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Presidential Documents

Title 3—

The President

Proclamation 5526 of September 17, 1986

Citizenship Day and Constitution Week, 1986

By the President of the United States of America

A Proclamation

In this coming year, as we celebrate the 200th anniversary of the signing of the Constitution of the United States, all Americans should reflect upon the precious heritage of liberty under law passed on to us by our Founding Fathers. This heritage finds its most comprehensive expression in our Constitution.

The framing of the Constitution was an arduous task accomplished in the spirit of cooperation and with dedication to the ideals of republican self-government and unalienable God-given human rights that gave transcendent meaning and inspiration to the American Revolution. After extensive debate and public participation, the Constitution was ratified by the several States. The wisdom and foresight of the architects of the Constitution are manifest in the fact that it remains a powerful governing tool to the present day. Indeed, a great British statesman has called it "the most wonderful work ever struck off at a given time by the brain and purpose of man."

For 200 years, people from other lands have come to the United States to participate in the great adventure in self-government begun in Philadelphia in 1787. It is no surprise that knowledge of the Constitution is one of the primary requirements for new citizens. In this bicentennial year, all citizens should reread and study this great document and rededicate themselves to the ideals it enshrines.

In recognition of the fundamental importance of our Constitution to our way of life and the role of our citizens in shaping government policies at all levels, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 153), has designated September 17 of each year as Citizenship Day and authorized the President to issue annually a proclamation calling upon officials of the government to display the flag on all government buildings on that day. The Congress also, by joint resolution of August 2, 1956 (36 U.S.C. 159), requested the President to proclaim the week beginning September 17 and ending September 23 of each year as Constitution Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, call upon appropriate government officials to display the flag of the United States on all government buildings on Citizenship Day, September 17, 1986. I urge Federal, State, and local officials, as well as leaders of civic, educational, and religious organizations to conduct ceremonies and programs that day to commemorate the occasion.

I proclaim the week beginning September 17 and ending September 23, 1986, as Constitution Week, and I urge all Americans to observe that week with appropriate ceremonies and activities in their schools, churches, and other suitable places.

Furthermore, I proclaim that effective September 17, 1986, the area designated as Constitution Gardens, a part of West Potomac Park in our Nation's Capital, to be henceforth a "Living Legacy" dedicated to the commemoration of the United States Constitution.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth 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. 86-21585
Filed 9-19-86; 11:00 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 5527 of September 18, 1986

World Food Day, 1986

By the President of the United States of America

A Proclamation

We Americans are blessed with nature's bounty. As children, our first prayers teach us to give thanks for the abundance we enjoy. We take for granted our full tables and the peace and security in which we enjoy them.

But, unfortunately, many do not share in our abundance. Hunger stemming from poverty and famine retains its cruel grip in many parts of the world, especially in Africa. This year, hunger is not as widespread as it was in 1985, in part because of the humanitarian spirit of Americans and other donors. No nation has been more generous to those less fortunate. We have sent billions of dollars to help other countries rebuild after war or disaster strikes. We have sent billions of tons of food to feed the hungry. And, we have sent our sons and daughters to work alongside our neighbors to help them help themselves.

The nobility of our purpose was made manifest in the great outpouring of aid Americans gave spontaneously to the victims of the African famine. Our help, both public and private, saved hundreds of thousands of lives. Last year, rain returned to Africa, and famine subsided. But hunger has not been overcome and another natural disaster, brought by locusts and grasshoppers, is bringing the threat of continued suffering.

The world is making progress in ending hunger, albeit slowly. In some countries, civil strife and socialist policies continue to fuel famine. We must continue to work towards peace and incentive policies if we are to eliminate famine caused by poverty, drought, environmental decline, and inappropriate economic policies. Many governments throughout the world have recognized that the health of their nations and their people depends on a strong agriculture, based on free enterprise and competitive markets. To this end, my Administration has encouraged policy reform efforts throughout the world, through our economic assistance programs as well as a new Food for Progress program, under which we provide grants of U.S. food to countries adopting sound agricultural policies.

