida Lime Administrative Committee (FLAC) and the Avocado Administrative Committee (AAC) by more than one handler member and alternate from each district within the respective production area. Presently, there are two districts for both limes and avocados. The hearing record indicates that two problems exist as to handler representation on the respective committees. Under the present order provisions, a single handler or its employees may occupy more than one member and alternate position on each committee. The order language also permits handlers, who own a number of packinghouses or entities, to have a member and alternate from each packinghouse or entity.

Instances have recently occurred where more than one handler member and alternate on such committees have been affiliated with the same handler entity. For example, in the 1984–85 season, four handler members of AAC and one handler member and three alternates on the FLAC were all employees of one hsndler. This was made possible because, in voting for nominees to serve as handler members on these committees, the votes of handlers are weighted by the volume of limes or avocados, as the case may be, shipped by the handler during the preceding calendar year. At the present time, two handlers are predominant in the handling of fresh limes and avocados grown in Florida. The current provision of the orders which allows for weighting of votes of handlers in the nomination process is to assure that the interests of the major handlers are represented in committee recommendations and deliberations. However, it was not the intent of the orders that a handler or handler organization could dominate representation on these committees by virtue of the fact that it controls a majority of the fresh shipments of limes and avocados handled. Providing that no handler may be represented on a committee by more than one handler member and alternate for each district would rectify this situation. The amendment should also broaden handler representation on the committees and permit more handlers to participate in the decision making process.

It is not uncommon in the Florida lime and avocado industries for a single handler organization to own, have substantial interest in, or control a number of packinghouses. Thus, a limitation on the number of handler members representing a single packinghouse would not necessarily accomplish the purpose of the proposed amendments. It would therefore be appropriate and consistent with record evidence to have such limitation apply to each handler organization, regardless of the number of packinghouses or entities owned, controlled by, or in which such organization has a substantial interest. Information available to the committees from reports filed by handlers is considered to be adequate to determine the officers and employees of corporations and other business units owned or controlled by these handlers.

The production areas for limes and avocados are divided into two districts for purposes of representation on these committees. The orders currently provide that no handler shall participate in the election of nominees in more than one district in any one fiscal year. The proponents testified that a handler should be allowed to be represented on the committees by one handler member and alternate in each district. In adopting the amendments regarding handler representation, which would assure that handlers who have interests in each of the producing districts are adequately represented in each district, it also would be appropriate that the orders should be amended to remove, as necessary, the current restriction on participation in election of nominees in more than one district.

At the present time, there are a sufficient number of handlers to fill all the handler member and alternate positions on each committee. However, the situation may change in the future and, though not likely, it is possible that the number of handlers could decline to the point where there is an insufficient number of handlers to fill all handler member positions. To provide for that contingency, the orders should provide for waiving of the requirement by the Secretary, that no handler or handler organization may be represented on the committee by more than one handler member and alternate from each district if an insufficient number of handlers are available to fill all handler member positions on these committees.

(2) The orders should be amended, as hereinafter set forth, to require referenda to be held relative to continuance of the orders every six years beginning in 1990.

Each order presently provides that the Secretary shall terminate the program if a majority of all producers favor termination. In addition, the act also requires that such majority has to produce more than 50 percent of the commodity for market. Since fewer than 50 percent of all producers usually participate in a referendum, it is difficult to determine producer support for termination of an order. In order to provide a basis for determining whether producers favor continuance of the orders, a new paragraph (d) should be added to §§ 911.64 and 915.64 to authorize continuance referenda. The results of such referenda should be based upon the same percentages set forth in section 8(c)(8) of the act with respect to producer approval of the issuance of a marketing agreement and order. This would require approval by two-thirds of the producers voting in the referendum or by producers who have produced two-thirds of the volume of production voted during a representative period. This is an appropriate basis for ascertaining whether lime and avocado growers favor continuation of the programs. In the event that the requisite majority of producers, by number or volume of production represented in the referenda, do not approve continuation of the orders, the Secretary should consider termination of the orders but would not be required to terminate. In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the orders and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the orders would tend to effectuate the declared policy of the act. In this regard, the Secretary may solicit input from the public through meetings, press releases, or any other means. In any event, section 8c(16)(B) of the act requires the Secretary to terminate the orders whenever the Secretary finds that a majority of all producers favor termination, and such majority produced more than 50 percent of the commodity for market. To be effective, termination of the orders should be announced on or before March 15 of the then current fiscal year. This date precedes the beginning of each committee's operation for a new fiscal year and is considered to be appropriate under the circumstances. Current paragraph (d) of both §§ 911.64 and 915.64 should be redesignated as paragraph (e).

These amendments to the orders would provide lime and avocado producers with the opportunity periodically to indicate their support for or rejection of the orders, and the periodic continuance referenda provided for would help to ensure that the programs continue to be accountable to the producers. Such authority would also obligate producers to periodically evaluate their programs and so involve them more closely in their operation. These referenda will enable the industries to determine the effectiveness of marketing orders. Currently it is felt that there is strong support for the orders, but, as the market may change in the next six years, a vote on continuance would show if support with the industries for the orders still exists. Holding such referenda is in keeping with the Department's guidelines for marketing orders.

There were two objections expressed at the hearing to the proposed amendment of §§ 911.64 and 915.64. Both objections were aimed at the six-year interval between the referenda. Since it takes an avocado tree 12 to 15 years to fully mature, some opponents felt six years is too short of a time period to protect their capital investments. Testimony revealed that some producers favor a longer time period between referenda to better reflect the time required for avocados to reach maturity. They also felt that current provisions in the orders allow the industries to ask for referenda if the need arises.

Based on evidence and testimony submitted at the hearing relative to periodic referenda, the orders should be amended to include periodic referenda every six years. A period of time greater than a six-year period is too long an interval between referenda. The market for such commodities may change significantly in a relatively brief period of time. Adopting a time period between referenda corresponding to the maturity cycle for trees would not necessarily provide the protection for investments suggested by the testimony, since new plantings occur every year. A period of six years between referenda is reasonable and is more consistent with the objectives of such referenda. Thus, it is appropriate that each order should be amended to provide that a continuance referendum be held every six years beginning in 1990.

When the avocado and lime orders were promulgated in 1954 and 1955, respectively, each order specifically provided for a continuance referendum among producers and a poll among handlers to be held two years after the programs began. The provisions in the avocado order required a producer referendum and handler poll as soon as practicable after March 1, 1956, and the lime order required a producer referendum and handler poll as soon as practicable after March 1, 1957. Such provisions are now obsolete and should be removed from §§ 911.64 and 915.64. Miscellaneous nonsubstantive changes are also made to these sections for clarity.

(3) Section 911.48 of the lime marketing order should be amended to add authority to require that handlers mark undersized limes with a food dye approved by the Food and Drug Administration (FDA) to prevent such fruit from entering regulated marketing channels.

The record indicates that there have been instances of shipments of fresh limes which have not met the minimum size regulations in effect. This has generally occurred at certain times during the year, particularly in the winter and spring months, when prices for limes are relatively high. Undersized limes tend to have very low juice content and may be immature and unsuitable for fresh consumption. The presence of undersized limes in the marketplace has a price depressing effect on shipments of better quality larger sized limes and weakens consumer confidence in the overall quality of limes.

The marketing order authorizes establishment of minimum grade and size regulations to promote orderly marketing conditions for fresh shipments of limes. Those limes failing to meet such minimum requirements are customarily processed into limeade, lime oil, and other lime products. The marketing order also requires Federal or

Federal-State inspection and certification that limes for the fresh market meet the applicable grade and size regulations in effect prior to shipment. Minimum grade and size regulations are currently in effect for Florida lime shipments.

Undersized limes are separated from marketable size limes during the packing process prior to being offered for inspection and certification. Undersized limes are customarily held for later processing into juice or conversion to other uses. The record indicates, however, that in some instances undersized limes are placed into fresh market channels contrary to marketing order requirements.

Proponents testified that marking undersized limes with an approved food dye could inhibit movement of such limes to fresh market destinations because it would be readily apparent to inspectors, handlers, and prospective buyers that any such limes so marked did not meet minimum requirements. Such marking of limes should take place at the handler's packinghouse, and only undersized limes should be so marked.

The record indicates that procedures for marking undersized limes with an FDA-approved food dye have been developed, and equipment for marking such limes is commercially available. Two methods of marking limes were discussed. One involves marking the limes with cord wicks as the fruit moves along a conveyor belt, and another involves rolling the fruit over a dye pad. However, the record also indicates that handlers should be able to select either of these methods or any other committee-approved method to mark undersized limes. Any such approval would be contingent on use of an FDA-approved food dye. It is anticipated that any method which may be used in marking the fruit can be integrated into handlers' existing packing lines without any appreciable difficulty. Disposition of undersized limes which are marked with dye into any of the outlets which customarily use such fruit would not be adversely affected by the use of such dye.

One major handler of limes conducted a research project in 1984, under the auspices of the Florida Lime Administrative Committee, to determine the feasibility of marking undersized limes with a food dye meeting FDA criteria. The results of the project were reported to the committee at the FLAC meeting on August 8, 1984. The results of the project indicate that marking such limes is practical and could be carried out at minimal cost.

The Dade County Supervisor of the State and Federal Inspection Service testified that that agency does not anticipate any problems with the proposal to dye undersized limes.

One witness commented that the lime dyeing requirements may be needed throughout the lime shipping season to accomplish the stated purposes. Another witness indicated that the diversion of undersized limes to fresh market tends to occur only during part of the season and any marking requirements should be made effective only during designated periods. In order that such marking requirements may be implemented when needed, the Secretary, upon the recommendations submitted by the committee or from other available information, should prescribe the periods when limes must be marked with an approved food dye and the terms and conditions under which such marking shall be performed.

Miscellaneous changes are being made to § 911.48 for clarity. Such changes would more accurately reflect the purposes for which the amendment to the order would be made.

(4) A proposal in the notice of hearing by the Department was that consideration be given to making such other changes in the orders as may be necessary to make the orders conform to any amendments that may result from this proceeding This proposal was supported at the hearing without opposition, and changes to §§ 911.22 and 915.22 as discussed in material issue 1 are incorporated into the order.

Rulings on Briefs of Interested Persons

At the conclusion of the hearing, the Administrative Law Judge fixed February 4, 1985, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs based on the evidence received at the hearing.

No briefs were filed.

Rulings on Exceptions

The Notice of Recommended Decision was published in the September 17, 1985, issue of the **Federal Register** (50 FR 37669). The final date for interested persons to file written exceptions was October 17, 1985.

No exceptions were filed.

Marketing Agreements and Orders

Annexed hereto and made a part hereof are four documents entitled, respectively, "Marketing Agreement, as Further Amended, Regulating the Handling of Limes Grown in Florida," "Order Amending the Order, as Amended, Regulating the Handling of Limes Grown in Florida," "Marketing Agreement, as Further Amended, Regulating the Handling of Avocados Grown in South Florida," and "Order Amending the Order, as Amended, Regulating the Handling of Avocados Grown in South Florida." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision, except the annexed marketing agreements, be published in the **Federal Register.** The regulatory provisions of the marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the annexed orders which are published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted for each marketing order in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*) to determine whether the issuance of the annexed orders as amended and as hereby proposed to be further amended, regulating the handling of limes and avocados grown in Florida, are approved or favored by the respective producers as defined under the terms of the orders, who during the representative period were engaged in the production of limes or avocados in the aforesaid production areas. The representative period for each such referendum is hereby determined to be April 1, 1985, through March 31, 1986.

The agents of the Secretary to conduct such referenda are hereby designated to be John R. Toth, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 9, Lakeland, Florida 33802; and Kenneth G. Johnson and Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250.

List of Subjects in 7 CFR Parts 911 and 915

Marketing Agreements and Orders, Limes, and Avocados.

Signed at Washington, DC, on September 2, 1986.

Karen K. Darling,

Deputy Assistant Secretary, Marketing and Inspection Services.

Order Amending the Order as Amended, Regulating the Handling of Limes Grown in Florida[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of

Continued

and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to 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 in Homestead, Florida, on January 15, 1985, upon proposed amendments to the marketing agreement, as amended, and to Order No. 911, as amended, (7 CFR Part 911), regulating the handling of limes grown in Florida.

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

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of limes grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable consistent with carrying out the declared policy of the act;

(4) There are no differences in the production and marketing of limes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of limes grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date thereof, all handling of limes grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Deputy Administrator on September 12, 1985, and published in the **Federal Register** on September 17, 1985 (50 FR 37669), shall be and are the terms and provisions of this order amending the order, except for the revisions in § 911.64 specified in this decision.

PART 911—LIMES GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 911 continues to read as follows.

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

2. Section 911.20 is amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 911.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided,* That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

3. Section 911.22 is amended by revising paragraph (b)(3) to read as follows:

§ 911.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler is entitled to cast only one vote for each nominee to be elected in the district in which such handler handles limes. Each vote shall be weighted by the volume of limes shipped by such handler during the immediately preceding twelve-month period, January through December.

4. Section 911.48 is amended by adding a proviso at the end of paragraph (a)(1) to read as follows:

§ 911.48. Issuance of regulations.

(a) * * *

(1) * * * *Provided,* That such regulations may require that limes not meeting minimum size requirements established under this section be marked with a Food and Drug Administration approved food dye as a necessary and incidental safeguard to prevent such limes from entering fresh marketing channels for regulated limes.

* * * * *

5. Section 911.64 is amended by revising paragraph (c), redesignating current paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 911.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the limes produced within the production area: *And provided further,* That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, and at such time every sixth year thereafter, to ascertain whether continuance of this part is favored by lime producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of limes in the production area: *Provided,* That termination of this part shall be effective only if announced on or before March 15 of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

Order Amending the Order as Amended, Regulating the Handling of Avocados Grown in South Florida[1]

Findings and determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations made in connection with the issuance of the order and each of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed except insofar as such findings and determinations may be in conflict

practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to 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 in Homestead, Florida, on January 15, 1985, upon proposed amendments to the marketing agreement, as amended, and to Order No. 915, as amended, (7 CFR Part 915), regulating the handling of avocados grown in South Florida.

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

(1) The said order, as amended and as hereby further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(2) The said order, as amended and as hereby further amended, regulates the handling of avocados grown in the designated production area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The said order, as amended and as hereby further amended, is limited in its application to the smallest regional production area that is practicable consistent with carrying out the declared policy of the act;

(4) The said order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to differences in the production and marketing of avocados; and

(5) All handling of avocados grown in the designated production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That, on and after the effective date thereof, all handling of avocados grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order, as amended, and as hereby further amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Deputy Administrator on September 12, 1985, and published in the **Federal Register** on September 17, 1985 (50 FR 37669), shall be and are the terms and provisions of this order amending the order, except for the revisions in § 915.64 specified in this decision.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

6. The authority citation for 7 CFR Part 911 continues to read as follows:

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

7. Section 915.20 is amended by adding one sentence at the end of paragraph (a) to read as follows:

§ 915.20 Establishment and membership.

(a) * * * No handler or handler organization shall be permitted to have more than one handler member and alternate on the committee from each district: *Provided,* That this requirement may be waived by the Secretary in the event that there are not enough persons available to be nominated and selected to serve on the committee.

* * * * *

8. Section 915.22 is amended by revising paragraph (b)(3) to read as follows:.

§ 915.22 Nomination.

* * * * *

(b) * * *

(3) Only handlers may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote for each nominee to be elected in the district in which such handler handles avocados. Each vote shall be weighted by the volume of avocados shipped by such handler during the immediately preceding twelve-month period, January through December.

9. Section 915.64 is amended by revising paragraph (c), redesignating current paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 915.64 Termination.

* * * * *

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the producers: *Provided,* That such majority has, during a representative period determined by the Secretary, produced more than 50 percent of the volume of the avocados produced within the production area: *And provided further,* That such termination shall be announced by March 15 of the then current fiscal year.

(d) The Secretary shall conduct a referendum as soon as practicable after the end of the fiscal year ending March 31, 1990, and at such time every sixth year thereafter, to ascertain whether continuance of this part is favored by avocado producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of avocados in the production area: *Provided,* That termination of this part shall be effective only if announced on or before March 15 of the then current fiscal year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

[FR Doc. 86–20181 Filed 9–8–86; 8:45 am]
BILLING CODE 3410–02–M

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7 CFR Part 981

Handling of Almonds Grown in California; Change in Administrative Rules and Regulations Governing Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Notice is hereby given of a proposal to change the quality control provisions of the administrative rules and regulations established under the Federal marketing order for California almonds to increase the tolerance for inedible almonds from zero percent to three percent. The change would allow more almonds to be shipped in view of a projected short almond crop while maintaining acceptable quality standards.

DATE: Comments must be received by September 19, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2085, South Building, Washington, DC 20250. Comments should reference the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS,

USDA, Washington, DC 20250; telephone: (202) 447–5697.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be 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 determined that this action would 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 business 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 acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 70 handlers of California almonds under the marketing order for almonds grown in California will be subject to regulation during the course of the current season and that the great majority of these firms may be classified as small entities. This proposal would increase the tolerance for inedible almonds from zero percent to three percent. An inedible almond is an almond kernel with any defect scored as serious damage or damage due to mold, gum, shrivel, or brown spot as defined in the U.S. Standards for Grades of Shelled Almonds or which has embedded dirt or other foreign material not easily removed by washing. This action would benefit both producers and consumers by allowing more almonds to be shipped in view of a projected short almond crop while maintaining acceptable quality standards not only for the current crop but also for future crop years.

It has been determined that this proposal should be published with less than a 30-day comment period. The change proposed by this action should apply to 1986 crop almonds, which handlers are currently receiving and processing. Therefore, handlers need to know as soon as possible what the basis will be for determining their inedible disposition obligation so that they can plan their processing and marketing operations accordingly.

This proposal would revise § 981.442 of Subpart—Administrative Rules and Regulations issued pursuant to the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order". Section 981.442 is issued pursuant to § 981.42(a) of the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on a recommendation of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order, and other information.

Section 981.42(a) of the almond order provides that each handler shall cause to be determined through the inspection agency and at handler expense the percent of inedible kernels in each variety received and shall report the determination to the Board. Section 981.442(a)(4) of the administrative rules and regulations provides that the weight of inedible kernels reported to the Board in excess of zero percent for each variety shall constitute a handler's disposition obligation. This weight must be accumulated by the handler during processing and delivered to the Board or Board-accepted crushers, feed manufacturers, feeders, or dealers in nut wastes.

It is proposed to revise § 981.442(a)(4) so that the quantity of inedible kernels in each variety in excess of three percent, instead of the current zero percent, shall constitute a handler's disposition obligation. The Board believes that this change would maintain acceptable quality standards while allowing more almonds to be shipped in view of a projected short almond crop.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds.

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. It is proposed to revise § 981.442 Quality control by changing, in paragraph (a)(4), "zero percent" to "three percent" to read as follows:

§ 981.442 Quality control.

(a) * * *

(4) The weight of inedible kernels in excess of three percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. * * *

* * * * *

Dated: September 2, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division.

[FR Doc. 86–20237 Filed 9–8–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1139

Milk in the Lake Mead Marketing Area; Termination of Proceeding on Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding on proposed suspension of rules.

SUMMARY: This action terminates a proceeding that was initiated to consider a proposal to continue the suspension of certain diversion provisions of the Lake Mead Federal milk order. The suspension was requested by Lake Mead Cooperative Association, which supplies some of the market's fluid milk needs and handles most of the market's reserve supplies

An evaluation of data, views, arguments, and other pertinent information available leads to the conclusion that no further action should be taken on the request, and the proceeding is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior Documents in this proceeding:

Notice of Hearing: Issued February 6, 1986; published February 11, 1986 (51 FR 5070).

Notice of Proposed Suspension: Issued July 29, 1986; published August 1, 1986 (51 FR 27555).

This termination of proceeding is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*). This proceeding was initiated by a notice of rulemaking published in the **Federal Register** on August 1, 1986 (51 FR 27555) concerning a proposed suspension of certain diversion provisions of the Lake Mead Federal milk order. Interested persons were invited to comment on the proposal in writing by August 8, 1986. The proposal would have continued suspension of the provisions of the order that limit the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order, and that require at least

one day's production of each producer's milk to be received each month at a pool plant.

Statement of Consideration

The proposed suspension would have made inoperative the provisions of the Lake Mead order that limit the amount of milk not needed for fluid (bottling) use that may be delivered directly from farms to nonpool manufacturing plants and still be priced under the order to 50 percent of the milk pooled by a cooperative association during the months of March through July, and 40 percent in other months. Also proposed to be suspended was the "touch-base" requirement that at least one day's production of each producer's milk be received each month at a pool plant. Lake Mead Cooperative Association, which supplies some of the market's fluid needs and handles much of the market's reserve milk supply, had requested that suspension of the provisions be continued until a proceeding to consider the proposed merger of the Lake Mead and Great Basin orders has been completed. The provisions proposed to be suspended have been suspended since February 1986. Continued, suspension of the requested language would allow unlimited amounts of a cooperative's member milk supply to continue to be diverted to nonpool plants and remain eligible to share in the marketwide pool.

A public hearing was held on March 18–20, 1986, in Salt Lake City, Utah, to consider a merger of the Great Basin and Lake Mead orders. The cooperative testified that the pooling provisions contained in the proposed merged order would offer a long-term solution to the problems of operating within the order's present diversion limits. The cooperative requested that suspension of the order's diversion limits and "touch-base" requirement be continued until the hearing proceeding is completed to assure that all of the member milk of the cooperative is eligible to participate in marketwide pooling and pricing under the Lake Mead Federal order. In its request the cooperative contended that the hearing record supports such action.

The record of the public hearing shows that milk production pooled under the Lake Mead order during 1985 increased by approximately 23 percent, while producer milk used in Class I increased only 5 percent. The record also shows that the cooperative would not have been able to pool all of the milk of its member producers in the absence of the prior suspension of the provisions in question without resorting to uneconomic and inefficient milk hauling and handling. However, objections to be proposed suspension were filed on behalf of Rockview Dairies, Inc. (Rockview), a nonmember producer shipping milk to Anderson Dairy from two farms.

The comments filed on behalf of Rockview stated that while the previous suspension had been in effect, Lake Mead Cooperative Association (LMCA) had pooled under the Lake Mead order milk from over 200 producers who had never previously supplied milk to the market. Rockview claimed that the additional volume of milk resulted in a decrease in the percentage of milk used in Class I sales by approximately 20 percentage points, and, correspondingly, caused an unwarranted decline in the prices paid to producers under the Lake Mead order.

Comments filed by Lake Mead Cooperative Association stated that the cooperative has performed the function of supplying the reserve needs of the market and removing excess milk from the market in a responsible manner since before the order became effective in 1973. LMCA stated that the necessity of transporting excess milk supplies considerable distances from the market has been costly, and entirely at the expense of the cooperative. None of the other market participants, according to the cooperative, has performed any service necessary to balance the market's reserve supply. The cooperative claimed that in addition to marketing the reserve milk supplies pooled under the order, it also provided the assurance that, if needed, milk supplies would be obtained from other markets as well. Therefore, the cooperative stated, other marketing areas have been carrying reserves of milk for the Lake Mead market.

LMCA pointed out that the increase in the number of producers pooled under the order did not necessarily represent increased volumes of milk pooled. The cooperative attributed the increase in number of producers to changes in the arrangements for marketing producers' milk for the purpose of effecting savings in transportation costs rather than for the purpose of disturbing the marketing of milk under the Lake Mead order. The association stated that the milk of many of its member producers had been pooled under the Lake Mead order in recent months, but that only a small share of many of the producers' total production had been pooled under the order. LMCA noted that the amount of milk available to the cooperative to pool might be perceived as affording the potential for the cooperative to dilute blend prices by pooling excessive milk supplies, but stated that the association has acted responsibly, and would continue to do so.

The cooperative attributed the increase in its member producer milk pooled under the Lake Mead order to an attempt to maintain its traditional percentage share of the market in response to an increase in the volume pooled under the order by Rockview Dairy, a nonmember producer in California. LMCA's view is that even with the additional milk the cooperative has pooled under the Lake Mead order, LMCA has a lost part of its share of the market's Class I sales because of the additional supplies of milk originating outside the historical supply area for the market.

Both Rockview Dairy and Lake Mead Cooperative Association included data supporting their views with the comments filed in response to the notice of proposed suspension. Much of the data submitted by Rockview described the sources of milk pooled under the Lake Mead order by county for the months preceding and during the February through July suspension of the diversion limits and "touch-base" requirement of the order. The statistics describing producer milk by county show clearly that a large volume of the milk pooled under the Lake Mead order during the months of February through May 1986 was not part of the regular supply of producer milk for the Lake Mead milk market. The additional volumes pooled from central and northern Utah counties were not offset by diminished volumes from southern Utah and Nevada. While these additional sources of milk may represent potential reserve supplies for the Lake Mead market, the data submitted show no evidence that they have ever served as actual reserve supplies. Indeed, the record of the public hearing and the data in the cooperative's request for suspension show clearly that the Lake Mead market's regular reserve supplies of milk in southern Utah have been exceeding the fluid needs of the market.

It is apparent that the large increases in milk supply, which include substantial increases in California-produced milk, resulted in a diminished percentage of producer milk used in Class I and a corresponding decline in the blend price to producers under the order. Although it is true, as LMCA observed, that the Lake Mead blend price never fell below the Great Basin blend price during the period in question, it is true only for the blend prices at Las Vegas and Salt Lake City. At locations where the additional milk

from central and northern Utah was actually received the traditional higher blend prices adjusted for those locations that were payable to producers under the Lake Mead order fell below the prices payable at those locations to producers pooled under the Great Basin order.

Lake Mead Cooperative Association indicated in its comments that the interrelated nature of the Lake Mead and Great Basin marketing areas is becoming more pronounced as fluid sales distributed within the Lake Mead area are increasingly distributed from milk plants regulated under the Great Basin order. The cooperative cited two examples of route dispositions in the Lake Mead area being supplied with fluid milk products processed by Great Basin—regulated handlers. One instance cited involved the closing of a fluid milk plant formerly regulated under the Lake Mead order. It is reasonable to suppose that the necessary reserve milk supplies formerly associated with these sales under the Lake Mead order would not become associated with the Great Basin order, which is deriving the benefit of the added Class I sales. Furthermore, in view of these marketing changes and the recent suspension of the diversion limits and "touch-base" requirements of the Great Basin order, there is no reason that any milk which is not eligible to be pooled within the limits of the Lake Mead order cannot be pooled under the Great Basin order.

Because of the changes in marketing practices, described above, since the suspension action was taken, the request for a continued suspension of the Lake Mead milk order's diversion limits and "touch-base" requirement is hereby denied and the proceeding is terminated.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1139 continues to read as follows:

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

Signed at Washington, DC on: August 29, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–20299 Filed 9–8–86; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Reopening of Public Comment Period on Proposed Amendment to the Virginia Permanent Regulatory and Abandoned Mine Land Reclamation Programs

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

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the reopening of the public comment period on the substantive adequacy of a proposed amendment and subsequent revisions submitted by the Commonwealth of Virginia as a modification to its permanent regulatory and abandoned mine land reclamation programs (hereinafter referred to as the Virginia programs) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of new regulations which, except for the regulation of certain existing operations, would completely replace those now implementing Chapter 19, Title 45.1 of the Code of Virginia, the Virginia Coal Surface Mining Control and Reclamation Act of 1979, as amended.

This notice sets forth the times and locations that the Virginia programs and proposed amendment will be available for public inspection and the comment period during which interested persons may submit written comments on the proposed amendment.

DATES: Written comments from the public not received by 4:00 p.m. on September 24, 1986, will not necessarily be considered in the decision process.

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219.

Copies of the Virginia programs, the proposed modifications to the programs, and the administrative record of the Virginia programs are available for public review and copying at the OSMRE offices and the State regulatory authority office listed below, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment and subsequent modifications by contacting the OSMRE Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Office of Surface Mining Reclamation and Enforcement, Lebanon Area Office, Flannagan and Carroll Streets, P.O. Box 487, Lebanon, Virginia 24266, Telephone: (703) 889–4032

Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5315, Washington, DC 20240, Telephone: (202) 343–5492

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219, Telephone: (703) 523–2925.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior conditionally approved the Virginia programs on December 15, 1981. Information pertinent to the general background, revisions, modifications and amendments to the permanent program submissions, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia programs can be found in the December 15, 1981 **Federal Register** (46 FR 61085–61115). Subsequent actions concerning proposed amendments and the conditions of approval are codified at 30 CFR 946.11, 946.12, 946.13 and 946.15.

II. Submission of Amendment

In accordance with the provisions of 30 CFR 732.17 (d) through (f), on March 25, 1985, the Director notified Virginia of the changes necessary to ensure that the approved regulatory program was no less effective than SMCRA and its implementing regulations, as revised since December 15, 1981, when the program was originally approved. To comply with this letter and to meet other needs and State objectives, the Commonwealth elected to undertake a complete rewrite of the regulations

governing its permanent regulatory and abandoned mine land reclamation programs.

By letter of November 8, 1985, Virginia submitted these regulations to OSMRE for review as a program amendment (Administrative Record No. VA 571). The proposed regulations, consisting of Parts 480–03–19.700 through 480–03–19.882, would replace Parts V700 through V882 of the currently approved regulations, although the current performance standards of Subchapters VK and the current permit application content requirements of Subchapter VG would remain in effect for mines operating under existing permits.

OSMRE announced receipt of this proposed amendment in the December 20, 1985 **Federal Register** (50 FR 51885–51886), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on its substantive adequacy. No comments were received by January 21, 1986, the close of the comment period, and, since no one requested an opportunity to testify, the public hearing scheduled for January 8, 1986 was cancelled.

By letter of April 22, 1986 (Administrative Record No. VA 574), OSMRE notified Virginia of certain areas (the definitions of "affected area", "adverse physical impact", "fragile lands", "historic lands" and "valid existing rights"; permit application/requirements with respect to processing times, lands unsuitable determinations, standards for approval of existing structures, ground water monitoring frequency, sites eligible for listing on the National Register of Historic Places, and subsidence control plans; award of costs and attorney's fees; sampling techniques for evaluation of revegetation success; success standards for cropland; consultation with forestry and wildlife agencies on certain revegetation success standards; augumentative practices; the static safety factor for backfilled steep slopes; spillway requirements for sedimentation ponds; and certain aspects of the administrative and judicial review process) in which the proposed amendment appeared to be less effective than the Federal regulations or in conflict with the decisions in *In re: Permanent Surface Mining Regulation Litigation II* (Civil Action 79–1144, D.D.C. 1984 and 1985). By letter dated May 27, 1986 (Administrative Record No. VA 575) Virginia responded to these concerns, which were further discussed at a May 28, 1986 meeting of OSMRE and Virginia personnel. The minutes of this meeting have been entered in the Virginia administrative record as Document No. VA 576. By letter dated August 14, 1986 (Administrative Record No. VA 577), Virginia submitted additional proposed regulatory changes, policy statements and other clarifying materials designed to address all OSMRE concerns.

Therefore, in accordance with the provisions of 30 CFR 731.17 and 884.17, OSMRE is now seeking comment on whether the amendment, as proposed on November 8, 1985, and modified on August 14, 1986, fully satisfies the criteria for approval of State program amendments set forth at 30 CFR 732.15, 732.17, 884.14 and 884.15. If approved, the proposed amendment will become part of the Virginia permanent regulatory and abandoned mine land reclamation programs.

III. Procedural Determinations

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

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

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

3. *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. 3507.

List of Subjects in 30 CFR Part 946

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

Dated: September 3, 1986.

Brent Walquist,

Assistant Director, Program Operations.

[FR Doc. 86–20270 Filed 9–8–86; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS–42043B; FRL–3042–6]

1,2-Dichloropropane; Proposed Test Rule; Proposed Testing Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that: (1) Pharmacokinetics (absorption, distribution, metabolism, and excretion) testing be conducted with 1,2-dichloropropane (CAS Number 78–87–5), (2) certain Toxic Substances Control Act (TSCA) test guidelines be utilized as the test standards for required studies for 1,2-dichloropropane, and (3) test data be submitted within specified time frames. Elsewhere in this issue of the **Federal Register**, EPA is also issuing a final test rule establishing certain testing requirements under section 4(a) of the Toxic Substances Control Act (TSCA) for manufacturers and processors of 1,2-dichloropropane.

DATES: Submit written comments on or before October 24, 1986. If persons request time for oral comment by October 9, 1986, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting, see Unit VI of this preamble.

ADDRESS: Submit written comments, identified by the document control number (OPTS–42043B), in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE–G004, 401 M Street SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Room E–543, 401 M Street SW., Washington, DC 20460. Toll Free (800–424–9065). In Washington, DC: (554–1404). Outside the USA: (Operator–202–554–1404).

SUPPLEMENTARY INFORMATION: The EPA is proposing that pharmacokinetic testing be conducted with 1,2-dichloropropane (DCP) and is proposing test standards for DCP testing, including time frames for test data submission.

I. Background

Section 4(e) of TSCA (Pub. L. 94–469, 90 Stat. 2003; 15 U.S.C. 2601) established an Interagency Testing Committee (ITC) to recommend to EPA a list of chemicals to be considered for testing under section 4(a) of the Act.

The ITC designated 1,2-dichloropropane (DCP) for priority consideration in its Third Report published in the **Federal Register** on October 30, 1978 (43 FR 50630). The ITC recommended that 1,2-dichloropropane be tested for the following health effects: Carcinogenicity, mutagenicity, teratogenicity, and other toxic effects (with emphasis on reproductive and neurological effects). The ITC also recommended that an epidemiological study be performed. Also, the following environmental effects tests were recommended by the ITC: Chronic toxicity to fish and invertebrates, effects on avian and mammalian reproduction and behavior, and effects on soil invertebrates and terrestrial insects.

On January 6, 1984 (49 FR 899), the EPA issued a proposed test rule for DCP under section 4(a)(1)(B) of TSCA. The Agency proposed that manufacturers and processors of DCP conduct the following health and environmental effects tests for the chemical: Neurotoxicity (inhalation); mutagenic effects (chromosomal aberrations and gene mutation); teratogenicity (inhalation); reproductive effects (two-generation via inhalation); mysid shrimp acute toxicity (flow-through conditions); algal toxicity (marine and freshwater); and daphnia (Daphnia magna) and mysid chronic toxicity. The proposed test rule for DCP did not include pharmacokinetic testing of DCP.

Since the test rule for DCP was proposed, new information on the type and extent of human exposure has been obtained. Although the inhalation route of exposure is still of concern to the Agency because of occupational and general population exposure, several factors indicate the oral rather than inhalation (as proposed) route of exposure to be more appropriate for conducting the health effects tests: (1) The elimination of consumer exposure because Dow Chemical Co. no longer sells DCP for use in paint strippers, paint, varnish, and furniture finish removers; (2) the exposure of over 800,000 people in the city of Philadelphia, PA to drinking water contaminated with DCP; (3) concerns of the National Toxicology Program over DCP in drinking water; and (4) potential concerns of EPA's Office of Solid Waste and the Office of Emergency and Remedial Response over DCP in ground water. Therefore, the Agency is proposing at this time that health effects testing be conducted via the oral route of administration, and that an oral-inhalation comparative pharmacokinetic study be performed with DCP. This study will allow the Agency to reasonably predict and compare the distribution and metabolism of DCP in the body as a result of oral or inhalation exposure (See Unit III).

Elsewhere in this issue of the **Federal Register**, EPA is promulgating a Phase I final rule pursuant to TSCA section 4 that establishes certain testing requirements for manufacturers and processors of 1,2-dichloropropane (DCP). That Phase I rule specifies the following testing requirements for DCP: (1) Nervous system effects testing including a neuropathology test, a motor activity test, and a functional observation battery; (2) mutagenic effects (chromosomal aberrations); (3) developmental toxicity; (4) a 2-generation reproductive effects test; (5) mysid shrimp acute toxicity; (6) algal toxicity; and (7) daphnid and mysid chronic toxicity.

Once the Phase I test rule becomes effective, manufacturers and processors of DCP would normally be required, under the existing two-phase process, to submit proposed study plans and schedules for both the initiation of testing and the submission of study data in accordance with 40 CFR 790.50. EPA would review the submitted study plans and schedules and would thereafter issue them (with any necessary modifications) in a Phase II test rule proposal. That proposal would request comment on the ability of the proposed study plans to ensure that the resulting data would be reliable and adequate. After evaluating and responding to public comment, EPA would adopt, with any necessary modifications, the study plans and reporting schedules, in a Phase II final rule as the required test standards and data submission deadlines in 40 CFR 790.52.

However, in the case of the DCP test rule, which was initiated under the two-phase process, EPA has now decided to propose the relevant TSCA test guidelines in this document as the test standards (see Unit IV) and at the same time issue the DCP final rule. In addition, EPA is proposing that the data from the required studies be submitted within certain time periods. These time periods will serve as the data submission deadlines required by TSCA section 4(b)(1) (see Unit V). The reasons for this change in the test rule process for DCP are discussed below.

II. Change in the Test Rule Development Process

A. Test Standards and Data Submission Deadlines

TSCA section 4(b)(1) specifies that test rules shall include standards for the development of test data ("test standards") and deadlines for submission of test data. Under a two-phase process utilized by EPA since 1982 (March 26, 1982; 47 FR 13012) and formally adopted in the fall of 1984 (October 10, 1984; 49 FR 39774), test standards and data submission deadlines were to be adopted during the second phase of the rulemaking process. Upon issuance of the Phase I final rule, which established the effects and characteristics for which a given chemical substance must be tested, persons subject to the rule would be required by a specified date to submit study plans detailing the methodologies and protocols they intended to use to perform the required tests. Such study plans were to include proposed schedules for the initiation and completion of testing and submission of test data in accordance with 40 CFR 790.50 (a) and (c). The Agency would then publish these study plans and solicit public comment. In the second phase, after consideration of public comment, the Agency would promulgate the Phase II final rule adopting the study plans (with any necessary modifications) as the test standards for the development of test data and deadlines for submission of test data.

In December 1983, the Natural Resources Defense Council (NRDC) and the Industrial Union Department of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) filed an action under TSCA section 20 challenging, among other things, the use of the two-phase process. In an August 23, 1984 Opinion and Order, the U.S. District Court for the Southern District of New York found that utilization of the two-phase rulemaking process was permissible. However, the Court also held that the Agency was subject to a standard of promulgating test rules within a reasonable time frame (*NRDC v. EPA*, 595 F Supp. 1255 (S.D.N.Y. 1984)).

Subsequent to the issuance of that Opinion, the Agency decided that in order to expedite the development of section 4 test rules, EPA would utilize a single-phase rulemaking process for most test rules. In the notice announcing this decision, published in the **Federal Register** of May 17, 1985 (50 FR 20652), EPA stated that the single-phase approach offers a number of advantages

over the two-phase process. In this single-phase approach, the Agency proposes (in one notice) not only the effects for which testing will be required but also proposes pertinent TSCA or other appropriate guidelines as the test standards and time frames for the submission of test data. After receiving and evaluating public comment on the proposed testing requirements, test guidelines, and data submission deadlines, EPA promulgates a final rule.

This single-phase approach shortens the rulemaking period and expedites the initiation of required testing relative to the two-phase rulemaking process. The single-phase process also eliminates the requirement under the two-phase approach for industry to submit test protocols for approval. Moreover, by allowing commenters to submit alternative testing methodologies during the comment period, the single-phase approach preserves the flexibility of the two-phase process.

These same advantages, i.e., expedited initiation of testing and the elimination of study plan submission requirements for persons subject to a Phase I rule, are factors EPA considered in deciding to modify the rulemaking process for DCP. By proposing both pertinent TSCA test guidelines as the test standards and data submission deadlines at the time of issuance of the Phase I final rule, EPA expects that the Phase II final rule will be issued 6 months sooner than would occur if the usual two-phase process was followed. Thus, required testing will be initiated on an expedited basis. In addition, for each of the required tests for DCP, appropriate TSCA test guidelines are available (Unit III). Thus, EPA believes that there is no need for manufacturers and processors of DCP to develop proposed study plans for EPA and public review during the rulemaking process. The pharmacokinetics test for DCP is being proposed under the single-phase test rule development process.

B. Modifications to Requirements Under a Phase I Final Rule for 1,2-Dichloropropane

As indicated in Unit II.A, persons subject to the DCP Phase I final rule and who have notified EPA of their intent to test would normally be required to submit proposed study plans and proposed data submission deadlines within a specified time of the final rule's effective date in accordance with 40 CFR 790.50(a) and (c). However, because EPA is proposing certain TSCA guidelines as the test standards, and data submission deadlines, persons subject to the Phase I final rule are not required at this time to submit study plans for the required testing or proposed dates for the initiation and completion of that testing. Manufacturers and processors of DCP are invited to comment on both the proposed test standards and the data submission deadlines. The Agency will consider these comments in issuing the Phase II final rule.

However, persons subject to the Phase I final rule for DCP are still required to submit notices of intent to test or exemption applications in accordance with 40 CFR 790.45. Moreover, once the test standards and reporting deadlines are promulgated in the Phase II final rule, those persons who have notified EPA of their intent to test must submit specific study plans (which adhere to the promulgated test standards) no later than 45 days before the initiation of each required test, 40 CFR 790.50(a)(1).

III. Proposed Test Rule

A. Data Contained in the Final Phase I Test Rule

The final Phase I test rule for 1,2-dichloropropane, appearing elsewhere in this issue of the **Federal Register**, contains (1) DCP's profile, (2) EPA's previous findings with respect to DCP, (3) a description of the persons who would be required to conduct the proposed health and environmental effects tests, and (4) a description of the test substance to be used for conducting the tests.

Since the proposed test rule for DCP was issued, new information on the production, use, and environmental distribution of DCP has become available. The sources of this information include public comment on the proposed rule, including current production and use information from the only U.S. producer of isolated DCP (Dow Chemical Company), and recent comprehensive monitoring data for the chemical in the vicinity of a major industrial user of DCP in Philadelphia, PA.

Testing of DCP was proposed under TSCA section 4(a)(1)(B). In support of this finding, the Agency contracted with Versar, Inc. to prepare a document assessing human and environmental exposure to DCP (Ref. 1). The document examined exposures as a result of TSCA-regulated environmental releases, including monitoring data from the Integrative Environmental Management Project for Philadelphia, PA; releases and exposures related to the pesticidal use of DCP were not investigated. A summary of this information is found in Unit IV of the final Phase I test rule for DCP.