Since its birth as a nation, the United States has relied on the twin pillars of individual freedom and individual enterprise as the foundations of its national economy. Political and economic freedoms cannot be separated; together, they foster a sense of social, economic, and political responsibility that sustains individual growth and fuels economic development. Without self-reliant, creative citizens, no nation can be self-sufficient politically or economically, nor can it provide sufficient food and fulfill the basic human needs of its people. Free market policies can promote economic growth based on social justice, self-reliance, and the skills of the people.

Today, millions of Americans in more than 3,000 communities will participate in a variety of World Food Day activities. The spirit of voluntarism has never shone more brightly throughout our Nation.

I ask that the American people use this day to reaffirm their commitment to ending world hunger. Ending hunger throughout the world will require a long-term commitment of the public and the private sectors, of people and their governments, and of developing and donor countries. The technological solu-

tions to end world hunger are known to man; now we must demonstrate that we have the will to eliminate hunger and its primary source, poverty.

In recognition of the desire and commitment of the American people to end world hunger, the Congress, by Public Law 99–288, has designated October 16, 1986, as "World Food Day" and has authorized the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 16, 1986, as World Food Day, and I call upon the people of the United States to observe this day with appropriate activities to explore ways in which our Nation can further contribute to the elimination of hunger in the world.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth 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. 86–21586
Filed 9–19–86; 11:01 am]
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Rules and Regulations

Federal Register
Vol. 51, No. 183
Monday, September 22, 1986

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

Kiwifruit Grown in California; Change in Inspection, Size, and Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the period of time that inspection certificates for kiwifruit are valid from 14 to 21 days and deletes reference to size designations with the exception of the minimum size which may be shipped under the order. It also amends the meaning of the term "fairly uniform in size" to conform to the U.S. Grade Standards for Kiwifruit. Increasing the length of time that inspection certificates remain valid should eliminate many unnecessary reinspections, and eliminating reference to all but the minimum size simplifies the regulations and provides handlers with additional flexibility in meeting buyer needs.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Cioffi, Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final 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 Admininstrator 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 65 handlers of California kiwifruit under the marketing order for kiwifruit 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. The change to extent the valid period for inspection certificates will lessen the regulatory burden on handlers since it provides a longer period during which the fruit may be shipped without reinspection. The elimination of all but the minimum size from the handling regulation gives growers and handlers additional flexibility in packing operations and is therefore less restrictive and less burdensome. Finally, changing terminology to coincide with that in the U.S. Standards will make the regulations more easily understood through the use of standardized terms. Therefore, this action will not impose additional costs on affected growers and handlers.

Notice was given in the August 18, 1986 **Federal Register** (51 FR 29473) affording interested persons until August 28, 1986, to file written comments on this proposal. None were filed.

Marketing Order No. 920 regulates the handling of kiwifruit grown in the State of California. The program is effective under the Agricultural Marketing Agreement Act of 1937, as amended. The Kiwifruit Administrative Committee, established under the order, is responsible for its local administration. The amendments herein will lessen regulatory requirements and simplify and clarify the regulations, and will therefore decrease the regulatory burden on the affected industry.

At its meeting on April 25, 1986, the committee recommended that the inspection requirements in § 920.155 be changed to extend the validity of inspection certificates to 21 days instead of the 14 days currently allowed. Nearly all kiwifruit is harvested in the fall and placed in controlled-atmosphere storage until sold and shipped. Last season, some handlers were required to obtain reinspection when shipments were delayed, causing an unnecessary additional expense. Therefore, the committee unanimously recommended that certification be valid until January 15 or 21 days after inspection, whichever is later, and that § 920.155 be changed accordingly.

The committee has also recommended that reference to the various size designations, with the exception of size 49, be deleted from § 920.302(a)(2)—"Size Requirements." Kiwifruit shipped under the order must be at least size 49. The committee annually prepares a chart defining the sizes of fruit in terms of the number of fruit per eight-pound sample. The chart is used by both the industry and various inspection agencies. Inasmuch as growing conditions differ from one season to the next, the committee needs the flexibility of being able to adjust or revise the criteria for the various size designations as necessary. The committee recommendation is therefore adopted.