B. Findings

EPA is basing its proposed oral-inhalation comparative pharmacokinetic testing requirement on the authority of section 4(a)(1)(B) of TSCA. EPA finds that DCP is produced and released to the environment in substantial quantities, and that the manufacture, processing, and use may result in substantial human exposure to this chemical. The detailed basis for this finding is found in Unit IV.A. of the final Phase I test rule for DCP, published elsewhere in this issue of the **Federal Register.**

The EPA also finds that there are insufficient data to reasonably predict and compare the distribution and metabolism of DCP in the body as a result of oral or inhalation exposure due to DCP's manufacture, processing, and use, and that an oral-inhalation comparative pharmacokinetic study of DCP is necessary to develop such data.

IV. Proposed Test Standards

EPA is proposing at this time that an oral-inhalation comparative pharmacokinetics test (absorption, distribution, metabolism, and excretion) be conducted, according to the pharmacokinetic guideline under 40 CFR 798.7475, published in the **Federal Register** proposed rule for cumene (50 FR 46104; November 6, 1985), a copy of which is in the docket for DCP, and as modified in § 798.1550(c)(5)(ii)(B). The proposed pharmacokinetic study will allow the Agency to reasonably predict and compare the distribution and metabolism of DCP in the body as a result of oral or inhalation exposure.

In the final Phase I test rule for DCP, the required testing includes neurotoxicity, mutagenic effects (chromosomal aberrations), developmental effects, reproductive effects, mysid shrimp acute toxicity, algal acute toxicity, and daphnid and mysid chronic toxicity.

The required nervous system effects testing falls into three categories. The data from the neuropathology testing will detect and characterize morphologic changes in the nervous system, if and when they occur, and determine a no-effect level for such changes.

Motor activity has been extensively studied in both behavioral pharmacology and behavioral toxicology (Refs. 2 through 5), through the use of rodents. The history of the development of psychoactive drugs indicates that the motor activities of rats and mice are predictive of psychoactive potential in humans (Refs. 4 through 7).

The functional observational battery is a non-invasive procedure designed to detect gross functional deficits in young adult rodents resulting from exposure to chemicals and to better quantify neurotoxic effects detected in other studies. While this battery of tests is not intended to provide a detailed evaluation of neurotoxicity, it is designed to be used in conjunction with neuropathologic evaluation and/or general toxicity testing. EPA is proposing that the neuropathology, motor activity, and functional observational battery testing be conducted according to 40 CFR 798.6400, 798.6200, and 798.6050, respectively.

EPA is proposing that the required dominant lethal assay be conducted for DCP according to 40 CFR 798.5450. Dominant lethal effects cause embryonic or fetal death. Induction of a dominant lethal event after exposure to a chemical substance indicates that the substance has affected germinal tissue of the test species. Dominant lethals are generally accepted to be the result of chromosomal damage (structural and numerical anomalies) but gene mutations and toxic effects cannot be excluded. As discussed in the DCP Phase I final test rule, available information for a structurally similar chemical, 1,2-dibromo-3-chloropropane (DBCP), indicates that mice are not sensitive to DBCP in the dominant lethal assay. The rat is therefore proposed as the test species for this assay.

The required developmental toxicity study is designed to determine the potential of DCP to induce structural and/or other abnormalities in the fetus which may arise from exposure of the mother during pregnancy. These developmental effects include permanent structural or functional abnormalities that occur during the period of embryonic development. EPA is proposing that the developmental toxicity study be conducted according to 40 CFR 798.4900.

The required two-generation reproductive effects testing is designed to provide general information concerning the effects of DCP on gonadal function, conception, parturition, and the growth and development of the offspring. The study may also provide information about effects of DCP on neonatal morbidity, mortality, and preliminary data on teratogenesis. EPA is proposing that the reproductive effects testing be conducted according to 40 CFR 798.4700.

EPA is proposing that the required health effects tests be conducted via the oral route of exposure, because the human exposure pattern described by the new information (see Unit III. B.) has led EPA to believe that the oral route of administration is now the most appropriate for conducting the required health effects tests.

The algal acute toxicity test is designed to develop data on the phytotoxicity of DCP to freshwater and marine algae. EPA is proposing that testing using systems that control for DCP evaporation be conducted with marine and freshwater algae according to 40 CFR 797.1050.

For the purpose of developing data on the acute toxicity of DCP to aquatic invertebrates, EPA is proposing that testing using flow-through systems and measured concentrations be conducted with mysid shrimp according to 40 CFR 797.1930. To develop data on the chronic toxicity of DCP to aquatic invertebrates, EPA is proposing that testing be conducted with *Daphnia magna* and the mysid shrimp according to 40 CFR 797.1330 and 797.1950, respectively.

V. Reporting Requirements

EPA is proposing that all data developed under this rule be reported in accordance with its final TSCA Good Laboratory Practice (GLP) standards in 40 CFR Part 792.

In accordance with 40 CFR Part 790, test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. Specific reporting requirements for each of the proposed test standards follow:

1. The pharmacokinetic, neurotoxicity, dominant lethal assay, and all environmental effects tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule. Progress reports on all studies shall be provided every 6 months.

2. The developmental toxicity tests shall be completed and the final results submitted to the Agency within 18 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided every 6 months.

3. The two-generation reproductive effects toxicity test shall be completed and final results submitted to the Agency within 29 months of the effective date of the final Phase II test rule. Interim progress reports shall be provided every 6 months.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will announce the receipt within 15 days in the **Federal Register** as required by section 4(d). Test data received pursuant to this rule will be made available for public inspection by any person except in those cases where the Agency determines that confidential treatment must be accorded pursuant to section 14(b) of TSCA.

VI. Issues for Comment

EPA invites comment on the following issues:

1. The proposed testing requirement for an oral/inhalation comparative pharmacokinetic study with DCP.

2. Requiring the oral, rather than inhalation, route of administration in conducting health effects tests with DCP.

3. The proposed use of the TSCA test guidelines as the test standards for the required testing of 1,2-dichloropropane.

4. The proposed schedule for the required testing.

VII. Economic Analysis of Proposed Rule

To assess the economic impact of this proposed rule, EPA has prepared an economic evaluation (Ref. 8) that examines the cost of the required testing, both for pharmacokinetics testing alone and in conjunction with testing required in the DCP final rule, and analyzes four market characteristics of DCP: (1) Demand sensitivity, (2) cost characteristics, (3) industry structure, and (4) market expectations. The economic evaluation for the DCP proposed test rule, which estimates a testing cost of $144,610 to $191,680 for pharmacokinetic testing, and a total testing cost of $470,230 to $606,350 for both the tests required in the final rule and the pharmacokinetic testing, indicates that the potential for adverse economic effects due to the estimated cost of testing is low. The annualized total test costs for DCP range from $121,855 to $157,648. This conclusion is based on the following observations (Ref. 8):

1. Propylene oxide (PO), the main product in DCP production, is used mainly as a captive intermediate and has a relatively inelastic demand.

2. The market expectations for PO and many of its derivatives are favorable.

3. Dow manufactures DCP and PO at two highly integrated plants where minor cost increases can be dispersed over numerous end products.

4. The estimated total unit test costs (i.e., the test costs for DCP and PO) are negligible, or less than 0.02 cents per pound or 0.04 percent of PO price in the upperbound case.

Refer to the economic analysis (Ref. 8) for a complete discussion of test cost

estimation and the potential for economic impact resulting from these costs.

VIII. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules and test programs negotiated with industry in place of rulemaking. Copies of the study "Chemical Testing Industry; Profile of Toxicological Testing," October, 1981, can be obtained through the NTIS under publication number PB 82-140773.

On the basis of this study, the Agency believes that there will be available test facilities and personnel to perform the testing required in this proposed rule.

IX. Public Meetings

If persons indicate to EPA that they wish to present oral comments on this proposed rule to EPA officials who are directly responsible for developing the rule and supporting analyses, EPA will hold a public meeting subsequent to the close of the public comment period in Washington, DC. Persons who wish to attend or to present comments at the meeting should call the TSCA Assistance Office (TAO): Toll Free: (800-424-9065); In Washington, DC: (554-1404); Outside the U.S.A. (Operator-202-554-1404), by October 9, 1986. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, the Agency would transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

X. Public Record

EPA has established a record for this rulemaking, [docket number (OPTS-42043]. This record includes basic information considered by the Agency in developing this proposal, and appropriate **Federal Register** notices. The Agency will supplement the record with additional information as it is received.

This record includes the following information:

A. Supporting Documentation

The supporting documents for this rulemaking consist of the proposed and final Phase I test rules on 1,2-dichloropropane.

B. References

(1) Versar, Inc. Exposure Assessment for test rules development for 1,2-dichloropropane. Washington, DC: U.S. Environmental Protection Agency, Office of Toxic Substances. Contract No. 68-02-3968.

(2) Reiter, L.W. "Use of activity measures in behavioral toxicology." *Environmental Health Perspectives* 26:9-20. (1978)

(3) Reiter, L.W. and MacPhail, R.C. "Motor activity: A survey of methods with potential use in toxicity testing." *Neurobehavioral Toxicology*. 1:Suppl. 1, 53-66. (1979)

(4) Irwin, S. "Comprehensive observational assessment: Ia. A systematic, quantitative procedure for assessing the behavioral and physiologic state of the mouse." *Psychopharmacology*. 13:222—257. (1968)

(5) Kinnard, E.J. and Watzman, N. "Techniques utilized in the evaluation of psychotropic drugs on animals' activity." *Journal Pharmaceutical Science*. 55:995-1012. (1966)

(6) Dews, P.B. "The measurement of the influence of drugs on voluntary activity in mice." *British Journal Pharmacology Chemotherapy*. 8:46-48. (1953)

(7) Turner, R.A. "Screening Methods in Pharmacology." New York: Academic Press, pp. 24-34. (1965)

(8) EPA. Economic Impact Analysis of Final and Proposed Test Rule for 1,2-Dichloropropane. U.S. Environmental Protection Agency, Washington, DC (1986)

The record is open for inspection from 8 a.m. to 4 p.m. Monday through Friday except legal holidays, in Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

XI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of 1,2-dichloropropane is discussed in the Phase I test rule appearing elsewhere in this issue of the **Federal Register** and Unit VII of this notice.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are no small manufacturers of 1,2-dichloropropane.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing efforts.

(3) Small processors will experience only very minor costs if any in securing exemption from testing requirements.

(4) Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070-0033. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs; OMB; 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA". The final rule package will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: August 27, 1986.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 799—[AMENDED]

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By amending § 799.1550 by adding paragraphs (b)(5), (c)(1) (ii) and (iii), (2) (ii) and (iii), (3) (ii) and (iii), (4) (ii) and (iii) and (5), and (d)(1) (ii) and (iii), (2) (ii) and (iii), (3) (ii) and (iii), and (4) (ii) and (iii), to read as follows:

§ 799.1550 1,2-Dichloropropane.

* * * * *

(b) * * *

(5) All persons who manufacture or process 1,2-dichloropropane, from the effective date of the final rule for pharmacokinetics testing to the end of the reimbursement period, shall submit letters of intent to test, exemption applications, and shall conduct tests and submit data as specified in paragraphs (a), (b)(5), and (c)(5) of this section, Subpart A of this Part, and Parts 790 and 792 of this chapter for single-phase rulemaking.

(c) * * *

(1) * * *

(ii) *Test standards.* The neurotoxicity testing of 1,2-dichloropropane, consisting of a neuropathology test, a motor activity test, and a functional observational battery, shall be conducted in accordance with §§ 798.6400, 798.6200, and 798.6050 of this chapter, respectively, using the oral route of exposure. The animals shall be dosed with DCP for a minimum of 5 days per week, over a period of at least 90 days.

(iii) *Reporting requirements.* (A) The neurotoxicity tests shall be completed and the final results submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the final Phase II test rule and ending with the submission of the Final Test Report.

(2) * * *

(ii) *Test standards.* The dominant lethal assay shall be conducted with 1,2-dichloropropane using the rat in accordance with § 798.5450 of this chapter.

(iii) *Reporting requirements.* (A) The dominant lethal assay shall be completed and the final results submitted to the Agency within 1 year of the effective date of the final Phase II test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(3) * * *

(ii) *Test standard.* The developmental toxicity testing shall be conducted with 1,2-dichloropropane in accordance with § 798.4900 of this chapter, using the oral route of exposure.

(iii) *Reporting requirements.* (A) The developmental toxicity study shall be completed and the final results submitted to the Agency within 18 months of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 months intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(4) * * *

(ii) *Test standard.* The two-generation reproductive effects testing shall be conducted with 1,2-dichloropropane in accordance with § 798.4700 of this chapter, using the oral route of exposure.

(iii) *Reporting requirements.* (A) The two-generation reproductive effects test shall be completed and the final results submitted to the Agency within 29 months of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(5) Pharmacokinetic studies—(i) *Required testing.* Oral and inhalation pharmacokinetic testing shall be conducted with 1,2-dichloropropane.

(ii) *Test standard.* (A) The oral and inhalation pharmacokinetic testing shall be conducted with 1,2-dichloropropane in accordance with § 798.7475 of this chapter and modifications specified in paragraph (c)(5)(ii)(B) of this section.

(B) Modifications.

(*1*) The requirement under § 798.7475(c)(2)(iii)(C) of this chapter for testing DCP is modified so that collection of excreta (urine, feces, and expired air) occurs at 0, 4, 8, 16, 24, and 48 hours posttreatment, or until 95 percent of the dose has been excreted.

(*2*) The requirement under § 798.7475(c)(2)(iii)(D) of this chapter for testing DCP is modified so that the concentration of hydrocarbon in inspired and expired air, and blood shall be measured at 0, 5, 10, 15, and 30 minutes, and at 1, 2, 4, 8, 16, 24, and 48 hours during and after inhalation exposure.

(*3*) The requirement under § 798.7475(c)(3)(i)(A) of this chapter for testing DCP is modified so that the levels of total ^{14}C-label shall be determined in whole blood and blood plasma or blood serum at 0, 4, 8, 16, 24, and 48 hours after dosing rats in groups A–B and F–H.

(*4*) The requirement under § 798.7475(c)(3)(i)(B) of this chapter for testing DCP is modified so that the quantities of total ^{14}C-label excreted in expired air, urine, and feces by rat groups A–B and F–H shall be determined at 0, 4, 8, 16, 24, and 48 hours after dosing and if necessary, daily thereafter until at least 90 percent of the dose has been excreted or until 7 days after dosing, whichever occurs first.

(*5*) The requirement under § 798.7475(d)(3)(vi) of this chapter for testing DCP is modified to require the reporting of biotransformation pathways and quantities of the test substance and its metabolites in urine, feces, and expired air collected after oral administration (single, low, and high doses) and inhalation exposure (low, intermediate, and high concentrations).

(iii) *Reporting requirements.* (A) The pharmacokinetic test shall be completed and the final results submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Interim progress reports shall be provided at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule and ending with the submission of the Final Test Report.

(d) * * *

(1) * * *

(ii) *Test standard.* The mysid shrimp acute toxicity testing of 1,2-dichloropropane shall be conducted as a flow-through test using *Mysidopsis bahia* in accordance with § 797.1930 of this chapter.

(iii) *Reporting requirements.* (A) The mysid acute toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule.

(2) * * *

(ii) *Test standard.* The algal acute toxicity testing of 1,2-dichloropropane shall be conducted with marine and freshwater algae using systems that control for 1,2-dichloropropane evaporation in accordance with § 797.1050 of this chapter.

(iii) *Reporting requirements.* (A) The algal acute toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule.

(3) * * *

(ii) *Test standard.* The daphnid chronic toxicity testing of 1,2-dichloropropane shall be conducted as a flow-through test using *Daphnia magna* in accordance with § 797.1330 of this chapter.

(iii) *Reporting requirements.* (A) The daphnid chronic toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals,

beginning 6 months after the effective date of the Phase II final test rule.

(4) * * *

(ii) *Test standard.* The mysid shrimp chronic toxicity testing of 1,2-dichloropropane shall be conducted as a flow-through test using *Mysidopsis bahia* in accordance with § 797.1950 of this chapter.

(iii) *Reporting requirements.* (A) The mysid chronic toxicity test shall be completed and the final report submitted to the Agency within 1 year of the effective date of the Phase II final test rule.

(B) Progress reports shall be submitted to the Agency at 6 month intervals, beginning 6 months after the effective date of the Phase II final test rule.

(Information collection requirements have been approved by the Office of Management and Budget under control number 2070-0033)

[FR Doc. 86-20261 Filed 9-8-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 85-229; Phase II]

Common Carrier Service; Replacing Structural Separation With Nonstructural Safeguards for the Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Extension of Time to File Reply Comments.

SUMMARY: This action extends the deadline for filing reply comments in Phase II of the Third Computer Inquiry, concerning the Commission's regulatory treatment of basic and enhanced services.

The extension is in response to a Joint Motion for Extension of Time filed by eight commenters in this proceeding on August 20, 1986.

This action will provide interested parties an opportunity to prepare more fully informed reply comments in this proceeding.

DATE: The final date for filing reply comments is extended to September 19, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William Maher, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-4047.

SUPPLEMENTARY INFORMATION: This action extends the due date for reply comments adopted in the Third Computer Inquiry Supplemental Notice of Proposed Rulemaking, CC Docket No. 85-229, Phase II, FCC 86-253 (51 FR 24410, July 3, 1986).

Order

In the Matter of amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry); CC Docket No. 85-229, Phase II; Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof; Communications Protocols under Sections 64.702 of the Commission's Rules and Regulations.

Adopted: August 25, 1986.

Released: August 27, 1986.

By the Chief, Common Carrier Bureau:

1. Before us is a Joint Motion for Extension of Time (the Motion), filed by eight commenters (the Movants) [1] in the above-captioned proceeding (*Computer III*, Phase II), asking that the deadline for filing reply comments in this proceeding be extended by three weeks, from September 8, 1986, to September 29, 1986.

2. The Motion states that at least 57 parties filed initial comments in *Computer III*, Phase II. It argues that, because those comments are voluminous and address fundamental technical, legal, and policy issues, more time is needed to review them adequately. Moreover, because summer vacations and Labor Day fall in the midst of the present reply period, it is difficult for the Movants' technical staffs and counsel to address such issues fully. The Motion points out that opposition to the petitions for reconsideration of the *Computer III Order* [2] are due on September 3, 1986,[3] and contends that under the current deadline for *Computer III*, Phase II reply comments, interested parties will be burdened with the near-simultaneous preparation of two sets of responsive pleadings. According to the Motion, grant of an extension would not prejudice any party because AT&T and several of the BOCs have challenged, through petitions for reconsideration, fundamental elements of the regulatory framework adopted in the *Computer III Order*.

3. Although it is the policy of this Commission that extensions of time shall not be routinely granted,[4] we acknowledge that the public interest would be served by permitting the Movants to prepare fully informed reply comments. However, in light of the public interest in early resolution of the significant issues raised in *Computer III*, Phase II, we find that an extension of the reply period to September 29, 1986, is not warranted. Instead, we shall extend the deadline for filing reply comments to September 19, 1986. This extension should provide all parties with sufficient time to prepare reply comments based on a considered analysis of the record, without delaying our resolution of the issues posed in this proceeding.

4. Accordingly, it is hereby ordered, pursuant to section 4(j) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(j) and 155(c), and authority delegated thereunder pursuant to §§0.91 and 0.291 of the Commission's Rules, 47 CFR 0.91 and 0.291, That the Motion is Denied in Part and Granted in Part as specified herein. Reply comments are due on or before September 19, 1986.

Federal Communications Commission.

Albert Halprin,

Chief, Common Carrier Bureau.

[FR Doc. 86-20225 Filed 9-8-86; 8:45 am]

BILLING CODE 6712-01-M

[1] The Movants are ADAPSO, Independent Data Communications Manufacturers Association, Inc., Tymnet, Ad Hoc Telecommunications Users Committee, Computer and Business Equipment Manufacturers Association, Digital Equipment Corporation, International Communications Association, and Telenet Communications Corporation.

[2] Amendment of §§ 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry), CC Docket No. 85-229, *Report and Order*, FCC 86-252 (released June 16, 1986).

[3] *See* 51 FR 29,609 (Aug. 19, 1986).

[4] Section 1.46(a) of the Commission's Rules 47 CFR 1.46(a) (1985).

47 CFR Part 73

[MM Docket No. 86-348; RM-5357]

Radio Broadcasting Services; Laurel, DE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to allot Channel 237A to Laurel, Delaware. as its first FM channel in response to a petition filed by Troy D. Hill.

DATES: Comments must be filed on or before October 20, 1986. and reply comments on or before November 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In

addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Troy D. Hill, Rt. 2, Box 58 A–1, Bridgeville, Delaware 19933 (petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–348, adopted August 22, 1986, and released August 29, 1986. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800. 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1231 for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86–20227 Filed 9–8–86; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 86–347; RM–5374]

Radio Broadcasting Services; Newberry, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Victor A. Michael, Jr. proposing the allocation of Channel 300B1 to Newberry, Pennsylvania, as the community's first local FM service. A site restriction of 9.1 kilometers (5.7 miles) west is required to avoid short-spacings to vacant Channels 297A and 300A at Northumberland and Tobyhanna, Pennsylvania, and to Station WRRB, Channel 300, Syracuse, New York. Canadian concurrence in the allotment is required.

DATES: Comments must be filed on or before October 20, 1986, and reply comments on or before November 4, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or their counsel or consultant, as follows: Victor A. Michael, Jr., R.D. 1, Box 59, Benton, Pennsylvania 17814 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86–347, adopted August 22, 1986, and released August 29, 1986. The full text of the Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

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. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy snd Rules Division, Mass Media Bureau.

[FR Doc. 86–20228 Filed 9–8–86; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

48 CFR Part 5316

Department of the Air Force Federal Acquisition Regulation Supplement; Types of Contracts

AGENCY: Department of the Air Force, DOD.

ACTION: Proposed rule.

SUMMARY: On December 4, 1985, the Air Force published (at 50 FR 49708) a proposal to amend Title 48 of the Code of Federal Regulations by establishing Chapter 53. DOD FAR Subpart 216.2, Fixed-Price Contracts, is being supplemented by the Air Force to require that economic price adjustment (EPA) clauses (abnormal cost index type) be structured in such a way that contract adjustments for fluctuations in the economy will include adjustments for future periods as well as completed periods.

DATE: Comments must be submitted in writing on or before October 24, 1986. Please cite AF Case No. 41–86 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to HQ USAF/RDCP, Room 4C251, Pentagon, Washington, DC 20330–5040.

FOR FURTHER INFORMATION CONTACT: Capt. Jeff Parsons, HQ USAF/RDCP, telephone (202) 697–6522.

SUPPLEMENTARY INFORMATION:

A. Background

The FY 1986 Department of Defense Appropriation Act deleted $375M from the Air Force budget request for various aircraft programs due to a Congressional Budget Office (CBO) report that indicated these funds were in excess due to declining inflation rates. The House Appropriation Committee (HAC) stated in their appropriation report that "The Committee has no intention of appropriating funds for inflation well above rational need, simply so the Department can declare funds to be excess at its convenience or to accelerate procurement of equipment that is not needed until later years." The Committee also said that the 1987 budget submitted by the Air Force must reflect the budgeted inflation and how that compares to the contract inflation on weapon systems which use EPA clauses in their contracts.

A change in the current EPA policy would allow the identification of future contract savings earlier and provide better fiscal management. This change

would require priced options, contract obligations, and contract funding requirements to be provisionally adjusted for future periods when EPA price adjustments for completed periods are made. Current policy is to only make adjustments to completed periods when actuals are available. However, since projected inflation indices have a compounding effect in determining forecasted prices, future prices should also be adjusted to reflect actual economic trends.

This change will allow the Air Force to reduce contract funding earlier during periods of declining inflation, and would allow early identification of additional funds required during periods of increasing inflation. Identifying and removing funds strictly through the budget estimating process is not possible without changing the actual contract prices. Programs would still have to fund their contract liability if prices were not changed.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, this rule does not have a significant impact on a substantial number of small entities because the rule applies to contracts exceeding $50,000,000.

C. Paperwork Reduction Act

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 5316

Government procurement.

Therefore, it is proposed to amend Title 48 of the Code of Federal Regulations by adding Part 5316 to read as follows:

CHAPTER 53—DEPARTMENT OF THE AIR FORCE FEDERAL ACQUISITION REGULATIONS

Subchapter C—Contracting Methods and Contract Types

PART 5316—TYPES OF CONTRACTS

Authority: 5 U.S.C. 301 and FAR 1.301.

Subpart 5316.2—Fixed-Price Contracts

5316.203-4 Contract clauses.

(d)(3)(iii)(A) When using the abnormal escalation index method, on contracts in excess of $50,000,000, the clause shall provide that contract adjustments will include the compounding effect of actual indices for future periods. Since predicted economic trends have a compounding effect on the scheduled price, when calculating each economic price adjustment (EPA) for costs within a completed period, a further provisional adjustment shall be made to all future period costs. This provisional adjustment shall be calculated using the same percentage decrease (or increase) as was made in the adjustment for the completed period. Provisional adjustments for each period must be liquidated against the final adjustment for each period. For example, the following formula could be used in computing adjustments:

$$\text{Adjustment} = ((x-y)/y)[z] - s$$

where

x = actual index

y = projected index

z = sum of dollars subject to adjustment for all periods in which a final adjustment has not been made

s = sum of unliquidated provisional adjustments

(B) For those EPA clauses that do not use cumulative indices in computing the adjustment, but use projected annual increases, y would equal the projected annual increase and x would equal the actual annual increase. For those EPA clauses which include a dead band in which no adjustment is made, the upper end of the dead band becomes the projected index value during times of increasing inflation, and the lower end of the dead band becomes the projected index value during times of decreasing inflation. For those EPA clauses which provide for price adjustments only if the difference between the projected index value exceeds a predetermined threshold (trigger bands), no adjustment will be made for the future periods unless the actual index value exceeds the predetermined threshold. However, when the actual index exceeds the projected index by the predetermined threshold, then an adjustment must be made to future periods.

(C) The above requirement is optional on multinational contracts where the impact of multiple country index recalculations are extremely complex.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-20206 Filed 9-8-86; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[BMCS Notice No. 86-12]

Demonstration of Front Wheel Brakes on Trucks and Truck Tractors

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of demonstration project, and request for comments.

SUMMARY: The FHWA invites interested persons to view a demonstration of front wheel braking on trucks and truck tractors comparing the stopping distances of vehicles with and without front brakes under various conditions.

DATE: The demonstration will be held September 19, 1986, 9:00 a.m., e.t. Interested persons who view the demonstration are requested to submit written comments on or before September 26, 1986.

ADDRESS: The demonstration will be held at the National Highway Traffic Safety Administration's test facilities at the University of Ohio's Transportation Research Center in East Liberty, Ohio. Persons who view the demonstration are requested to submit comments to Mr. Bill Snow, Federal Highway Administration, Bureau of Motor Carrier Safety, HMC-20, Room 3404, 400 Seventh Street, SW., Washington, DC. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Snow, (202) 366-2996. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking published in the **Federal Register** on July 3, 1986 at 51 FR 24413, interested persons were invited to submit comments to BMCS Docket No. MC-124, Notice No. 86-8 concerning a revision to the brake rules which currently allows trucks and truck tractors having three or more axles to be operated with no brakes on the front wheel. Comments were due on or before August 4, 1986.

Interested persons who view the demonstration are requested to submit written comments on or before September 26, 1986, to Mr. Bill Snow at the above address in Washington, DC. A compilation of the statistics from this demonstration project will be available on October 31, 1986 from Federal Highway Administration, Bureau of Motor Carrier Safety, HMC-20, Room 3404, 400 Seventh Street SW., Washington, DC 20590, (202)366-2996.

Issued on: September 2, 1986.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 86-20198 Filed 9-8-86; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Federal Protection of Private Sector Health and Safety Whistleblowers; Public Hearing

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public hearing.

SUMMARY: The Administrative Conference is studying the operation of the federal whistleblowing statutes that protect from retaliation private sector employees who raise health and safety concerns. Statutes containing such provisions include various pollution control and waste disposal laws administered by EPA, the nuclear power licensing law by NRC, the strip mining law by the Department of the Interior, workplace safety, mine safety and migrant labor laws by the Department of Labor and trucking and railroad safety laws by the Department of Transportation. Most, but not all, cases are investigated by the Department of Labor's Wage and Hour Division and heard by the Department's administrative law judges. The study will include an examination of current agency investigative and adjudicative procedures and consideration of possible recommendations to Congress or relevant agencies. Preliminary findings of the study indicate that there is a great lack of uniformity among the statutes with respect to organizational responsibilities and procedures to be followed. To aid the Conference and its Committee on Adjudication in evaluating these issues, the Conference will conduct a public hearing. The public hearing will take place on Wednesday, October 1, 1986, in courtroom 10 of the United States Claims Court, 717 Madison Place, NW., Washington, DC, commencing at 9:30 a.m. Conference Chairman Marshall J. Breger will preside at the hearing.

Brief initial statements of views or relevant experiences will be followed by opportunities for questioning by the Chairman and Conference members in attendance. If time permits, witnesses may exchange views or reactions. The Conference is particularly interested in obtaining information and advice on the following questions:

1. Are current arrangements satisfactory for protecting private sector employees from retaliation for whistleblowing in connection with health and safety concerns? Should all private sector employment be covered? Should all government contracts be covered?

2. Responsibility for investigation and adjudication of whistleblowers' complaints is at present vested in several agencies. One possibility to be considered is to centralize investigative and/or adjudicative responsibilities with respect to whistleblowers in a single agency. How important is it that the *investigative* agency have expertise in the substantive area in which the whistleblowing arises? The *adjudicatory* body? If these functions were centralized what role should the agency that is responsible for administration of the underlying substantive regulatory scheme play in these proceedings?

3. Are there deficiencies in the Department of Labor's investigative, adjudicatory or review function?

4. Are current coordination arrangements between the program and investigative agencies satisfactory with regard to (a) training, (b) investigation, (c) conduct at hearings, (d) reporting of results, (e) follow-up?

5. Should it make a difference if the employee's belief that safety has been compromised is not well founded? Should the test be subjective or objective?

6. What remedies (damages, reinstatement, etc.) should be available?

7. Should there be uniform provisions regarding types of protected disclosures, temporary reinstatement, requirement of initial complaint to employer, employer conciliation programs, statutes of limitations, posting of workplace notices of protection, judicial review.

8. Should an employee be able to pursue federal whistleblowing remedies as well as state law remedies?

A number of public officials and other public figures have been invited to appear at the hearing to discuss their views. Other persons may be allowed to make presentations if time permits. Persons wishing to restify should apply to the Conference outlining their proposed testimony, relevant experience, or other interest. They must also be prepared to submit written submissions of testimony by September 26. However, written statements pertinent to the subject of the hearing may be submitted at any time, before or after the hearing, by any person whether or not appearing at the hearing.

DATE: October 1, 1986.

Location: The public hearing will be held in courtroom 10 of the U.S. Claims Court, 717 Madison Place, NW., Washington, DC, at 9:30 AM.

Public Participation: Attendance at the meeting is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance. The chairman may permit members of the public to make oral statements at the meeting. Written statements may be submitted to the committee at any time.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037; telephone (202) 254–7065.

Dated: September 5, 1986.

Richard K. Berg,

General Counsel.

[FR Doc. 86–20348 Filed 9–8–86; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration

Title: Small-Craft Facility Questionnaire

Form number: Agency—NOAA; OMB—0648–0021

Type of request: Revision of a currently approved collection

Burden: 1,860 respondents; 202 reporting hours

Needs and uses: Information is collected on the availability of services at small-craft facilities. The information is used to revise nautical charting products listing such services for the boating public.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: Annually

Respondent's obligation: Voluntary

OMB Desk officer: 395-3785

Agency: National Oceanic and Atmospheric Administration

Title: Marine Mammal Taking by State/Local Governments

Form number: Agency—N/A; OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 100 respondents; 50 reporting hours

Needs and uses: State or local officials who take marine mammals in the course of their duties may do so without a permit. They are required to report such takings to the National Marine Fisheries Service. The information is used to study strandings and other problems faced by the species, and to determine whether or not management action is needed.

Affected public: State or local governments

Frequency: Semi-annually

Respondent's obligation: Mandatory

OMB Desk officer: Sheri Fox, 395-3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: September 3, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-20277 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-CW-M

Foreign-Trade Zones Board

[Docket No. 24-86]

Foreign-Trade Zone 66, Wilmington, NC; Application for Subzone, American Hoist and Derrick Crane Manufacturing Plant; Extension of Comment Period

The period for comments on the above case, involving a special-purpose subzone for the crane manufacturing plant of American Hoist and Derrick Company in Wilmington, North Carolina (51 FR 26729, 7/25/86) is extended to October 17, 1986, to allow interested parties additional time in which to comment on the proposal.

Comments in writing are invited during this period. Submissions shall include 5 copies. Material will be available at: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Rm. 1529, 14th & Pennsylvania, NW., Washington, DC 20230.

Dated: September 3, 1986.

John J. Da Porte, Jr.,

Executive Secretary.

[FR Doc. 86-20279 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-05-M

International Trade Administration

[A-588-602]

Postponement of Final Antidumping Duty Determination: Certain Carbon Steel Butt-Weld Pipe Fittings from Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received requests from all of the respondents in this investigation to postpone the final determination, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on these requests, we are postponing our final determination as to whether sales of certain carbon steel butt-weld pipe fittings from Japan have occurred at less than fair value until not later than December 19, 1986. We are also postponing our public hearing from September 3, 1986 until October 7, 1986.

EFFECTIVE DATE: September 9, 1986.

FOR FURTHER INFORMATION CONTACT: Karen DiBenedetto, (202-377-1778) or Mary S. Clapp, (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

On March 24, 1986, we published a notice in the **Federal Register** (51 FR 10070) that we were initiating, under section 732(b) of the Act (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether certain carbon steel butt-weld pipe fittings from Japan were being, or were likely to be, sold at less than fair value. On April 10, 1986, the International Trade Commission determined that there is a reasonable indication that imports of certain carbon steel butt-weld pipe fittings from Japan are materially injuring a U.S. industry. On August 11, 1986, we published a preliminary determination of sales at less than fair value with respect to this merchandise (51 FR 28734). The notice stated that if the investigation proceeded normally, we would make our final determination by October 20, 1986.

On August 6, 1986, Awaji Sangyo K.K., a respondent in this investigation requested a postponement of the final determination until not later than the 135th day after the date of our preliminary determination, pursuant to section 735(a)(2)(A) of the Act. On August 12, 1986, Nippon Benkan Kogyo Co. Ltd., another respondent in this investigation, requested a postponement of the final determination until not later than 135 days after our preliminary determination. The respondents are qualified to make such a request because they account for a significant proportion of exports of the merchandise to the United States. If exporters who account for a significant proportion of exports of the merchandise under investigation properly request an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the requests. Accordingly, we grant the request and postpone our final determination until not later than December 19, 1986.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10 a.m. on October 7, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary, Import Administration, Room B-099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's

name, address, and telephone number; (2) The number of participants; (3) The reason for attending; and (4) A list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by September 30, 1986. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-20280 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-DS-M

Texas A&M University; Decision on Application For Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed 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 number: 85-277. Applicant: Texas A&M University, College Station, TX 77843. Instrument: Closed Loop Crystal Driver. Manufacturer: Solid State Equipment, New Zealand. Intended Use: See notice at 50 FR 38569.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign article simultaneously measures elastic modulus and internal friction to temperatures up to 1400°C. This capability is pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 86-20278 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council and its Administrative Subcommittee will convene separate public meetings at the Hotel Villa Esperanza, Vieques, PR, as follows:

Council—will convene its 57th regular meeting, October 15, 1986, from approximately 9 a.m. to 5 p.m., and reconvene October 16 from 9 a.m. to noon, to elect a Chairman; to consider fishery management plans development, as well as to discuss other technical and administrative matters related to Council operations.

Administrative Subcommittee—will convene October 14, 1986, from approximately 2 p.m. to 5 p.m. to discuss issues related to the Subcommittee's regular administrative operations. For further information contact the Caribbean Fishery Management Council, Banco de Ponce Building, Suite 1108, Hato Rey, PR 00918; telephone: (809) 753-4926.

Dated: September 4, 1986.

Richard B. Roe,

Director, Office of Fisheries Management National Marine Fisheries Service.

[FR Doc. 86-20272 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Mackerel Advisory Panel will convene a public meeting, September 24, 1986, at the Ramada Inn, 5303 West Kennedy Boulevard, Tampa, FL, to review Amendment No. 2 to the Migratory Coastal Pelagic (Mackerel) Fishery Management Plan. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council 5401 West Kennedy Boulevard, Suite 881, Tampa FL 33609, telephone: (813) 228-2815.

Dated: September 4, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-20273 Filed 9-8-86; 8:45 am]

BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 4:00 p.m. on September 29, 1986, in Room 1605 at the United States Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC (Public entrance to the building is on 14th Street, Pennsylvania Avenue and Constitution Avenue.)

The Council was estabished on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Proposed NTIA policy on allocation of multifunction spread spectrum systems.

(2) Proposed NTIA policy on Federal Government Trunked Land Mobile Radio.

(3) Discussion of recent developments relative to radio frequency radiation exposure guidelines.

(4) Preliminary considerations for space station frequency availability.

The meeting will be open to public observations; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before September 26, 1986. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to the Executive Secretary, FMAC, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 4706, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 30330, telephone 202–377–0805.

Dated: September 2, 1986.

Charles L. Hutchison,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 86–20275 Filed 9–8–86; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amending Export Visa Requirement and Exempt Certification for Certain Cotton, Wool and Man-Made Fiber Textile Products from Mexico

September 3, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on September 8, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

On May 20, 1981 a notice was published in the **Federal Register** (46 FR 27516) announcing the establishment of an export visa and exempt certification mechanism for certain cotton, wool and man-made fiber textile and apparel products produced or manufactured in Mexico and exported on and after July 1, 1981. Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, between the Governments of the United States and Mexico, agreement has been reached to amend the existing export visa and exempt certification requirements to provide the following:

1. Commercial shipments valued at less than U.S. $250 will no longer be exempt from agreement limits. They will be charged to the quota limits established under the agreement and will require export visas. Sample shipments and shipments for the personal use of the importer will not be affected by this new provision.

2. Polyethylene film in the spool or in cartridges in Category 627 pt. (only TSUSA numbers 389.6260 and 389.6265) will not require an export visa.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For The Implementation of Textile Agreements

September 8, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 15, 1981 which directed you to prohibit, effective on July 1, 1981 and until further notice, entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Mexico and exported on and after July 1, 1981, which were not visaed or certified for exemption by the Government of Mexico.

Effective on September 8, 1986, the directive of May 15, 1981 is hereby amended to require an export visa for commercial shipments valued at less than U.S. $250. Sample shipments and shipments for the personal use of the importer will continue to be exempt from the visa requirement if properly certified for exemption by the Government of Mexico prior to exportation. Polyethylene film in the spool or in cartridges in Category 627 pt. (only TSUSA numbers 389.6260 and 389.6265) will not require an export visa.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–20391 Filed 9–8–86; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Ground Wave Emergency Network (GWEN); Intent To Prepare Programmatic Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; Council on Environmental Quality Regulations (40 CFR Part 1500); and 32 CFR Part 989 (AFR 19–2); the Air Force gives notice that a programmatic Environmental Impact Statement (EIS) is being prepared on the proposed deployment of the Ground Wave Emergency Network (GWEN) in its Final Operational Capability (FOC). The proposed action would establish a national communications link between the nation's military command authority and strategic military forces. The proposed communication system would consist of input/output and receive only stations at existing military installations and unmanned relay nodes situated on parcels of approximately 11 acres throughout the continental United States (CONUS).

With the proposed action, the Air Force would expand its current developmental program (Thin Line Connectivity Capability, or TLCC), which consists of less than 100 total sites. The proposed production and deployment of the GWEN at its Final Operations Capability would increase this number by approximately 200 fixed sites, including about 70 additional unmanned relay nodes.

Each proposed relay node would include a 299-foot main radio tower with an antenna tuning unit shelter at its base. The tower and antenna tuning unit would be enclosed by an 8-foot high chain link fence. The tower would be supported by 15 guy wires and include 12 top loading elements to increase the performance of the antenna. About 12 inches below the ground, a ground plane consisting of approximately 200 copper wires would extend up to 330 feet from the tower in a radial pattern resembling the spokes of a wheel. The wires would be plowed into the ground using equipment that replaces the sod as it lays the wire. A smaller, 30-foot UHF antenna and a 10-foot low-frequency receive antenna would also be installed on the site. A 4-foot high barbed or fabric wire fence would be installed around the perimeter of the ground plane. The relay node would contain a fenced-in equipment area with two

enclosed shelters, each about the size of a truck-carried camper unit; one containing an emergency power generator and two diesel tanks, and the other housing radio equipment. The relay node would use commercial power sources.

The relay node would look similar to commercial radio and television broadcase transmitters. GWEN would broadcast low frequency radio signals in the 150–175 kilohertz band, well below the bottom of the commercial AM radio of 530 kilohertz. Its broadcast power would be approximately 2,000 to 3,000 watts. GWEN would not interfere with existing communications or electronic equipment.

Since proposed, input/output and receive only stations would consist mainly of communications and support equipment at existing military installations, the siting of the proposed relay nodes is of principal environmental concern. The Air Force proposes to mitigate protential adverse environmental impact through a detailed site selection process. Specific relay node sites to achieve GWEN FOC have not yet been selected. A programmatic Environmental Impact Statement will be prepared, followed by tiered, site-specific environmental studies after alternative sites have been identified. The Air Force estimates that the Draft Environmental Impact Statement will be available for public review by early 1987, and that the site-specific environmental studies would be prepared late in 1987.

The Air Force's Electronic Systems Division (ESD), located at Hanscom Air Force Base, Massachusetts, will conduct a public scoping process emphasizing written input. Because GWEN is a national program, a public scoping meeting will be conducted in Washington, DC on September 25, 1986, at 1 p.m. in the Auditorium, Department of Commerce Building, 14th Street and Constitution Ave, NW. Written inputs will be considered equally with those provided at the public scoping meeting. Inputs must be received by October 10, 1986, to be addressed in the draft Environmental Impact Statement. In support of the public scoping process, the scoping meeting, and enviornmental issues to be addressed in the proposed Environmental Impact Statement, individuals, organizations, and agencies should direct their inputs and questions to: HQ Electronic Systems Division, Deputy for Acqusition Civil Engineering, ATTN: GWEN Directorate (ESD/DE–3), Handscom Air Force Base, MA 01731–5000.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–20452 Filed 9–8–86; 12:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

September 5, 1986.

The European portion of the meeting of the USAF Scientific Advisory Board Ad Hoc Committee on Airbase Performance, previously scheduled for September 12 through 21, 1986, has been postponed. The rescheduled dates are September 23 through October 1. (Previously announced in 51 FR 165, page 30392, on 26 Aug 86)

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Norita C. Koritko,

Air Force Federal Register Liaison Officer.

[FR Doc. 86–20371 Filed 9–8–86; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Army Science Board Ad Hoc Subgroup; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 24–26 September 1986.

Times of Meeting: 0830–1630 hours.

Places: US Army Air Defense Artillery School, Fort Bliss, Texas.

Agenda: The Army Science Board Ad Hoc Subgroup for Army Analysis will meet for briefings by analytical agencies. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–20241 Filed 9–8–86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board Ad Hoc Subgroup; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 30 September-1 October 1986.

Times of Meeting: 0800–1700 hours.

Places: Pentagon.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet for briefings on Exoatmospheric Reentry Intercept Systems (RIS) concept and lethality. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–20242 Filed 9–8–86; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Academic Advisory Board to the Superintendent; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, will meet on September 26, 1986, in Rickover Hall, Room 301, United States Naval Academy, Annapolis, Maryland. The meeting will commence at 8:15 a.m. and terminate at 1:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving education standards and in solving Academy problems. The meeting will be open to the public for observation to the extent that space is available.

For further information concerning this meeting, contact: Major S.E. Leitch, USMC, Military Secretary to the Academic Advisory Board, Office of the Academic Dean, United States Naval Academy, Annapolis, Maryland 21402–5000, Telephone No. (301)–267–2500.

Dated: September 4, 1986.

H.L. Stoller,

CDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 86–20220 Filed 9–8–86; 8:45 am]

BILLING CODE 3810–01–M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on September 25 and 26, 1986, at the Submarine Base, New London, Connecticut. The meeting will commence at 8:15 a.m. on September 25, and terminate at 3:00 p.m. on September 26, 1986. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and tours for the Committee members on submarine operations. The agenda for the meeting will consist of briefings on submarine tactics and training, and an overnight ride on a submarine. These briefings and tours will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting contact: Commander T.C. Fritz, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217–5000, Telephone number (202) 696–4870.

Dated: September 4, 1986.

Harold L. Stoller, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 86–20221 Filed 9–8–86; 8:45 am]

BILLING CODE 3810–AE–M

Corps of Engineers, Department of the Army

Intent To Prepare A Draft Environmental Impact Statement (DEIS) for a Proposed Water Supply Impoundment Structure in Crump Creek at Hanover County, VA.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Proposed Action:* Hanover County proposes to build an earthen fill impoundment structure across Crump Creek, a tributary of the Pamunkey River, near the Town of Hanover, Virginia. The impounded lake would have a normal pool area of 1000 acres with a maximum depth of 125 feet. As a water supply reservoir, the lake could supply a maximum safe yield of 33.8 million gallons per day with a minimum downstream release of 118.7 mgd (184cfs). A significant portion of the area to be flooded consists of wetlands.

2. *Alternatives:* Alternatives which will be investigated will include, but will not be limited to site alternatives in and around Hanover County, groundwater, conservation, and no project.

3. *Scoping Process:* Informal pre-application scoping meetings were held with State and Federal agencies in the spring of 1986. Significant issues which have already been identified include wetland destruction and mitigation, impacts on anadromous fish, and watershed development. A public notice requesting written scoping comments will be published in the near future.

4. *Public Meetings:* The public notice mentioned above will also announce that a public scoping meeting will be held on October 16, 1986, at the Hanover County Board of Supervisors, Board Room.

5. *DEIS Availability:* It is estimated that the DEIS will be available to the public for review and comments in late 1987.

ADDRESS: Questions about the proposed action and DEIS can be answered by Kenneth Kimidy, U.S. Army Engineer District, Norfolk, 803 Front Street, Norfolk, Virginia 23510–1096, (804) 441–3832, 827–3832–FTS.

Dated: September 2, 1986.

Claude D. Boyd III,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 86–20207 Filed 9–8–86; 8:45 am]

BILLING CODE 3710–EN–M

DEPARTMENT OF ENERGY

National Petroleum Council Historical Factors Task Group; Meeting

Notice is hereby given that the Historical Factors Task Group will meet in September 1986. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Historical Factors Task Group is responsible for the identification and analysis of events, governmental policies, and actions (federal, state, and local), and the reactions of the oil and gas industries to such events, policies and actions (i.e., the "factors") that affect the supply of and demand for oil and gas in the U.S. since the end of World War II.

The Historical Factors Task Group will hold its seventh meeting on Monday and Tuesday, September 15–16, 1986, starting at 9:00 a.m., in the Conference Room of the National Petroleum Council, 1625 K Street NW., Washington, DC.

The tentative agenda for the Historical Factors Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.

2. Discussion of the factors affecting petroleum supply and demand.

3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Historical Factors Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Historical Factors Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform Ms. Pat Dickinson, Advanced Fuels, Technology, Extraction and Environmental Controls, Fossil Energy, 301/353–2430, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 2, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-20235 Filed 9-8-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER86-670-000 et al.]

Commonwealth Electric Co. et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission.

1. Commonwealth Electric Co.

[Docket No. ER86-670-000]

September 3, 1986.

Take notice that on August 21, 1986, Commonwealth Electric Company ("Commonwealth") tendered for filing on behalf of itself, Montaup Electric Company, and Boston Edison Company supplemental data pertaining to their applicable gross investments, combined Federal income and franchise tax rates, and local tax rates for the twelve month period ending December 31, 1985. Commonwealth states that this supplemental data is submitted pursuant to a letter order of the Federal Power Commission in Docket No. E-7981 dated April 26, 1973 accepting for filing Commonwealth's Rate Schedule FERC No. 21, Boston Edison Company's Rate Schedule FERC No. 67, and Montaup Electric Company's Rate Schedule No. 27.

Commonwealth states that these rate schedules have previously been similarly supplemented for the calendar years 1972 through 1984.

Copies of said filing have been served upon Boston Edison Company, Montaup Electric Company, Northeast Utilities and the Massachusetts Department of Public Utilities.

Comment date: September 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Public Service Co.

[Docket No. ER86-671-000]

September 3, 1986

Take notice that on August 21, 1986, Iowa Public Service Company tendered for filing an Assignment for Capacity Schedule, whereby Iowa Public Service Company, Iowa-Illinois Gas and Electric Company, Corn Belt Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Light Plant, Laurens Municipal Light & Power Plant, Milford Municipal Utilities, Spencer Municipal Utilities and the City of Webster City have assigned a Capacity Schedule of seven (7) megawatts to the Municipality of Waverly commencing October 1, 1983 and continuing through October 1, 1988. The Assignment of Capacity Schedule of seven (7) megawatts is taken from the Louisa Generating Unit, entering Lehigh-Webster Transmission at the Lehigh Terminal, and exiting Lehigh-Webster Transmission at the Webster Terminal.

Comment date: September 16, 1986, in accordance with Standard Paragraph E at the end of this document.

Iowa Public Service Co.

[Docket No. ER86-672-000]

September 3, 1986.

Take notice that on August 21, 1986, Iowa Public Service Company tendered for filing an executed Transmission Facilities and Operating Agreement dated June 26, 1974, and subsequently amended, whereby the following parties entered into an agreement to construct, own, and operate the George Neal Generating Station Unit No. 4 and are presently in agreement to construct, own, and operate transmission facilities for the above-mentioned Generating Station: Iowa Public Service Company, Interstate Power Company, Northwestern Public Service Company, Corn Belt Power Cooperative, Northwest Iowa Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Light Plant, Laurens Municipal Light & Power Plant, Milford Municipal Utilities, Spencer Municipal Utilities, City of Webster City, and City of Cedar Falls.

Each of the parties owns electric facilities and is engaged in the generation, transmission, distribution and sale of electric power and energy within the geographical areas served by the parties and desire to implement an agreement regarding transmission facilities that they have jointly constructed.

Copies of the filing were served upon all parties to the agreement and the Iowa Utilities Board.

Comment date: September 16, 1986 in accordance with Standard Paragraph E at the end of this notice.

4. PacificCorp doing business as Pacific Power & Light Co.

[Docket No. ES86-56-000]

September 2, 1986.

Take notice that on August 26, 1986, PacificiCorp dba Pacific Power & Light Company (Pacific) filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1) authorizing it to issue and sell not more than 25,000 additional shares of its common stock pursuant to its Bargaining Employees' Stock Ownership Plan and Trust and (2) exempting the issuance from competitive bidding pursuant to 18 CFR 34.2(b)(2).

Comment date: September 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. System Energy Resources, Inc.

[Docket No. ER86-673-000]

September 3, 1986.

Take notice that on August 21, 1986, System Energy Resources, Inc. (SERI) tendered for filing pursuant to § 35.16 of the Federal Energy Regulatory Commission's Regulations a Notice of Succession through which SERI adopts Rate Schedule FERC No. 2, and Supplement No. 1 thereto, previously filed by Middle South Energy, Inc.

SERI states that the Notice of Succession is necessary to reflect the fact that it changed its name from Middle South Energy, Inc. effective as of July 28, 1986.

Comment date: September 16, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20302 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-876-001]

Equitable Gas Co., a division of Equitable Resources, Inc., Notice of Compliance Filing

September 4, 1986.

Take notice that on August 28, 1986, Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable) tendered for filing the following tariff sheets for inclusion in its FERC Gas Tariff, First Revised Volume No. 1:

Fourteenth Revised Sheet No. 1
Second Revised Sheet No. 1-A
First Revised Sheet No. 10-CC
Original Sheet Nos. 10-EE, 10-FF, 10-GG, 10-HH, 10-JJ, 10-KK, 10-LL, 10-MM, 10-NN, 10-OO, 10-PP, 10-QQ, 10-RR.

Equitable states these tariff sheets comprise its Rate Schedules SS-1, SS-2, SS-3 and STS-1, as restated in accordance with the Commission's order issued July 31, 1986 in Docket No. CP85-876-000, et al.

Equitable requests waiver of any Commission rules and regulations as may be necessary to permit the tariff sheets to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20305 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-1-34-000, 001]

Florida Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 4, 1986.

Take notice that on August 29, 1986, Florida Gas Transmission Company (FGT), P.O. Box 1188, Houston, Texas 77001 tendered for filing the following tariff sheets to its FERC Gas Tariff.

First Revised Volume No. 1

4th Revised 10th Revised Sheet No. 8
5th Revised Sheet No. 9

Original Volume No. 2

4th Revised 33th Revised Sheet No. 128

Reason for Filing

4th Revised 10th Revised Sheet No. 8 and 4th Revised 33rd Revised Sheet No. 128 contain revisions to FGT's Rate Schedules G and I and Rate Schedule T-3, respectively to adjust: (i) The Primary Adjustment to reflect increases in FGT's average cost of gas purchased for sale and company use, net of amounts to be recovered through Incremental Pricing Surcharges; (ii) The Balancing Adjustment to amortize over the six-month adjustment period (October 1, 1986 through March 31, 1987), the balance in the current period Unrecovered Purchase Gas Cost Account as of June 30, 1986; and (iii) The Order 94 Surcharge to amortize retroactive Order 94 costs paid to producers subsequent to September 30, 1985 together with amounts expected to be paid prior to October 1, 1986 (Adjustment Date) over the twelve-month Adjustment Period commencing October 1, 1986.

5th Revised Sheet No. 9 contains the estimated Incremental Pricing Surcharges for the adjustment period.

4th Revised 10th Revised Sheet No. 8, 5th Revised Sheet No. 9 and 4th Revised 33rd Revised Sheet No. 128 are to be effective on October 1, 1986.

The above-mentioned changes to the Primary and Balancing Adjustments are being made pursuant to section 15 (Purchase Gas Adjustment and Incremental Pricing Provision) of the General Terms and Conditions of FGT's FERC Gas Tariff, First Revised Volume No. 1 and Section 154.38 *et seq.*, of the Commission's Regulations (18 CFR 38, *et seq.*).

The net effect of the adjustments being filed for Rate Schedules G and I, and for Rate Schedule T-3 are summarized below.

	Rate schedules		
	G	I	T-3
	(¢/therm)	(¢/therm)	(¢/Mcf)
Currently effective rates*	25.561	23.788	46.24
Primary adjustment	1.797	1.797	.53
Balancing adjustment	(1.196)	(1.196)	(.32)
Order 94 surcharge adj	(.312)	(.312)	(.16)
October 1, 1986 rates	25.850	24.077	46.29

*Reflects rates effective April 1, 1986 pursuant to Docket No. TA86-4-34-000.

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 and interested state commissions and is being posted.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211). All such motions or protests should be filed on or before September 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20307 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-8-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

September 4, 1986.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on August 27, 1986, tendered for filing Second Revised Sheet No. 57(i) and Second Revised Sheet No. 57(ii), First Revised Volume No. 1 to its FERC Gas Tariff to be effective August 1, 1986.

These tariff sheets reflect changes resulting from a substantial reduction in Great Lakes' purchased gas cost applicable to Michigan Consolidated Gas Company (Mich Con), ANR Pipeline Company (ANR), Inter-City Gas Company (Inter-City), Michigan Power Company and Peoples Natural Gas Company (Peoples).

The reduction in gas costs applicable to Mich Con results from a further price renegotiation among Great Lakes, Mich Con and TransCanada PipeLines Ltd. (Trans-Canada) effective August 1, 1986 pursuant to an agreement between the parties dated July 31, 1986. The revised pricing arrangements were approved by the National Energy Board of Canada (NEB) by Order dated July 30, 1986. The revised commodity rate for gas purchased by Great Lakes for resale to Mich Con effective August 1, 1986 is $2.15 per MMBtu for quantities up to 15,000 Mcf per day, $1.85 per MMBtu for quantities in excess of 15,000 Mcf per

day up to 62.5% of contract demand, $1.65 per MMBtu for quantities in excess of 62.5% of contract demand up to 100% of contract demand and $1.60 per MMBtu for all quantities of gas in excess of 100% of contract demand.

The gas purchased price reductions for ANR, Inter-City, Michigan Power, and Peoples amount to 48.133¢ per MMBtu, 35.397¢ per MMBtu, 42.264¢ per MMBtu and 38.683¢ per MMBtu respectively and resulted from the pricing index mechanism previously approved by the Commission for gas sales to these customers.

Great Lakes is requesting an effective date of August 1, 1986 for Second Revised Sheet No. 57(i) and Second Revised Sheet No. 57(ii). In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provisions of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 10, 1986. Protests will be considered by the Commisison in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20313 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8804-001]

Mill Creek Associates; Surrender of Preliminary Permit

August 29, 1986.

Take notice that Mill Creek Associates, permittees for the Strawberry Flats Project No. 8804, have requested that their preliminary permit be terminated. The preliminary permit for Project No. 8804 was issued on December 11, 1985, and would have expired on November 30, 1988. The project would have been located on the Rogue River in Jackson County, Oregon.

The permittees filed the request on August 11, 1986, and the preliminary permit for Project No. 8804 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-20301 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-155-000]

Northwest Central Pipeline Corp.; Proposed Changes In FERC Gas Tariff

September 4, 1986.

Take notice that on August 28, 1986, Northwest Central Pipeline Corporation (Northwest Central) tendered for filing the following tariff sheets to Original Volume No. 2 of its FERC Gas Tariff to be effective on September 27, 1986:

Original Volume No. 2

Second Revised Sheet No. 2A
Third Revised Sheet No. 2B
First Revised Sheet Nos. 2C through 2P
Original Sheet Nos. 2Q through 2RR

Northwest Central states that these tariff sheets will permit it to commence new NGPA section 311 firm and interruptible transportation services on an interim basis pending Commission action on the Stipulation and Agreement dated July 18, 1986 (Stipulation) in Docket Nos. RP86-32 and RP86-68, which Stipulation reflects a comprehensive proposal whereby Northwest Central will restructure its sales and transportation tariff to render open-access transportation services under the provisions of the Commission's Order Nos. 436, *et seq.* Northwest Central states that the filed tariff sheets applicable to the proposed interim Interruptible Transportation Service (ITS) reflect those revisions to the presently effective Rate Schedule T-1 as required to conform to the applicable conditions of Subpart A of Part 284 of the Commission's Regulations as amended by Order No. 436 and that the rates, terms and conditions applicable to such interim ITS service as well as to the proposed interim Firm Transportation Service (FTS) are in substance virtually identical to the corresponding tariff provisions applicable to the ITS and FTS services under the pending Stipulation.

To make these tariff sheets effective on an iterim basis Northwest Central requests that the Commission waive for the interim period (1) the contract demand reduction/conversion requirements of § 284.10 of the Commission's Regulations, (2) the "full requirements" provisions of Northwest Central's F, C, and I Rate Schedules and related service agreements and (3) the revenue crediting provisions of the Stipulation and Agreement dated February 14, 1984, in Docket No. RP82-114 applicable to transportation revenues under Rate Schedule T-1.

Northwest Central states that copies of the filing have been mailed to all of its customers and affected state commissions and to all parties upon which the Stipulation was required to be served.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20416, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September *10*, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 86-20308 Filed 9-8-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP84-59-005 and RP85-13-013]

Northwest Pipeline Corp.; Proposed Changes to FERC Gas Tariff

September 4, 1986.

Take notice that on August 29, 1986, Northwest Pipeline Corporation (Northwest) submitted for filing, to be a part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets.

First Revised Volume No. 1

Twenty-Eighth Revised Sheet No. 10
Alternate Twenty-Eighth Revised Sheet No. 10

Northwest states that the purpose of its filing is to place into effect a revised

Demand-1 rate and Special Demand-1 Surcharge rate to Rate Schedule ODL–1, in accordance with the provisions of the Joint Offer of Settlement filed in the above-captioned dockets on February 11, 1986 and approved by the Commission on June 4, 1986 (35 FERC ¶ 61,284).

Northwest states that the tariff sheets are being submitted in alternate forms, in conjunction with Northwest's July 31, 1986 filing in Docket No. RP86–145–000. In that filing, Northwest requested the Commission to approve a one-month delay in the filing date and the effective date of its regular semiannual PGA filing, in order to provide Northwest an opportunity to finalize contract negotiations with its Canadian pipeline supplier. Northwest therefore requests the Commission to accept Twenty-Eighth Revised Sheet No. 10 for filing effective November 1, 1986 (rather than October 1, 1986) and to allow Northwest to adjust the Demand-1 surcharge to cover the period April through October 1986 rather than April through September 1986. Northwest states that this would allow the proposed rates to become effective at the same time as Northwest's delayed PGA and would avoid two rate changes to Northwest's customers within one month.

In the event Northwest's request to make Twenty-Eighth Revised Sheet No. 10 effective as proposed is denied, Northwest in the alternative requests the Commission to accept Alternative Twenty-Eighth Revised Sheet No. 10 effective October 1, 1986, in accordance with the provision of the Joint Offer of Settlement in the above-captioned dockets. Northwest states that regardless of which tariff sheet is accepted for filing, the Special Demand-1 Surcharge rate to Rate Schedule ODL–1 would terminate on March 31, 1987.

Northwest requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective as proposed, and states that copies of the filing have been served upon all of its jurisdictional customers, all affected state regulatory commissions, and all intervenors in Docket Nos. RP84–59–000, *et al.* and Docket Nos. RP85–13–000 *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 11, 1986. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20309 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–39–000, 001]

Pacific Interstate Transmission Co.; Rate Change

September 4, 1986.

Take notice that Pacific Interstate Transmission Company (Pacific Interstate) on August 29, 1986, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following sheets:

Thirtieth Revised Sheet No. 4
Thirteenth Revised Sheet No. 4–A
Twenty-Fifth Revised Sheet No. 5

Pacific Interstate states that these tariff sheets are issued pursuant to Pacific Interstate's Purchased Gas Cost Adjustment (PGCA) Provision and Incremental Pricing Provision as set forth in section 16 and 17, respectively, of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 2. The proposed effective date of these tendered tariff sheets and the rates thereon is October 1, 1986.

Pacific Interstate also states that the above-tendered tariff sheets reflect a proposed October 1, 1986, Pacific Interstate Rate Schedule S–G–1 commodity rate of 421.70¢ per decatherm, an increase of 86.05¢ per decatherm from the 335.65¢ per decatherm rate effective April 1, 1986, the date of the last S–G–1 commodity rate change, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment. This is due to greater than anticipated production of section 102 gas and an 80% decrease in forecasted sales due to termination of the section 102 gas purchase contracts.

Pacific Interstate states that the current Gas Cost Adjustment is based on an annualized gas cost decrease of $93,434.00 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning October 1, 1986, an amount of $174,319.34, which is the amount of Pacific Interstate's Unrecovered Purchased Gas Cost Account at June 30, 1986. Furthermore, Pacific Interstate states that there is no incremental pricing surcharge adjustment applicable to this filing, since its only customer has no surcharge absorption capability.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 9–11–86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20312 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–62–000,001]

Pacific Offshore Pipeline Co.; Proposed Changes in FERC Gas Tariff Pursuant to Purchased Gas Cost Adjustment Provision

September 4, 1986.

Take notice that Pacific Offshore Pipeline Company (Pacific Offshore) on August 29, 1986, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following sheet:

Sixth Revised Sheet No. 4

Pacific Offshore requests an effective date of this tendered tariff sheet and the rates thereon of October 1, 1986.

As indicated below, the proposed increase is due in greatest part to the effect of the liquid revenue crediting mechanism in the PGA. Under the PGA, gas costs are credited with the average price of liquid by-product sold in January and July. Due to the seasonal nature of the liquid market, the two months represent the highest and lowest priced months. This device has recently resulted in exaggerated swings in POPCO's PGA. In addition, in April 1986, the price of liquid by-products dropped drastically. This has resulted in POPCO paying Exxon, its sole supplier, much more for its gas than it received from Southern California Gas Company (SoCalGas), its sole customer. POPCO will file a change in this PGA mechanism to reflect a moving annual average liquid revenue crediting provision in its Spring 1987 PGA.

Also, a portion of the increase is due to the escalation of NGPA §109 gas costs sold to POPCO by Exxon. However, commencing in January of 1986, POPCO started negotiations with Exxon to amend the gas purchase agreement in order to reduce gas costs. Negotiations have proceeded since that time through frequent meetings and sometime intense negotiations. To date, however, POPCO has been unsuccessful in achieving an agreement with Exxon.

Pacific Offshore also states that the above-tenderd tariff sheet reflects a proposed October 1, 1986, Pacific Offshore Rate Schedule G–1 commodity rate of $3.277 per decatherm, an increase of $1.258 per decatherm from the $2.019 per decatherm rate effective April 1, 1986, the date of the last revised commodity rate, and that such increase reflects a current Gas Cost Adjustment and a change in the Surcharge Adjustment.

Pacific Offshore states that the current Gas Cost Adjustment is based on an annualized gas cost decrease of $1,193,749 and that the Surcharge Adjustment is designed to collect, over a six-month period beginning October 1, 1986, an amount of $2,722,733.22 which is the amount of Pacific Offshore's Unrecovered Purchased Gas Cost account at June 30, 1986.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before 9–11–86. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20311 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–154–000]

Southern Natural Gas Co., Notice of Compliance Filing

September 4, 1986.

Take notice that on August 26, 1986, Southern Natural Gas Company (Southern) tendered for filing Eighth Revised Sheet No. 30D to its FERC Gas Tariff, Sixth Revised Volume No. 1. Southern states that this filing is being made pursuant to Ordering Paragraph (D) of the Federal Energy Regulatory Commission's June 3, 1986 order in Docket No. CP86–281–000 and that the revised sheet sets forth the rates to be effective under its Flexible Discount Rate Schedule during September of 1986. Southern is requesting an effective date of September 1, 1986.

Southern indicates that copies of the filing have been mailed to all of its jurisdictional purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20306 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA87–1–42–000, 001]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

September 4, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on August 29, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following sheets:

35th Revised Sheet No. 5
14th Revised Sheet No. 6A

The above tariff sheets are being filed pursuant to Transwestern's Purchased Gas Adjustment provision set forth in Article 19 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1. The Purchased Gas Cost Adjustment reflected in these sheets represent a decrease of $0.2766/dth as measured against Transwestern's last regular semi-annual PGA filing Docket No. TA86–4–42–000 (PGA86–4) which became effective on April 1, 1986 and a decrease of $0.0278/dth as measured against Transwestern's "flex PGA" filing, Docket No. TF86–1–42–000 which became effective on August 1, 1986.

The rate change herein consists of:

(1) A decrease in the Cost of Gas Adjustment of $0.2960/dth as measured against Transwestern's last regular PGA filing, Docket No. TA86–4–42–000 (PGA86–4) which became effective on April 1, 1986 and a decrease of $0.0472/dth as measured against Transwestern's "flex PGA" filing, Docket No. TF86–1–42–000, which became effective on August 1, 1986.

(2) An increase in the Surcharge Adjustment of $0.194/dth due to a decrease in the balance in the Gas Cost Adjustment account as of June 30, 1986.

The proposed effective date of the above tariff sheets is October 1, 1986.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before September 11, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–20310 Filed 9–8–86; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $37,000 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Gibbs Industries, Inc. of Revere, Massachusetts (Case No. HEF–0079). The fund will be available to customers who purchased petroleum

products from Gibbs during the consent order period.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be filed no later than 90 days after publication of this notice in the **Federal Register** and should be addressed to: Gibbs Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0079.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585 (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Gibbs Industries, Inc. of Revere, Massachusetts. The Consent Order settled possible allocation violations with respect to the firm's sales of petroleum products during the months of May and June 1979, the consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established refund procedures and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued January 29, 1986, 51 FR 4971 (February 10, 1986).

As the Decision and Order indicates, applications for refund from the consent order fund may now be filed. Applications will be accepted provided that they are postmarked no later than 90 days after the publication of this Decision and Order in the **Federal Register**. Applications will be accepted from customers who purchased petroleum products from Gibbs during the consent order period. The specific information required in an application for refund is set forth in the Decision Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: September 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

September 2, 1986.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Gibbs Industries, Inc.
Date of Filing: October 13, 1983
Case Number: HEF-0079

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Gibbs Industries, Inc. (Gibbs) of Revere, Massachusetts.

I. Background

Gibbs is engaged in the reselling and retailing of petroleum products and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. An ERA audit of Gibbs revealed possible violations of the regulations governing the allocation of petroleum products, 10 CFR Part 211, Subparts A and F. The ERA specifically alleged that during the months of May and June 1979, Gibbs failed to supply certain of its customers with their adjusted price period allocation of motor gasoline.

In order to settle all claims and disputes between Gibbs and the DOE regarding the firm's allocation of motor gasoline during May and June 1979 (hereinafter referred to as the consent order period), Gibbs and the DOE entered into a Consent Order on January 7, 1981. The Consent Order refers to the ERA's allegations of allocation infractions, but notes that there was no formal finding that violations actually occurred. Additionally, the Consent Order states that Gibbs does not admit that it violated the regulations. Under the terms of the Consent Order, Gibbs remitted $37,000 to the DOE for deposit in an interest-bearing escrow account for ultimate distribution by the DOE.

On January 29, 1986, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 51 FR 4971 (February 10, 1986). We stated in PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from Gibbs' customers who can demonstrate that they were injured as a result of Gibbs' allocation practices during the consent order period. The PD&O was published in the **Federal Register** on February 10, 1986, and comments were solicited regarding the proposed refund procedures. We have received no comments regarding those procedures.

II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines that may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). As we stated in the PD&O, we have reviewed the record in the present proceeding and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Gibbs consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds in this proceeding will take place in two stages. In the first stage, we will accept claims from Gibbs' motor gasoline customers who may have been injured by the firm's allocation practices during the consent order period. The ERA audit file contains the names of Gibbs' base period customers who received less than their adjusted base period allocation of motor gasoline for May and/or June 1979. These are the parties most likely adversely affected by Gibbs' alleged allocation infractions. We will adopt the following standards and presumptions to assess the claims of these customers.[1]

First, we will generally assume that the customers listed in the ERA audit file were injured by Gibbs' alleged allocation violations. This assumption is different from our approach in other refund proceedings, where we have required detailed proof of injury, *see, e.g., Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982) (*RFI*), but is justified in this case on the basis of the following factors. The first factor is the period of time covered by the Gibbs audit and Consent Order: May and June 1979. This was a period of severe supply shortages in the Petroleum industry, and firms generally were able to sell all the motor gasoline they were able to obtain. *Cf. Colony West Gulf*, No. DEE-4579 (June 22, 1979) (Proposed Decision), *finalized sub nom, AIA Exxon*, No. DEE-2426 (August 20, 1979), and *C&C Garage & Towing*, No. DEE-3362 (June 20, 1979) (Proposed Decision), *finalized* at 5 DOE

[1] Presumptions in refund cases are specifically authorized by § 205.282(e) of the DOE procedural regulations in order that refund applications may be considered in an efficient and equitable manner.

¶ 81,249 (1980) (when shortages exist, any firm that obtains additional quantities of product could sell it). Furthermore, we note that Gibbs Consent Order is focused on specific alleged allocation violations based upon a detailed audit. The ERA audit file identifies 147 customers of Gibbs who were affected by the firm's alleged allocation violations and indicates the difference between each customer's adjusted base period allocation of motor gasoline and the amount which it actually purchased from Gibbs. *See* the Appendix to this Decision. Therefore, we will adopt the presumption that each customer listed in the ERA audit file was injured with respect to any gallons of motor gasoline to which it was entitled, but did not receive from Gibbs.[2]

Second, we will use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all customers experienced the same loss per gallon as a result of not receiving the correct adjusted base period allocation of motor gasoline from Gibbs during the consent order period. The assumption that the injury in this case was the same for each gallon lost is reasonable since the customers were in the same marketing area and is not inconsistent with the information contained in the audit file. As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly and avoids detailed examination of the impact on each firm of the alleged violation. *See Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric refund amount is calculated by dividing the consent order settlement amount ($37,000) by the total volume of misallocated motor gasoline (383,670 gallons), yielding a per gallon volumetric refund amount, exclusive of interest, of $0.096437. An eligible claimant will receive a refund determined by multiplying the volumetric refund amount by the number of gallons to which it was entitled, but did not receive from Gibbs during the consent order period (excluding any gallons obtained from alternative sources).[3] In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

All refund applicants will be required to indicate, for each month of the consent order period, their adjusted base period allocation of motor gasoline and the number of gallons actually purchased from Gibbs, and the adjusted base period allocation and gallons purchased from other suppliers. If a claimant lacks these data, but is listed in the attached Appendix, it may certify that, during May and June 1979, (i) it had a supplier-purchaser relationship with Gibbs pursuant to 10 CFR Part 211, and (ii) it did not receive motor gasoline from another supplier.

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b). The same principle applies here.

In the unlikely event that the total amount of valid claims exceeds the funds available in the escrow account, all refunds will be reduced proportionately. If, on the other hand, money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent second-stage proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the intitial stage of this refund proceeding has been completed.

IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Gibbs consent order fund. Accordingly, we shall now accept Applications for Refund from eligible purchasers of Gibbs motor gasoline during the consent order period. As proposed, the consent order funds will be distributed to claimants that are identified in the ERA audit file as having been affected by Gibbs' alleged allocation violations, as well as to any other eligible customers of Gibbs who apply for a refund. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The name of the consent order firm: Gibbs Industries, Inc., the case number: HEF-0079, and the applicant's name should be prominently displayed on the first page.

2. The name, position title, and telephone number of a person who may be contacted by us for additional information concerning the Application.

3. A schedule of the applicant's purchases of motor gasoline from Gibbs and other suppliers during the months of May and June 1979 and its adjusted base period allocation from Gibbs and other suppliers for those months. In the alternative, an applicant may submit a statement certifying that during those months it has a supplier-purchaser relationship with Gibbs and did not receive motor gasoline from another supplier.

4. A statement of whether the applicant was in any way affiliated with Gibbs. If so, the applicant should state the nature of the affiliation.

5. A statement of whether there has been any change in ownership of the entity that purchased the motor gasoline from Gibbs since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

6. A statement of whether the applicant is or has been involved as a party in any DOE or private Section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for Refund. *See* 10 CFR 205.9(d).

7. The following signed statement:

I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000 Independence Avenue, SW., Washington, DC. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be confidential.

All Applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Gibbs Industries, Inc. pursuant to the Consent Order executed on January 7, 1981 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: September 2, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

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[2] This presumption will not apply to firms which were able to obtain sufficient quantities of motor gasoline elsewhere. The acquisition of product from other sources would have mitigated the injury which such customers experienced as a result of Gibbs' alleged failure to supply them with their full allocation. However, a claimant which purchased product from alternative sources will still be eligible for a refund, if, for example, it shows that it paid a significantly higher price for the product and was not able to pass the higher price through to its customers.

[3] Some customers may claim that they suffered an injury greater than that which has been approximated by the volumetric refund amount. These firms must make the showings required of allocation claimants in other Subpart V proceedings. *See, e.g., RFI: cf. Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984) (refund above volumetric level approved for price violation claim). Specifically, they must document the net profits lost as a result of not receiving their adjusted base period allocation of motor gasoline during the consent order period.

APPENDIX

I. GIBB'S WHOLESALE ACCOUNTS

Name of customer	Gallons not received	
	May 1979	June 1979
A. Address Known		
Arsenault, Harold	7,705	
Clean Machine	282	
Coviello & Son *	149	
Deering Lumber		156
Eddy, James	20	
Hallman Chevrolet	270	
Pleasant Park Yacht Club *		98
Richardson, Harold	1,684	
B. Address Unknown		
Acorni Corporation	6,865	
Aranosian Oil Co	1,912	
Avellino, Silveo	11,100	
B&D Enterprises	276	
Ballard Oil	2,001	
Barnes, William	2,531	
C&C Elliot	951	
CDC, Inc	1,564	
Carl Oil Company	2,362	
Center Market, Inc	1,262	
Chapman Oil Co	157	
Charles Auto Body and Tire *	20	
Charles C. Towne and Sons	270	81
Charles Deemers, Inc	249	
Chelmsford Fuel Trans	1,449	
City of Saco, Maine	1,047	51
Colonial Express	232	
Conway, Clinton	5,552	
Cray Oil	5,031	
Daigle, Claude *	108	
Davis, Frank Jr.*	28	
Dennis K. Burke, Inc	5,806	
Derring, Albert *	43	
Dinola Fuels, Inc	711	
Disilva Truck Service	80	
Duquette, D	2,333	
Dutton Tire and Auto Dist	622	1,670
Duval, Robert L	1,212	12,635
Dystart Service	2,178	4,672
Ecology Oil Corp	4,837	
Edgemont Garage and Oil	2,919	
Freed Oil Co	269	
Gasland (Good Hope)	18,129	
Geo. E. Warren Co	2,992	
Goldman Paper *	68	
Gorham Town Garage	252	
Green Brothers Oil and Co., Inc	126	
Hall, Hoyt T	7,490	
Harbor Supply	186	
Hill Oil Company	5,227	19,228
Hoole, Richard E	1,865	
JBB, Inc	9,839	
Kartland, Inc	23	
L.J. Bouchard & Son	2,113	
Lovetere, Angelo	376	
Lucus, James	1,202	
Maier, Paul	5,583	
Maine Coal Sales	630	
Malden Taxi	750	
McCollister	436	
Milliard, Fred *	52	
Montgomery, A	988	
Moore, Tom	617	
Mosher Farm *	27	
Mullerkey, Paul	1,715	
Munces Superior Petroleum	564	
Pages Service, Inc	4,478	3,120
Paul Martin, Inc	205	289
Piglet Market	1,312	
Prentiss, Arthur Jr.*	30	
Pressman, Melvin	212	
R.L. Greenlaw and Sons, Inc	630	79
Red's Inc	6,006	
Remi Fortin Construction	730	
Rent A Tool, Inc	273	
Richdale Dairies	3,206	
Riverdside Anchorage *	90	
Rohner Service, Inc	1,257	
Romanchuk, Al	2,725	
Rossi, Steve	1,431	
Rousseau, G.A	3,612	
Roy's Garage	685	
Saco Brick *	84	

APPENDIX—Continued

Name of customer	Gallons not received	
	May 1979	June 1979
Schlager, Joseph	1,777	
Spang, Phil *	96	
Stevens, Walter *	44	
Stop-N-Go *	150	
Sweetster's Home *	106	
Teixeira, E	2,771	
Terry Oil and Heating	275	
Thibeault Oil	540	440
United Tire	1,501	
Wakefield Moving & Storage	472	
Wayfra Realty	11,688	
Welch, Frank	1,123	
Woonsocket Consumer Coal	527	

* Using the volumetric method of calculating refunds, these firms do not quality for the $15 minimum required to file a refund application.

II. GIBB'S DEALER ACCOUNTS

Name of customer	Gallons not received	
	May 1979	June 1979
A. Address Known		
Beers, Richard R		7,408
Berube, Jos	6,587	11,558
Bourassa, William	4,744	233
Clean Machine		953
Cote's Garage, Inc	552	
Daniels, Warren C		4,228
Martines, Joseph	200	3,957
B. Address Unknown		
A & G Auto		856
Arthur Wolfe Tire Co	1,698	
Arundel Tulsa	469	
Bartlett, Clarence	7,829	
Bates, Clifford		578
Bill and Andy's	3,734	5,561
Bob Brest Buick		329
Brighton Auto Service	174	1,834
Bruhms, Arthur	610	508
Buster's Service	1,260	
Cormier, Ronald	1,304	1,505
D. Duquette		5,288
Donovan, Thomas		366
Duff's Littleton		6,205
Ferris, Thomas*	66	
Forbes, George	4,132	1,983
Foster, Charlie	7,936	
Granite State Gas Station		241
Greenier, Andrew		8,999
Hodge, William		2,498
Jiffy Mart		171
L.J. Bouchard & Son		177
Lampron, Hubert	3,016	
Latorella & Frongell		1,361
Lemieux, Hercules	215	
Levyssohn, J.V. Permis		2,049
Maier, Paul		105
Morel, Edmund		779
Mullarkey, P		934
Nierberle, Ernest	1,547	
North Reading BP		6,403
Oliver, G		3,552
Pressman, Melvin		130
Ray, Leonard		4,060
Reggie's BP		594
Rohner Service		1,295
Rossi, Steve		1,302
Samson, Lionel	1,777	145
Schlager, Joseph		1,323
Sebago, Portland		2,967
Steelstone Industries, Inc	266	
Sullaway, Sam		8,969
Venuti, Robert	421	
Welch, Frank		4,777
York Oldsmobile*		130
Zannini, David	2,159	5,470

*Using the volumetric method of calculating refunds, these firms do not qualify for the $15 minimum required to file a refund application.

[FR Doc. 86-20298 Filed 9-8-86; 8:45 am]

BILLING CODE 6450-01-m

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis; Cumberland Basin System of Projects

AGENCY: Southeastern Power Administration (SEPA), DOE.

ACTION: Notice of order confirming and approving power rates on an interim basis for the Cumberland Basin System of Projects.

SUMMARY: Notice is given of Rate Order No. SEPA-23 of the Under Secretary of the Department of Energy, confirming and approving, on an interim basis, Rate Schedule CC-1-B for the Cumberland Basin System of Projects. The rates were approved on an interim basis through June 30, 1989, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

EFFECTIVE DATE: Approval of rates on an interim basis is effective on September 1, 1986.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

J. Emerson Harper, Office of Management and Review, CE-41, Department of Energy, James Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued December 27, 1984, in Docket No. EF84-3021 confirmed and approved Wholesale Power Rate Schedules CBR-1-A, CSI-1-A, CEK-1-A, CM-1-A, CK-1-A, CTV-1-A and CC-1-A through June 30, 1989. Rate Schedule CC-1-B replaces CC-1-A.

Issued in Washington, DC, August 29, 1986

Joseph F. Salgado,

Under Secretary.

Order Confirming and Approving Power Rates on an Interim Basis

In the matter of: Southeastern Power Administration—Cumberland Basin Projects' Power Rates: Rate Order SEPA-23.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission

under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm, approve, and place in effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued pursuant to the delegation to the Under Secretary.

Background

Power from the Cumberland Basin Projects is presently sold under Wholesale Power Rate Schedules CBR–1–A, CSI–1–A, CEK–1–A, CM–1–A, CK–1–A, CTV–1–A and CC–1–A confirmed and approved through June 30, 1989. These rate schedules were approved by the Federal Energy Regulatory Commission by order issued December 27, 1984, for a period beginning July 1, 1984, and ending June 30, 1989.

Public Notice and Comment

Opportunities for public review and comment on Rate Schudule CC–1–A were provided during the period March 12, 1984, through May 11, 1984. Comments and discussion of those comments were provided in FERC Docket No. EF84–3021.

Discussion

System Repayment

The repayment study supporting Rate Schedule CC–1–A in the original rate filing is included in FERC Docket No. EF84–3021. Repayment studies prepared with actual data through fiscal years 1984 and 1985 show that the amortization is less than anticipated in the 1984 rate filing because of lower than average water conditions. However, the repayment studies continue to show that present revenues are adequate to recover the total costs in accordance with the repayment criteria.

Additionally, it appears that Rate Schedule CC–1–B is designed so as to produce revenue adequate to recover on a timely basis all system power costs. The Administrator of SEPA has certified that the rates are consistent with the applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Rate Design

Rate Schedule CC–1–A was originally designed to recover costs for power delivered on the Tennessee Valley Authority (TVA)—Carolina Power & Light Company (CP&L) border. This rate schedule was designed prior to final contractual arrangements with CP&L to deliver the power to SEPA's preference customers. Recently, arrangements have been completed, and CP&L has requested reserves and losses to deliver the power. Therefore, we have adjusted rates on Rate Schedule CC–1–A to provide the same revenues through reduced capacity and energy delivered. In addition, CP&L is charging a transmission charge which SEPA is passing directly to the affected customers through a new transmission charge.

Environmental Impact

SEPA has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate schedule, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Office of the Director of Management and Review of Conservation and Renewable Energy, Forrestal Building, 1000 Independent Avenue SW., Room 6B–070, Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning September 1, 1986, and ending no later than June 30, 1989.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 1, 1986, attached Wholesale Power Rate Schedule CC–1–B. The rate schedule shall remain in effect on an interim basis through June 30, 1989, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves it or a substitute rate schedule on a final basis.

Issued in Washington, DC, August 29, 1986.

Joseph F. Salgado,

Under Secretary.

Wholesale Power Rate Schedule CC–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives served through the facilities of Carolina Power & Light Company, Western Division (hereinafter called the Customers).