In addition, the committee also recommended that the meaning of the term "fairly uniform in size" in § 920.302(a)(3) be amended to conform to the current U.S. Standards for Grades of Kiwifruit (7 CFR 51.2338(d)).

After consideration of all relevant matters, including the proposal set forth in the notice, it is hereby found that the amendment, as hereinafter set forth, will tend to effectuate the declared policy of the act. It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the kiwifruit shipping season began in early September of this year and this amendment should apply to as many shipments as possible in order to have the greatest benefits to producers.

List of Subjects in 7 CFR Part 920

Marketing agreements and orders, Kiwifruit.

The regulation is as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 610–674.

2. Section 920.155 (50 FR 41660, October 15, 1985) is revised to read as follows:

§ 920.155 Inspection requirement.

Certification of any kiwifruit which is inspected and certified as meeting grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53 during each fiscal year shall be valid until January 15 of such year or 21 days from the date of inspection, whichever is later.

3. Section 920.302 (50 FR 36568, September 9, 1985) is hereby amended by revising paragraph (a)(2) and by revising the sixth sentence of paragraph (a)(3) through the word "Provided," to read as follows:

§ 920.302 Grade, size, pack, and container requirements.

(a) * * *

(2) *Size requirements.* Such kiwifruit are at least a minimum size 49 (size 49 means that an eight-pound sample representative of this size in the package or container contains not more than 64 pieces of fruit).

(3) * * * For the purposes of this section "fairly uniform in size" means that fruit in containers marked numerically to denote size may not vary in diameter more than ½ inch (12.7 mm) in sizes 30 or larger; ⅜ inch (9.5 mm) in sizes 31 through 38; and ¼ inch (6.4 mm) in sizes 39 or smaller: *Provided,* * * *

* * * * *

Dated: September 16, 1986

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86–21370 Filed 9–19–86; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1079

Milk in the Iowa Marketing Area; Temporary Revision of Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action temporarily relaxes for September, October and November 1986 the supply plant shipping requirements under the Iowa milk order. The revision is made in response to a request by the operator of a pool supply plant who ships milk to distributing plants regulated by the order. The revision would prevent uneconomic movements of milk.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–4829.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Temporary Revision of Shipping Percentages: Issued August 19, 1986; published August 25, 1986 (51 FR 30220).

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 on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1079.7(b)(1) of the Iowa order (7 CFR Part 1079).

Notice of proposed rulemaking was published in the **Federal Register** (51 FR 30220) concerning a proposed decrease in the shipping requirements for pool supply plants for the months of September, October and November 1986. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by September 2, 1986. Only one comment was received.

Statement of Consideration

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that the supply plant shipping percentage should be lowered by 10 percentage points from the present 35 percent to 25 percent for the months of September through November 1986.

Pursuant to the provisions of § 1079.7(b)(1), the supply plant shipping percentages set forth in § 1079.7(b) may be increased or decreased by up to 10 percentage points during any month to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

Beatrice Companies, Inc. (Beatrice), on behalf of Beatrice Cheese, requested the action in order to prevent uneconomic shipments of milk during September through November 1986. Beatrice said that under the current supply conditions, distributing plants in the Iowa market will have more than an adequate supply of milk for Class I use and that there will be no need for supply plants to ship 35 percent of their producer receipts to distributing plants during the months of September through November 1986. Beatrice said that a 25 percent shipping standard would be adequate for such months and would prevent uneconomic shipments of milk. If the shipping requirements were not lowered as requested, Beatrice indicated that their company would have to "backhaul" approximately 3.5 to 3.8 million pounds of milk in September, October and November 1986. "Backhauling" means that milk is hauled from a supply plant to a distributing plant, and then is hauled back to the supply plant. The purpose of backhauling would be to assure the continued pooling of the supply plant that has regularly supplied the market. Beatrice said such uneconomic shipments could be avoided if the shipping requirements were lowered.

Beatrice said that marketwide producer receipts during the April through June 1986 period showed an increase each month over the same month of 1985. The monthly increases for this period cited by Beatrice were 8.5, 6.7 and 12.9 percent, respectively. Beatrice indicated that receipts at their supply plant for this same period have been approximately 8 percent higher than in 1985.