Applicability

This rate schedule shall be applicable to electric capacity and energy available from the Dale Hollow, Center Hill, Wolf Creek, Cheatham, Old Hickory, Barkley, J. Percy Priest and Cordell Hull Projects (all of such projects being hereinafter called collectively the "Cumberland Projects") and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of sixty hertz. The power shall be delivered at nominal voltages of 161,000 volts to the transmission system of Carolina Power & Light Company, Western Division.

Points of Delivery

The points of delivery will be at interconnecting points of the Tennessee Valley Authority system and the Carolina Power & Light Company, Western Division system. Other points of delivery may be as agreed upon.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge

$1.71 per kilowatt of total contract demand.

Energy Charge

5.74 mills per kilowatt-hour.

Transmission Charge

1.91 per kilowatt of total contract demand.

The transmission rate is subject to annual adjustment on April 1 of each year and will be computed subject to the formula in Appendix A attached to the Government-Carolina Power & Light Company contract.

Energy to be Furnished by the Government

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to

Carolina Power & Light Company (less six percent (6%) losses). The Customer's contract demand and accompanying energy allocation will be divided pro rata among its individual delivery points served from the Carolina Power & Light Company's, Western Division transmission system.

Billing Month

The billing month for power sold under this schedule shall end at 2400 hours CDT or CST, whichever is currently effective, on the last day of each calendar month.

September 1, 1986.

[FR Doc. 86-20236 Filed 9-8-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3076-7]

Science Advisory Board Environmental Engineering Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Environmental Engineering Committee of the Science Advisory Board will be held at the Environmental Protection Agency, Conference Room #3 North (on the Ground Floor, near the EPA Washington Information Center), Waterside Mall, 401 M Street SW., Washington, DC on September 29-30, 1986. The meeting will begin at 9:00 a.m. each day, and last until 5:00 p.m. on September 29, and until 1:00 p.m. on September 30.

The purpose of the meeting will be to continue review of technical documents supporting Agency regulations for the reuse and disposal of municipal treatment plant sludges under section 405(d) of the Clean Water Act, and proposed revisions to the Agency's Ocean Dumping Regulations (40 CFR Parts 220 through 229).

The meeting is open to the public. Any member of the public wishing to participate or obtain further information about the meeting should contact Mrs. Kathleen Conway, Deputy Director, at (202) 382-2552, or Terry F. Yosie, Director, Science Advisory Board, at (202) 382-4126. Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be opportunity for brief oral statements. Anyone wishing to make oral or written comments must contact Mrs. Conway prior to September 22, 1986 in order to be placed on the agenda. Any member of the public wishing to attend should contact Ms. Renee Butler at (202) 382-2552.

Dated: August 29, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-20262 Filed 9-8-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3076-6]

Science Advisory Board Radiation Advisory Committee National Radon Survey Design Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a meeting of the National Radon Survey Design Subcommittee of the Science Advisory Board's Radiation Advisory Committee will be held at the Capitol Holiday Inn, Gemini Conference Room, 550 C Street SW., Washington, DC 20024 on September 24, 1986. The meeting will begin at 9:00 a.m. and adjourn no later than 5:00 p.m.

The Subcommittee will review the *Design of the National Survey of Radon Levels in Residential Structures* for the Office of Radiation Programs. Copies of the documents being reviewed may be obtained by calling or writing Daniel Egan (202) 475-9605 at the Office of Radiation Programs, ANR-460, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The meeting is open to the public; however, seating is limited. Any member wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101-F) Radiation Advisory Committee, Science Advisory Board, by the close of business on September 21, 1986. The telephone number is (202) 382-2552.

Dated: August 29, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-20263 Filed 9-8-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-36125; FRL-3067-3]

Pesticide Registration Standards; Notice of Availability

Correction

In FR Doc. 86-18757 beginning on page 29693 in the issue of Wednesday, August 20, 1986, make the following corrections:

1. On page 29693, in the second column in the table in the **SUPPLEMENTARY INFORMATION,** the fifteenth entry in the first column should read "Bolstar (Sulprofos)"; and

2. On the same page, the same column and table, the NTIS order No. opposite the entry "Chlorobenzilate" should read "PB 85-107605".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1616]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

September 3, 1986.

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules for Rural Cellular Service. (CC Docket No. 85-388, RM-5167). Number of petitions received: 13.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-20230 Filed 9-8-86; 8:45 am]

BILLING CODE 6712-01-M

Radio Broadcasting Advisory Committee; Meeting

The next meeting of the Advisory Committee on Radio Broadcasting will be held at 1:30 p.m., Wednesday, September 24, 1986, at the McCollough Room, National Association of Broadcasters, 1771 N Street, Washington, DC.

The Committee will consider:

—Possible improvements to the AM service through revisions to the AM Broadcast Rules. (See the Staff Report to the Commission on this subject dated April 3, 1986);

—Preparations for the 1988 Second Session of the ITU Regional Administrative Radio Conference on the Expansion of the Band Allocated to AM Broadcasting;

—Implementation of the recently signed United States-Mexican Agreement on AM Broadcasting; and
—Other Business.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for September 24, 1986 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Louis C. Stephens at FCC Headquarters. His telephone number has been changed to (202) 254–3394.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–20229 Filed 9–8–86; 8:45 am]

BILLING CODE 6712-01-M

New TV Stations; Applications for Consolidated Hearing; Interface Productions et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM Docket No.
A. Interface Productions, Inc., Bluefield, WV.	BPCT–860401KE	86–345
B. Paul Lambert, Limited, Bluefield, WV.	BPCT–860505KE	.....
C. Living Faith Ministries, Inc., Bluefield, WV.	BPCT–860529KF	.....
D. Blue Sky Broadcasting, Inc., Bluefield, WV.	BPCT–860530KY	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, C,D
Multiple Ownership, C
Standard Comparative (Commercial), A,B,C,D
Ultimate, A,B,C,D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Stephen F. Sewell,

Assistant Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–20231 Filed 9–8–86; 8:45 am]

BILLING CODE 6712-01-M

New TV Stations; Applications for Consolidated Hearing; Meredith Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant and city/state	File No.	MM docket No.
A. Meredith Corporation, Bunnell, FL.	BPCT–860306LH	86–343
B. Pollack Broadcasting Company, Bunnell, FL.	BPCT–860421KK	.....
C. Glenda McLeod, Bunnell, FL.	BPCT–860422KH	.....
D. Bunnell Broadcasting, Corp., Bunnell, FL.	BPCT–860422KI	.....
E. Press Broadcasting, Company, Bunnell, FL.	BPCT–860422KJ	.....
F. Bunnell Communications, Inc., Bunnell, FL.	BPCT–860530KK	.....
G. Bunnell Television Company, Bunnell, FL.	BPCT–860530KM	.....

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, A,B,C,D,E,F,G
Satellite, A,E
Comparative, A,B,C,D,E,F,G
Ultimate, A,B,C,D,E,F,G

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86–20232 Filed 9–8–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Martime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010987.

Title: United States/Central America Liner Association.

Parties:

Coordinated Caribbean Transport
Seaboard Marine, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed agreement would establish a conference arrangement in the trade between United States Atlantic, Gulf and Puerto Rico ports and ports in Costa Rica, El Salvador, Guatemala and Honduras and inland points via all such ports (excluding Alaska and Hawaii).

Agreement No.: 217–010988.

Title: Tecomar, S.A./Flagship Container line, Inc. Space Charter Agreement.

Parties:

Flagship Container Line, Inc. (FCL)
Tecomar, S.A. (Tecomar)

Synopsis: The proposed agreement would permit FCL to charter space on Tecomar vessels in the trade between United States Gulf and Florida ports, and ports in Belize, Guatemala, El Salvador, Honduras and Costa Rica. The parties have requested a shortened review period.

Dated: September 3, 1986.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-20200 Filed 9-8-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Peoples National Bancorp, Inc., 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(a) 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 October 2, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Peoples National Bancorp, Inc.*, State College, Pennsylvania; to acquire 24.90 percent of the voting shares of Heritage Financial Services Corporation, Lewistown, Pennsylvania, and thereby indirectly acquire The Russell National Bank, Lewistown, Pennsylvania.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Bankshares of Reedsburg, Inc.*, Reedsburg, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers and Merchants Bank, Reedsburg, Wisconsin.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grant Avenue, Kansas City, Missiouri 64198:

1. *Robinson Bancshares, Inc.*, Robinson, Kansas; to acquire 80 percent or more of the voting shares of Morrill and Janes Bancshares, Inc., Hiawatha, Kansas, and thereby indirectly acquire Morrill and Janes Bank and Trust Company, Hiawatha, Kansas.

Board of Governors of the Federal Reserve System, September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20211 Filed 9-8-86; 8:45 am]

BILLING CODE 6210-01-M

Unibancorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23)a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activiteis will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Unibancorp, Inc.*, Chicago, Illinois; to engage *de novo* through its subsidiary, Unibanc Brokerage Services, Inc., Chicago, Illinois, in security brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 3, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-20212 Filed 9-8-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Disease Control

National Symposium on the Prevention of the Leading Work-Related Diseases and Injuries; Open Meeting

A National Symposium on the Prevention of Leading Work-Related Diseases and Injuries will be held October 28-31, 1986, at the Hyatt Regency Hotel, Cincinnati, Ohio. This symposium is sponsored by the Association of Schools of Public Health (ASPH) and the Association of University Programs in Occupational Health and Safety under a cooperative agreement with the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control. NIOSH developed and published a suggested list of the Leading Work-Related Diseases and Injuries, and in cooperation with ASPH, convened the first symposium in Atlanta, Georgia, in May 1985. Proposed strategies for the prevention of occupational lung diseases, musculoskeletal injuries, occupational cancers, occupational traumatic injuries, and cardiovascular diseases were introduced and discussed by professionals from all sectors of occupational safety and health. These deliberations have resulted in a publication of these five strategies by the ASPH.

The second symposium is scheduled to begin at 9 a.m., Wednesday, October 29, with an opening session and continue through 3 p.m., Friday, October 31. Beginning at 2:30 p.m., Wednesday, and continuing on Thursday until 5 p.m., there will be five concurrent workshops

with a panel of national experts on the following proposed draft prevention strategies:

Workshop I: Prevention of Disorders of Reproduction
Workshop II: Prevention of Neurotoxic Disorders
Workshop III: Prevention of Noise-Induced Hearing Loss
Workshop IV: Prevention of Dermatologic Conditions
Workshop V: Prevention of Psychologic Disorders

On Friday, October 31, there will be summaries of the above five prevention strategies followed by a panel of national leaders who will discuss the utility of these strategies for the future.

FOR FURTHER INFORMATION CONTACT: Roger W. Turenne, NIOSH, CDC, Building 1, Room 3040, 1600 Clifton Road, NE, Atlanta, Georgia 30333, Telephones: FTS: 236-3794, Commercial: 404/329-3794.

Dated: September 3, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-20240 Filed 9-8-86; 8:45 am]

BILLING CODE 4160-19-M

Reproductive Effects of Low Frequency Radiofrequency Radiation in Rats; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers of Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: September 23, 1986
Time: 9 a.m.—4p.m.
Place: Room B-56, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226
Purpose: To review and discuss the scientific merit of an experimental investigation designed to determine the effects of acute and subchronic exposure to low frequency radiation on the reproductive systems of male and female rats. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Joseph M. Lary, Ph.D., Division of Biomedical and Behavioral Science, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-8482, Commercial: 513/533-8482.

Dated: September 3, 1986.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-20239 Filed 9-8-86; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 86M-0344]

Elscint, Inc.; Premarket Approval of GYREX™ (Nuclear Magnetic Resonance (NMR) Device)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Elscint, Inc., Boston, MA, for premarket approval, under the Medical Device Amendments of 1976, of the GYREX™. After reviewing the recommendation of the Radiologic 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 October 9, 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: Robert A. Phillips, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7514.

SUPPLEMENTARY INFORMATION: On May 16, 1985, Elscint, Inc., Boston MA 02215, submitted to CDRH an application for premarket approval of the GYREX™. The GYREX™ is a nuclear magnetic resonance (NMR) device with multi-slice operation and a 0.6 and 0.67 tesla (T) superconducting magnet operating at 0.5T. The device is indicated for use as a diagnostic imaging system that produces transverse, coronal, and sagittal images of the internal structure of the head or body. These images depict the spatial distribution of protons (hydrogen nuclei) exhibiting nuclear magnetic resonance, and are based upon NMR properties of body tissues and fluids (proton density, flow velocity, spin-lattice relaxation time (T1), and spin-spin relaxation time (T2)). When interpreted by a trained physician, the images yield information that can be useful in the determination of a diagnosis. All other uses of the GYREX™ remain investigational.

On September 30, 1985, the Radiologic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On July 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 Robert A. Phillips (HFZ-430), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the 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 CDRH'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 publish 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 October 9, 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: August 29, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–20218 Filed 9–8–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. D–86–0822]

Office of the Manager, Milwaukee Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of succession.

SUMMARY: The Manager is designating officials who may serve as the Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: The designation is effective August 14, 1986.

FOR FURTHER INFORMATION CONTACT: Walter Ratzki, Director, Management and Budget Division, Office of Regional Administration, Chicago Regional Office, Department of Housing and Urban Development, 300 South Wacker Drive, Chicago, Illinois 60606–6765, 312–353–8477. (This is not a toll-free number.)

Designation: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability or vacancy in the position.

1. Deputy Manager
2. Chief Counsel
3. Director, Housing Management
4. Director, CPD Division
5. Director, Housing Development
6. Director, FH&EO
7. Chief, Loan Management
8. Chief, AE&C
9. Chief, Property Disposition

This designation supersedes the designation published at Docket No. D–84–753, Federal Register Vol. 49, No. 95, dated Tuesday, May 15, 1984 (49 FR 20572).

Authority: Delegation of Authority, 27 FR 4319 (1962); Sec. 9(c), Department of Housing and Urban Development Act, 42 U.S.C. 3531 note; and Interim Order II, 31 FR 615 (1966).

Michael T. Scanlon,

Acting Manager, Milwaukee Office.

Lewis Nixon,

Acting Regional Administrator-Regional Housing Commissioner, Region No. 5.

[FR Doc. 86–20276 Filed 9–8–86; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under Paperwork Reduction Act

August 26, 1986.

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 contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Procedures for Establishing that an American Indian Group Exists as an Indian Tribe, 25 CFR Part 83.

Abstract: The regulations contain seven criteria to be addressed by American Indian groups seeking Federal acknowledgment. The process provides groups an opportunity to present their arguments for recognition.

Bureau Form Number: BIA–8304, BIA–8305, BIA–8306.

Frequency: One-time only

Description of Respondents: Unrecognized American Indian groups

Annual Responses: 4

Annual Burden Hours: 10,528

Bureau Clearance Office: Ann Bolton 202–343–3577

Hazel E. Elbert,

Deputy to the Assistant Secretary—Indian Affairs (Tribal Services).

[FR Doc. 86–20208 Filed 9–8–86; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

Minerals Management Service

[AA–630–86–4111–02–2410]

Review of Forms for Information Collection for Onshore and Offshore Oil and Gas Operations

AGENCY: Bureau of Land Management and Minerals Management Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Land Management and the Minerals Management Service are conducting a joint review of several onshore and offshore reporting forms used to propose or to report on oil and gas operational activities. This effort is part of the periodic review of all information collection requirements and is designed to eliminate duplicative and/or unnecessary information collection. The relationship between the six forms that are the subject of this review will also be studied. In the case of offshore operations, the review is concurrent with the proposed rulemaking published in the **Federal Register** of March 18, 1986 (51 FR 9316), that would revise the offshore operating regulations in 30 CFR Part 250 and 256.

DATE: Comments should be submitted by November 10, 1986.

ADDRESS: Comments should be submitted to: Director (630), Bureau of Land Management, Room 5640, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

The original comments will be available for public review in Room 5640 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday. A duplicate set of the comments will be available for public review at the Minerals Management Service, 12203 Sunrise Valley Drive, Room 6A110, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Stephen Spector, Bureau of Land Management, (202) 653–2147

or

John Mirabella, Minerals Management Service, (703) 648–7815.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management and the Minerals Management Service are jointly conducting a review of six of the current forms used by the oil and gas industry in proposing or reporting on oil and gas operational activities. The forms being reviewed are:

Onshore—3160–3 (OMB No. 1004—0136) Application for Permit to Drill, Deepen or Plug Back
Onshore—3160–4 (OMB No. 1004—0137) Well Completion or Recompletion Report and Log
Onshore—3160–5 (OMB No. 1004—0135) Sundry Notice and Reports on Wells
Offshore—MMS–331C (OMB No. 1010—0044) Application for Permit to Drill, Deepen or Plug Back
Offshore—MMS–331 (OMB No. 1010—0045) Sundry Notice and Report on Wells
Offshore—MMS–331 (OMB No. 1010—0046) Well Completion or Recompletion Report and Log

During the late 1950's, the above listed forms and counterpart forms used by the States were developed by representatives of the Department of the Interior, officials of various States working through the Interstate Oil Compact Commission, and representatives of the petroleum industry. The forms used by the Federal agencies were issued in 1963. As a result of reorganizations within the Department of the Interior in 1982, responsibility for onshore and offshore operations were separated and assigned to the Bureau of Land Management and the Minerals Management Service, respectively, and each agency thereafter issued its own separate forms. Although the onshore and offshore forms have been assigned new numbers by the respective agencies, the format of the forms is essentially unchanged from that adopted in 1963 and the information collection requirements of the corresponding onshore and offshore forms are basically the same. This notice requests comments from the public on several contemplated changes so that any warranted changes of the forms may be made comprehensively. This will minimize the burden of the conversion to the new forms by industry and also will eliminate the propspect of the additional burden of making changes on a piecemeal basis. The comments may address any of the specific items set out in this notice and may be directed to onshore or offshore operations, or both, on all of the listed forms.

Specific Items of Discussion

A. Duplication of Information Used for Identification

The three forms which each agency utilizes contain the same basic informational items which identify the specific well to which the information required by the forms applies. While it is essential to evaluate proposed and ongoing activities with the correct well and lease, information that is duplicative or unnecessary should not be required. In light of this discussion, please answer the following questions:

1. Is there any further need on later filings to supply all of the items of identification supplied as part of an inital filing on forms 3160–3 or MMS–331C?

2. Would sufficient information for identification be supplied if only the name of the operator, the lease Communitization Agreement or Unit Agreement designation and the API well number were supplied?

3. If only the information set forth in question 2 above were required, could the elimination of other information now required by the forms cause any problems in assuring that the report woul be related to the proper well and lease or Agreement?

4. For onshore operations, would any problems arise in relating a report to the proper well and lease or Agreement when operations involve a well for which no API well number has been assigned?

B. Use of Proper Form

There has been some confusion about the proper form for recompletions in a new zone. Both of the Applications for Permit to Drill (3160–3 and MMS–331C) clearly state that they are the forms to be used for reporting recompletions in a new zone and that both Sundry Notice Forms (3160–5 and MMS–330) state that they are not be used for this purpose. In light of this discussion, please answer the following questions:

1. Is there confusion as to the proper form to be used for any desired actions?

2. Is anything to be gained from continuing to having multiple use forms for several types of actions?

3. Could any of the forms be simplified and used for only one type of action?

4. Would such simplification be beneficial?

C. Revision of Offshore Operating Regulations

On March 18, 1986, the Minerals Management Service issued a proposed rulemaking that would revise its offshore operating regulations. An analysis of the comments on that proposed rulemaking may result in changes in the use of some offshore forms. Those comments and the comments received in response to this notice will be jointly analyzed to determine what changes, if any, should be made in the offshore forms and their use.

D. Relationship between Onshore, Offshore and State Forms

The forms identified in this notice were originally developed for use for both onshore and offshore operations. This was changed when the Federal responsibility for oil and gas operations was delegated to two agencies. When the forms were originally issued, a number of States also issued corresponding forms of identical design. In light of this discussion, please answer the following questions:

1. Do the benefits of designing separate Federal forms to meet the specific needs of onshore and offshore operations outweigh the benefits of retaining similar forms for both types of operations?

2. Are there any substantial differences between onshore and offshore operational proposals and activities that would dictate the revision of individual items on the onshore form but not on the offshore form, or vice versa?

3. Is there a continuing benefit from retaining a close relationship between Federal onshore forms and the various State forms which serve essentially the same purpose?

Robert F. Burford,

Director, Bureau of Land Management

September 3, 1986.

John B. Rigg,

Acting Director, Minerals Management Service.

August 28, 1986.

[FR Doc. 86–20264 Filed 9–8–86; 8:45 am]
BILLING CODE 4310–MR–M

Bureau of Land Management

New Mexico; Filing of Plat of Survey

September 2, 1986.

The supplemental plats described below were officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, effective at 10:00 a.m. on September 2, 1986.

The supplemental plats show the corrected bearings and distances and longitude in section 30, Township 15 North, Range 7 West and sections 25 and 35, Township 15 North, Range 8 West, NMPM, New Mexico.

These supplemental plats were requested by the Director, Bureau of Land Management.

These plats will be in the open files of the New Mexico State Office, Bureau of Land Management, P.O. Box 1449, Santa Fe, New Mexico 87504. Copies of the

plat may be obtained from that office upon payment of $2.50 per sheet.

William S. DeGroot,

Acting Chief, Branch of Cadastral Survey

[FR Doc. 86-20209 Filed 9-8-86; 8:45 am]

BILLING CODE 4310-FR-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 30, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by September 24, 1986

Carol D. Shull,

Chief of Registration National Register.

Alabama

Perry County

Marion, *Henry House*, S. Washington St.

Connecticut

Fairfield County

Danbury, *Union Station*, White St. & Patriot Dr.

Hawaii

Kauai County

Kukui Heiau

Maui County

Pu'upehe Platform (#50-La-19)

Michigan

Lopeer County

Hadley Township, *Hadley Flour and Feed Mill*, 3633 Hadley Rd.

Montana

Custer County

Miles City, *Harmon, William, House*, 1005 Palmer

Granite County

Philipsburg, *Anderson Lumber Company (Philipsburg Montana MRA)*, Roughly bounded by Brown, First, & Holland Sts.

Philipsburg, *Doe, M.E., House (Philipsburg Montana MRA)*, Dearborn & Montgomery Sts.

Philipsburg, *Philipsburg, Grade School (Philipsburg Montana MRA)*, W of Schnepel St.

Philipsburg, *Philipsburg, Historic District (Philipsburg Montana MRA)*, Roughly bounded by Gamma, Cleveland Ave., Montgomery, Madison, Duffy, Broadway & Cedar Sts

Philipsburg, *Ringeling House (Philipsburg Montana MRA)*, Caledonian Mining Claim, E of Doe and Morse Addition

Sanders County

Thompson Falls, *Ainsworth House (Thompson Falls MRA)*, 911 Maiden Lane

Thompson Falls, *Bedard House (Thompson Falls MRA)*, 207 Spruce St.

Thompson Falls, *Gem Saloon (Thompson Falls MRA)*, 808 Main St.

Thompson Falls, *Grandchamp House (Thompson Falls MRA)*, 1012 Preston Ave.

Thompson Falls, *Griffen House (Thompson Falls MRA)*, 205 Gallatin St.

Thompson Falls, *House at 112 Park Street (Thompson Falls MRA)*, 112 Park St.

Thompson Falls, *House at 916 Preston Avenue (Thompson Falls MRA)*, 916 Preston Ave.

Thompson Falls, *Hoyt House (Thompson Falls MRA)*, 204 Gallatin St.

Thompson Falls, *100F Lodge (Thompson Falls MRA)*, 520 Main St.

Thompson Falls, *Norby House (Thompson Falls MRA)*, 13 Pond St.

Thompson Falls, *Northern Pacific Warehouse (Thompson Falls MRA)*, Bounded by Preston Ave. & Main St. along Burlington Northern Right-of-Way

Thompson Falls, *Preston House (Thompson Falls MRA)*, 250 Ferry St.

Thompson Falls, *Rinard House (Thompson Falls MRA)*, 210 Jefferson St.

Thompson Falls, *Sanders County Jail (Thompson Falls MRA)*, Madison & Maiden Lane

Thompson Falls, *Thayer House (Thompson Falls MRA)*, 109 Jefferson St.

Thompson Falls, *Thompson Falls Hydroelectric Dam Historic District (Thompson Falls MRA)*, U.S ALT 10 at Clark Fork River within NW part of Thompson Falls

Thompson Falls, *Tourist Hotel (Thompson Falls MRA)*, 101 Main St.

Thompson Falls, *Ward Hotel (Thompson Falls MRA)*, 919 Main St.

Thompson Falls, *Weber's Store (Thompson Falls MRA)*, 510 Main St.

New York

Cortland County

McGraw, *Main Street Historic District*, Roughly on Main St. between South and Washington Sts.

Orange County

Montgomery vicinity, *Bull, William III, House*, Bart Bull Rd.

North Dakota

Divide County

Noonan vicinity, *Nielsen, Niels, Fourteen-Side Barn Farm (North Dakota Round Barns TR)*, ND 38

Eddy County

New Rockford vicinity, *Marriage, Sylvanus, Octagonal Barn (North Dakota Round Barns TR)*, ND 38

New Rockford vicinity, *Myhre, Jens, Round Barn (North Dakota Round Barns TR)*, ND 30

Emmons County

Strasburg, *SS Peter and Paul Catholic Church Complex*, First Ave.

Foster County

McHenry vicinity, *McHenry Railroad Loop*, E side of ND 20

Grand Forks County

Kempton vicinity, *Funseth, Carlott, Round Barn (North Dakota Round Barns TR)*, ND 38

Grant County

Medicine Rock State Historic Site

LaMoure County

Edgeley vicinity, *Rodman Octagonal Barn (North Dakota Round Barns TR)*, ND 30

Logan County

Burnstad vicinity, *Abell, Robert, Round Barn (North Dakota Round Barns TR)*, ND 38

Rolette County

Dunseith vicinity, *Cote, Urbain, Round Barn (North Dakota Round Barns TR)*, ND 38

Stark County

Gladstone vicinity, *Gerhardt Octagonal Pig House (North Dakota Round Barns TR)*, ND 38

Stutsman County

Kensal vicinity, *Baker, Cecil, Round Barn (North Dakota Round Barns TR)*, ND 38

Ward County

Surrey vicinity, *Glick, Levi, Round Barn (North Dakota Round Barns TR)*, ND 38

Puerto Rico

Arecibo County

Arecibo, *Casa Alcaldia de Arecibo*, Jose de Diego Ave.

Arecibo, *Edificio Oliver*, 64 Jose de Diego Ave.

Ponce County

Ponce, Iglesia de la Santisima *Trinidad*, Marina St., at intersection of Mayor & Abolicion St.

Ponce, *Rosaly-Batiz House*, 125 Villa St.

Texas

Ellis County

Waxahachie, *Vickery, Richard, House (Waxahachie MRA)*, 1104 E. Marvin

Victoria County

Victoria, *Lane—Tarkington House (Victoria MRA)*, 1207 N. Bridge

[FR Doc. 86-2027 Filed 9-8-86; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-269 (Sub-No. 1X]

Iowa Terminal Railroad Co.; Abandonment Exemption; Cerro Gordo and Floyd Counties, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by Iowa Terminal Railroad Co. of three line segments totalling 15.7 miles of railroad in Cerro Gordo and Floyd Counties, IA, subject to standard employee protective conditions, a historic resource condition, and a salvage condition.

DATES: This exemption will be effective on October 9, 1986. Petitions to stay must be filed by September 19, 1986, and petitions for reconsideration must be filed by September 29, 1986.

ADDRESSES: Send pleadings referring to Docket No. AB-269 (Sub-No. 1X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Petitioner's representative: Roger W. Corner, P.O. Box 450, Mason City, IA 50401

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr., (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 4, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre and Lamboley. Commissioner Lamboley joined by Vice Chairman Simmons, dissented with a separate expression.

Kathleen King,

Acting Secretary.

[FR Doc. 86-20335 Filed 9-8-86; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-269]

Iowa Terminal Railroad Co.; Abandonment in Cerro Gordo and Floyd Counties, IA; Notice of Findings

The Commission has issued a certificate authorizing Iowa Terminal Railroad Co. to abandon its 10.4-mile rail line, as follows: (a) The Mason City Division between milepost 0.0 near Mason City and milepost 5.5 near Emery, in Cerro Gordo, IA a distance of 5.5 miles; and (b) the Charles City Division between milepost 2.1 near North Charles City, and milepost 7.0, in Floyd County, IA, a distance of 4.9 miles. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". Any offer previously made msut be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1127.

Kathleen M. King,

Acting Secretary.

[FR Doc. 86-20374 Filed 9-8-86; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Request for State or Federal Workers' Compensation Information
1215-0060; CM-905
On occasion
State or local governments; Federal agencies or employees
3,000 responses, .25 hr., 1 form

30 U.S.C. 922 and 20 CFR 725.535 specify that beneficiaries of DCMWC have their benefits reduced by those amounts which they may receive from State or other Federal workers' compensation programs.

Notice of Intent to Employ Homeworkers in a Restricted Industry
1219-0159; Letter or Optional Form WH-46
Initial Report Only
Businesses or other for-profit; small businesses or organizations
62 responses; 7 hours; 1 form

Regulations 29 CFR 530.4(c) permit the employment of homeworkers in a restricted industry, provided employers notify the Department of Labor of their intent to employ such homeworkers and obtain authorization to do so. We believe this collection is not an "information collection" pursuant to 5 CFR 1320.7(k), but are requesting a final determination by OMB. Notice can be provided to DOL by a letter or an optional form.

Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops
1215–0120; FLSA 575
On occasion
Farms
1 response; 3 hrs.; 1 form

Agricultural employers are required to supply certain information to DOL when applying for a waiver of the FLSA child labor provisions to employ 10 and 11 year old minors in hand harvesting of short season crops. Agricultural employers granted waivers are required to maintain certain records regarding compliance with the waiver.

Employment and Training Administration
Monthly Determinations, Allowance Activities and Employability Services under the Trade Act
1205–0016; ETA 563
Monthly
State or local governments
50 respondents; 1,229 hours; 1 form

Monthly data on trade adjustment assistance activity is needed for timely program evaluation necessary for competent administration and for providing legally mandated reports to the Congress on the trade adjustment assistance program.

Signed at Washington, DC, this 3rd day of September, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–20291 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–27–M

Senior Executive Service; Appointment of Members to the Performance Review Board

This Notice amends Department of Labor Notice published on December 9, 1983 (48 FR 55199), listing Department of Labor members of the Performance Review Board of the Senior Executive Service.

The following executives are hereby appointed to three-year terms effective September 7, 1986: Alan D. Lebowitz and David O. Williams.

Mr. Lebowitz replaces Ms. Janice M. Sawyer, who resigned from the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Larry K. Goodwin, Director of Personnel Management, Room C5526, Department of Labor, Frances Perkins Building, Washington, DC 20210.

Signed at Washington, DC, this 4th day of September 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–20293 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

Federal Advisory Council on Occupational Safety and Health; Postponement of Meeting

Notice is hereby given that the meeting of the Federal Advisory Council on Occupational Safety and Health, scheduled for August 28, 1986, is postponed until October 8, 1986.

All communications regarding this Advisory Council should be addressed to Mr. John E. Plummer, Director, Office of Federal Agency Programs, Department of Labor, OSHA, Frances Perkins Building, Room N3613, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–9329.

Signed at Washington, DC, this 29th day of August 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86–20292 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–3114]

Withdrawal of the Proposed Exemption Involving Alaska Laborers-Employers Retirement Trust Fund (the Plan) Located in Anchorage, Alaska

In the **Federal Register** dated April 1, 1983 (48 FR 14075), the Department of Labor published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1954. The notice of proposed exemption concerned the participation by the Plan in a loan made on February 17, 1976 to Anchorage Hotel Associates, a California limited partnership, in which a party in interest with respect to the Plan was a 10% limited partner.

The applicants have requested that the exemption application be withdrawn.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 2nd day of September, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86–20215 Filed 9–8–86; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–6101 et al.]

Proposed Exemptions; Fresh Retirement Plan et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code)

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested

persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Fresh Retirement Plan (the Plan) Located in Salinas, CA

[Application No. D–6101]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the leasing, effective July 1, 1986, of a portion of a ranch (the Property), known as the Estel Ranch (the Ranch) from July 1, 1986 until June 30, 1991, by the Plan to Bruce Church, Inc. (BCI), a party in interest with respect to the Plan, provided the terms and conditions of the transactions are at least as favorable to the Plan as the Plan could obtain in dealing with an unrelated third party.

EFFECTIVE DATES: If this proposed exemption is granted, the effective dates will be July 1, 1986 to June 30, 1991.

Summary of Facts and Representations

1. The Plan is a money purchase plan covering non-union and non-agricultural field employees established in 1975. As of December 31, 1983, the Plan had approximately 225 participants. As of December 31, 1984, the Plan had assets valued at $2,041,034.58. The trustee (the Trustee) of the Plan is Valley National Bank of Arizona, N.A.

2. BCI is a California corporation, and a member of the Fresh International Corp. (Fresh) controlled group of corporations, engaged in the farming of vegetable produce in the western United States. BCI is the largest operating subsidiary of Fresh.

3. The Property had previously been leased to BCI by the Fresh Profit Sharing Plan (the Profit Sharing Plan) from 1955 to June 30, 1986. The latest lease was entered into on March 1, 1984, for a period of five years. The applicant represents that the leasing by the Profit Sharing Plan was exempt until June 30, 1984, from the restrictions of section 406 of the Act by reason of section 414(c)(2) *. The Profit Sharing Plan was merged into the Plan on July 1, 1986, and the Plan will now be the owner and lessor of the Property. The total assets of the Plan as of that date were approximately $4.7 million.

4. The lease entered into on July 1, 1986 (the Lease) contains the following terms: (a) It is for a term of five years, commencing July 1, 1986, through June 30, 1991; (2) rent is triple net, $92,000 annually for the first three years, after which time the rental will be adjusted upward for the final two years if the fair market rental value of the Property is higher than $92,000 annually, as determined by a qualified independent real estate appraiser; (3) the Plan may terminate the Lease on 60 days notice or adequate time to remove crops growing on the Property. The Property was last appraised on December 31, 1984 by Robert J. Moody, A.R.A., and independent appraiser from Yuma, Arizona, who has done annual appraisals of the Ranch since 1976. Mr. Moody appraised the fair market value of the Ranch at $1,600,000, an increase of approximately $100,000 from the 1983 appraisal, with the Property's value being approximately $1,050,000, an increase of $67,000 from 1983. As of November 6, 1984, Mr. Moody represented that a $92,000 annual rental for the Property was in the upper end for current rentals of this type in the Yuma area.

5. The Trustee represents that the only current relationship it has to BCI or any of its affiliates is one loan on a corporate jet owned by Fresh, with a balance of $226,445.69 out of a total commercial loan portfolio of $697,499,993.39, as of May 14, 1985. The applicant represents that neither Fresh nor any of its subsidiaries will engage in any other commercial relationships with the Trustee, other than small checking accounts, for the duration of the transaction. The Trustee represents that the Ranch represents 32% of the Plan's assets and that the Property represents 21% of its assets. This is the only real property owned by the Plan, and the Trustee represents that its investments are well-diversified. In addition, the Trustee represents that Fresh and its subsidiaries have a high reputation as farm operators and have managed the Property well. The Trustee is the largest agricultural lender in Arizona and is represented to be very familiar with the rental markets for agricultural property in general and the Property in particular. The Trustee reviewed the Lease, the 1983 appraisal of the Property and the market in the spring of 1984, and represents that the terms and conditions have been and are arm's-length terms and conditions, that the rental has been and is in the upper range for similar rentals in the Yuma areas, and that the yield is adequate to the Plan. On this basis, the Trustee represents that the continuation of the Lease is in the best interests of the Plans' participants and beneficiaries. The Trustee will also monitor BCI's performance under the Lease and take any steps necessary to protect and enforce the Plan's rights.

6. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) because: (a) The Plan will receive rent at the upper range of similar rentals in the geographic area as determined by an independent appraiser; and (b) The Trustee has determined that the Lease is in the best interests of the Plan and will enforce the Plan's rights under the Lease.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

* The Department expresses no opinion herein whether the conditions of section 414(c)(2) have been met. The applicant represents that it will file Form 5330 with the Internal Revenue Service and pay any applicable excise tax for the period of July 1, 1984 to June 30, 1986 within 60 days of the grant of this proposed exemption.

Diamond Shamrock Employee Stock Ownership Plan (the PAYSOP) and the Employee Shareholding and Investment Plan of Diamond Shamrock Corporation (the Savings Plan; collectively the Plans) Located in Cleveland, Ohio

[Application Nos. D–6380 and D–6381]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1985). If the exemption is granted the restrictions of sections 406(a) and 407(a) of the Act shall not apply, effective October 30, 1985, to (1) the acquisition and holding by the Plans of certain Units (the Units) representing limited partnership interests in Diamond Shamrock Offshore Partners, Ltd. (the Partnership) distributed as dividends to the Plans as shareholders of Diamond Shamrock Corporation (DSC) Common Stock (the Stock); and (2) the acquisition and holding by the Plans of Units acquired on the open market as a result of either the Plans' reinvestment of cash distributions made with respect to the Units or the purchase by the Savings Plan of Units with contributions from participants of the Savings Plan in accordance with directions given by those participants.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective October 30, 1985.

Summary of Facts and Representations

1. The PAYSOP is a stock bonus plan which, as of December 31, 1985, had approximately 6,424 participants. The Savings Plan is a profit-sharing plan which, as of December 31, 1985, had approximately 6,006 participants. As of May 31, 1985, the PAYSOP had total assets of $7,708,956 and the Savings Plan had total assets of $55,268,397. The trustee for the Plans is the AmeriTrust Company, N.A., a national bank located in Cleveland, Ohio (the Trustee). The Plans are sponsored by DSC. The Applicants referred to herein are the Trustee, DSC, and the Diamond Shamrock Employee Benefits Committee.

2. The Partnership is a Delaware limited partnership which was created for the purpose of succeeding to a portion of the business of Diamond Shamrock Exploration Company (DSEC), a wholly-owned subsidiary of DSC. On September 6, 1985, DSEC transferred to the Partnership all of its oil and gas exploration and production interests in federal offshore fields off the Gulf Coast of Texas and Louisiana (the Partnership Properties). In exchange for the Partnership Properties, DSEC received Units representing approximately 88.2 percent of the total outstanding Units issued by the Partnership. The remaining 11.8 percent of the Units were sold to the public in a public offering. The Units are traded on the New York Stock Exchange and are freely transferable to United States citizens and qualified United States entities, except as otherwise restricted by federal and state securities laws.

The Applicants state that the Partnership intends to continue DSEC's current production, exploration, and development activities with respect to the Partnership Properties and will bid in future federal offshore lease sales. Oil production from the Partnership Properties will continue to be sold to a subsidiary of DSC.

The Applicants state further that additional Units will be issued to DSC from time to time in exchange for cash. However, DSC's total percentage ownership of all outstanding Units will decline over time as DSC distributes Units to its shareholders as dividends. The Applicants expect that the percentage of Units held by the public, including DSC shareholders, will increase from approximately 11.8 percent to approximately 25 percent by the end of 1986. DSC's total interest in the Partnership will not fall below 50 percent at any time. As of December 31, 1985, DSC owned 37,500,000 Units representing approximately 83 percent of the total Units outstanding.

3. On July 10, 1985, DSC announced that beginning with the fourth quarter of 1985 quarterly dividends on the Stock would include Units. DSC also announced that a special dividend distribution of Units would be made on October 30, 1985, to all shareholders of the Stock. Thus, since October 30, 1985, the Plans, as stockholders of DSC, have received noncash dividends in the form of Units in addition to cash dividends. The Plans have also received cash distributions on the Units as part of the Partnership's cash distributions to unitholders. When Partnership cash has been distributed to unitholders, such cash received by the Plans has been reinvested in additional Units through open market purchases for the accounts of those participants whose accounts held Units on which the cash distribution was received.*

4. Prior to the receipt of the Units as dividends, the assets of the PAYSOP consisted only of shares of the Stock and cash. The PAYSOP owned 341,397 shares of the Stock as of October 30, 1985. Each PAYSOP participant has an individual Stock Ownership Account. There are no participant contributions to the PAYSOP.

The Applicants state that prior to any distribution of Units to the PAYSOP, each participant was provided with a written form on which the participant could direct the Trustee to sell any Units received as dividends for his or her account and reinvest the proceeds of such sales in the Stock. If a participant did not direct the Trustee to sell the Units, the Units were retained for the participant's account. PAYSOP Participants who have directed that dividend Units be retained for their accounts may change their previous instructions to the Trustee during a 10 day window period after each quarterly dividend distribution. The change of instruction applies to all Units received by the participant's account after the window period expires. If a participant directs that Units to be received for his or her account in the future as dividends on the Stock be sold, then all Units that have been credited to the account are sold and the proceeds reinvested in the Stock.

When Units acquired or held by a PAYSOP participant's account are directed to be sold, the Units are sold on the open market. In addition, the reinvestment of all Partnership cash distributions which are received by the participant's account on Units presently held is accomplished through the purchase of additional Units on the open market.

5. The Savings Plan invests in the Stock and other investments in accordance with elections made by participants. The Savings Plan owned 2,053,531 shares of the Stock as of October 30, 1985. The Savings Plan receives both participant contributions and employer contributions. The employer's contributions are invested by the Trustee in an investment fund containing only the Stock (the Stock Fund). Participant's contributions may be invested in either the Stock Fund or a government bond fund, a general corporate stock fund, or a fund investing solely in "fixed income contracts" of major insurance companies. Units distributed as dividends to the Savings Plan are held in a newly created investment fund containing only Units (the Unit Fund).

The Applicants represent that, in addition to the receipt of Units by the

*The Applicants represent that reinvestment of Partnership cash distributions on Units held by the Plans in additional Units is consistent with the Plans' treatment of cash dividends on the Stock, which are reinvested in additional Stock.

Savings Plan as dividends, the Savings Plan will be amended to allow participants to direct the Trustee to allocate their own contributions to the Savings Plan into the Unit Fund. The contributions to the Unit Fund will be used to purchase additional Units on the open market for the participant's account.

6. The Applicants state that prior to any distribution of Units to the Savings Plan, each participant was provided with a written form on which the participant could direct the Trustee to sell any Units received as dividends for his or her account and reinvest the proceeds of such sales in the Stock Fund. If the participant did not direct the Trustee to sell the Units, then all Units allocable to the participant's account were retained in the Unit Fund.

Savings Plan participants who have directed that dividend-Units be retained for their accounts may change their previous instructions to the Trustee during the 10 day window period after each quarterly dividend distribution. The change of instruction applies to all Units received by the participant's account in the Savings Plan after the window period expires. Where a participant executes a change of instruction directing that Units to be received as dividends for his or her account be sold, then all Units that have previously been credited to the account are sold and the proceeds reinvested in the Stock Fund.

When Units acquired or held by the Savings Plan are directed to be sold, the Units are sold on the open market. In addition, the reinvestment of all Partnership cash distributions which are received by the participant's account on Units presently held is accomplished through the purchase of additional Units on the open market.

7. The Applicants represent that the Units issued by the Partnership are "employer securities" as defined under section 407(d)(1) of the Act. However, the Applicants state that relief from section 406(a) and 407(a) of the Act for the acquisition and holding of the Units is necessary since the Units are not "qualifying employer securities" as defined under section 407(d)(5) of the Act. The Applicants considered prohibiting the Plans from receiving the Units as dividends, but this would have resulted in a loss to the Plans equal to the market value of the Units. The decision to acquire and hold Units is made by each participant prior to the receipt of the Units by the participant's account in either the PAYSOP or Savings Plan. In addition, with respect to the Savings Plan, the decision to acquire additional Units with the participant's contributions is made in accordance with the participant's instructions designating the Trustee to allocate such contributions for his or her account into the Unit Fund.

8. In summary, the Applicants represent that the transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) The acquisition and holding of the Units by the Plans is the result of DSC's quarterly dividend distributions to all shareholders of the Stock; (2) The decision to acquire additional Units and the decision to hold or dispose of all Units is made by the participants in the Plans in accordance with directions given to the Trustee by each participant for his or her account in the Plans; (3) The participants may change their previous instructions to the Trustee regarding the receipt or disposition of the Units; and (4) All transactions concerning the Units, other than the distribution of the Units by DSC as dividends on the Stock, are conducted on the open market.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Drs. Williams & Harper Profit Sharing Plan and Drs. Williams & Harper Money Purchase Pension Plan (the Plans) Located in Fort Lauderdale, Florida

[Application Nos. D-6448 and D-6449]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of beneficial interest in a trust to the Plans by Drs. John I. Williams and John M. Harper (the Doctors), provided that the terms of the transaction are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated person.

Summary of Facts and Representations

1. The Plans are a profit sharing and a money purchase pension plan, with 8 participants in each Plan. Effective December 1, 1984, the Plans were combined into a single trust fund and plan document (the Fund). As of November 30, 1984, the Fund had total assets of $943,990. Drs. Williams & Harper, Professional Association (the Employer), is engaged in the practice of medicine in Fort Lauderdale, Florida. The Doctors are the sole shareholders of the Employer, as well as, officers and directors of the Employer and trustees of the Plans.

2. The Doctors propose to sell their respective 25% beneficial interest in the WHB Trust (the Trust) to the Fund. The Trust was created to facilitate the investment by the Trust's beneficiaries.* in Lake Wales Golf Estates, Ltd., a Florida limited partnership (the Partnership). The Trust has no liabilities and, except for a minimal amount of cash, its sole asset is an 8.7912% interest in the Partnership. Originally, the Trust owned an 8% interest in the Partnership however, this interest was increased to its current level by the assignment by two other limited partners of their Partnership interests to the remaining partners.

3. Dr. Williams serves as trustee of the Trust. After sale of the beneficial interests in the Trust, Dr. Williams will continue to serve as trustee for the convenience of the Trust's beneficiaries, however, he won't be able to transfer any assets of the Trust without the beneficiaries' consent. The applicant represents that once the sale takes place, there is no potential for abuse since Dr. Williams, as trustee merely holds legal title and must act in accordance with the wishes of the beneficiaries.

4. The Doctors desire to transfer their beneficial interest in the Trust to the Fund, so that Fund's participants can benefit from the substantial appreciation in value which is expected on the Partnership property. The Partnership, which was formed in 1973, owns 614 acres of raw land in Polk County Florida. Mr. Hubbard K. Biggs, SRA, an independent appraiser located in Lake Wales, Florida, states that the fair market value of the Partnership's property is $2.8 million as of September 13, 1985. The Partnership has total assets of $2,846,000.

5. Since the Trust owns an 8.7912% Partnership interest, the value attributable to this ownership amount is $250,198 (2,846,000 x 8.7912%). Thus, the value of each of the Doctor's 25% interests in the Trust is $62,550. The Doctors will sell their beneficial interests in the Trust to the Fund for $62,550 each. The purchase price will be paid in cash by the Fund, and all expenses incurred in connection with

*The beneficiaries of the Trust and their respective beneficial interests are as follows: Dr. Williams, 25%; Dr. Harper, 25%; Robert C. Bishop (deceased), 25%; Laverne G. White, 25%.

the purchase will be paid by the Doctors. As additional protection to the Fund, the Doctors have executed a loss guaranty agreement in which they agree to make the Fund whole if any economic loss is suffered through sale or decline in value of the beneficial interest in the Trust. The Doctors have total combined net worth in excess of $2 million.

6. The Fund has appointed James S. Welzien (Mr. Welzien), a certified public accountant with the firm of Professional Consultants, Inc., Fort Lauderdale, Florida, to serve as independent fiduciary with respect to the proposed transaction. Mr. Welzien has no interest in the subject property nor any prior dealings with the Employer or any other party involved in the transaction. Mr. Welzien represents that he is aware of his duties, responsibilities and potential liabilities under the Act as a result of his prior work experience as an agent for the Internal Revenue Service and as a compliance officer for the Department.

Mr. Welzien represents that the proposed purchase of the beneficial interest in the Trust would be an excellent investment opportunity for the Fund. The property owned by the Partnership is in an excellent location, between the rapidly expanding areas of Orlando and Tampa, and the price being paid is a good price for this investment. Also, completion of this transaction would improve the investment mix and increase the diversification of the Fund's assets. The Doctors have agreed to personally indemnify the Fund against loss associated with this transaction. After analyzing the exemption application and exhibits, Mr. Welzien has concluded that the transaction represents a prudent investment for the Fund. Mr. Welzien represents that that transaction is in the best interest of the Fund's participants and will enhance diversification of the Fund's assets.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Fund's independent fiduciary has determined that the proposed transaction is appropriate and suitable for the Fund;

(b) All costs involved in the proposed sale will be paid by the Doctors; and

(c) The price to be paid by the Fund for the beneficial interest in the Trust is equal to its current fair market value.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Meister-Neiberg Co. Pension Plan and Trust (the Plan) Located in Chicago, IL

[Application No. D-6502]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective May 14, 1986, to the proposed loans (the Loans) by the Plan, for a period of 6 years, of up to 25% of its assets to Meister-Neiberg Co. (the Employer), the Plan sponsor, provided that the terms of the Loans are at least as favorable to the Plan as those between unrelated parties would be.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted, will expire 6 years after May 14, 1986 with respect to the making of any Loan. Subsequent to the expiration of this exemption, the Plan may hold Loans originated during this 6 year period until the Loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the 6 year period, the applicant may submit another application for exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with four participants and approximately $1,500,000 in assets. The Employer is a home builder in the Chicago metropolitan area.

2. The applicant requests an exemption that will permit the Plan to make Loans to the Employer, for 6 years, for the purchase of unimproved real property. The Employer will then develop the land and sell homes to third party buyers. The Loans will be for terms not to exceed five years. The interest rate will be three percent over the prime rate of Continental Bank of Chicago and will be adjusted quarterly, but only if the new rate would differ by at least one percent from the current rate. The Loans will have an interest floor of ten percent. The Loans will be repaid as follows: (1) In the first year, interest will be compounded and paid quarterly; and (2) In years two through five, equal principal and interest payments will be made quarterly. The Employer may full or partially prepay the Loans at any time. The Loans will be secured by first mortgages on the real property purchased by the Employer with each such Loan. Each property will be appraised prior to any Loan and the collateral for each Loan will equal at least 150% of such Loan. If the collateral falls below 150% of the outstanding balance of a Loan, additional collateral will be pledged so that the collateral will be equal to at least 150% of the outstanding balance. The Plan will make no Loan that would cause the cumulative amount of such outstanding Loans to exceed 25% of the Plan's assets.

3. The Employer has entered into a contract to purchase a 6½ acre parcel of land in Glenview, Illinois (the Property) for $575,000. Twenty-five houses will be built on the Property. The Employer estimates the costs for improvements such as water and sewer lines at $356,000 and for construction of the houses at $118,000 to $120,000 each. The sales price of each house will be $222,900 to $227,900. The applicant proposes that the Plan loan the Employer $375,000 (the First Loan) for the purchase of the Property. The purchase price for the Property, which serves as collateral for the Loan, is equal to 153% of the proposed First Loan amount.

4. The Property was appraised by Michael S. MaRous, MAI, SRPA, an independent appraiser in the Chicago area, on April 8, 1986. At that time some of the improvements such as utilities were being extended to the individual lots. Mr. MaRous appraised the fair market value of the Property, with utilties extented to each lot and the Property graded for construction, at $1,200,000 to a single buyer. This amount represents 320% of the proposed Loan.

5. Joseph Gurdak has agreed to act as independent fiduciary for the Plan with respect to the proposed Loans. Mr. Gurdak is the president of Bates & Rogers Construction Co. (Bates) a general construction company not actively involved in the home building business. He is also a certified public accountant and is familiar with the home building industry and the financial transactions related to it. Mr. Gurdak has also been a trustee for the Bates & Rogers Construction Co. Pension Plan and Trust for four years and represents that he is familiar with the Act and the duties of a fiduciary thereunder. There are no ownership or business connections between Mr. Gurdak or Bates and the Employer or its principals. Mr. Gurdak reviewed the terms of the proposed First Loan on May 14, 1986 and made the following findings: (a) The

First Loan of $375,000 will help diversify the Plan's investments, which are currently all in Treasury Bills; (b) The Plan has little need for liquidity in the near future, since the vested benefits of the two principals of the Employer are a significant portion of the Plan's assets and neither intends to retire soon; (c) The rate of return on the First Loan will initially be 14%, significantly higher than the 7% to 7.5% being earned on Treasury Bills and is an excellent return in the current real estate market; (d) The First Loan will be well secured by the first mortgage on the Property; and (e) The payment terms are satisfactory to the Plan in that the First Loan will be paid back more quickly than the costs of development. Mr. Gurdak will review the proposed terms of any future Loan and determine whether the Plan should enter into the Loan. Mr. Gurdak also has the authority to alter the terms of the Loans if he determines that it is in the Plan's interest to do so. Furthermore, Mr. Gurdak will monitor the Loans and enforce the terms and conditions of the Loans on behalf of the Plan. In the event of a default, he will take any actions necessary to protect the Plan's interest.

6. The applicant requests that this proposed exemption, if granted, be retroactive to May 14, 1986, the date Mr. Gurdak concluded that the First proposed Loan would be in the interests of the Plan, since the Employer's contract to purchase the Property would have expired soon after that date. This investment opportunity would therefore have been lost to the Plan. The applicant also represents that all safeguards discussed above were in place on the date the transaction was entered into.

7. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) of the Act because: (a) The rate of return to the Plan on the Loans will be substantially higher than its other investments; (b) Each Loan will be secured by land having an appraised fair market value of at least 150% of such Loan; (c) No more than 25% of the Plan's assets will be invested in the Loans; and (d) Mr. Gurdak has and will continue to review and approve the terms of the Loans before the Plan enters into any Loan and will take any action necessary to protect the Plan.

FOR FURTHER INFORMATION CONTACT: David Lurie of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

First National Bank of Mapleton Employees' Profit Sharing Retirement Trust (the Mapleton Plan) Located in Mapleton Depot, PA

[Application No. D-6669]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of the section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Mapleton Plan for the total cash consideration of $610,879, of certain mortgage and vehicular loan receivables (the Receivables) to First National Bank of Mapleton (Mapleton), provided the amount paid for the Receivables is not less than fair market value at the time the transaction is consummated.

Summary of Facts and Representations

1. The Mapleton Plan is a profit sharing plan with 38 participants and total assets of $1,128,380 as of December 31, 1984. The trustees of the Mapleton Plan (the Trustees) and decision-makers with respect to Plan investments are Messrs. John M. Diffenderfer, Tedd Crotsley and Robert Donahue. Mapleton is a banking association maintaining various branches throughout the State of Pennsylvania.

2. On November 15, 1984, Mellon Bank (Central) National Association (Mellon), which is principally located in State College, Pennsylvania, entered into a plan of merger (the Merger) with Mapleton under which Mellon was to be merged with Mapleton and Mapleton was to become the surviving bank. The Merger, which took place on November 1, 1985, was conducted in compliance with National Banking Act provisions. Upon its consummation, Mapleton adopted Mellon's name.

3. Under the terms ot the Merger, the employee benefit plans sponsored by Mapleton and Mellon will be consolidated upon the granting of this proposed exemption. These plans include the Mapleton Plan and the Profit Sharing Plan for Salaried Employees of Mellon Bank (Central) National Association (the Mellon Plan). The Mellon Plan will be merged into the Mapleton Plan as Mapleton is the surviving bank. Then, the Mellon Plan will be readopted as the sole plan for all employees of both Mapleton and Mellon.

4. As of March 7, 1986, approximately 54 percent of the total assets of the Mapleton Plan was invested in the Receivables consisting of 26 mortgage loans secured by real property and one vehicular (truck) loan secured by personal property. The loans were originated between the Mapleton Plan and unrelated parties and funded directly by the Mapleton Plan from August 1973 to May 1985. They range in amounts of between $1,600 and $84,000, their durations are from 8 to 15 years and they have maturities between 1986 and 1999. To date, none of the loans has ever fallen into default. For the most part, the loans carry fixed interest rates ranging from 9.25 percent to 17 percent per annum. In two situations, the loans have adjustable interest rates. As of March 7, 1986, the Receivables had a total outstanding principal balance of $597,012.

5. In funding the Receivables, a lending officer of Mapleton who received loan applications would present them to the Trustees for their review as possible investments for the Mapleton Plan. It was the policy of the loan officer and the Trustees to consider only the best loan applications from the standpoint of their financial soundness, rate of return, loan to value ratio, safety and liquidity. These criteria ensured that inappropriate loan applications would not be selected for investment purposes inasmuch as the Trustees were authorized to approve or reject each loan application they reviewed. In addition, properties covered by the Receivables were of a type well known to both Mapleton and the Trustees. Repayment ability was calculated on the same basis as Mapleton-funded loans.

The Trustees never obtained any Receivables for construction financing nor were permanent loans ever used to retire construction loans made by Mapleton. In addition, no origination, servicing or other fees were ever paid by the Mapleton Plan nor were documents ever executed in connection with the payment of fees. Mapleton bore all such costs.[1]

6. An exemption is requested to allow the Mapleton Plan to sell the Receivables for cash to Mapleton for the higher of their remaining cost basis or their fair market value. The applicant believes the liquidation of the

[1] In this proposed exemption, the Department expresses no opinion on whether the acquisition, pursuant to the procedures utilized to select the Receivables for the Mapleton Plan, and the holding of the Receivables by the Plan, violated any provision of Part 4 of Title I of the Act.

Receivables will enable Mapleton Plan participants to invest their account balances in any one or more of four investment funds currently being offered by the Mellon Plan and it will minimize any cash flow problems the Mapleton Plan may experience when it distributes accrued benefits to its participants. The Mapleton Plan will not incur any fees or commissions in connection with the proposed transaction.

7. The Receivables have been valued by PaineWebber Real Estate Securities, Inc. (PaineWebber), a subsidiary of one of the largest investment brokerage firms in the United States. PaineWebber is totally independent of and has no interest in either Mellon or Mapleton. Neither Mellon nor Mapleton have any interest in PaineWebber nor do any of its subsidiaries. In an appraisal dated March 27, 1986, PaineWebber has placed the fair market value of the Receivables at $610,879 as of March 7, 1986. The valuation PaineWebber utilizes reflects the secondary mortgage market values which are based on an independent source, the Federal National Mortgage Association rates in effect on March 7, 1986. The fair market value of the Receivables will be recalculated prior to the sale to Mapleton.

8. In summary, it is represented that the proposed transaction will satisfy the criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) The sales price for the Receivables will be based on the higher of their cost basis or their fair market value as determined by an independent appraiser; (c) The Mapleton Plan will not be required to pay any fees or commissions in connection therewith; and (d) The sale of the Receivables will result in increased liquidity for the Mapleton Plan and allow its participants the benefit of selecting their own investments from one or more investment funds currently being offered by the Mellon Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Profit Sharing Plan and Trust of L.R. Mannausa, M.D., P.C. (the Profit Sharing Plan) and Amended and Restated Pension Retirement Plan and Trust of L.R. Mannausa, M.D., P.C. (the Pension Plan; together, the Plans) Located in East Lansing, Michigan

[Application Nos. D-6677 & D-6678]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plans of certain unimproved real property (the Property) to Lawrence R. Mannausa, M.D. (Dr. Mannausa), a disqualified person with respect to the Plans; provided that such sale is on terms no less favorable to the Plans than the Plans could obtain in an arm's-length transaction with an unrelated party.

Summary of Facts and Representations

1. The Profit Sharing Plan is a defined contribution plan with one participant and net assets of $128,586 as of June 17, 1986. The Pension Plan is a defined benefit pension plan with one participant and net assets of $155,078 as of June 17, 1986. Dr. Mannausa is the sole participant and trustee of the Plans. Dr. Mannausa is also the sole shareholder of the Plans' sponsor, Lawrence R. Mannausa, M.D., P.C., a Michigan professional corporation engaged in the general practice of medicine in East Lansing, Michigan.[1] Dr. Mannausa has partially retired from the practice of medicine and the Plans are frozen in preparation for termination.

2. Among the assets of the Plans is the Property, a vacant tract of 104 acres of land located at West St. Joe Highway and Canal Road in Delta Township, Eaton County, Michigan. Acting as trustee, Dr. Mannausa purchased the Property in 1978 from unrelated parties under a land contract (the Contract). Under the Contract, executed June 9, 1978, the sellers agreed to transfer the Property for a purchase price of $174,400, payable in one installment of $43,000 upon signing the Contract and semiannual installments of $9,000 commencing January 15, 1979, with interest at the rate of seven percent per annum. The Plans hold the Property as tenants in common. As of June 17, 1986, the Plans' cash investment in the Property, including principal and interest under the Contract and real property taxes, totalled $179,355. As of January 31, 1986, the balance due under the Contract was $54,948. The Property had a fair market value of $228,000 as of April 15, 1986, according to Terrell R. Oetzel, MAI (Oetzel), an independent professional real estate appraiser in Lansing, Michigan. The Property remains vacant and Dr. Mannausa represents that at no time has the Property been used by parties related to him or the Plans.

3. The Plans are now frozen and Dr. Mannausa expects to prepare for distribution of the Plans' assets in the near future. In order to achieve liquidity of the Plans' assets and to realize the appreciation of the Property since its original acquisition, Dr. Mannausa proposes to purchase the Property from the Plans and is requesting an exemption to permit such purchase. Dr. Mannausa proposes to pay the Plans cash for the Property in the amount of the greater of (1) $230,000, (2) the Property's fair market value, or (3) the Plans' total investment in the Property including the balance due under the Contract. Commensurate with the sale, Oetzel will review his appraisal of the Property to determine any changes in the Property's fair market value since his appraisal of April 15, 1986. Simultaneously, Dr. Mannausa will review the Plans' records to determine the Plans' total investment in the Property to that date, including the balance due under the Contract. The purchase price will be the greater of these two amounts but not less than $230,000. Dr. Mannausa will bear all costs and expenses related to the proposed sale transaction.

4. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plans will receive cash for the Property in an amount which will be no less than the Property's fair market value; (2) The Plans will recover their total investment in the Property, including the balance due under the Contract; and (3) As the trustee and sole participant of the Plans, Dr. Mannausa will be the only party affected by the proposed transaction and he desires that the transaction be consummated.

Notice to Interested Persons

Because Dr. Lawrence R. Mannausa is the sole shareholder of the Plans' sponsor and the only participant in the Plans, it has been determined that there is no need to distribute the notice of pendency to interested persons. Comments and requests for a hearing must be received by the Department within 30 days of the date of publication of this notice of proposed exemption.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department,

[1] Since Dr. Mannausa is the sole stockholder of the Plans' sponsor and the only participant in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an adminstrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 1986.

Elliot I. Daniel,

Assistant Adminstrator of Regulations and Interpretations Pension and Welfare Benefits Adminstration U.S. Department of Labor.

[FR Doc. 86-20216 Filed 9-8-86; 8:45 am]

BILLING CODE 4510-29-N

[Prohibited Transaction Exemption 86-103; Exemption Application No. D-6071 et al.]

Grant of Individual Exemptions; United Parcel Service Thrift Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

United Parcel Service Thrift Plan (the Thrift Plan) and United Parcel Service Retirement Plan (the Retirement Plan; together, the Plans) Located in Greenwich, Connecticut

[Prohibited Transaction Exemption 86-103; Exemption Application Nos. D-6071 and D-6366]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the acquisition by the Plans of six aircraft from United Parcel Service Co. (UPS Co.), provided the Plans pay no more than the fair market value of the aircraft on the date of acquisition; (2) the leaseback of the aircraft by the Plans to UPS Co., under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plans than those terms obtainable in an arm's-length transaction with an unrelated party; (3) the guarantee of UPS Co.'s payments under the lease by United Parcel Service Company of America, Inc. (UPS); (4) the acquisition of notes issued by the Plans by Overseas Partners, Ltd., in connection with the transaction; and (5) the possible future reacquisition of the aircraft by UPS Co. for cash pursuant to the terms of the lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on May 6, 1986 at 51 FR 16756.

Written Comments and Hearing Requests

The Department received eight written comments with respect to the proposed exemption including four requests for a hearing. The hearing requests were subsequently withdrawn.

Four of the written comments were in favor of the Department's granting the exemption as it was proposed. Three of the other four comments raised a complaint that notification of interested persons had not been furnished in a timely fashion.

The applicants represent that posting of the notice of proposed exemption was accomplished in timely fashion in all but one location out of the numerous UPS facilities throughout the country. However, posting at one location was not accomplished within the time period set forth in the notice of proposed exemption. Pursuant to discussions with the Department, the applicants notified

interested persons in the location (Earth City, Missouri, the work site of the three commentators) that the period for written comments and hearing requests would be extended until July 7, 1986. The applicants represent that interested persons at the work site were notified by June 5, 1986, and that notice of the extension of the comment period remained posted until July 8, 1986.

Two of the commentators submitted comments that did not address the merits of the subject transaction. Another commentator wrote that the percentage of the Thrift Plan's assets involved in the transaction, 19.7% was too high. The Plans' independent fiduciary, Connecticut National Bank (the Bank) responded to this comment. The Bank states that it has considered the percentage of plan assets involved and considers the amount appropriate. The Bank also indicates that the percentage of the Thrift Plan's assets involved will be less than anticipated due to increases in the Thrift Plan's assets.

One commentator stated that the rate of return to the Thrift Plan for the subject transactions would be less than the Thrift Plan had earned in the past. The applicants state that the commentator had confused the return on investment of Thrift Plan assets with total growth of Plan assets, including both earnings on investments and employer contributions. In any event, the Bank represents that it has carefully considered the return to the Plan from the subject transactions, and that the return compares favorably with other types of investments of similar quality generally available to the Plans. The Bank reiterates its view that the proposed transactions are appropriate for, and in the best interests of, the Plans.

One commentator questioned why the Thrift Plan is to take a two-thirds participation in the subject transactions, while the Retirement Plan is to take a one-third participation. The applicants respond that the Thrift Plan participants would derive more benefit from the transactions because the Retirement Plan is a defined benefit plan while the Thrift Plan is a defined contribution plan, to which UPS Co. makes only voluntary contributions. Thus, the applicants represent, the excellent return to be derived from the transactions would have no effect on the benefits received by the Retirement Plan participants. However, the Thrift Plan participants would benefit because benefits of the transactions would be passed through to their individual accounts. In addition, the benefits of the return on the transactions would be shared under the Thrift Plan with more employees than would be the case if all the return were to be allocated to the Retirement Plan.

The Department has considered the entire record, including the comments submitted and the responses to the comments submitted by the applicants and the Bank, and has determined to grant the exemption as it was proposed.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Emanuel Klimpl Pension Plan (the Plan) Located in New York, NY

[Prohibited Transaction Exemption 86-104; Exemption Application No. D-6462]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the contribution to the Plan of certain promissory notes by Emanuel Klimpl, a disqualified person with respect to the Plan;[1] provided that (1) the notes are valued at their fair market value at the time contributed, and (2) the notes represent no more than 10% of the total assets of the Plan at the time of contribution.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 11, 1986 at 51 FR 25271.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Peter M. Pencheff Co., LPA, Defined Benefit Pension Plan (the Plan) Located in Columbus, Ohio

[Prohibited Transaction Exemption 86-105; Exemption Application No. D-6475]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) by the Plan of a certain parcel of real property (the Property) to Mr. Peter M. Pencheff, a party in interest with respect to the Plan, provided that the consideration paid for the Property is not less than the higher of either $220,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22996.

For Further Information Contact: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

David F. Smith, M.D., P.C. Money Purchase Plan (the Plan) Located in Sacramento, California

[Prohibited Transaction Exemption 86-106; Exemption Application No. D-6501]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale by the Plan of certain improved real property to David F. Smith and Regina Smith, disqualified persons with respect to the Plan; provided that such sale is on terms at least as favorable to the Plan as the Plan could obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decison to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22996.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Kalihi Medical Center, Inc. Money Purchase Pension Plan, and Kalihi Medical Center, Inc. Profit Sharing Plan (the Plans) Located in Honolulu, Hawaii

[Prohibited Transaction Exemption 86-107; Exemption Application No. D-6504]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The lease of space in a building (the Building) by the Plans to Kalihi Medical Center, Inc. (Kalihi), for the period from July 1, 1984 until the date of sale of the Building, under the terms described in the notice of proposed exemption, provided such terms are not less favorable to the Plans than those obtainable in an arm's-length transaction with an unrelated party; and (2) The sale of the Building by the Plans

[1] Since Mr. Klimpl is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

to Kalihi Partners for $855,800 in cash, provided such amount is not less than the fair market value of the Building on the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22997.

Effective date: With respect to the lease, the exemption is effective from July 1, 1984 until the date of sale of the Building.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Michael J. Gianturco, M.D., P.C. Profit Sharing Plan and Michael J. Gianturco, M.D., P.C. Money Purchase Pension Plan (collectively, the Plans) Located in Cheektowaga, New York

[Prohibited Transaction Exemption 86–108; Exemption Application Nos. D–6551 and D–6552]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the purchase of a certain parcel of improved real property (the Property) by the individually directed accounts (the Accounts) of Michael J. Gianturco, M.D. (Dr. Gianturco) and Geraldine Gianturco (Ms. Gianturco) in the Plans for $253,000 in cash from Dr. Gianturco and Mr. Joseph Romanello, Jr., an unrelated party, provided that such amount is not greater than the fair market value of the Property at the time of its acquisition by the Accounts; (2) the subsequent lease of the Property by the Accounts to Ms. Gianturco, provided that the lease terms are not less favorable to the Accounts than those obtainable in an arm's-length transaction with an unrelated party; and (3) the possible cash sale of the Property by the Accounts to Ms. Gianturco, provided that the sales price is not less than the fair market value of the Property at the time of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 2, 1986 at 51 FR 24245.

Written Comments. The notice of proposed exemption states that the Property will represent no more than approximately 22 percent of the assests of each of the Accounts. The applicant has advised the Department that recent changes in the stock market may decrease the value of the Accounts' total assets and, thereby, increase the percentage of such assets that the Property will represent to more than 22 percent. However, the applicant states that the Property will not represent more than 25 percent of the total assets of any of the Accounts at the time of the transaction. Accordingly, the Department has determined to grant the requested exemption.

For Further Information Contact: Mr. E.F Williams of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sagara Trucking, Inc. Defined Benefit Pension Plan (the Plan) Located in Woodland, California

[Prohibited Transaction Exemption 86–109; Exemption Application No. D–6561]

Exemption

The restrictions of section 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan of certain unimproved real property to Mr. and Mrs. Kay K. Sagara, parties in interest with respect to the Plan, provided the amount paid for the property is no less than fair market value at the time of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 22998.

For Further Information Contact: Paul Kelty of the Department, telephone (202) 523–8196. (This is not a toll-free number.)

Teamsters Joint Council No. 83 of Virginia Pension Fund (the Pension Fund) Teamsters Joint Council No. 83 of Virginia Health and Welfare Fund (the Welfare Fund) Located in Richmond, Virginia

[Prohibited Transaction Exemption 86–110; Exemption Application No. D–6561]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code, shall not apply to (1) The lease (the Lease) of office space by the above named funds (the Funds) to On-Line Financial Systems, Inc. (the Tenant), which provides services to the Funds, and (2) the Tenant's occupancy (the Occupancy) of office space provided by the Funds during the period subsequent to the execution of a software license agreement on February 15, 1984, between the Funds and the Tenant and prior to the commencement of the Lease, provided the terms of the Lease and the Occupancy were and are at least as favorable to the Funds as the terms the Funds could obtain in similar transactions with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 24, 1986 at 51 FR 23002.

Effective date: This exemption is effective as of February 15, 1984.

Notice To Interested Persons

The applicants advise that although they intended to furnish notice of the proposed exemption to interested persons by July 9, 1986, they were unable to do so until July 14, 1986. Therefore, they also provided a supplemental notice informing the interested persons that they had 30 days from July 14, 1986 to comment on the proposed exemption.

For Further Information Contact: Mrs. Miriam Freund of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an

administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 1986.

Elliot I. Daniel,

Assistant Administrator for Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 86-20217 Filed 9-8-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96-64)]

Calendar Year 1985 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, the NASA advisory committees that held close or partially closed meetings in 1985, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NASA Advisory Council (NAC), NAC History Advisory Committee, NAC Life Sciences Advisory Committee, NAC Space Applications Advisory Committee, NAC Space and Earth Science Advisory Committee, National Commission on Space and NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Mary R. Lippolis, Code NI, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2986).

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

August 28, 1986.

[FR Doc. 86-20205 Filed 9-8-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-60)]

NASA Advisory Council, Aeronautics Advisory Committee, (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee Ad Hoc Task Team on Aircraft Automation.

DATE AND TIME: September 24, 1986, 8:30 a.m. to 5 p.m., and September 25, 1986, 8:30 a.m. to 12:30 p.m.

ADDRESS: Ames Research Center, Building 200, Center Committee Room, Moffett Field, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Carol Roberts, Code RC, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-2745).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC) Ad Hoc Task Team on Aircraft Automation was established to assess the quality and direction of the NASA program in aircraft automation. This team, chaired by Mr. Duane McRuer, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants).

Type of Meeting: Open.

AGENDA:

September 24, 1986

8:30 a.m.—Ames Research Center technical briefing on aircraft automation.

1 p.m.—Continue technical briefings with planning discussions.

September 25, 1986

8:30 a.m.—Planning of study team activities and task assignments.

12:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86-20201 Filed 9-8-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-61)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Informal Space Life Sciences Committee.

DATE AND TIME: September 24, 1986, 8:30 a.m. to 5 p.m., and September 25, 1986, 8:30 a.m. to 2 p.m.

ADDRESS: National Aeronautics and Space Administration, NASA Headquarters Building, 600 Independence Avenue, SW., Conference Room 226-A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. James H. Bredt, Code EBR, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1540).

SUPPLEMENTARY INFORMATION: The NASA Advisory Council, Informal Space Life Sciences Committee was established to formulate a comprehensive strategic plan for space life sciences, identify essential efforts with appropriately phased objectives, and define efficient implementing strategies to pursue these goals. The committee, chaired by Dr. Frederick C. Robbins, has 17 members.

The meeting will be open to the public up to the seating capacity of the room (approximately 35 persons including Committee members and other participants). Visitors will be requested to sign a register.

Type of Meeting: Open.

AGENDA:

September 24, 1986

8:30 a.m. Swearing in Ceremony and Opening Remarks.

9:30 a.m. Charge to the Committee.

10:00 a.m. Presentations on Other Past and Present Advisory Activities on Life Sciences in Space.

11:00 a.m. Presentation of Current Life Science Activities in the Space Program.

3:00 p.m. Discussion of Study Structure, Assignments to Committee Members.

5:00 p.m. Adjourn.

September 25, 1986

8:30 a.m. Planning and Scheduling of Study Activities.

2:00 p.m. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86-20202 Filed 9-8-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-62)]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Task Team on Propulsion Technology.

DATE AND TIME: September 26, 1986, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Administration Building, Room 215, Cleveland, Ohio 44135.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Facey, Office of Aeronautics and Space Technology; Telephone: 202/453–2857.

For Further Information: The Aeronautics Advisory Committee was established to provide overall guidelines and direction to the aeronautics research and technology activities in the Office of Aeronautics and Space Technology (OAST). Special ad hoc subcommittees are formed to address specific topics. This ad hoc subcommittee on Propulsion Technology, chaired by Dr. Eugene Covert, is comprised of 10 members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the subcommittee members and other participants).

Type of Meeting: Open.

AGENDA:

September 26, 1986

8:30 a.m—Welcome and introductory remarks.

9 a.m.—Discussion of ad hoc subcommittee charter and organization.

10 a.m.—Technical presentation by Lewis Research Center.

2:30 p.m.—Discussion of presentation.

3 p.m.—Discuss future actions and task assignments.

4:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86–20203 Filed 9–8–86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-63)]

NASA Advisory Council, Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Task Team on Aviation Safety Research.

DATE AND TIME: September 25, 1986, 8:30 a.m. to 4:30 p.m., September 26, 1986, 8:30 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Louis J. Williams, Code RJ, National Aeronautics and Space Administration, Office of Aeronautics and Space Technology, Washington, DC 20546 (202)/453–2812).

SUPPLEMENTARY INFORMATION: The Aeronautics Advisory Committee (AAC), Ad Hoc Task Team on Aviation Safety Research was established to assess NASA's safety related research efforts and explore possibilities for joint programs with the Federal Aviation Administration, other organizations and industry. This team, chaired by Mr. Donald E. Pritchett, is comprised of nine members and was formed to provide a review of critical areas of aviation safety research and determine whether that research is taking maximum advantage of NASA's expertise and unique facilities. The meeting will be open to the public up to the seating capacity of the room (approximately 25 persons including the team members and other participants).

Type of Meeting: Open.

AGENDA:

September 25, 1986

8:30 a.m.—Organization of Study Plan.

10:30 a.m.—Briefing on Langley Research Center Aviation Safety Research Program.

4:30 p.m.—Adjourn.

September 26, 1986

8:30 a.m.—Assignment of specific study tasks to team members.

12:30 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

September 2, 1986.

[FR Doc. 86–20204 Filed 9–8–86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Committee For Earth Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Earth Sciences

Date: September 25, 26 and 27, 1986

Time: 8:30 a.m. to 5:30 p.m. on September 25 and 26; 9:00 a.m. to 12:00 p.m. on September 27 (tentative)

Place: The National Science Foundation, Room 1243, 1800 G Street, NW., Washington, DC 20550

Type of Meeting: Open.

Contact Person: Dr. James Fred Hays, Division Director, Earth Sciences, Room 602, National Science Foundation, Washington, DC 20550 Telephone: (202) 357–7958

Purpose of Committee: To provide advice, recommendations, and oversight concerning support for research and research-related activities in the Earth Sciences

Agenda:

Thursday, 25 September 1986

8:30 a.m.–12:00 p.m. Introduction; Review of FY 1986 Actions; Update on Continental Lithosphere Activities; Reports on Selected Earth Sciences Programs

2:00 p.m.–5:30 p.m. Reports on Selected Earth Sciences Programs (cont.); Long-Range Planning Process

Friday, 26 September 1986

8:30 a.m.–12:00 p.m. Committee Discussion of Issues and Long-Range Planning

2:00 p.m.–5:30 p.m. Committee Discussion of Issues and Long-Range Planning (cont.); Formulation of Committee Statements and Recommendations

Saturday, 27 September 1986

9:00 a.m.–12:00 p.m. Formulation of

Committee Statements and Recommendations (cont.)

M. Rebecca Winkler,

Committee Management Officer.

September 3, 1986.

[FR Doc. 86-20244 Filed 9-8-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics Subcommittee for Review of the NSF Elementary Particle Physics Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics: Subcommittee for the Review of the NSF Elementary Particle Physics Program.

Date and time: September 25, 1986; 9:00 a.m. to 6:00 p.m.; September 26, 1986; 8:00 a.m. to 4:00 p.m.

Place: Room 341, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Harvey B. Willard, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550, Telephone: (202) 357-7985.

Purpose of Subcommittee: To provide oversight concerning NSF support and planning for research in elementary particle physics.

Agenda: To review NSF Elementary Particle Physics Program documentation as part of the program oversight function.

Reason for Closing: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information from the files pertaining to the proposals. The meeting will also include a review of the peer review documentation pertaining to applicants. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

Mr. Rebecca Winkler,

Committee Management Officer.

September 4, 1986.

[FR Doc. 86-20245 Filed 9-8-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Alabama Power Co.; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-348]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix R to 10 CFR Part 50 to Alabama Power Company, (the licensee), for the Joseph M. Farley Nuclear Unit No. 1 located near the City of Dothan, Alabama.

Environmental Assessment

Identification of Proposed Action: The exemption would permit alternatives to the technical requirements of Appendix R concerning certain specifically identified fir areas in Farley Unit No. 1.

The exemption is responsive to the licensee's application for exemption dated May 31, 1985, supplemented October 18, 1985, and July 16, 1986.

The Need for the Proposed Action: The proposed exemption is needed because the features described in the licensee's request regarding the existing fire protection at the plant for these items are the most practical means for meeting the intent of Appendix R and literal compliance would not significantly enhance the fire protection capability.

Environmental Impacts of the Proposed Action: The proposed exemption and modifications to be made will provide a degree of fire protection that is equivalent to that required by Appendix R for the affected areas of the plant such that there is no increase in the risk of fires at this facility. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor does the proposed exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action: Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require rigid compliance with section III.G of Appendix R requirements. Such action would not enhance the protection of the environment and would result in unjustified costs for the licensee.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Joseph M. Farley Nuclear Plant, Unit No. 1.

Agencies and Persons Consulted: The NRC staff reviewed the licensee' request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated May 31, 1985, supplemented October 18, 1985, and July 16, 1986, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Local Public Document Room, located at the George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama.

Dated at Bethesda, Maryland, this 4th day of September, 1986.

For The Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate #2 Division of PWR Licensing-A.

[FR Doc. 86-20288 Filed 9-8-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station, Unit 2; Environmental Assessment and Final Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing exemptions from certain requirements of 10 CFR Part 50 to the Niagara Mohawk Power Corporation (the applicant) for the Nine Mile Point Nuclear Station, Unit 2

(NMP–2), located at the applicant's site in Scriba, New York.

Environmental Assessment

A. Deferral of the Completion of the Turbine Electrohydraulic Control System

Identification of Proposed Action

The proposed action would exempt the applicant from having the turbine electrohydraulic control (EHC) system operable prior to fuel load. The request for deferral and supporting justification are contained in a submittals from the applicant, dated July 2, and August 29, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 29 requires the protection and reactivity control systems to be designed to assure an extremely high probability of accomplishing their safety functions in the event of anticipated operational occurrences. The Code of Federal Regulations Title 10 Part 50, Appendix A, GDC 4 is also dependent, in part, upon the EHC system to reduce the turbine missile risk.

GDC 4 requires that structures, systems, and components important to safety shall be appropriately protected against dynamic effects, including the effects of missiles. The evaluation of the turbine missile risk is based, in part, on the availability of the EHC system. Therefore, the EHC system is required to be operable to meet GDC 4.

The applicant has stated that the EHC system controls the bypass valves, the control valves, and the turbine stop valve position switches that supply a scram signal to the reactor protective system. However, since there will be no steam in the main steam lines prior to reactor heatup, there is no need to initiate a scram from stop valve closure. Therefore, the turbine electrohydraulic control system is not required to be operational prior to reactor heatup. In addition, before opening both of the MSIVs the turbine cannot be brought to an overspeed condition, therefore, the EHC system would not be needed to reduce the probability of a turbine missile.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the turbine EHC system operational. Preoperational testing of this system will be completed prior to opening both of the MSIVs, when the system is required to be operational. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer operability of the turbine EHC system until after the fuel is loaded but prior to opening both of the MSIVs.

Since no steam exists in the main steam lines prior to opening both of the MSIVs after reactor heatup, the staff concludes that granting the proposed relief will not increase the probability of an accident and will not result in post-accident radiological releases that are greater than those previously determined for the Nine Mile Point Nuclear Station, Unit 2. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

B. Deferral of the Completion of the Off-Gas System Identification of Proposed Action

The proposed action would exempt the applicant from having the off-gas system operable prior to fuel load. The request for deferral and supporting justifications are contained in letters from the applicant dated May 7, July 3, and August 29, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 60 and Part 50, Appendix I require, in part, that the nuclear power unit design include means to control the release of radioactive materials in gaseous effluents.

Prior to opening both of the MSIVs, steam will not be introduced into the main turbine condenser and no radioactive gaseous effluents can be generated, therefore the off-gas system is not needed.

Need for Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the off-gas system operational. Preoperational testing of the off-gas system will be completed prior to opening both of the MSIVs after initial startup. This exemption would provide the applicant with greater flexibility and, therefore, expedite the start of power operations.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer operability of the off-gas system until after fuel loading, but prior to opening both of the MSIVs after initial startup.

Prior to opening both of the MSIVs after startup, this system is not required, and the main turbine condenser is not utilized.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined as a result of the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

C. Deferral of the Completion of Portions of the Containment Atmospheric Monitoring System

Identification of Proposed Action

The proposed action would exempt the applicant from having portions of the containment atmospheric monitoring system related to the humidity monitors, containment and drywell H_2/O_2 concentration monitors, containment pressure monitors, and suppression pool and drywell excess flow instrument line check valves operable until after fuel load. The specific requests for deferral and supporting justifications are

contained in submittals from the applicant dated May 7, 1986, July 3, 1986, and June 18, 1986 (date should read July 18, 1986).

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 41 requires that, in part, systems to control fission products, hydrogen, oxygen, and other substances in the reactor containment be provided. GDC 64 requires, in part, that means be provided for monitoring the reactor containment atmosphere for radioactive releases.

The applicant has stated that the monitors identified above, for which the deferrals are being requested, are not needed prior to initial criticality. Since the reactor coolant temperature during open vessel testing is maintained at less than 140°F, no decay heat is present so a loss of coolant accident would not result in the formation of hydrogen and prior to initial criticality no appreciable quantities of fission products are present in the fuel. Therefore, no significant release of radioactivity is possible.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having fully operational portions of the containment monitoring system as identified in the applicant's May 7, 1986 submittal. The operational testing of the portions of the containment monitoring system identified will be complete prior to initial criticality. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: Requiring that the portions of the containment monitoring system identified in the applicant's May 7, 1986, submittal to be fully operational at fuel load would result in a hardship for the applicant without a compensating increase in safety. The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined due to the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

D. Deferral of the Completion of the Reactor Coolant and ECCS Leak Detection System

Identification of Proposed Action

The proposed action would exempt the applicant from having the reactor coolant and ECCS leak detection system operable prior to fuel load. The specific requests for deferral and supporting justification are contained in submittals from the applicant dated May 7, 1986, and July 3, 1986.

The Code of Federal Regulations Title 10 Part 50, Appendix A, General Design Criterion (GDC) 30 requires, in part, that means be provided for detecting and identifying the location of the source of reactor coolant leakage. GDC 64 requires, in part, that means be provided for monitoring the containment atmosphere, spaces containing components for recirculation of loss-of-coolant accident fluids, effluent discharge paths and plant environs for radioactivity. Operability of the leak detection system is normally demonstrated during the preoperational testing based on the acceptance criteria specified in these operational test specifications.

Until the reactor attains initial criticality, significant fuel exposure or buildup of radioactive fission products in the core should not occur. Hence, there should not be significant heat generation in the core from fuel or fission products, nor a significant buildup of the radioactivity in the coolant. Therefore, the applicant has stated that the reactor coolant and ECCS leak detection system, for which the deferral is being requested, is not required prior to initial criticality.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the reactor coolant and ECCS leak detection system operational. Preoperational testing of this system will be completed prior to initial criticality. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operation.

Environmental Impact of the Proposed Action: The proposed exemption would allow the applicant to defer the operability of the reactor coolant and ECCS leak detection system until after fuel loading but before initial criticality. During initial fuel loading and precritical testing, the reactor will remain at essentially ambient temperatures and atmosphere conditions. Under these conditions, no radioactive species will be produced; therefore, there are no environmental impacts associated with the proposed action.

The staff concludes that the probability of an accident will not be increased and the post-accident radiological releases will not be greater than previously determined as a result of the proposed relief. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

E. Deferral of the Completion of the Design Basis Accident (DBA) Hydrogen Recombiner System

Identification of Proposed Action

The proposed action would exempt the applicant from having the DBA hydrogen recombiner system operable prior to fuel load. The request for deferral and the supporting justification are contained in submittals from the applicant, dated June 13, 1986 and July 3, 1986.

GDC 41 requires a containment atmosphere cleanup system to control hydrogen and oxygen following a DBA to ensure that containment integrity is maintained. Inspection and periodic testing of the containment atmosphere cleanup system are required by GDC 42 and GDC 43, respectively. 10 CFR 50.44 contains requirements for combustible gas control systems which will be met,

in part, by the DBA hydrogen recombiner system when it is fully tested.

The applicant has stated that the DBA recombiners can only perform a function during a post-LOCA with degraded core condition. The applicant further stated that this condition is not possible until after initial power operation.

Need for the Proposed Action: The exemption is required in order to provide the applicant with the ability to load fuel without having the DBA hydrogen recombiner system operational. Preoperational testing of this system will be completed prior to initial criticality. This exemption would provide the applicant with greater preoperational flexibility and, therefore, expedite the start of power operations.

Environmental Impact of the Proposed Action: The exemption would allow the applicant to defer operability of the DBA hydrogen recombiner system until after the fuel is loaded but prior to initial criticality.

Since prior to initial criticality the DBA hydrogen recombiner system performs no function as DBA-post LOCA conditions are not possible until after initial criticality, the staff concludes that granting the proposed relief will not increase the probability of an accident and will not result in post-accident radiological releases that are greater than those previously determined for the Nine Mile Point Nuclear Station, Unit 2. Moreover, the proposed relief will not otherwise affect radiological plant effluents, nor result in any significant occupational exposure. Likewise, the relief does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant radiologicl or non-radiological environmental impacts associated with this proposed relief.

Alternative to the Proposed Action: The staff has concluded that there is no measurable environmental impact associated with the proposed exemption. Any alternatives to the proposed exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested relief and exemption. Such action would not reduce environmental impacts of the Nine Mile Point Nuclear Station, Unit 2 operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources: These actions associated with the granting of the proposed exemptions as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of Nine Mile Point Nuclear Station, Unit No. 2", dated May 1985.

Agencies and Persons Consulted: The NRC staff reviewed the applicant's submittals that support the requested exemptions A through E above. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessments, the Commission concludes that the proposed actions will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemptions as listed herein, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13126.

Dated at Bethesda, Maryland, this 3rd day of September 1986.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, BWR Project Directorate No. 3, Division of BWR Licensing.

[FR Doc. 86-20289 Filed 9-8-86; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Joint Meeting of the Subcommittees on Seabrook and Occupational and Environmental Protection Systems

The ACRS Subcommittees on Seabrook and Occupational and Environmenal Protection Systems will hold a joint meeting on September 25, 1986, in Room 1046, 1717 H Street, NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Thursday, September 25, 1986—1:00 p.m. until the conclusion of business.*

The Subcommittees will gather and exchange information with the NRC Staff and PSNH. The Subcommittees will review preliminary efforts by the applicant to reduce the size of the emergency planning zone (EPZ). This effort uses results of the Seabrook Probabilistic Safety Assessment to justify a smaller EPZ. A primary focus will be the credit taken for the strength and leak tightness of the Seabrook containment. A status report on emergency planning around Seabrook will also be heard.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the intial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the Public Service Company of New Hampshire, the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 3, 1986.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 86-20287 Filed 9-8-86; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Advisory Committee Meeting; Correction Notice

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1–4; correction.

SUMMARY: This document corrects the meeting date published on August 20, 1986 at 51 FR 29728 as September 11, 1986. The correct date is September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Jim Ruff at (503) 222–5161.

Edward Sheets,

Executive Director.

[FR Doc. 86–20213 Filed 9–8–86; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[FILE NO. 22–15590]

Application and Opportunity for Hearing; Chrysler Financial Corporation

September 2, 1986.

Notice is hereby given that Chrysler Financial Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the successor trusteeship of J. Henry Schroder Bank and Trust Company (the "Bank") under (i) an indenture, dated as of July 15, 1985, between the company and Bankers Trust Company, (ii) an indenture, dated as of August 1, 1984, as supplemented and amended by a First Supplemental Indenture dated as of August 1, 1984, between the Company and Bankers Trust Company and (iii) an indenture, dated as of September 1, 1977, between the Company and Fidata Trust Company New York (formerly Bradford Trust Company), as successor trustee to Chemical Bank, all of which were heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges that:

1. The Company had outstanding as of June 25, 1986, $26,365,000 of its 9⅜% Subordinated Notes Due 1987 (the "9⅜% Notes") issued under an indenture dated as of September 1, 1977 (the "1977 Indenture"), between the Applicant and Fidata Trust Company New York (formerly Bradford Trust Company), as successor trustee to Chemical Bank, which was qualified under the Act. The 9⅜% Notes were registered under the Securities Act of 1933.

2. The Company had outstanding as of June 25, 1986, $100,000,000 of its 12⅛% Subordinated Notes Due February 15, 1990 (the "12⅛% Notes") and $200,000,000 of its Subordinated Exchangeable Variable Rate Notes Due 1994 (the "Variable Rate Notes") both issued under an indenture dated as of August 1, 1984, as amended and supplemented by a First Supplemental Indenture, dated as of August 1, 1984 (as so amended and supplemented the "1984 Indenture") between the Applicant and Bankers Trust Company ("Bankers Trust"), which was qualified under the Act. The 12⅛% Notes and the Variable Rate Notes were both registered under the Securities Act of 1933.

3. The Company has outstanding as of June 25, 1986, $60,000,000 of its Floating Rate Subordinated Notes Due August 15, 1990 (the "1990 Floating Rate Notes"), $125,000,000 of its Floating Rate Extendible Subordinated Notes Due 1992 (the "1992 Floating Rate Notes") and $150,000,000 of its 9¼% Subordinated Notes Due March 1, 1991 (the "9¼% Notes") all issued under an indenture, dated as of July 15, 1985, between the Company and Bankers Trust, which was qualified under the Act. The 1990 Floating Rate Notes, the 1992 Floating Rate Notes and the 9¼% Notes were each registered under the Securities Act of 1933. The 1977 Indenture, the 1984 Indenture and the 1985 Indenture each contain the provisions required by section 310(b)(1)(ii) under the Act.

4. On April 11, 1986 the Bank was appointed successor trustee under the 1977 Indenture.

5. The Company on June 26, 1986 appointed the bank to act as successor trustee under the 1984 Indenture and 1985 Indentures.

6. The Company is not in default under any of the Indentures.

7. The Company's obligations under the indentures and the debentures issued thereunder are wholly unsecured and rank *pari passu inter se*. There are no material differences between the 1985 Indenture, the 1984 Indenture and the 1977 Indenture except for variations as to aggregate principal amounts, dates of issue, maturity and interest payment dates, interst rates, redemption prices, convertibility and sinking fund provisions.

8. In the opinion of the Company, the provisions of the aforementioned indentures are not so likely ot involve a material conflict of interest so as to make it necessary in the public interest or for the protection of any holder of any of the debentures issued under such indentures to disqualify Bank from continuing to act as successor trustee under the 1985 Indenture, the 1984 Indenture and the 1977 Indenture. The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, File Number 22–15590, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than September 24, 1986 request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86–20248 Filed 9–8–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC-15280; (File No. 812-6418)]

Equus Investments II, L.P.; Application

August 29, 1986.

Notice is hereby given that Equus Investments II, L.P. ("Partnership"), River Oaks Bank Tower, 2001 Kirby, Suite 1114, Houston, Texas 77219, filed an application on June 26, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), declaring that the Independent General Partners of the Partnership are not "interested persons" of the Partnership as defined in section 2(a)(19) of the Act solely by reason of their being general partners of the Partnership. 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.

Applicant states that it was organized as a Delaware limited partnership, pursuant to a Certificate of Limited Partnership dated May 30, 1986 ("Partnership Agreement"), and that it will elect to become a business development company, pursuant to section 54(a) under the Act. Applicant further states that its investment objective is to seek capital appreciation by making equity, and to a lesser extent, equity-oriented investments in leveraged buyouts of established medium-sized companies or divisions thereof. The application states that the Partnership has filed a registration statement under the Securities Act of 1933 with respect to a proposed public offering of up to 5,000,000 units of Limited Partnership Interests. The proceeds of the offering will be invested in leveraged buy-out investments over a period of three to four years. Each investment will be liquidated once it reaches a state of maturity when disposition can be considered (typically within four to seven years of the date of investment). The proceeds of liquidation will not be reinvested (except in limited circumstances) but will be distributed to the Partners. The Partnership will have a duration of not more than 14 years.

Applicant represents that Equus Capital Corporation will serve as managing general partner of the Partnership ("Managing General Partner") and will be responsible for selecting the Partnership's investments and arranging financing for leveraged buy-outs. Equus Capital Management Corporation ("ECMC") will serve as the Partnership's management company and, pursuant to a management agreement with the Partnership, will negotiate, structure, monitor, and liquidate the Partnership's investments and perform, or arrange for third parties to perform, the management, certain administrative, and certain investment advisory services necessary for the operation of the Partnership. According to the application, both the Managing General Partner and ECMC are registered investment advisers under the Investment Advisers Act of 1940. The Managing General Partner is controlled by ECMC, which is controlled by EI Incorporated, a Texas corporation engaged in a variety of investment activities, including leveraged buyouts. The application indicates that the Managing General Partner will not resign or withdraw from the Partnership unless certain specific procedures are followed and a successor is appointed and consented to by the Limited Partners of the Partnership.

The application states that the General Partners of the Partnership consist of four Individual General Partners (three Independent General Partners, defined as individuals who are not "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act, and one affiliated individual) and the Managing General Partner. According to the application, the Partnership will be managed exclusively by the Independent General Partners, except that the Managing General Partner, subject to the supervision of the Independent General Partners, will be responsible, *inter alia*, for the management of the Partnership's investments. The application states that the General Partners will perform the same functions as directors of a corporation and the Independent General partners will assume the responsibilities and obligations imposed upon the non-interested directors of a corporate business development company by the Act. The application further states that the number of persons serving as Individual General Partners will be fixed from time to time by the Independent General Partners, provided, however, that the number of Individual General Partners will in no event be less than three. Additionally, a majority of the General Partners will at all times be Independent General Partners who are not "interested persons" of the Partnership (as defined in the Act). The Partnership Agreement provides that the Independent General Partners may be removed either (i) for cause by the action of a majority of the remaining Independent General Partners, or (ii) with the consent of a majority in interest of the Limited Partners. The Managing General Partner may be removed either (i) by a majority of the Independent General Partners, or (ii) by the vote of a majority in interest of the Limited Partners.

The application indicates that the Partnership's Limited Partners have no right to control or otherwise participate in the management of the Partnership's business, but may exercise certain rights and powers under the Partnership Agreement, including voting rights and giving consents and approvals. The Partnership further states that it does not presently have an insurance policy that would provide coverage to persons who become Limited Partners, but it undertakes that it will periodically review the question of the appropriateness of obtaining an errors and omissions insurance policy for the Partnership.

Applicant represents that the Independent General Partners are "interested persons" of the Partnership within the meaning of section 2(a)(19) of the Act by virtue of being partners of the Partnership, which makes them "affiliated persons" of the Partnership within the meaning of section 2(a)(3)(D) of the Act. It is requested that the Partnership and its Independent General Partners be exempted from the provisions of section 2(a)(19) of the Act to the extent the Independent General Partners would otherwise be deemed to be interested persons of the Partnership solely because the Independent General Partners are general partners of the Partnership. According to the application, the Partnership has been structured so that the Independent General Partners are the functional equivalents of non-interested directors of an incorporated investment company. The application states that section 2(a)(19) of the Act excludes from the definition of interested persons of an investment company those individuals who would be interested persons solely because they are directors of an investment company. It is submitted that it is consistent with the purposes fairly intended by the policy and provisions of the Act to grant the requested exemption from the provisions of section 2(a)(19) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 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 at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20249 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-10-M

[Release No. IC-15284; File No. 812-6431]

Application and Opportunity for Hearing; Hartford Life Insurance Co. et al.

September 2, 1986.

Notice is hereby given that Hartford Life Insurance Company ("Company"), a Connecticut stock life insurance company with offices at Hartford Plaza, Hartford, Connecticut 06115, Hartford Life Insurance Company Separate Account Two ("Account"), registered under the Investment Company Act of 1940 ("Act") as a unit investment trust; and Harford Equity Sales Company, Inc., the principal underwriter of the individual and group flexible premium deferred combination fixed/variable annuity contracts ("contracts") offered through the Account, (together, "Applicants"), filed an application on July 10, and amendments thereto on July 29 and August 29, 1986, requesting an order pursuant to section 6(c) of the Act, exempting them from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit transactions described in the application. All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below, and are referred to the Act for a statement of the relevant provisions.

Applicants request exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) to offer the contracts subject to a daily asset charge at the rate of 1.25% per annum paid to the Company for mortality and expense guarantees, estimated at .90% and .35%, respectively.

Applicants state that the contractowner has the right to allocate purchase payments to any one of seven underlying funds. Applicants further state that a sales charge is not deducted at the time of purchase. Each premium payment, net of any applicable premium tax, is credited to the contract. A contingent deferred sales charge may be assessed against contract values upon partial and/or full surrender. The time from receipt of a premium payment to the time of surrender determines the contingent deferred sales charge; and the charge equals 5% of the amount withdrawn for the first two years, 4% for the third year, 3% for the fourth year, 2% for the fifth year, and 0% for the sixth year. A single partial surrender may be made each year after the first full contract year of up to 10% of the aggregate premium payments without the application of the contingent deferred sales charge.

Applicants state that an annual maintenance fee of $25 is deducted on each contract anniversary from contract values. The contracts issued with respect to the Account will provide a 1.25% annual asset charge paid to the Company on a daily basis for providing mortality and expense guarantees with respect to the contracts.

Applicants state that the mortality undertaking provided by the Company under the contracts, assuming the selection of one of the forms of life annuities, is to make monthly annuity payments (determined in accordance with the 1983(a) Individual Annuity Table with ages set back one year and other provisions in the contract) regardless of how long an annuitant may live, and regardless of how long all annuitants as a group may live. The Company also assumes the liability for payment of a minimum death benefit. The expense undertaking is the risk assumed that the contingent deferred sales charges and the annual maintenance fee may be insufficient to cover the actual costs.

Applicants request exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) in order that they may offer the contracts subject to the mortality and expense risk charge. The Company represents that:

(a) The mortality and expense risk charge is within the range of industry practice for comparable annuity contracts as determined by a survey of comparable contracts issued by a large number of other insurance companies. These contracts are similar in that current charge levels are approximately the same; all provide minimum death benefit guarantees the same as or lower than the Applicants' contract; all have guaranteed annuity purchase rates; all have the same special accounting system for separate account unit value administration; and all are offered in the same market. The Company will undertake to maintain and make available to the Commission upon request a memorandum underlying this representation;

(b) There is the likelihood that the proceeds from explicit sales loads will be insufficient to cover the expected costs of distributing the contracts. The Company has concluded that there is a reasonable likelihood that the Account's distribution financing arrangement will benefit the Account and contractowners, and that it will maintain and make available to the Commission upon request a memorandum setting forth the basis for this representation; and

(c) The Account will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of the open-end management company, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Applicants submit the exemption requested to permit the deduction for mortality and expense guarantees is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is given that any interested person wishing to request a hearing on the application may, not later than September 29, 1986 at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed. Such request should be addressed to: Secretary, Securities Exchange Commission, Washington, DC 20549. A copy of such request should be served personally or by mail upon the Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 86-20250 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-15661]

Application and Opportunity for Hearing; Oglethorpe Power Corp.

August 29, 1986.

Notice is hereby given that Oglethorpe Power Corporation (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Trust Company Bank (the "Bank") under an indenture dated as of September, 1986 (the "September Indenture") between Company and Bank, which is to be qualified under the Act, and under nine separate Trust Indentures, (Pollution Control Indentures), between Company and Bank, which have not been qualified under the Act, under which Pollution Control Bonds were issued as set forth below:

(1) Trust Indenture from Development Authority of Applying County to Trust Company Bank, as Trustee, dated as of November 1, 1978, pursuant to which were issued $10,540,000 aggregate principal amount of Development Authority of Appling County Pollution Control Revenue Bonds Series 1978;

(2) Trust Indenture from Development Authority of Heard County to Trust Company Bank, as Trustee, dated as of November 1, 1978, pursuant to which were issued $18,460,000 aggregate principal amount of Development Authority of Heard County Pollution Control Revenue Bonds Series 1978;

(3) Trust Indenture from Development Authority of Monroe County to Trust Company Bank, as Trustee, dated as of September 15, 1982, pursuant to which were issued $190,000,000 aggregate principal amount of Development Authority of Monroe County Pollution Control Revenue Bonds Series 1982;

(4) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of September 15, 1982, pursuant to which were issued $110,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1982;

(5) Trust Indenture from Development Authority of Appling County to Trust Company Bank, as Trustee, dated as of November 1, 1984, pursuant to which were issued $24,000,000 aggregate principal amount of Development Authority of Appling County Pollution Control Revenue Bonds Series 1984;

(6) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of November 1, 1984, pursuant to which were issued $416,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1984;

(7) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of December 1, 1984, pursuant to which were issued $174,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1984;

(8) Trust Indenture from Development Authority of Appling County to Trust Company Bank, as Trustee, dated as of October 15, 1985, pursuant to which were issued $25,000,000 aggregate principal amount of Development Authority of Appling County Pollution Control Revenue Bonds Series 1985; and

(9) Trust Indenture from Development Authority of Burke County to Trust Company Bank, as Trustee, dated as of October 15, 1985, pursuant to which were issued $200,000,000 aggregate principal amount of Development Authority of Burke County Pollution Control Revenue Bonds Series 1985, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that is has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) The Pollution Control Bonds were not registered under the Securities Act of 1933 (the "1933 Act") and the corresponding Indentures were not qualified under the Act.

(2) The Company is not in default under the Pollution Control Bonds. The Company's obligations under the Pollution Control Indentures and September Indenture are wholly secured by separate collateral. All series to be issued under the September Indenture will rank *pari passu*.

(3) The provisions of the Pollution Control Bond Indentures and September Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of practice of the Commission in the connection with this matter.

For a more detailed statement of the matters of fact and law ascertained, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-15746, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than September 22, 1986, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20251 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15281; File No. 812-6329]

Oxford Acceptance Corporation; Notice of Application

August 29, 1986.

Notice is hereby given that Oxford Acceptance Corporation ("Applicant") 4550 Montgomery Avenue, Suite 300, Bethesda, Maryland 20814, filed an application on March 31, 1986, and amendments thereto on June 2 and July 24, 1986, for an order 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 contained therein and to the Act and rules thereunder for the text of all applicable provisions.

According to the application, Applicant is a Delaware company, all of the common stock of which is owned by Leo Zickler individually. Mr. Zickler is also the 100 percent owner of Oxford Corporation, a holding company that owns all the common stock of Oxford Development Corporation ("Oxford Development"). Oxford Development is engaged in the businesses of real estate development and mortgage finance. Mr. Zickler is the chairman, president and chief executive officer of Oxford Development.

Applicant states that it has been formed for the purpose of serving as a conduit vehicle through which it will provide a source of funds to entities or affiliates of such entities engaged in mortgage finance by issuing bonds or other evidences of indebtedness ("Bonds") collateralized by mortgage-backed securities, mortgage loans and funding agreements secured by such mortgage-backed securities and mortgage loans ("Mortgage Collateral"). Applicant may in the future sell authorized shares of its captial stock in private placements exempt from registration under the Securities Act of 1933, as amended ("Securities Act"), or in public offerings pursuant to a registration statement filed under the Securities Act. Applicant states that in the event Applicant sells its equity interest in the future, it will comply with any position so established by the Commission at such time with respect to the sale of equity interests.

Applicant represents that each series of Bonds will consist of one or more classes of Bonds and will be issued pursuant to an indenture between Applicant and an independent trustee ("Trustee"), as supplemented by a supplemental indenture for such series ("Indenture"). Applicant represents that each series of Bonds will be separately secured primarily by some combination of the following (collectively, "Mortgage Collateral"): (i) "Fully-modified pass-through" certificates fully guarateed as to principal and interest by the Government National Mortgage Association, mortgage participation certificates issued and guaranteed by the Federal Home Loan Mortgage Corporation or mortgage pass through certificates issued and guaranteed by the Federal National Mortgage Association (collectively, "Mortgage Certificates"); (ii) mortgage loans secured by first liens on single family (one- to four-family) residences ("Mortgage Loans"); and (iii) funding agreements and, if provided in such funding agreements, one or more related promissory notes ("Funding Agreements") evidencing loans made by the Applicant to entities engaged in real estate and mortgage finance that are primarily in the business of originating mortgage loans, such as savings and loans, savings banks, commerical banks, mortgage bankers, life insurance companies and homebuilders or their affiliates. (Such entities and affiliates of such entities are referred to herein as the "Participants"). Affiliates of the Applicant may act as such a Participant. All or a portion of the Mortgage Certificates pledged as collateral for a series of Bonds may consist of "partial pool" Certificates. Applicants represent that the Funding Agreements will be secured by some combination of Mortgage Certificates and Mortgage Loans.

Applicant states that each series of Bonds may also be secured by certain accounts, certain reserve funds, and a minumum principal payment agreement. Additionally, Applicant states that funds in a collection account will be reinvested in eligible investments, pending the next bond payment date. Further, Applicant represents that all such reinvestments will mature on or prior to such bond payment date, and on such bond payment date such payments and the earnings thereon will be distributed to make required payments on the Bonds as required by the Indenture.

Applicant states that each series of Bonds will registered under the Securities Act unless an appropriate exemption from such registration is available. The Indenture of each public offering will be qualified under the provisions of the Trust Indenture Act of 1939, unless an appropriate exemption thereform is available.

Applicant represents that at the time of issuance of a series of Bonds, the Mortgage Collateral for each such series of Bonds will have a scheduled cash flow sufficient, together with reinvestment income thereon at assumed rates acceptable to the rating agency that initially rates the Bonds (or the contractually agreed rate provided by a guaranteed investment contract) to make payment on the Bonds of each series in accordance with their terms. Applicant further represents that the Indenture will require that an independent public accountant certify to the Trustee at least annually that the remaining collateral is sufficient, together with such reinvestment income, to make all such required payments on the Bonds.

Applicant submits that the relief requested is necessary and appropriate in the public interest because: (1) Applicant should not be deemed to be an entity to which the provisions of the Act were intended to be applied; (2) Applicant submits that the safeguards afforded to purchasers of the Bonds fully protect investors; and (3) Applicant's activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation. Applicant requests this relief with respect to the issuance of any series of its Bonds collateralized by Mortgage Certificates, Mortgage Loans or Funding Agreements secured by Mortgage Certificates or Mortgage Loans.

In addition, Applicant has consented to the imposition of seven conditions, set forth below, as specific conditions to granting the requested exemptive order:

(1) Each series of Bonds will be registered under the Securities Act unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "Mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Collateral underlying the Bonds (whether owned by Applicant or pledged pursuant to collateralized obligations) will be limited to: the Mortgage Certificates, the Pledged Loans and the Funding Agreements.

(3) If new Mortgage Collateral is substituted, the substitute collateral must: (i) Be of equal or better quality than the Mortgage Collateral replaced; (ii) have similar payment terms and cash flow as the Mortgage Collateral replaced; (iii) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (iv) meet the conditions set forth in paragraphs (2), (4), and (6). In addition, new collateral may not be substituted for more than 20 percent of the aggregate face amount of the Mortgage Loans or Funding Agreements initially pledged as Mortgage Collateral or for more than 40 percent of the aggregate face amount of the Mortgage Certificates initially pledged as Mortgage Collateral. New Mortgage Loans or Funding Agreements may be substituted for Mortgage Loans or Funding Agreements initially pledged as Mortgage Collateral only in the event of default, late payments or defect in the collateral being replaced. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

(4) All collateral securing a series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian that is not an affiliate of the Applicant (as the term "affiliate" is defined in Rule 405 of the Securities Act (17 CFR 230.405)) and the Trustee will have a first priority perfected security or lien interest in and to the Bond Collateral;

(5) Each series of Bonds will be rated in one of the two highest rating categories by at

least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

(6) The master servicer of any Mortgage Loans that are pledged as Mortgage Collateral may not be an affiliate of the Trustee. If there is no master servicer, no servicer of those mortgages may be an affiliate of the Trustee. Any master servicer and services of such Mortgages will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage laons. The agreement governing the servicing of such Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to those Mortgage Loans as it is then currently required to provide in connection with the servicing of mortgage loans insured by FHA, guaranteed by VA or eligible for purchase by FNMA or FHLMC.

(7) No less often than annually, an indpendent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continues to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 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 at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20252 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15283; File No. 812-6315]

Oxford Acceptance Corporation III; Notice of Application

August 29, 1986.

Notice is hereby given that Oxford Acceptance Corporation III ("Applicant"), 4550 Montgomery Avenue, Suite 340, Bethesda, Maryland 20814, filed an application on March 7, 1986, and amendments thereto on June 2, 1986, and July 24, 1986, for an order 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 contained therein and to the Act and the rules thereunder for the text of all applicable provisions.

According to the application, Applicant is a limited purpose corporation incorporated under the laws of the State of Maryland. Applicant states that it was organized for the purpose of (i) issuing and selling one or more series of bonds, under one or more indentures, secured primarily by mortgage certificates, investing in certain mortgage certificates to be purchased with the proceeds of bonds secured by such mortgage collateral, acquiring, owning, holding and pledging mortgage certificates in connection therewith and investing cash balances on an interim basis in certain short term investments; (ii) investing on a non-recourse basis in operating subsidiaries; (iii) issuing and selling certain subordinated indebtedness; (iv) becoming the general partner in a limited partnership issuing and selling bonds secured by mortgage certificates, provided that no such action will result in the reduction in the ratings then assigned to applicant's bonds; (v) transferring its rights to any amounts remitted or to be remitted to Applicant by the trustee under any indenture; and (vi) engaging in other activities that are necessary, suitable or convenient to accomplish the foregoing or are incidental thereto or connected therewith. However, Applicant states that although its Articles of Incorporation permit it to engage in the activities enumerated above, Applicant represents as a condition of the application that (1) it will not invest on a non-recourse basis in operating subsidiaries and (2) will not become the general partner in a limited partnership. The Applicant may at times issue and sell subordinated indebtedness provided that such issuance or sale does not result in the downgrading of the bonds of any series by the rating agency rating the bonds. The Applicant may also, from time to time, transfer its rights to amounts remitted or to be remitted to it by the trustee under any indenture. Such amounts may represent fees or excess cash flow due the Applicant which would be free from the lien of the indenture.

Applicant states that all of its issued and outstanding shares of capital stock are owned by one stockholder, Leo E. Zickler. Applicant states that it may in the future, however, sell authorized shares of its capital stock in private placements exempt from registration under the Securities Act of 1933 ("1933 Act") or in public offerings pursuant to a registration statement filed under the 1933 Act. Applicant further states that in the event Applicant sells its equity interest in the future, it will comply with any position so established by the Commission at such time with respect to the sale of equity interest.

Applicant proposes to issue and sell bonds ("Bonds") in series (the "Series") from time to time under a prospectus ("Prospectus") and related prospectus supplements ("Prospectus Supplement"). A registration statement with respect to the Bonds has been filed with the Commission. Also, the Bonds may be sold pursuant to private placement memoranda. Each Series of Bonds will consist of one or more classes ("Classes") of Bonds, one or more of which may be Classes of current-pay Bonds or compound interest Bonds. Each Class will bear a separate bond interest rate and stated maturity date as indicated in the Prospectus Supplement for such Series. Applicant represents that it will not issue any Bonds unless they are rated in the highest bond rating category by an unaffiliated nationally recognized rating agency.

The Applicant states that each Series of Bonds will be issued pursuant to an indenture ("Indenture") between Applicant and an independent trustee under the Indenture ("Trustee"), as supplemented by one or more supplemental indentures. The Indenture for each Series of Bonds will be qualified under the Trust Indenture Act of 1939, unless an appropriate exemption is available. The Indenture will not provide for redemption of the Bonds at the option of the Bondholders.

Applicant states that each Series of Bonds will be secured separately by assignments to the Trustee of any combination of mortgage-backed certificates ("GNMA Certificates") guaranteed by the Government National Mortgage Association, mortgage participation certificates ("FHLMC Certificates") issued by the Federal Home Loan Mortgage Corporation, and guaranteed mortgage pass-through certificates ("FNMA Certificates") issued by the Federal National Mortgage Association. (As used herein, the term "Mortgage Certificates" includes the

GNMA Certificates, the FHLMC Certificates and the FNMA Certificates.) Applicant states that each Series of Bonds may also be secured by certain collection proceeds accounts, debt service funds and reserve funds.

The collateral pledge to the Trustee to collateralize the Bonds of any Series will consist of (a) Mortgage Certificates having initial collateral value equal to at least 100% of the initial principal amount of the Bonds and (b) to the extent applicable a Reserve Fund, a GPM Fund and a Minimum Principal Payment Agreement, all as defined more fully in the application. The collateral securing each Series of Bonds will serve as collateral only for that Series of Bonds. Applicant further states that the projected cash flow derived from payments of principal and interest on the Mortgatge Certificates, together with reinvestment income thereon at the assumed reinvestment rate established by Applicant and approved by the rating agency and payments from the Reserve or GPM Funds or Minimum Principal Payment Agreement (see above), if any, is calculated to be sufficient to pay accrued interest on the Bonds and to amortize the entire principal amount of each Class by its respective stated maturity.

Applicant represents that it will have the limited right to substitute up to 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral with new Mortgage Certificates. Unless otherwise provided in a Series Supplement, any substitute Mortgage Certificate must have a collateral value that is at least equal to the collateral value of the Mortgage Certificate for which it is substituted, an annual interest rate within one-half of one percentage point of the Certificate for which it is substituted, and a maturity date within 180 days of the maturity date of the Certificate for which it is substituted. Applicant further represents that it will be a further condition of any such substitution that the stated maturity of any Class of Bonds not be delayed by such substitution. Unless otherwise provided in a Series Supplement, Applicant will be permitted to substitute only a like kind of Mortgage Certificate for any Mortgage Certificate and will not be able to substitute for any substitute Mortgage Certificate.

Applicant submits that the relief requested is necessary and appropriate in the public interest because: (1) Applicant should not be deemed to be an entity to which the provisions fo the Act were intended to be applied: (2) Applicant submits that the safeguards afforded to purchasers of the Bonds fully protect investors; and (3) Applicant's activities will promote the public interest by expanding the market for mortgage securities, thereby increasing the pool of funds available for mortgage loans and increasing the capacity of mortgage lenders to meet the housing finance needs of the nation. In addition, Applicant has consented to the imposition of seven conditions, set forth below, as specific conditions to granting the requested exemption:

(1) Each Series of Bonds will be registered under the Securities Act of 1933 (the "Securities Act") unless offered in a transaction exempt from registration pursuant to Section 4(2) of the Securities Act;

(2) Bonds will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934. However, the Mortgage Certificates pledged to secure a Series of Bonds will be Mortgage Certificates guaranteed or insured by the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation;

(3) If new Mortgage Certificates are substituted for Mortgage Certificates initially pledged for a Series of Bonds the substituted Mortgage Certificates will (a) be of equal or better quality than the Mortgage Certificates replaced, (b) have similar payment terms and cash flows as the Mortgage Certificates replaced, (c) be insured or guaranteed to the same extent as the Mortgage Certificates replaced, (d) meet the conditions of "(2)" and "(4)" herein, and (e) no more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged as collateral may be substituted with new Mortgage Certificates. In no event may any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All collateral securing a Series of Bonds will be held by the Trustee or on behalf of the Trustee by an independent custodian which is not an affiliate of the Applicant (as the term "Affiliate" is defined in Securities Act—Rule 405 17 CFR 230.405) and the Trustee will have a first priority perfected security or lien interest in and to the Mortgage Collateral;

(5) Each Series will be reated in the highest rating category by an unaffiliated nationally recognized statistical rating agency; and the Bonds will not be considered redeemable securities within the meaning of section 2(a)(32) of the Act.

(6) At least annually, an independent public accountant will audit the books and records of the Applicant and will report on whether the anticipated payments of principal and interest on the Mortgage Certificates together with the other collateral pledged to secure a Series of Bonds, continues to be adequate to pay principal and interest on such Bonds in accordance with their terms. Copies of the auditor's report will be provided to the trustee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 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 at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20253 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23584; File No. SR-CBOE-86-13]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

I. Introduction

On May 15, 1986, the Chicago Board Options Exchange, Inc. ("CBOE"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change that will provide one-year access to its foreign currency options markets and short and long term incentives to encourage market makers and floor brokers to trade currency options.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 23437 (July 14, 1986), 51 FR 26322. No comments were received on the proposed rule change.

II. Description

A. Foreign Currency Options Permits

Under the proposed permit plan, the CBOE will issue, at no cost, 50 market maker and 20 floor broker non-transferable permits that will enable

[1] 15 U.S.C. 78s(b)(1)(1982).

[2] 17 CFR 240.19b-4 (1985).

[3] On August 6, 1986 the CBOE submitted an amendment to its filing. The amendment allows CBOE flexibility in allocating the short term incentive program discussed below.

holders to trade currency options through August 31, 1987. Under the plan, permit holders would not be charged any dues or currency options transaction fees through August 31, 1987. All market maker permit holders are required to accommodate at least 300 non-market maker currency options contracts every consecutive three month period. Similarly, floor brokers must execute at least 300 non-market maker currency options contracts every consecutive three months period. Failure of permit holders to meet these requirements will result in automatic recall of the permit, which then may be reissued to another participant for the remaining time in the one-year program. Market maker permit holders are also required to do 75% of their currency transactions in person and must be able to carry currency options positions requiring a haircut of at least $100,000 or their permits will be recalled.

Under CBOE's existing foreign currency options access plan, free permits and foreign currency options trading rights have been issued. CBOE has stated that these permits and rights holders may convert their positions to the new permit plan.

Under the rule, permit holders would be subject to all CBOE rules, policies and procedures that regular members are subject to including customer protection rules and business conduct standards. If there are more than 50 market maker or 20 floor broker applications the CBOE's membership committee will select the most qualified.

B. Short-Term Incentives Plans

The CBOE also has proposed to institute two short-term incentive programs and one long-term incentive plan.

First, the 50 market makers and 20 floor broker permits that would be issued pursuant to approval of the permit plan discussed above could be convereted into transferable, non-leasable currency options memberships if these holders accommodate or execute 50,000 non-market maker currency options contracts betwen June 1, 1986 and August 31, 1987.[4] CBOE also will make available seventy additional currency memberships, and any unearned memberships by the existing 70 permit holders, to regular members and permit holders that also accommodate at least 50,000 non-market maker currency during the same period noted above.

Second, the CBOE is proposing to extend its existing six month currency options incentive program, which expired on August 29, 1986, for an additional one-year period as of September 1, 1986. Under the program, the CBOE will compute for each market maker, from trade match data in each currency class, the total number of in-person, market maker trades with off-floor orders. Based on this information, incentive credits will be allocated among market makers for each options class. The rule provides for a $50 contract cap so that if a market maker trades only one contract, the maximum incentive credit that can be gained is $50. The credits can be applied by the market maker toward the payment of dues, fees and open market seat purchases. There is one change from the existing incentive program. Under the existing program, CBOE set forth the specific allocations for each currency option class and provided that they would not exceed $120,000 in any one month for all classes [5] under the proposed extenstion of the program, CBOE has not set forth a monthly limit of the credits or set forth an allocation for each class. Nevertheless, CBOE will not be allowed over the one-year program to allocate more than $908,750.00 in incentive credits.[6] CBOE believes this approach will provide it with necessary flexibility in setting the monthly allocation totals in each options class included in the incentive program. All allocations under the program will, however, be announced in advance.

C. Long-Term Incentive Plan

Finally, the CBOE is proposing a long-term incentive program to reward regular members and currency permit holders who elect to meet certain trading requirements. Under this program, regular members and currency options permit holders can receive on a pro rata basis a share in exchange currency options transactions fees for a five year period beginning September 1, 1987, according to a schedule set forth in the rule. Members and permit holders must elect to participate in this program, in writing, before November 1986.[7] In addition, participants in the long-term incentive program may receive double credits for accommodating non-market maker orders that can be used to obtain currency options memberships, as discussed above. Under this part of the proposal, participants would receive two credits instead of one, for every non-market maker currency options contract accommodated, that can be used toward the 50,000 credits needed to receive a currency option membership. Under the proposal, in order for participants to rceive a share of transaction fees and double credits toward a currency options membership, they must, from the day following their election to the end of the five year period:

(1) Maintain quotes and markets in one group of three currency options classes, (2) be present continuously (nominees are interchangeable intra-day) in the trading crowd during currency options trading hours on ninety percent of the business days in each year or partial year and (3) maintain a minimum of $350,000 in currency trading capital.

III. Discussion

In its filing, the CBOE has stated that the purpose of the foreign currency options permit, short-term and long-term incentive programs is to attract additional market makers and floor brokers to trade currency options. For example, CBOE states that the membership permit incentive should help develop a currency. In addition, CBOE states that its long-term incentive plan will reward those market makers who meet certain requirements and make a commitment to trade currency options by September 1, 1986. CBOE believes that additional market makers and floor brokers in currency options will provide an increased capacity to accommodate public customer and firm proprietary currency options orders thereby attracting more order flow so that a deep and liquid market in currency options develops.

The Commission has reviewed carefully the CBOE's proposals. As noted above, the seventy one-year currency options permits (50 market maker permits and 20 floor broker permits) would be issued at no cost. In addition, during the one-year period, permit holders would not be charged dues or currency transaction fees. Nevertheless, as discussed above permit holders must meet certain conditions including a requirement to accommodate or execute 300 non-market maker currency option contracts in a three month period. The Commission believes

[4] One credit is earned for every non-market maker contract accommodated or executed. Under the proposal, 50,000 credits are necessary to convert a permit to a foreign currency options membership.

[5] The monthly allocations were increased to $300,000 during the months of June, July and August.

[6] CBOE has indicated for example, that if it allocates the total amount in the first nine months, the incentive program will simply end early.

[7] The original filing provided for notification by September 1, 1986. CBOE has proposed to extend this date to November 1, 1986. *See* letter from Anne Taylor, Associate General Counsel, CBOE, to Eneida Rosa, Branch Chief, SEC, dated August 27, 1986.

that the CBOE has attempted through its plan to facilitate increased participation in its currently launched foreign currency options market by permitting non-members, in addition to members, access to its market and by providing relatively inexpensive access that might encourage greater participation in a product that has, to now, not attracted substantial market maker or other floor participation. The Commission believes that, consistent with sections 6(b)(2), 6(b)(4), 6(b)(5) and 6(b)(8) of the Act, CBOE is seeking to implement a start-up program for a relatively new product designed to allow access to qualified persons, to remove impediments to a free and open market and to foster competition among a wide variety of market participants. Accordingly, after carefully reviewing CBOE's proposed foreign currency permit plan, the Commission has concluded that the proposal is consistent with the requirements of the Act.

The two short-term incentive programs provide benefits based on a market makers accommodation of non-market maker currency options contracts. Both of these programs create concerns because the incentives (in either the form of dollar credits or credits toward the purchase of a foreign currency options membership), that are based on a market makers' volume in foreign currency options could encourage so-called chumming [8] or other artificial forms of trading by which market makers might attempt to inflate their volume in order to earn the credits.

The Commission, however, has determined that these short-term incentive programs should be approved. First, we note that the programs only will exist for a one-year period. Second, under the proposal, permit holders can only receive credits for non-market maker accommodation trades. Accordingly, the proposal should not create incentives for market-makers to enter into transactions with each other solely for the purpose of obtaining credits. Third, CBOE will monitor the foreign currency options trading of market makers with a large accommodation volume to ensure that their volume consists of actual accommodations that should be counted toward the market maker's credits. CBOE also has indicated that it will provide the Commission with a report after the first six months of the programs on any abuses detected and, generally, on foreign currency options activity during the incentive programs. We also note that the CBOE has indicated that, to date, no abuses involving chumming or pre-arranged trading has been found in CBOE's foreign currency options market during the existing six month incentive program. Moreover, CBOE's general surveillance of pre-arranged trading should capture any transaction effected for the purpose of increasing a market maker's volume. On balance, therefore, the Commission believes that the one-year currency options incentive programs proposed by CBOE for the limited purpose of attracting more market makers to a relatively new product traded mostly by institutional investors should be approved.

Finally, the Commission has reviewed carefully CBOE's long-term incentive proposal. As noted above, the share in transactions fees will occur over a five year period. CBOE is seeking to develop a longer term committment to its currency options market by providing this long-term incentive for market makers that meet certain requirements. The requirements are not volume related. Instead, they include requirements such as the maintenance of quotes and markets in one group of three currency options classes. The Commission does not believe that this program creates any signfiicant concerns. The requirements are related to encouraging a continued presence of market makers that will maintain markets in foreign currency options and this should benefit all market participants in foreign currency options. Participants in the long-term incentive program also may receive double credits for accommodating non-market maker orders. These credits can be used to obtain acurrency options membership. As noted above, this creates certain concerns regarding chumming and prearranged trades for the purpose of earning credits. For the reasons stated above, including the increased monitoring of such market maker activity by the CBOE, the Commission believes the issuance of double credits under the long-term incentive program also should be approved. Of course, if significant abuses were observed the Commission expects to be notified immediately by the CBOE.[9]

[8] Chumming is a broad term that covers a variety of activity including prearranged trades, wash sales and trade reversals, to provide the appearance of increased trading volume. *See* Securities Exchange Commission, *Report of the Special Study of the Options Markets*, H.R. Rep. No. 1FC3, 96th Cong., 1st Sess. (Comm. Print 1978) at 169–72.

[9] In addition, CBOE has represented that during the program it will monitor whether increased market maker participation in foreign currency options results from market makers leaving lower volume equity options classes thereby decreasing the liquidity in those options classes. The CBOE has stated, however, that it does not believe such an effect is likely to occur because of the expertise and capital required to trade foreign currency options.

Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [10] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Dated: September 2, 1986.

Shirley E. Hollis

Assistant Secretary.

[FR Doc. 86–20246 Filed 9–8–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–23583; File No. SR–Phlx–86–16]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

On June 4, 1986, the Philadelphia Stock Exchange, Inc., submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change that would narrow the maximum allowable bid-ask differential in nine and twelve month term series of foreign currency options except for options on the European Currency Unit ("ECU").

The proposed rule change was noticed in Securities Exchange Act Release No. 23436 (July 14, 1986), 51 FR 26326 (July 22, 1986). No comments were received on the proposed rule change.

Under current Phlx rules, the bid/ask differentials in Phlx Rule 1014 apply to foreign currency options series of less than nine months. For nine and twelve months series, the differentials are twice the size of those provided in the rule for series of less than nine months. Phlx's proposal would narrow the bid/ask differentials in the nine and twelve month term foreign currency options, except for options on the ECU, by applying to these longer-term options the narrower differentials that currently apply to series of less than nine months.

[10] 15 U.S.C. 78f (1982).

[11] 15 U.S.C. 78s(b)(2)(1982).

[12] 17 CFR 200.30–3 (a)(12)(1985).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240–19b–4 (1985).

In its filing, Phlx states that the change should improve posted quotations in the longer term foreign currency options. Phlx believes, however, that the wider differentials (twice the size of those stated in the proposed rule) should continue to apply to the two longest term series (nine and twelve months) on the ECU for the following reasons. First, the ECU option contract is more volatile when compared to other foreign currency options contracts. Second, the ECU options contract is approximately twice as large as options on other foreign currency options.

The Commission has reviewed carefully the proposal and believes that the narrowing of bid/ask differentials in the nine and twelve month term series of foreign currency options open for trading may improve quotations in foreign currency options. In addition, the larger differentials for the two longest term series in ECU options appear to be appropriate because of the contract's size and volatility, especially as compared to other foreign currency options.

For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [3] and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, [4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Dated: September 2, 1986.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20247 Filed 9-8-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15282 (812-6372)]

Thrift Financing Corp.; Application

August 29, 1986.

Notice is hereby given that Thrift Financing Corporation, 814 East Main Street, Richmond, Virginia 23219 ("Applicant"), filed an application on May 6, 1986, and an amendment thereto on June 2, 1986, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") to amend an order of the Commission dated March 14, 1985 (Rel. No. IC-14418) ("1985 Order") to continue to exempt Applicant from all provisions of the Act if it engages in certain additional activities. 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 for its relevant provisions.

According to the application, Applicant is a Virginia limited purpose finance corporation organized by Craigie Incorporated ("Craigie"), an investment banking firm headquartered in Richmond, Virginia, and 9 financial institutions, the deposit accounts of which are insured by the Federal Savings and Loan Insurance Corporation ("FSLIC") (collectively, "FSLIC Institutions"). Fifty-one percent of the voting non-dividend paying stock of Applicant is owned by Craigie and the remaining 49% is owned by subsidiaries of the FSLIC Institutions. Twenty percent of Applicant's non-voting dividend paying stock is owned by Craigie and the FSLIC Institutions each own 8.9%. Applicant is registered and files periodic reports with the Commission under the Securities Exchange Act of 1934 ("Exchange Act").

Applicant proposes to issue bonds ("Bonds") in series form, each series separately secured primarily by mortgage collateral consisting of (1) first lien mortgage loans on single (one-to-four) family residences ("Mortgages"), (2) mortgage pass-through certificates evidencing an undivided interest in pools of first lien mortgage loans on single (one-to-four) family residences ("Conventional Certificates"), (3) Federal Home Loan Mortgage Corporation ("FHLMC") Guaranteed Mortgage Pass-Through Certificates ("FHLMC Certificates"), (4) Federal National Mortgage Association ("FNMA") Mortgage participation certificates ("FNMA Certificates"), and (5) Government National Mortgage Association ("GNMA") "fully-modified" pass-through mortgage backed certificates ("GNMA Certificates") (FHLMC Certificates, FNMA Certificates and GNMA Certificates collectively, "Agency Certificates") (Agency Certificates and Conventional Certificates collectively, "Certificates") (Mortgages, Conventional and Agency Certificates collectively, "Mortgage Collateral") and/or Funding Agreements with Borrowers (both of which as defined below) which are secured by Mortgage Collateral. "Funding Agreements" will consist of notes, bonds or other evidences of indebtedness issued, in exchange for a loan of a proportionate share of Bond proceeds, by Borrowers which are owners of Mortgages, Conventional Certificates and/or Agency Certificates and which are secured by such Mortgage Collateral. The application states that the payment terms of Funding Agreements will be identical in all material respects to the payment terms of the series of Bonds which they secure. Mortgage Collateral pledged to secure Funding Agreements will be pledged by Applicant to, and held by, the trustee for holders of the Bonds ("Bond Trustee") in the same manner as Mortgage Collateral acquired directly be Applicant and pledged to secure its Bonds.

Applicant seeks to amend the 1985 Order that exempt it from all provisions of the Act but limited its initial business to (1) making loans to FSLIC Institutions secured by Mortgage Collateral and (2) bonds payable out of the payments and secured primarily by Mortgage Collateral pledged to the Applicant under the Funding Agreements. The Applicant now seeks to engage in the following additional activities: (i) Make loans pursuant to Funding Agreements secured by Mortgage Collateral to commercial banks and savings banks with respect to their mortgage lending activities, the deposit accounts of which banks are insured by the Federal Deposit Insurance Corporation ("FDIC"), and to affiliates of such FDIC insured financial institutions (collectively, "FDIC Institutions"); (ii) acquire Mortgage Collateral in the open market and from affiliates or others engaged in mortgage originating, financing or funding activities, without regard to whether any Conventional Certificates or Agency Certificates are whole pool Certificates, and pledging such Mortgage Collateral to secure Applicant's Bonds; (iii) make loans to entities which are neither FSLIC Institutions nor FDIC Institutions but which are engaged directly, or through the owners of such entities or their affiliates, in mortgage financing, originating or funding activities, including mortgage bankers, home builders, and state agencies, which loans are secured by Mortgage Collateral pursuant to Funding Agreements (such entities, FDIC Institutions, FSLIC Institutions and their subsidiaries collectively, "Borrowers"); and (iv) issue Bonds to provide funds for the additional activities described above.

Applicant represents that it does not expect to have any significant assets other than the Funding Agreements of Borrowers and Mortgage Collateral acquired by Applicant and pledged to secure a particular series of Bonds.

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[3] 15 U.S.C. 78f (1982).

[4] 15 U.S.C. 78s(b)(2) (1982).

[5] 17 CFR 200.30-3(a)(12) (1985).

Additional security for a series will be provided by one or more reserve funds and/or insurance policies as required by the rating agencies rating such series.

According to the application, each series of Bonds will be issued pursuant to one or more indentures between Applicant and a Bond Trustee under the Trust Indenture Act of 1939, as supplemented by one or more supplemental indentures for each such series. Applicant states that neither the Bond Trustee nor any successor will be affiliated with the Applicant.

Applicant represents that its future securities offerings will be limited to Bond offerings under the following conditions:

(1) Each series of bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt from registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Exchange Act. However, the Mortgage Collateral underlying the Bonds will be limited to (i) Mortgages, (ii) Conventional Certificates, and (iii) Agency Certificates.

(3) If new Mortgage Collateral owned by the Applicant or pledged pursuant to Funding Agreements is substituted, the substitute collateral must: (i) Be of equal or better quality than the collateral replaced; (ii) have similar payment terms and cash flow as the collateral replaced; (iii) be insured or guaranteed to the same extent as the collateral replaced; and (iv) meet the conditions set forth in paragraphs numbered (2), (4) and (6). In addition, new collateral may not be substituted for more than 20% of the aggregate face amount of the Mortgages initially pledged as Mortgage Collateral or for more than 40% of the aggregate face amount of the Certificates initially pledged as Mortgage Collateral. New Mortgages may be substituted for Mortgages initially pledged as Mortgage Collateral only in the event of default, late payments or default in the collateral being replaced. New Conventional Certificates may be substituted for Conventional Certificates initially pledged as Mortgage Collateral only in the even of default, late payments, or defect in the collateral being replaced. In no event may any new Mortgage Collateral be substituted for any Mortgage Collateral. New Funding Agreements may be substituted for Funding Agreements initially pledged only if substitution of the Mortgage Collateral underlying these instruments would be permitted under this condition.

(4) All Mortgages, Conventional Certificates, Agency Certificates, funds, accounts and other collateral securing a series of Bonds ("Bond Collateral") will be held by the Bond Trustee or on behalf of the Bond Trustee by an independent custodian. The custodian shall not be an affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of the Applicant, or of the master servicer or originating lender of any Mortgages that are pledged as Mortgage Collateral. If there is no master servicer, no servicer of the Mortgages will be an affiliate of the custodian. The Bond Trustee will be provided with a first priority perfected security or lien interest in and to all Bond Collateral.

(5) Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered redeemable securities within the meaning of section 2(a) (32) of the Act.

(6) The master servicer of any Mortgages (including, for purposes of this paragraph, Mortgages underlying any Conventional Certificates) or Conventional Certificates that are pledged as Mortgage Collateral, may not be an affiliate of the Bond Trustee. If there is no master servicer, no servicer of any such Mortgages may be an affiliate of the Bond Trustee. Any master servicer or servicer of any such Mortgage will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential mortgage loans. The agreement governing servicing of such Mortgages shall obligate the servicer to provide substantially the same services with respect to those Mortgages as it is then currently required to provide in connection with the servicing of Mortgages insured by the Federal Housing Administration, guaranteed by the Veterans Administration or eligible for purchase by FNMA or FHLMC.

(7) No less often than annually, an independent public accountant will audit the books and records of the Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Collateral for each Series of Bonds continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Bond Trustee.

With respect to each series of its Bonds, Applicant represents that the payments on the pledged Mortgage Collateral will be the primary source of funds for payments of principal and interest on that series; and, that a first lien priority security interest in collateral, consisting principally of Mortgage Collateral with an aggregate principal amount at least equal to the initial principal amount of such series of Bonds, will secure the Bonds.

According to the application, certain series of Bonds or classes within a series may provide for redemption at the option of the Bondholder, but the option will be exercisable only to the extent that payments received on the Mortgage Collateral for such Bonds are available for such redemptions. Applicant represents that under no circumstances will Bondholders be permitted to compel the liquidation of Mortgage Collateral or reserve funds in order to redeem Bonds prior to maturity. Applicant states such redemptions do not create reedeemable securities as defined by the Act.

Applicant submits it will facilitate the mortgage financing, funding and origination activities of additional entities than those permitted under the 1985 Order and thereby will provide financing for housing. Applicant's activities will enable a number of small participants in mortgage funding and financing activities to achieve economies of scale in their financing efforts. Applicant concludes that the requested exemption is necessary and appropriate in the public interest, is consistent with the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 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 of law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 86-20296 Filed 9-8-86; 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 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: Elizabeth M. Zaic, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-6623

OMB Reviewer: Patricia Aronsson, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7231

Title: Grants Management Reporting and Recordkeeping Requirements

Frequency: On occasion

Description of Respondents: SBA requires the recipients of Federal dollars to report both programmatic and financial status for prudent monitoring by Federal officials.

Annual Responses: 2000

Annual Burden Hours: 10600

Type of Request: Reinstatement

Elizabeth M. Zaic,

Deputy Director, Office of Administrative Services, Small Business Administration.

[FR Doc. 86-20282 Filed 9-8-86; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration, Region X Advisory Council, located in the geographical area of Portland, Oregon, will hold a public meeting at 9:00 a.m. on Friday, October 10, 1986, in the Memorial Union Building, Board Room, Oregon State University, Corvallis, Oregon, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Mr. John L. Gilman, District Director, U.S. Small Business Administration, 1220 SW. Third Avenue, Room 676, Portland, Oregon 97204-2882-(503) 294-5221.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 2, 1986.

[FR Doc. 86-20284 Filed 9-8-86; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VI Advisory Council, located in the geographical area of San Antonio, Texas, will hold a public meeting at 9:00 a.m. on Friday, September 19, 1986, at the Federal Building, Room A-206, 727 E. Durango, San Antonio, Texas, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Julio G. Perez, District Director, U.S. Small Business Administration, Federal Building, Room A-513, 727 E. Durango, San Antonio, Texas, (512) 229-6105.

Jean M. Nowak,

Director, Office of Advisory Councils.

September 2, 1986.

[FR Doc. 86-20285 Filed 9-8-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas; Partially Closed Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States National Section of the International Commission for the Conservation of Atlantic Tunas will be held on October 1 and 2, 1986 beginning at 9:30 a.m. The meetings will be held at the offices of the National Marine Fisheries Service, Room 929, Universal Building (South), 1825 Connecticut Avenue NW., Washington, DC.

On October 1 and the morning of October 2 the meeting will be open to the public, and the public may participate in the discussions subject to the instructions of the Committee Chairman. Items on the agenda include overview of preparations for the Standing Committee on Research and Statistics (SCRS) meeting, review of research concerning Bluefin Tuna and Billfish, review of ICCAT Activities with respect to Tropical Tunas and Albacore, report of Bluefin Tuna Fishery conducted in the U.S. and Canadian Zones, and estimates of Japanese Harvest of Tunas and Billfish in the U.S. EEZ.

The Advisory Committee will meet in closed session on the afternoon of October 2, 1986. At this session documents classified in accordance with Executive Order 12356 of April 2, 1982 will be circulated and discussed and matters will be considered which the public interest requires be withheld from disclosure. Accordingly, a determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, s.10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information should be directed to Barbara Rothschild, Office of International Fisheries Affairs, National Marine Fisheries Service, Department of Commerce. She may be reached by telephone on (202) 673-5281.

Dated: August 28, 1986.

Edward E. Wolfe,

Deputy Assistant Secretary for Oceans and Fisheries Affairs.

[FR Doc. 86-20266 Filed 9-8-86; 8:45 am]

BILLING CODE 4710-09-M

Advisory Committee to United States Section International North Pacific Fisheries Commission; Partially Closed Meeting

The Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will meet on September 27, 1986, at the Sheraton Anchorage Hotel, Anchorage, Alaska, at 9:00 a.m. This session will discuss the Protocol to the International Convention for the High Seas Fisheries of the North Pacific Ocean, surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, and fishery developments as they affect the International North Pacific Fisheries Commission. The session will be open to the public.

The Advisory Committee will also meet from 1:00 p.m. to 5:00 p.m. on September 27, 1986. These sessions will not be open to the public inasmuch as the discussion will involve classified matters pertaining to the United States' negotiating position to be taken at the 33rd Annual Meeting of the International North Pacific Fisheries Commission to be held in Anchorage, Alaska, November 3–7, 1986. Pursuant to section 4(c) of the North Pacific Fisheries Act of 1954, as amended, 16 U.S.C. 1023(c) which provides that the "advisory committee . . . shall be granted opportunity to examine and to be heard on all proposed programs of study and investigation, reports, and recommendations of the United States Section", the members of the Advisory Committee will examine various options for the negotiating position at the Special Meeting, and these considerations must necessarily involve review of classified matters. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, section 10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Robert J. Ford, Pacific Fisheries Officer, OES-OFA Room 5806, U.S. Department of State, Washington, DC 20520. Mr. Ford can be reached by telephone on (202) 647–2009.

Dated: August 26, 1986.

Edward E. Wolfe,

Deputy Assistant Secretary, Oceans and Fisheries Affairs.

[FR Doc. 86–20267 Filed 9–8–86; 8:45 am]

BILLING CODE 4710–09–M

Shipping Coordinating Committee; Committee on Ocean Dumping; Meeting

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting on Tuesday, September 23, 1986, at the Environmental Protection Agency, Waterside Mall, 401 M Street SW., Washington, DC. The meeting will convene at 2:00 p.m. in the EPA Conference Center, room 4. The Conference Center is located on the first floor, with entrance through the Mall commercial area.

The purpose of the meeting is to review and discuss the draft U.S. position documents for the Tenth Consultative Meeting of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Dumping Convention), to be held in London on October 13–17, 1986.

For further information contact Ms. Norma A. Hughes, Executive Secretary, Committee on Ocean Dumping (WH–556M), Environmental Protection Agency, Washington, DC 20460. Telephone (202) 475–7113.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

August 26, 1986.

[FR Doc. 86–20268 Filed 9–8–86; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Rulemaking, Research, and Enforcement Programs

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on November 5, 1986, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by October 23, 1986. If sufficient time is available, questions received after the October 23, date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by October 23, and the issues to be discussed will be mailed to interested persons on October 30, 1986, and will be available at the meeting.

ADDRESS: Questions for the November 5 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street, SW., Washington, DC 20590.

The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on November 5, 1986. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–20297 Filed 9–8–86; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirements Under OMB Review

AGENCY: United States Information Agency.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 USC Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that

such a submission has been made. USIA is requesting approval of information collection activities in support of the evaluation of the IIE publications *Open Doors* and *Profiles*.

DATE: Comments must be received by September 15, 1986. If you intend to comment but cannot before the deadline, please advise the OMB Reviewer and the Agency Clearance Officer promptly.

Copies: Copies of the request for clearance (SF–83), supporting statement, cover letters and questionnaires submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the items listed should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Office, Retta Graham-Hall, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485–7501. And OMB review: Mr. Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3785.

SUPPLEMENTARY INFORMATION: Title: evaluation of IIE Publications, *Open Doors* and *Profiles*.

Abstract: In the interest of sound program management and effective resource allocation, USIA's Bureau of Educational and Cultural Affairs will evaluate the quality and usefulness of these publications, which are widely distributed domestically and abroad to the foreign student affairs community. Surveys of foreign student advisors in U.S. colleges and universities, educational research organizations, State Education Department, businesses, and foreign Embassies will be undertaken in support of this goal.

Dated: August 29, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86–20210 Filed 9–8–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 174
Tuesday, September 9, 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).

CONTENTS

1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 51 FR 31880, dated September 5, 1986.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:000 p.m. (Eastern Time), Monday, September 15, 1986.

CHANGE IN THE MEETING: The following matter has been added to the open portion of the meeting.

"PROPOSED COMPLIANCE MANUAL SECTION 632, VOLUME II:
Advertising Recordkeeping, and Notice

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Mattews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: September 4, 1986.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

[FR Doc. 86–20360 Filed 9–5–86; 2:23 pm]

BILLING CODE 6750-06-M

2

FARM CREDIT ADMINISTRATION

SUMMARY: Notice is hereby given pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board ("Board").

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 3, 1986, from 4:30 p.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Farm Credit Administration Board, McLean, Virginia 22102–5090.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters at the meeting are:

1. Approval of Minutes of August Meeting
2. Regulations
   Final:
   Part 615—Amendments to Subpart E, Investments (Sections 615.5135, 615.5136, 615.5140, 615.5141, 615.5142, and 615.5144)
3. Implementation of At-Large District Director Elections
4. Consideration of Proposed Agency Budget for FY 1988
5. Examination and Supervision Matters*
   Dated: September 3, 1986.

Frank W. Naylor, Jr.,

Chairman, Farm Credit Administration Board.

[FR Doc. 86–20332 Filed 9–5–86; 8:45 am]

BILLING CODE 6705-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION

September 3, 1986.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

TIME AND DATE: 10:00 a.m., September 10, 1986.

PLACE: 825 North Capitol Street, NE., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the division of public information.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Consent Power Agenda, 841st Meeting—September 10, 1986, Regular Meeting (10:00 a.m.)

CAP–1.
Project Nos. 9573–003 and 005, Upper Slate Creek Associates
CAP–2.
Project Nos. 9940–003 and 9725–003, Birch Power Company
CAP–3.
Project No. 199–040, South Carolina Public Service Authority
CAP–4.
Project No. 7306–005, Arnold Irrigation District
CAP–5.
Project No. 8546–001, Howard and Mildred Carter
CAP–6.
Project No. 9940–002, Birch Power Company
CAP–7.
Project No. 9866–001, Birch Power Company, Inc.
CAP–8.
Project No. 9608–001, McCallum Hydro Enterprises
Project No. 9982–001, Bridgeport Hydraulic Company
CAP–9.
Project No. 8080–003, High Rock Hydro Partners
CAP–10.
Project No. 2548–009, Georgia-Pacific Corporation
CAP–11.
Project No. 9817–001, Cash Flow Systems
CAP–12.
Project No. 5756–006, Mega Hydro, Inc.
CAP–13.
Project No. 8203–001, Falls Hydro Associates
CAP–14.
Project No. 8136–003, Friends of Keeseville, Inc.
CAP–15.
Omitted
CAP–16.
Project No. 8332–000, city of Ellensburg, Washington
Project No. 9605–001, Kittitas Reclamation District
CAP–17.
Project No. 184–011, Pacific Gas and Electric Company
CAP–18.
Project No. 8823–001, city of New York, New York
CAP–19.
Docket No. HBO5–86–1–001, Montana Power Company
CAP–20.
Project No. 3239–002, Puget Sound Power & Light Company
Project Nos. 6373–000 and 6374–000, McMaster & Schroder
CAP–21.

Docket No. ER86-629-000, New England Hydro-Transmission Corporation and New England Hydro-Transmission Electric Company, Inc.

CAP-22.
Docket No. ER86-444-001, Citizens Energy Corporation

CAP-23.
Docket No. ER86-504-002, Pennsylvania Power and Light Company

CAP-24.
Docket Nos. ER86-506-002, and 003, Southeastern Electric Power Company

CAP-25.
Docket Nos. EL85-18-002, 003, 004 and 005, city of Tacoma, Washington, v. the Washington Water Power Company, the Montana Power Company, Portland General Electric Company, Pacific Power and Light Company, and Puget Sound Power and Light Company

CAP-26.
Docket No. ER86-386-001, Washington Water Power Company

CAP-27.
Docket No. ER86-204-001, Pennsylvania Electric Company

CAP-28.
Docket No. ER83-628-000, Kansas Gas and Electric Company

CAP-29.
Docket No. ER85-18-001, Puget Sound Power & Light Company

CAP-30.
Docket No. EL86-33-001, Eua Power Corporation

CAP-31.
Docket No. EL85-46-001, Eua Power Corporation

Consent Miscellaneous Agenda

CAM-1.
Docket No. FA83-4-001, Duke Power Company

CAM-2.
Docket No. FA85-18-000, Dayton Power and Light Company

CAM-3.
Docket No. RI83-9-001, Northern Natural Gas Company

CAM-4.
Docket No. RA83-11-000, Dow Chemical U.S.A.
Docket No. RA83-13-000, Texas City Refining, Inc.

Consent Gas Agenda

CAG-1.
Docket No. RP86-151-000, Seagull Interstate Corporation

CAG-2.
Docket No. RP86-124-001, Alabama-Tennessee Natural Gas Company

CAG-3.
Docket No. RP86-127-002, Colorado Interstate Gas Company

CAG-4.
Docket No. RP86-57-003, Northwest Pipeline Corporation

CAG-5.
Docket Nos. RP81-54-023, 024, 025, 026, 027, 029, 030, 031, 032, and RP82-12-014, 015, 016, 017, 018, 019, 020, 021, Tennessee Gas Pipeline Company

CAG-6.
Docket No. CP86-17-010, Colorado Interstate Gas Company

CAG-7.
Omitted

CAG-8.
Docket No. RP85-178-012, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-9.
Docket Nos. TA86-4-46-000, and 002, Kentucky West Virginia Gas Company

CAG-10.
Docket No. RP86-139-000, Mississippi River Transmission Corporation

CAG-11.
Docket No. RP86-5-000, Northwest Pipeline Corporation

CAG-12.
Docket Nos. ST86-921-000, ST83-93-000 and ST84-444-000, South Texas Gathering Company

CAG-13.
Docket Nos. ST81-260-009, CP82-206-000 and ST86-1308-000, Mustang Fuel Corporation

CAG-14.
Docket Nos. ST86-1321-000, ST81-105-003, ST84-1138-001, ST85-70-001, ST85-71-001, Producer's Gas Company

CAG-15.
Docket Nos. RP82-125-018 and RP82-121-002, Tennessee Gas Pipeline Company, a division of Tenneco Inc.

CAG-16.
Docket No. RP84-108-005, Texas Eastern Transmission Corporation

CAG-17.
Docket No. CI64-26-021, Chevron U.S.A. Inc. (formerly Gulf Oil Corporation)

CAG-18.
Docket No. CP85-710-000, Northern Natural Gas Company

CAG-19.
Docket Nos. CI86-371-000 and CI86-392-000, Southern Natural Gas Company

CAG-20.
Docket Nos. CI86-254-000, and CI86-265-000, Tenneco Oil Company, Houston Oil & Minerals Corporation, Tenneco Exploration, Ltd., and Tenneco Exploration II, Ltd.

CAG-21.
Docket Nos. CI86-276-000 and CI86-283-000, Phillips Petroleum Company

CAG-22.
Docket Nos. CI86-278-000 and CI86-296-000, Trans-Continental Gas Pipe Line Corporation and Transco Gas Supply Company

CAG-23.
Docket No. CP84-386-005, ANR Pipeline Company
Docket No. CP86-394-004, Techstaff Transmission Company

CAG-24.
Docket Nos. CP86-439-000, 001 and 003, Southern Natural Gas Company

CAG-25.
Docket No. CP86-316-001, Interstate Power Company

CAG-26.
Docket No. CP86-410-001, Trunkline Gas Company

CAG-27.
Docket No. CP86-383-000, Colorado Interstate Gas Company

CAG-28.
Docket No. CP86-539-000, Transcontinental Gas Pipe Line Corporation

CAG-29.
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CAG-30.
Docket No. CP85-891-000, Valley Gas Transmission, Inc.

CAG-31.
Docket No. CP85-189-000, Sea Robin Pipeline Company
Docket No. CP85-825-000, Southern Natural Gas Company

CAG-32.
Docket No. CP86-195-000, United Gas Pipe Line Company

CAG-33.
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Docket No. CP85-597-000, Empire Exploration, Inc.

CAG-34.
Docket No. CP86-477-000, Mississippi River Transmission Corporation

CAG-35.
Docket No. CP80-72-005, Columbia Gulf Transmission Company, Columbia Gas Transmission Corporation and Southern Natural Gas Company

CAG-36.
Docket No. CP74-126-016, El Paso Natural Gas Company
Docket No. CP74-162-018, Natural Gas Pipeline Company of America

CAG-37.
Docket No. CP86-524-000, Iroquois Gas Transmission System

CAG-38.
Docket No. CP83-219-001, ANR Pipeline Company
Docket No. CP60-44-007, Texas Gas Transmission Corporation

CAG-39.
Docket No. CP86-528-000, Shell Gas Pipeline Company

CAG-40.
Docket Nos. RI74-188-084 and RI75-21-079, Independent Oil & Gas Association of West Virginia

CAG-41.
Docket No. CI86-428-000, Mobil Oil Corporation, Mobil Producing Texas & New Mexico Inc., Mobil Oil Exploration & Producing Southeast Inc., and Mobil Exploration and Producing North America Inc.
Docket No. CI86-429-000, Phillips Petroleum Company
Docket No. CI86-535-000, Zapata Exploration Company

I. Licensed Project Matters

P-1.
Project No. 2890-011, Kings River Conservation District

P-2.
Project No. 7669-003, John L. Symons

P-3.
Project No. 9631-001, Robert Z. Walker and John N. Foster

II. Electric Rate Matters

ER-1.
Docket No. ER79-97-006, Alamito Company
Docket Nos. EL86-26-000 and 001, San Diego Gas and Electric Company v. Alamito Company

Docket No. EL86-34-000, San Diego Gas and Electric Company v. Alamito Company, Osceola Energy, Inc., and Alamito Holdings, Inc.

ER-2.

Docket Nos. EF81-2011-003 and EF82-2011-003, United States Department of Energy-Bonneville Power Administration

ER-3.

Docket Nos. EL86-30-000, Oxbow Geothermal Corporation

Miscellaneous Agenda

M-1.

Reserved

M-2.

Reserved

M-3.

Docket Nos. RM83-8-001 through 010, Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies

M-4.

Docket No. GP86-32-000, Minerals Management Service, Louisiana, § 102(d) NGPA Determination, Taylor Energy Company, West Delta Block 133, MMS Docket G4-4440; FERC No. JD85-31411, MMS Docket G4-4581; FERC No. JD86-01397; MMS Docket G4-4433; FERC No. JD86-01398, MMS Docket G4-4328; FERC No. JD86-01399

M-5.

Docket No. RM85-1-176, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corporation)

I. Pipeline Rate Matters

RP-1.

Docket Nos. TA82-2-9-000 and TA83-1-9-000, Tennessee Gas Pipeline Company, a Division on Tenneco, Inc.

RP-2.

Docket Nos. TA85-3-29-000, TA86-1-29-002, CP85-190-000, TA85-1-29-000, TA86-1-29-000, TA86-5-29-002, RP83-137-000 and TA85-3-29-009, Transcontinental Gas Pipe Line Corporation

RP-3.

Docket No. RP85-149-009, East Tennessee Natural Gas Company

II. Producer Matters

CI-1.

Docket No. CI86-307-000, Sea Robin Pipeline Company

CI-2.

Docket No. CI86-168-000, Tenngasco Corporation and Tenngasco Exchange Corporation

CI-3.

Docket No. CI86-376-000, ARKLA Exploration Company

Docket No. CI86-377-000, ARKLA Energy Marketing Company

III. Pipeline Certificate Matters

CP-1.

Docket Nos. CP86-329-000 and CP86-330-000, Erie Pipeline System

Docket Nos. CP86-422-000 and CP86-423-000, Great Lakes Gas Transmission Company

Docket Nos. CP86-452-000 and CP86-455-000, Transco Gas Services Company, Inc.

Docket No. CP86-419-000, ANR Pipeline Company

Docket Nos. CP86-333-000 and CP86-334-000, Transylvania Gas Pipeline Company

Docket No. CP85-453-000, Transco Gas Services Company, Inc., and Transcontinental Gas Pipe Line Corporation

CP-2.

Docket No. CP86-465-000, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

CP-3.

Docket No. CP86-444-000 and CP86-445-000, Washtenaw Pipeline Company

CP-4.

Docket Nos. CP85-756-000 and 001, Consolidated Gas Transmission Corporation

Docket No. CP85-806-000, Texas Eastern Transmission Corporation

Docket Nos. CP86-208-000 and 001, Consolidated System LNG Company and Consolidated Gas Transmission Corporation

Docket No. CP86-454-000, Columbia Gas Transmission Corporation

CP-5.

Docket No. CP86-261-000, National Fuel Gas Supply Corporation

CP-6.

Omitted

CP-7.

Docket Nos. CP86-345-000 and 001, Northwest Pipeline Corporation

CP-8.

Docket Nos. CP84-4-002 and CP86-264-000, Natural Gas Pipeline Company of America

CP-9.

Docket No. CP86-349-001, Texas Gas Transmission Company

Docket No. CP86-177-004 (Not Consolidated), Northwest Pipeline Corporation

CP-10.

Docket Nos. CP86-277-001, CP86-306-001, CP86-308-001, CP86-318-001, CP86-336-001, CP86-358-001, CP86-359-001, CP86-365-001, CP86-392-001, CP86-400-001, CP86-408-001, CP86-409-001, CP86-432-001, CP86-439-002, CP86-458-001, CP86-459-001, CP86-460-001, CP86-461-001, CP86-466-001, CP86-467-001, CP86-500-001, CP86-558-001, CP86-559-001, CP86-560-001, CP86-561-001, CP86-562-001, CP86-563-001, CP86-564-001, CP86-565-001, CP86-566-001, CP86-567-001, CP86-568-001, CP86-569-001, CP86-592-001, CP86-594-001, CP86-609-001, CP86-611-001, and CP86-614-001, Southern Natural Gas Company

Docket Nos. CP86-366-001, CP86-382-001, CP86-401-001, CP86-595-001, and CP86-610-001, Southern Natural Gas Company and South Georgia Natural Gas Company

CP-11

Docket Nos.CP86-232-000, CP86-486-000, CP86-504-000, CP86-551-000, CP86-573-000 and CP86-598-000, Panhandle Eastern Pipe Line Company

Docket No. CP86-584-000, Independent Petroleum Association of Mountain States v. Panhandle Eastern Pipe Line Company

Docket No. CP86-663-000, Independent Petroleum Association of Mountain States v. Colorado Interstate Gas Company

CP-12.

Docket No. CP86-395-000, Northern Border Pipeline Company

Kenneth F. Plumb,

Secretary

[FR Doc. 86-20303 Filed 9-5-86; 8:51 am]

BILLING CODE 6717-01-M

4

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 4, 1986.

TIME AND DATE: 2:00 p.m., Thursday, September 11, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor on behalf of Corbin, etc., v. Sugartree Corporation, Terco, Inc., etc., Docket No. KENT 84-255-D. (Issues include whether the administrative law judge properly determined that Terco, Inc. was liable for damages resulting from discriminatory conduct by Sugartree Corporation.)

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 86-20375 Filed 9-5-86; 3:32 pm]

BILLING CODE 6735-01-M

5

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM:

TIME AND DATE: 11:00 a.m., Monday, September 15, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Implementation of the Board's Program Improvement Project.

2. Personnel actions (appointments, promotions, assignments, reassignments,

and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 5, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–20383 Filed 9–5–86; 3:55 pm]

BILLING CODE 6210–01–M

6

NATIONAL CREDIT UNION ADMINISTRATION

The following items have been deleted from a previously announced open meeting of the National Credit Union Administration on September 10, 1986 and have tentatively been rescheduled for consideration at the Board's October 15, 1986 open meeting:

Charter Conversion: Multi-occupational to community for IRCO Employees Federal Credit Union #17395, Phillipsburg, NJ
Charter Amendment: Expansion of Field of Membership for Signey Federal Credit Union #6011, Sidney, NY

The previously announced items were:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Review of Central Liquidity Facility Lending Rate.
4. Insurance Fund Report.
5. Final Rule: Deletion of Part 709, NCUA Rules and Regulations: Division of Assets, Liabilities and Capital.

The meeting is scheduled for September 10, 1986 at 9:30 a.m., in the Filene Board Room, 7th Floor, 1776 G Street, NW, Washington, DC.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board

[FR Doc. 86–20358 Filed 9–5–86; 2:17 pm]

BILLING CODE 7535–01–M

7

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:00 a.m., Tuesday, September 16, 1986.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Marine Accident Report*: Collapse of the U.S. Mobile Offshore Drilling Unit PENROD 60/61, Gulf of Mexico, October 27, 1985.

2. *Marine Accident Report*: The Near Capsizing of the Charter Passenger Vessel MERRY JANE at Bodega Bay, California on February 8, 1986.

3. *Aircraft Incident Summary Report*: USAir, Flight 4381 McDonnell-Douglas DC–9, N965VJ, Erie, Pennsylvania October 14, 1984.

FOR MORE INFORMATION CONTACT: H. Ray Smith (202) 382–6525.

H. Ray Smith,

Federal Register Liaison Officer.

September 4, 1986.

[FR Doc. 86–20382 Filed 9–5–86; 3:48 pm]

BILLING CODE 7533–01–M

8

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 8, 1986:

A closed meeting will be held on Tuesday, September 9, 1986, at 2:30 p.m. An open meeting will be held on Wednesday, September 10, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 9, 1986, at 2:30 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.
Institution of injunction action.
Regulatory matter regarding financial institution.
Opinion.

The subject matter of the open meeting scheduled for Wednesday, September 10, 1986, at 10:00 a.m., will be:

1. Consideration of whether to issue an interpretive release concerning the application of Rule 10b–6 under the Securities Exchange Act of 1934 to participants in secondary shelf distributions. The interpretive release would modify and clarify the extent to which Rule 10b–6 applies to shelf distribution participants and broker-dealers who sell shares on behalf of shelf distribution participants. For further information, please contact Larry E. Bergmann at (202) 272–2874 or Elizabeth Jacobs at (202) 272–2848.

2. Consideration of whether to propose for public comment new rules and rule and form amendments relating to advertising by investment companies. For further information, please contact Robert E. Plaze at (202) 272–7309.

3. Consideration of whether to propose for public comment alternative amendments to Rule 2(e)(7) of the Commission's Rules of Practice, the provision governing whether hearings in proceedings against professionals brought pursuant to Rule 2(e) shall be public or non-public. The proposed amendments relate to the current provision which provides that administrative proceedings instituted pursuant to Rule 2(e) shall be non-public unless the Commission otherwise orders. For further information, please contact Phillip D. Parker at (202) 272–2214.

4. Consideration of whether to propose for public comment rule 6c–9 under the Investment Company Act of 1940. Rule 6c–9 would, under certain conditions, provide an exemption from that Act to permit a foreign bank or the bank's finance subsidiary to offer or sell its own debt securities or non-voting preferred stock in the United States without registering as an investment company. For further information, please contact Philip J. Niehoff at (202) 272–2048.

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: Patrick Daugherty at (202) 272–3077.

Shirley E. Hollis,

Assistant Secretary.

September 3, 1986.

[FR Doc. 86–20295 Filed 9–5–86; 8:47 am]

BILLING CODE 8010–01

9

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1374]

TIME AND DATE: 10:00 a.m. (EDT), Thursday, September 11, 1986.

PLACE: Norris Community Center, Chestnut Drive, Norris, Tennessee.

STATUS: Open.

AGENDA

Approval of minutes of meeting held on August 29, 1986.

Discussion Item

1. Reservoir Resource Improvement Studies: A Progress Report.

Action Items

A—Budget and Financing

A1. Payment from net power proceeds for fiscal year 1986 to the Treasury of the United States.

B—Purchase Awards

B1. Req. 15—Term coal for John Sevier Steam Plant.

B2. Req. 16—Term coal for Allen Steam Plant.

C—Power Items

C1. Cooperative Agreement No. TV-68699A with the United States Nuclear Regulatory Commission covering arrangements for a research project for implementation of continuous acoustic emission monitoring of light water reactor pressure boundaries at TVA's Watts Bar Nuclear Plant.

C2. Supplement No. 6 to Contract No. TV-62313A with the State of Alabama for cooperation in the development and implementation of radiological emergency plans as required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

D—Personnel Items

D1. Amendment to Board policy relating to overtime pay.

D2. Resolution relating to short-term employment of students from foreign universities.

D3. Personal Services Contract with Manpower Temporary Services, Chattanooga, Tennessee, for intermittent part-time automatic data processing personnel, requested by the Division of Management Systems.

E—Real Property Transactions

E1. Filing of condemnation cases.

F—Unclassified

F1. Contract No. TV-70283A with Mid-Cumberland Council of Governments to provide operating engineer training to unemployed or underemployed residents of Cheatham, Dickson, Houston, Humphreys, Montgomery, Robertson, Stewart, Sumner, Trousdale, Williamson, and Wilson Counties in Tennessee.

F2. Resolution rescinding designation of William E. Mason as Assistant Secretary of the Tennessee Valley Authority.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: September 4, 1986.

W.T. Willis,

General Manager.

[FR Doc. 86-20322 Filed 9-5-86; 9:52 am]

BILLING CODE 8120-01-M

federal register

Tuesday
September 9, 1986

Part II

Environmental Protection Agency

40 CFR Parts 51 and 52

Air Quality Implementation Plans, Preparation, Adoption, and Submittal; Air Quality Models Guideline; Final Rule and Supplemental Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL-3011-6, Docket No. A-80-46]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 7, 1984 [49 FR 48018] EPA proposed to amend 40 CFR 51.24 and 52.21 to substitute by reference the "Guideline on Air Quality Models (Revised)," EPA 450/2-78-027R for the April 1978 version. The guideline lists the air quality models and data bases required to assess impact and to estimate ambient concentrations due to certain sources of air pollutants. Today's action establishes those revisions and incorporates changes as a result of public comment.

EFFECTIVE DATE: October 9, 1986. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 30, 1986.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-5561 or Jawad S. Touma, telephone (919) 541-5681.

ADDRESSES: All documents relevant to development of this rule have been placed in Docket A-80-46, located in the Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying.

The "Guideline on Air Quality Models (Revised)" (1986), Publication No. EPA 450/2-78-027R is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. This document is also available for public inspection at the libraries of each of the ten EPA Regional Offices and at the EPA library at 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Background

Section 165(e)(3)(D) of the Clean Air Act (CAA) requires the Administrator to adopt regulations specifying with reasonable particularity each model or models to be used to comply with the Act's prevention of significant deterioration (PSD) requirements. To carry out these requirements, the Guideline on Air Quality Models was incorporated by reference in regulations promulgated for PSD [40 CFR 51.24]. Because of its incorporation, revisions to the guideline must satisfy the rulemaking requirements of section 307(d) of the Act.

In March 1980, EPA issued a notice soliciting air quality models developed outside the Agency for potential inclusion in the planned revisions to the Guideline on Air Quality Models [45 FR 20157]. EPA received nearly 30 air quality models from private model developers. These were reviewed for technical feasibility and for utility to potential users. In addition to a review by EPA for technical merit, documentation, validation, and coding, the submitted models are also subjected to public review and comment.

On December 7, 1984 [49 FR 48018], EPA proposed amendments to its regulations concerning air quality models and announced that it would hold a public hearing on these proposed amendments and on the revised guideline.

EPA also invited the public to participate and provide advice and comment on the proposed revisions to the Guideline on Air Quality Models. On December 20, 1984 [49 FR 49484]. EPA announced the Third Conference on Air Quality Modeling to provide a forum for public review. A transcript of all oral comments received at the conference, as well as a record of all written comments, is maintained in Docket A-80-46. The written comment period was extended to April 1, 1985, and the rebuttal comment period was held open until April 30, 1985.

Response to Comments

Specific comments received can be found in Docket A-80-46, in items IV-D and IV-H. All comments were consolidated according to the issues raised and are discussed, along with full EPA responses in the "Summary of Comments and Responses on the December 1984 Proposed Revisions to the Guideline on Air Quality Models, January 1986," (Docket Item IV-G-26). Certain comments raised significant issues that are fundamental to the development of this guideline. These issues are summarized below, along with EPA responses.

A. Consistency and Accuracy

A number of commenters urged that use of the most accurate models should be promoted and that the need for consistency was overstated. They noted that: (1) The regulatory program should not require use of a single model, (2) use of a single model was based on an arbitrary selection process, and (3) this selection made the Agency inflexible in allowing use of nonguideline models.

EPA's position reflects Congressional concerns that permitting different requirements in different parts of the country could lead to the inequitable location of some industries. Section 165(e)(3)(D) of the CAA specifically requires that EPA ". . . shall specify with reasonable particularity each air quality model or models to be used under specified sets of conditions . . ." Also, section 301(a)(2)(A) of the CAA requires EPA "to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the Act." EPA uses the term "consistency" to mean that the same model is used in determining emission limitations for similar sources of air pollution. The result is a uniform approach to modeling-based decisions. Such consistency is not, however, promoted at the expense of model and data base accuracy. In selecting the models listed in Appendix A of the revised guideline, EPA conducted several evaluations of model performance using air quality monitoring data, and peer scientific reviews of modeling techniques. The findings lead to a conclusion that the models listed in Appendix A are at least as accurate as, if not better than, other available models, that these preferred models are statistically unbiased, and that they are familiar to the modeling community. Every effort has been made to ensure within the revised guideline that the realism, flexibility, accuracy and best technical judgments, sought by both regulatory agencies and the regulated community, can be provided. Suitable mechanisms have been provided to assure such accuracy, and flexibility, and to allow the use of alternate or new models.

B. Use of Non-Guideline Models in Particular Areas (The Texas Models)

Many commenters urged EPA to make provisions in the guideline for use of new models, for improvements to existing models, and for models that are otherwise more appropriate in specific cases. In particular, the Texas Models were cited as meeting EPA's criteria for selection and being more economical to run. Concern was also expressed that failure to include these as preferred models would have an adverse effect on

the consistency of PSD permitting analyses in Texas where these models are currently used.

EPA has made provision in CFR 51.24 and 52.21 and the guideline for using alternative and improved models. The final rules provide that modification or substitution of an approved model may occur on either a case-by-case basis or on a generic basis within a state's regulatory program. However, EPA will only give generic approval where a state demonstrates that generic usage is appropriate under defined circumstances. For example, a state may be able to show that a model is appropriate for the entire state or some portion thereof based on geographic and meteorological characteristics. EPA encourages the use of these provisions and does not intend to place an undue burden on states that use alternative models, or to delay implementation of scientific advances that are appropriate for regulatory use. EPA has discussed these issues with representatives of the Texas Air Control Board and has indicated that it may be possible for them to demonstrate that certain versions of the Texas Models TEM and TCM (possibly with some modification and clarification in the way these models are applied) may be approvable for generic use in their program. EPA anticipates that these models will be tested by the State of Texas using a protocol developed by them and agreed to by EPA. If the demonstration requirements are satisfied, EPA will announce for public comment in the Federal Register its intention to approve these models for generic use by Texas. For a limited interim period, to be jointly agreed to by Texas and EPA, the Texas Models may continue to be used there because of long prior use based on approval under the previous version of the guideline.

C. Urban Airshed Model

Several commenters requested justification for selection of the Urban Airshed Model as the preferred model for photochemical or reactive pollutant modeling applications involving entire urban areas.

The Urban Airshed Model is the most widely applied and evaluated photochemical dispersion model in existence. EPA believes the evaluation studies referenced in Appendix A of the revised guideline represent sufficient justification for the selection of the Urban Airshed Model as the preferred model for the specified applications.

D. Bjorklund and Bowers Stack-tip Downwash Algorithm

EPA's proposed use of this algorithm was opposed by numerous commenters. Many of these commenters objected to the Bjorklund and Bowers algorithm on the grounds that it was semi-empirical and that it was insufficiently tested by EPA.

EPA is withdrawing its proposal to use the Bjorklund and Bowers stack-tip downwash algorithm pending further evaluation. In the interim, EPA continues to recommend the use of the Briggs stack-tip downwash correction for those cases when the use of stack-tip downwash is appropriate.

E. Definition of Emission Rates

Many commenters said that the use of maximum hourly emission rates is unrealistic and overestimates air quality impact. Alternatives such as using actual emissions, highest historical (e.g., three years), or system-wide limitations on load (for power plants) were suggested.

EPA is required, according to 40 CFR 51.22, to adopt "[e]mission limitations and other measures necessary for attainment and maintenance of any national standard." To achieve this, stationary source control strategies for State Implementation Plans (SIP's) must be determined using the maximum emission rate allowed under the federally enforceable permit. An actual emission rate based on past record may be used only if it is federally enforceable. This requirement applies to the source(s) subject to the SIP emission limit and to nearby sources that have a joint impact. The emission rate for "other sources," defined in the guideline, which generally contribute only to the background has been modified to indicate actual, instead of the maximum, rate to reflect real production or firing rate and hours of operations.

F. Length of Record

A number of commenters disagreed with the requirement for using five years of meteorological data from nearby National Weather Service (NWS) stations.

The Clean Air Act requires EPA to assure that the standards will be attained and maintained. The length of record must be sufficient to include the climatological variability needed to determine emission limitations used to meet the standards. EPA has previously presented its analysis on the length of record in the 1984 Summary of Comments and Responses document (II–G–5). Results from recent EPA research support the position that five years of meteorological data is appropriate. Moreover, commenters did not present factual information which would lead EPA to alter its position.

G. Use of On-site Meteorological Data

Some commenters recommended that if one year of quality assured on-site data is available, the guideline should require its use and eliminate the source's option of using the most beneficial result of either on-site or NWS data.

EPA agrees with these suggestions and recommends that if quality assured on-site data are available, they are preferable to NWS data and should be used.

H. Model Uncertainty

Commenters stated that EPA should incorporate model uncertainty when setting emission limitations based on estimated concentrations. Other factors such as the uncertainty in emissions and meteorological data inputs should also be considered. No viable recommendations on how to implement this concept were given.

EPA has sponsored research on improving methods to assess how uncertainty might be used to set emission limitations. However, this methodology is still being tested. Thus, it does not appear appropriate to extend the use of model uncertainty in the guideline at this time; such a method will be considered for proposal at a future date.

I. Additional Models

Many commenters recommended that the guideline include three new models, the Rough Terrain Diffusion Model (RTDM), a modified version of the building downwash algorithm in the Industrial Source Complex (ISC) model, and the Offshore and Coastal Dispersion Model (OCD).

EPA agrees with these recommendations; however, the application of these models has the potential to change emission limitations set for sources using current models. EPA, therefore, is preparing a supplemental notice of proposed rulemaking that seeks public comment on inclusion of these three new models in the guideline.

J. Other Comments

There was at least one comment on every section of the proposed revisions. Many comments have been incorporated in the revised guidance. EPA has complied with the request of model developers to withdraw their models from Appendix B of the guideline. The

models are: IMPACT (Sklarew), MESOPLUME, and RTDM (version 3.00). Issues not specifically addressed in the guideline, such as those associated with new methods or techniques will be investigated and future guidance issued, subject to public comment, as necessary.

K. Other Issues

Although the December 7 proposal solicited, in particular, advice and comment on eight issues, several of these topics received little or no comment. Both EPA and the commenters found it easier to include these comments under appropriate sections in the guideline instead of listing these issues separately. Responses to public comments on the eight issues are contained in the Summary of Comments and Responses document (IV–G–26) as follows:

(1) Specific changes to 40 CFR Parts 51 and 52 (no comment received);

(2) Revised format of the guideline (Chapters 1 and 3);

(3) Recommendations for ozone models (Chapter 6);

(4) Proposed changes to preferred models (Chapters 4, 5, and Appendices A and B);

(5) Improving performance evaluations (Chapters 3 and 10);

(6) Modeling uncertainty (Chapter 10);

(7) Degree to which State or local regulatory agencies can have authority to use nonguideline models (Chapters 1 and 3); and

(8) Degree of oversight or approval authority retained by EPA (Chapters 1 and 3).

E.O. 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The Administrator finds this rule not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no 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. This regulation will result in no significant environmental or energy impacts. Thus, no Regulatory Impact Analysis was conducted.

Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. This rule merely updates existing technical requirements for air quality modeling analyses required by other Clean Air Act programs (prevention of significant deterioration, new source review, SIP-revisions) and imposes no new regulatory burdens.

Economic Impact Assessment

The requirement for performing an economic impact assessment in section 317 of the Act, 42 U.S.C. 7617, does not apply to this action since the revisions included do not constitute a substantial change in the regulatory burden imposed by the regulation. However, since the guidance includes more sophisticated models, and addresses the use of site-specific data (required under a different section of the PSD regulations), an analysis of the relative costs of using some of the 1978 models and data bases versus the models and data bases specified in the 1980 updated guidance was prepared. This report, "Cost Analysis of Proposed Changes to the Air Quality Modeling Guideline" is available for inspection in Docket A–80–46 at the Central Docket Section whose address is given above, or from the National Technical Information Service as NTIS No. PB 83–112177.

Paperwork Reduction Act

This rule does not contain any information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.* EPA has submitted this regulation to OMB for review under Executive Order 12291 and their written comments on the revisions and any EPA responses have been placed in the docket for this proceeding.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

This notice of final rulemaking is issued under the authority granted by sections 165(e) and 320 of the Clean Air Act, 42 U.S.C. 7475(e), 7620.

Dated: August 19, 1986.

Lee M.Thomas,

Administrator.

PART 51—REQUIREMENTS FOR PREPARATION ADOPTION AND SUBMITTAL OF IMPLEMENTATION PLANS

Part 51, Chapter I, Title 40 of the Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7475(e), 7620.

2. Section 51.24 is amended by revising paragraph (l) to read as follows:

§ 51.24 Prevention of significant deterioration of air quality.

* * * * *

(l) *Air quality models.* The plan shall provide for procedures which specify that—

(1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) which is incorporated by reference. It is EPA Publication No. 450/2–78–027R and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. It is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on October 9, 1986. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Authority: 42 U.S.C. 7475(e), 7620.

2. Section 52.21 is amended by revising paragraph (l) to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(l) *Air quality models.* (1) All estimates of ambient concentrations required under this paragraph shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986) which is incorporated by reference. It is EPA publication No. 450/2–78–027R and is for sale from the U.S. Department of Commerce, National Technical Information Service, 5825 Port Royal Road, Springfield, Virginia, 22161. It is also available for inspection at the Office of the Federal Register, Room 8301, 1100 L Street, NW., Washington, DC. This incorporation by reference was approved by the Director of the Federal Register on October 9, 1986. These materials are incorporated as they exist on the date of approval and a notice of any change will be published in the **Federal Register.**

(2) Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis for a specific state program. Written approval of the Administrator must be obtained for any modification or substitution. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures developed in accordance with paragraph (q) of this section.

[FR Doc. 86–19498 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AH-FRL-3030-4, Docket No. A-80-46]

Requirements for Preparation, Adoption, and Submittal of Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: EPA is issuing a supplement to the notice of proposed rulemaking that was published on December 7, 1984 [49 FR 48018]. Today's notice proposes to include (1) addition of a specific version of the Rough Terrain Dispersion Model (RTDM) as a screening model, (2) modification of the downwash algorithm in the Industrial Source Complex (ISC) model, (3) addition of the Offshore and Coastal Dispersion (OCD) model to EPA's list of preferred models, and (4) addition of the AVACTA II model as an alternative model in the "Guideline on Air Quality Models, Revised," EPA 450/2-78-027R. The revised guideline lists the air quality models required to estimate air quality impact for sources of air pollutants which appear at 40 CFR 51.24 and 52.21. The purpose of the proposed changes is to augment the guidance in response to a substantial number of public comments urging the Agency to do so. EPA is soliciting public comments on these four proposed changes only.

DATES: The period for comment on these proposed changes closes October 9, 1986.

ADDRESSES: Written comments should be submitted to: Central Docket Section (LE-131), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Docket A-80-46.

Copies of reports referenced herein, as well as all public comments are maintained at Docket A-80-46. The docket is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the address above. A reasonable fee may be charged for copying. A copy of the proposed revised pages to the guideline may be obtained from the Docket or the address below.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Chief, Source Receptor Analysis Branch, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone (919) 541-5561 or Jawad S. Touma, telephone (919) 541-5681.

SUPPLEMENTARY INFORMATION:

Background

In March 1980, EPA issued a Notice soliciting air quality models developed outside the Agency for potential inclusion in the planned revisions to the Guideline on Air Quality Models [45 FR 20157]. EPA received nearly 30 air quality models from private model developers. These were reviewed for technical feasibility and for utility to potential users. In addition to a review by EPA for technical merit, documentation, validation, and coding, a submitted model is open to public review and comment.

On December 7, 1984 [49 FR 48018], EPA proposed amendments to its regulations concerning air quality models and announced that it would hold a public hearing on these proposed amendments. On December 20, 1984 [49 FR 49484], EPA announced the Third Conference on Air Quality Modeling to provide a forum for public review. A transcript of all oral comments received at the conference, as well as a record of all written comments, is maintained in Docket A-80-46. EPA is in the final stages of the rulemaking process on the revisions to the Guideline on Air Quality Models and will announce these revisions in a separate **Federal Register** notice.

During the public comment period, EPA received requests to consider several additional new modeling techniques. However, the developers did not submit those models to EPA until much later. Due to insufficient time for public review, these models could not be included in the revised guideline. In this separate regulatory proposal, EPA is seeking public comment on four additional models as described below. These four additions, when promulgated, will require modifications to the "Guideline on Air Quality Models, Revised." A copy of those pages proposed for revision is also available in Docket A-80-46, Item IV-J-2 for public review and comment.

Proposed Action

A. Rough Terrain Diffusion Model

The "Guideline on Air Quality Models, Revised" describes two levels of sophistication of models: Screening and refined. Screening models provide a conservative estimate of the air quality impact of a source. The purpose of screening models is to eliminate from further consideration those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS) or the allowable prevention of significant deterioration (PSD) concentration increments. Refined models consist of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result, they provide a more accurate estimate of source impact and the effectiveness of control strategies.

Due to a lack of scientifically sound and proven techniques, the guideline does not recommend any refined air quality model for determining pollutant concentrations from sources in "complex terrain" areas (where the height of the terrain exceeds the height of the source being modeled). Such a model would apply in situations where the impaction of effluent plumes on terrain at elevations equal to or greater than plume centerline during stable atmospheric conditions are believed to cause air quality problems. In the absence of an approved case-specific, refined, complex terrain model, the guideline specifies screening models in two categories, depending on the level of sophistication and the amount of input data required. The Valley Screening Technique is recommended for first level screening with an assumed worst case; COMPLEX I and the SHORTZ/LONGZ models are recommended with hourly measured meteorological data as second level screening techniques for rural and urban applications, respectively.

Because there is perceived to be an immediate need, EPA received numerous public comments suggesting that it place a high priority on accelerating the development of a refined complex terrain model based on current research and/or recommend such a model based on review of candidate models. Many commenters, notably from the utility industry, proposed the Rough Terrain Diffusion Model (RTDM) as a preferred, refined model that can fill this need. One of the technical improvements in RTDM is the ability to determine the critical streamline, i.e., whether a plume will likely flow over, around or impact on a terrain obstacle. Further discussion on this model is contained in Docket Items IV-D-22 and 27; IV-H-21; IV-K-8 and 11; and IV-B-1.

EPA recognizes the efforts of many groups to develop a refined model for complex terrain applications and, EPA has been conducting, over the last five years, the Complex Terrain Model Development program as documented in the Fourth Milestone Report [EPA/600/

3–84/110]. While this program is a significant step toward the solution of a complicated problem, completion of the research project is not expected before late 1986. In addition, EPA has also been evaluating the performance of eight currently available complex terrain models that were submitted as a result of 45 FR 20157. The first available data base developed under this program, Cinder Cone Butte, and also the Westvaco-Luke Mill data base were used to compare model predictions with observed air quality data. The performance of these models was evaluated using an extensive set of statistical measures recommended by the American Meteorological Society. Of the eight models tested, RTDM showed the best overall performance for both data sets. For more detail see "Evaluation of Complex Terrain Air Quality Simulation Models," EPA–450/4–84–017.

RTDM requires an extensive set of meteorological data input such as horizontal and vertical turbulence measurements and measured vertical temperature profiles (delta-T). A survey by the Utility Air Regulatory Group (UARG) has shown that this type of data is not presently collected at most power plant facilities in complex terrain areas [Docket Item IV–E–3] and model inputs would therefore be restricted to more routine meteorological measurements. At the January 1985 Conference on Air Quality Modeling, EPA expressed concern about how well RTDM would perform without the use of the more sophisticated on-site meteorological data. Also, EPA asked for more information on how well RTDM would perform relative to COMPLEX I for distances beyond two kilometers from the source. To respond to EPA's concerns about the use of RTDM with more routine data, UARG further evaluated RTDM model performance using the Cinder Cone Butte and Westvaco-Luke Mill data bases. Three meteorological input sets were used. First, for the full on-site case, meteorological inputs included on-site turbulence, wind profile and temperature profile measurements. Second, for the default case, only on-site temperature, wind speed, and wind direction measurements were used as model inputs. All other parameters were based on default values specified in the model. Third, for delta-T/default case, on-site temperature profiles were used, in addition to other model inputs being the same as case two above. The results indicated that RTDM only with default input sets (case 2 above) did not underpredict the highest concentrations. The other two (full on-site and delta-T/default) did underpredict high concentrations for some comparisons with observed data. For more detail refer to Docket Item IV–K–9.

In addition, UARG also evaluated RTDM model performance using 2 years of data from the Tennessee Valley Authority's Widows Creek power plant, located in northeastern Alabama where the number of monitoring sites is sufficient. A description of this evaluation is contained in Docket Item IV–K–8. The conclusion drawn from this study is that for the primary averaging times, there were instances of underpredictions of maximum concentrations while for the default data input set, the model overpredicted. The delta-T/default case was not tested.

Independent of these model evaluation studies, a considerable amount of high quality, research grade data were being collected under the EPA's continuing Complex Terrain Model Development program at the Tracy Power Plant east of Reno, Nevada. This area is surrounded by complex terrain in many directions. For 21 hours of data that had previously undergone full data quality control checks, UARG further tested RTDM. The analysis showed that RTDM with full on-site data, substantially underpredicted the concentrations, but RTDM with default data almost exactly predicted maximum concentrations. For more detail see Docket Item IV–K–11.

These evaluations indicate that, although RTDM may be technically superior to other models, including EPA's COMPLEX I screening model, when all the necessary on-site data are available, there is a potential for underpredictions. In the default mode, RTDM is not as sophisticated but provides a margin of safety necessary to ensure the protection of ambient air quality standards. In this mode, RTDM can more properly be characterized as a screening model. If on-site temperature, stability, wind speed and direction data are input to this model, RTDM may be classified as a third level screen—more sophisticated than the present second level screen, COMPLEX I, yet not as sophisticated as the model developers had assumed.

EPA is therefore seeking public comment on its proposal to further modify the revised guideline to list RTDM as a third level screen for estimating air quality impact from stationary point sources in rural complex terrain. EPA believes that this proposal has several good aspects. First, since it has been demonstrated that RTDM with full on-site data can underpredict concentrations substantially, EPA cannot recommend RTDM as a refined model at this time. EPA believes that it is more prudent to await results from its Complex Terrain Model Development program before recommending a refined model. Second, many users may not wish to commit the additional resources necessary to use RTDM as a third level screen, and EPA believes they should not presently be required to do so; less sophisticated screening techniques (i.e., more conservative) remain available. Finally, the RTDM model with full on-site data is an available option for users, subject to case-by-case approval.

B. Modifications to the Industrial Source Complex Model (ISC)

EPA received comments from the American Petroleum Institute (API) requesting the approval of a modified version of the building downwash algorithm in the Industrial Source Complex (ISC) model. A current shortcoming of ISC is that the effect of building wakes on plume dispersion occurs abruptly for effective stack heights less than Good Engineering Practice (GEP). That is, for any plume height greater than either 2.5 building heights or the building height plus 1.5 times the lesser of the building height or width, the building wake is assumed to have no effect on dispersion. For a plume height slightly less than GEP the full wake effect is assumed. This leads to an unrealistic physical discontinuity which is not duplicated either in physical simulation (e.g., wind tunnel) or by observation. For meteorological conditions under which downwash does not occur, the ISC model would be unchanged. The effect of the proposed changes to ISC is to replace the present "full downwash/no downwash" model with one that predicts progressively-increasing downwash with decreases in stack heights at and below GEP. The proposed modifications to ISC include: (1) The enhancement of the dispersion coefficients through the introduction of a linearly decreasing decay factor as a function of plume height (at two building heights downwind) above building height, instead of the current step function behavior at a specific height; (2) final plume rise reduced by initial plume dilution instead of the current approach where final plume height is unaffected by building downwash; (3) different effective building widths and heights for every ten degree wind sector; (4) optional input of hourly stack temperature, velocity and emission rates. For more detailed discussions of

these changes, see Docket Items IV–D–28 and IV–1–23.

The modifications to ISC were evaluated by API with two sets of field data. The first set consists of tracer experiments at two natural gas compressor stations and the second consists of one year of air quality data collected at a 600 MW power plant. Model evaluation results indicated that the short-term version of the existing (unmodified) ISC model was underpredicting maximum ground-level concentrations, under moderate to high wind speeds and neutral stability conditions, by a factor of 2–4. The proposed modifications improve the physics of the model (i.e. do better than the ISC model at matching the meteorological conditions of the highest observed concentrations), although the results indicate a slight overprediction.

EPA proposes therefore to revise the downwash algorithm for the ISC model in the guideline by using the API modifications for applications to stacks shorter than the Good Engineering Practice (GEP) stack height. EPA recommends this change for the following reasons. First, EPA's own model evaluation program [An Evaluation Study for the Industrial Source Complex Dispersion Model, EPA–450/4–81–002] has indicated an apparent systematic tendency to underestimate the concentrations produced near the source by buoyant stack emissions subject to building wake effects. API's findings support these conclusions and have provided constructive help to develop realistic algorithms to accurately predict ground level concentrations. Second, although many other commenters stated that the ISC model's current downwash algorithm overpredicts ground level concentrations, this conclusion has not been supported by a comparison of actual measured versus predicted concentrations.

C. Offshore and Coastal Dispersion Model

EPA received comments from the Minerals Management Service (MMS) requesting the inclusion of the Offshore and Coastal Dispersion (OCD) model in the revised guideline as a recommended model for application to sources located over water [Docket Item IV–D–9]. This model has been approved for use by the MMS in 50 FR 12248. In subsequent communications between EPA and MMS, MMS has agreed that the application of this model should be limited to estimating air quality impact from offshore sources on onshore flat terrain areas. This model is not recommended by EPA for use in air quality impact assessments for onshore sources.

The OCD model was evaluated by the model developers in order to determine whether its performance was better than the original MMS model (CRSTER with stability classes A and B collapsed into C). Further discussion of this model is contained in Docket Items IV–D–9 and IV–I–22. Aerometric data from three separate offshore and coastal diffusion experiments were used in this evaluation. Two versions of the OCD model were tested. One required measurements of parameters (turbulence intensities) that are not made on a routine basis; the other version was run without the turbulence intensity data. The results indicated that both versions of the OCD model performed better than the original MMS model. Even without turbulence intensity data, the OCD model is a good screening model for assessing air quality impact from offshore sources under very stable atmospheric conditions. When these conditions are present, the highest onshore concentrations are expected from these offshore sources.

EPA is proposing to list the OCD model as a preferred model, in the revised guideline, for estimating air quality impact from offshore sources on onshore flat terrain areas. EPA's recommendation of this action is based on the findings that the materials submitted in support of this model meet the six requirements outlined by EPA in its notice soliciting air quality models developed outside the Agency in 45 FR 20157.

D. AVACTA II Model

EPA received a comment from the model developer AeroVironment, Inc. requesting the inclusion of the AVACTA II model as an alternative model in Appendix B of the revised guideline [Docket Item IV–K–13]. Models listed in Appendix B must meet the six criteria outlined in 45 FR 20157 and may be considered for use on a case-by-case basis subject to a demonstration.

EPA has determined that the material submitted in support of the model meets the six criteria and is proposing to list this model as an alternative model in the revised guideline.

Classification

The revisions being proposed herein to the previous proposal will not change the conclusions regarding Executive Order 12291, Regulatory Flexibility Act, Economic Impact Assessment, or Paperwork Reduction Act which were previously stated. Consequently this action is not considered major under E.O. 12291.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Hydrocarbons, Carbon monoxide.

40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

Authority: Secs. 165(e) and 320, Clean Air Act, 42 U.S.C. 7475(e), 7620.

Dated: August 11, 1986.

Don R. Clay,

Assistant Administrator for Air and Radiation.

[FR Doc. 86–19497 Filed 9–8–86; 8:45 am]

BILLING CODE 6560–50–M

Federal Register

Tuesday
September 9, 1986

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Research on the Effects of the Deinstitutionalization of Status Offenders; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement: Research on the Effects of the Deinstitutionalization of Status Offenders

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of reissuance of solicitation of applications to conduct research on the effects of the deinstitutionalization of status offenders.

SUMMARY: This notice announces a new Office of Juvenile Justice and Delinquency Prevention (OJJDP) research program entitled, "Research on the Effects of Deinstitutionalization of Status Offenders."

One of the major issues which has shaped the development of American juvenile justice policy and practice is the concern for "status offenders." The removal of minor, non-criminal juvenile offenders from secure detention and correctional facilities was heralded as the solution to providing fair, more humane treatment for these youth and to reserving the resources of the juvenile justice system for dealing with more serious offenders.

It has been approximately 20 years since the movement to deinstitutionalize status offenders (DSO) began. As each state moved to DSO there were legislative changes, policy developments and revision, and practice changes in various sequences. These changes, in most cases, led to changes in the way in which youth who committed status offenses were responded to by different systems in the community.

Given the tremendous amount of energy and resources that have been committed to DSO, OJJDP feels it is necessary to systematically examine the positive and negative impact that deinstitutionalization of status offenders has had on youth, both in terms of risk of exploitation and subsequent delinquency and on youth-serving public institutions and private agencies.

Public or private, not-for-profit and for-profit, organizations are invited to submit applications to receive a grant from OJJDP.

OJJDP will select the applicant which presents the soundest and most cost-effective approach, and which best demonstrates the organizational capability to condust large scale, multi-site research; and research on the policies and practices of the juvenile justice system, and other public and private youth serving systems, and/or the criminal justice system. The project period is for thirty-six months. OJJDP has allocated up to $800,000 for the first twenty-four month budget period. Up to $200,000 will be made available for the third year. Applicants are encouraged to present cost-competitive proposals. The deadline for submission is November 15, 1986.

This competition will be conducted according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart A, published August 2, 1985 at 50 FR 31365–31367.

FOR FURTHER INFORMATION CONTACT: Richard Sutton, Research and Program Development Division, NIJJDP, OJJDP, 633 Indiana Avenue, NW., Room 778, Washington, DC 20531; telephone (202) 724–5929.

SUPPLEMENTARY INFORMATION:

Request for Proposals—Research on the Impact of Deinstitutionalization of Status Offenders

I. Introduction

This solicitation to conduct research on the Impact of Deinstitutionalization of Status Offenders is reissued by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice. The OJJDP was established by the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. This program is pursuant to Part C, section 243, of the JJDP Act which authorizes OJJDP to "conduct, encourage and coordinate research and evaluation into any aspect of juvenile delinquency, . . . " and ". . . provide for the evaluation of all juvenile delinquency programs assisted under this title in order to determine the results and effectiveness of such programs."

Public or private agencies are invited to submit applications proposing research designs to examine the impact of a major policy thrust in juvenile justice: deinstitutionalization of status offenders. The approved funding level will be based on the scope of work. One project will be funded as a result of this competition. The project period is three years. Based on the need for additional research or refinement and the availability of funds, a six month project period extension may be considered.

II. Background

One of the major issues which has shaped the development of American juvenile justice policy and practice is the concern for "status offenders." By the late 1960's, there was growing concern over the capability of the juvenile justice system to serve the needs of children and protect the public. The removal of minor, non-criminal juvenile offenders from correctional facilities was heralded as the solution to providing fair, more humane treatment for these youth, and to reserving the resources of the system for dealing with more serious offenders.

The movement to remove non-criminal offenders from secure detention and correctional facilities began at the state and local level, and was embraced at the Federal level by the Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93–415). A major mandate of the Act was to encourage the deinstitutionalization of status offenders and the development of community-based alternatives to secure detention and correctional facilities for these youth. (Formula Grants for Juvenile Justice: Notice of Final Regulation, **Federal Register**, 28 CFR Part 31, Volume 50, Number 119, June 20, 1985, pp. 25550–25561; Policy and Criteria for de Minimus Exceptions to Full Compliance with Deinstitutionalization Requirement of the Juvenile Justice and Delinquency Prevention Act, 1974, as amended, **Federal Register**, Volume 46, Number 6; January 9, 1981.)

There has been considerable debate over the concept and definition of a "status offender." Most of the recent research suggests that juvenile offenders engage in a variety of delinquent and non-delinquent, but socially troublesome, acts. This program will focus on youth who commit acts which would not be criminal if committed by an adult: e.g., running away, curfew violation, incorrigibility, alcohol consumption and truancy.

The National Academy of Sciences (NAS) conducted a major assessment of the development and implementation of the deinstitutionalization policy (*Neither Angles* nor *Thieves: Studies in the Deinstitutionalization of Status Offenders*, National Academy Press, Washington, DC 1982). The NAS concluded that while the Federal Government served as a significant catalyst and provided resources; legislation, policies and programs were developed primarily at the state and local levels. Deinstitutionalization of status offenders assumed different forms. The major strategies consisted of:

decarceration (removal of status offenders from secure detention and correctional facilities); diversion (prevention of status offenders from entering secure detention or correctional facilities); divestiture (removal of status offenders from court jurisdiction); and "no arrest" policy (police policy to ignore or divert status offenders). States and localities have implemented various strategies or combinations of these strategies.

Each strategy may have involved all or some of the following changes, in varying sequence: legislative changes, policy development and revision, and changes in operational practices. These changes, in most cases, led to changes in the way in which youth who commit status offenses are responded to by different systems in the community today.

All of the strategies generally reduced the role of one or more parts of the juvenile justice system in dealing with these youth and thereby had implications for families, and public and private youth-serving agencies including welfare, mental health, education, volunteer organizations, etc. While a major goal of the deinstitutionalization movement was to "help" status offenders, there is considerable debate as to whether or not this policy has inadvertently created problems for many of the youth it was designed to help. There is concern that children who are victims of neglect, chronic runaways who become exploited and non-serious offenders are often diverted away from the system or released with no requirement to be involved in programs they may need to be safe and become productive citizens. Without adequate self-control, discipline or structure in their lives, many of them continue committing status and more serious offenses until they ultimately penetrate the system as delinquents.

There was considerable variation in the amount of existing and new resources available to other organizations to handle new clientele. It is assmed that the particular deinstitutionalization strategy, the process through which deinstitutionalization was implemented, and the resources and response of other youth-serving agencies, independently and jointly affect the juveniles they are aimed at helping.

National data on juvenile detention and correctional facilities indicated that the number of status offenders in public correctional institutions decreased by 67% from 1974 to 1983. However, there has been an increase in commitments to private facilities. OJJDP has also sponsored several studies which focused on legislative and policy-based efforts to document and assess the process of deinstitutionalization. These included an evaluation of a multi-site demonstration program to deinstitionalize status offenders and develop alternatives to secure confinement *(National Evaluation of the Deinstitutionalization of Status Offender Programs,* Kobrin and Klein, 1982); an assessment of the reform of the Washington juvenile justice code (*An Assessment of Juvenile Justice Reform in Washington State,* Schneider and Schram, grant #79–JN–AX–0028); and an assessment of California's AB3121 legislation *(Implementation of New Juvenile Justice Legislation,* Teilman et. al., grant #78–JN–AX–0034). A recent review entitled *The Impact of Deinstitutionalization on Recidivism and Secure Confinement of Status Offenders* (Schneider, A.L., 1985) revealed that deinstutionalizing status offenders had virtually no effect on recidivism. (Recidivism was not a primary focus of most evaluations, and there were serious methodological flaws in those that analyzed recidivism.) Note: Copies of these materials are available from the Juvenile Justice Clearinghouse, NCJRS, at (800) 638–8736.

Overall, there have been relatively few attempts to systematically evaluate a policy which has been, at least in many jurisdictions, central to the recent development of the juvenile justice system in this country. Moreover there is a growing concern regarding the potential unintended consequences of deinstitutionalization of status offenders, and particularly chronic status offenders. Some of the most important questions which need to be answered include: are there some juveniles who need protection or services who, at least in part as a result of DSO, are "falling through the cracks"? Have alternative service networks developed and how do they identify potential clients? Are providers being held accountable for meeting the needs of these youth? Do children who commit status offenses become involved in more serious crime because of a lack of appropriate intervention? Is the use of alcohol and drugs extensive among this population? Is the extent of their involvement related to the level of supervision or services they receive? What are the effects of valid court order provisions on youth who commit status offenses?

Given the tremendous amount of energy and resources that have been committed to DSO and the development of alternatives, OJJDP feels it is essential to systematically examine the impact that deinstitutionalization of status offenders has had on youth, and on youth-serving public institutions and private agencies. The Federal legislation will be intensively reviewed in the course of considering 1988 re-authorization. It is expected that this research will inform the debate on this policy at the Federal, state and local level.

III. Program Goal

To determine the impact that DSO has had on youth, their parents, the juvenile justice system, other youth-serving agencies.

Major Objectives

1. To identify the range of current philosophies, policy (legislative, judicial and administrative) and practice with regard to deinstitutionalization of status offenders in the country and to select a number of local jurisdictions representative of the range of philosophies and implementation strategies and to document the extent to which the policies are being implemented.

2. To identify the barriers to effective implementation and significant unanticipated consequences of Federal and local policies for youth, parents, justice and youth serving agencies.

3. Within these jurisdictions, determine the extent to which youth involved in non-criminal misbehavior are viewed by parents and personnel in justice agencies, schools and youth-serving agencies, to be at risk of exploitation and therefore in need of protection, and/or at risk of involvement in delinquent or criminal activities and therefore in need of control and supervision.

4. To examine the availability and appropriateness of resources devoted to these populations and to assess the effectiveness of alternative dispositions on delinquency and exploitation among youth who commit status offenses.

5. To identify and assess the adequacy of the community accountability structure for ensuring that the needs of youth who commit status offenses are being met.

IV. Strategy

The research should be designed to determine the effects, positive and negative, that deinstitutionalization of status offenders has had on youth, their families, the juvenile justice system, other public and private youth serving agencies. It should be designed to assess current policy and practice, in local jurisdictions that are representative of the wide range of philosophies and implementation strategies. Jurisdictions

should be selected based on well-justified criteria. Consideration should be given to variation in: (1) Philosophy and policy, (2) strategies of implementation, (3) the level of resources committed to DSO, and (4) population density. The nature and quality of available data should be carefully considered when selecting the jurisdictions for this research, and in developing the research strategy.

Applicants are encouraged to be creative in their approach to this research program, and to maximize the potential for building upon previous research efforts and existing resources. Proposals should highlight short term and long term products and their potential utility for policy makers, legislators, judges and school officials. Specifically, applicants should take into account the need for preliminary results to inform the Federal policy debates surrounding the 1988 reauthorization of the JJDP Act.

Efforts should be made to identify DSO strategies which have effectively addressed the issues of appropriate handling of status offenders, particularly chronic status offenders.

V. Eligibility Criteria

Eligible applicants include public and private not-for-profit and for profit research agencies or organizations. Applicant agencies or organizations may submit joint proposals with other organizations provided one is designated in the application as the applicant and any co-applicants are designated as such. Together, co-applicants must meet the eligibility requirements specified below.

The applicant must demonstrate in the application that they have experience in the following areas in order to be eligible for consideration:

A. Prior experience in the design and implementation of large scale, multisite research, policy analysis, and research on the juvenile justice system, the criminal justice system, and other related public systems.

B. Demonstrated knowledge of the issues associated with the deinstitutionalization of status offenders.

C. Prior experience in the development, maintenance and analysis of a large computerized data base.

D. The applicant must have the management and financial capability to effectively implement a project of this scope and complexity.

In order to maximize competition in the award of this research grant, for-profit organizations are eligible to apply, provided that they certify compliance with the following two agency policy requirements:

A. The OJJDP grant award must not be used to support the normal profit making operations of the organization, but must serve to stimulate the legislatively authorized research and evaluation objectives of OJJDP.

B. For at least one year following the termination of this award the recipient will not compete or accept any procurement or assistance award supported by OJJDP funds which may have resulted or been derived from the original award.

VI. Minimum Program Application Requirements

Applicants must complete all parts of the Application for Federal Assistance, (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. All applications must also include the information described in this section of the solicitation. The program narrative shall not exceed 125 *double-spaced* pages in length. Applications which propose non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $10,000. The budget must include funds for a three person project advisory committee to meet three times during the study. Applicants should highlight cost effective features of their proposals.

In submitting applications which contain more than one organization, the applicant must clarify the relationships among the parties in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the program application:

(1) A concise description of your organizational experience which would qualify you to achieve the goal and objectives of this research and demonstrates substantive and financial capability to effectively administer the project.

(2) A succinct statement of your understanding of the goal and objectives of research on the impact of deinstitutionalization of status offenders.

(3) The specific objectives and conceptual framework which will guide the proposed approach to the research must be articulated. An analytical review of the relevant theoretical and empirical research should support the major research questions that the proposal addresses.

(4) A detailed description of the research design should be presented including jurisdiction selection criteria, sampling plans, data collection activities, and preliminary analysis plans.

(5) An implementation plan which describes how the research will be managed and includes an organizational chart depicting the roles of key staff (and subcontractors, if relevant); a list of key personnel responsible for conducting the study. Position descriptions, qualifications and selection criteria must be presented for each position. Individuals' resumes may be submitted as appendices. Please note that OJJDP will attach a special condition that requires prior OJJDP approval for hiring all key project personnel.

(6) A discussion of how data access and privacy issues will be addressed including a Privacy Certificate describing procedures to be followed to assure confidentiality of data in accordance with funding agency regulations, examples of which are available on request.

(7) A detailed time-task plan which includes major milestones and a schedule for product completion. A schedule for completion of interim reports will be established as a condition of award.

(8) A description of interim and final products, including purpose, audience, and usefulness to the field.

(9) A detailed budget with a narrative which justifies the proposed project cost for the entire project period with the budget divided between the first 24 months and the last 12 months. Applicants are encouraged to highlight cost effective aspects of their approach;

such as the utilization of existing survey instruments, etc.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, organizational capability, and thoroughness and innovativeness in responding to strategic issues in research implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B, published August 2, 1985 at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

(1) The problem to be addressed by the project is clearly stated—(5 points)
(2) Understanding of the goal and objectives of the DSO research project—(10 points)
(3) Soundness of the research design—appropriatenss and innovativeness of the research design and data collection strategy for meeting the goals and objectives. Potential utility of proposed products—(35 points)
(4) Qualifications of key staff—extent and relevance of the qualifications and experience of key staff to manage and conduct this research—(15 points)
(5) Organizational capability—The extent and quality of experience in conducting policy impact research and in conducting multi-site research of similar scope—(10 points)
(6) Budget—completeness, reasonableness, and appropriateness of the costs in relation to the proposed strategy—(10 points)
(7) Clarity and appropriateness of the implementation plan—soundness of project management structure and feasibility of the time-task plan—(15 points)

The results of peer review will be a relative aggregate ranking of applications in the form of "Summary Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary review, will assist the Administrator in considering competing applications and in selecting of the application for funding.

VIII. Submission Requirements

All applicants responding to this solicitation should be aware of the following requirements for submission:

1. Organizations which plan to respond to this announcement are requested to submit written notification of their intent to apply to NIJJDP/OJJDP by September 30, 1986. Such notification should specify: the name of the applicant organization, mailing address, telephone number, and primary contact person. In the event that organizations intend to apply as co-applicants, each of the co-applicants are to provide the above information. The submission of this notification is optional. It is requested to assist NIJJDP in estimating the workload associated with the review of applications and for notifying potential applicants of any supplemental information related to the preparation of their applications.

2. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

3. The NIJJDP/OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding. It is anticipated that the grant may be awarded as early as March, 1987.

4. Applications must be received by mail or hand delivered to the NIJJDP/OJJDP by 5:30 p.m. EST on November 15, 1986. Those applications sent by mail should be addressed to Richard Sutton NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the NIJJDP/OJJDP, Room 780, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:30 p.m. except Saturdays, Sundays or Federal holidays.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations (28 CFR Part 42, Subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 86–20294 Filed 9–8–86; 8:45 am]

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