Market data indicates that producer milk for the first seven months of 1986 was approximately 11.8 percent higher than for the same period of 1985. Class I utilization as a percentage of producer milk for the first seven months of 1986 ranged from a low of 23 percent to a high of 28 percent. For the same period of 1985, the range was from 24 percent to 35 percent.

The shipping percentage reductions are aimed at facilitating the delivery of milk to the market from supply plants for Class I use without requiring shipments merely for pooling purposes. It is expected that less than 35 percent of the producer milk supply on the market will be needed for Class I use during the months of September through November 1986. It is concluded that the supply-demand conditions in the market warrant a lowering of the shipping requirements by 10 percentage points for

the months of September through November 1986.

Only one comment was received in response to the proposed action. Kraft, Inc., which operates a pool supply plant located in Earlville, Iowa, stated that it expects to have less demand for fluid milk at its plant this fall. Kraft, Inc., contends that without this action, it would be required to "backhaul" a substantial volume of milk in order to pool producers who have been historically associated with the Iowa market.

Associated Milk Producers, Inc., also indicated that the supply plant shipping requirements should be lowered during this period of time.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing in the Iowa marketing area for the months of September, October and November 1986;

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

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. No comments were filed in opposition to this action.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the Federal Register.

List of Subjects in 7 CFR Part 1079

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, that the aforesaid provisions of § 1079.7(b) of the Iowa milk order are hereby revised for the months of September, October and November 1986.

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority citation for 7 CFR Part 1079 continues to read as follows:

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

§ 1079.7 [Amended]

2. In § 1079.7(b), the provision "35 percent" is revised to "25 percent" for the months of September, October and November 1986.

Effective date: September 22, 1986.

Signed at Washington, DC, on September 17, 1986.

Robert R. Miller,

Acting Director, Dairy Division.

[FR Doc. 86–21371 Filed 9–19–86; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 85–030F]

Ascorbic Acid, Erythorbic Acid, Citric Acid, Sodium Ascorbate, and Sodium Citrate in Fresh Pork Cuts; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule with request for comments; correction.

SUMMARY: This document corrects an interim final rule with request for comments by changing the number of paragraph § 317.8(b)(*36*) to § 317.8(b)(*37*).

FOR FURTHER INFORMATION CONTACT: Ms. Margaret O'K. Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, USDA, DC 20250 (202) 447–6042.

SUPPLEMENTARY INFORMATION: On Monday, August 18, 1986, the Food Safety and Inspection Service (FSIS) published a final rule in the Federal Register which concerned a binding mixture consisting of sodium alginate, calcium carbonate, lactic acid, and calcium lactate (51 FR 29456).

In that rule, FSIS amended 9 CFR 317.8 by adding a new paragraph (b)(36) which set labeling requirements for the binder mixture.

On Friday, August 22, 1986, FSIS published an interim final rule with request for comments concerning ascorbic acid, erythorbic acid, citric acid, sodium ascorbate, and sodium citrate in fresh pork cuts (51 FR 30052). That document also amended 9 CFR 317.8(b) by adding a new paragraph to set labeling standards for those substances when used on fresh pork. The amendment of August 22nd inadvertently cited the new paragraph as (b)(*36*) instead of (b)(*37*).

Accordingly, FSIS is now issuing this correction to accurately reflect the added paragraph number, as follows:

§ 317.8 [Corrected]

In FR Doc. 86–19037, appearing in the Federal Register of Friday, August 22, 1986, page 30054, first column, the designation of added paragraph § 317.8(b)(36) is corrected to read § 317.8(b)(37).

Done at Washington, DC, on September 17, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86–21425 Filed 9–19–86; 8:45 am]

BILLING CODE 3410–DM–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Ch. V and Parts 561 and 563

[No. 86–857]

Regulatory Capital (Net Worth) Requirements of Insured Institutions

Date: August 15, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to the level of and the method for calculating the minimum amount of regulatory capital (previously referred to as "regulatory net worth" or "net worth") required for institutions the accounts of which are insured by the FSLIC ("insured institutions" or "institutions"). The term "regulatory capital" replaces the terms "net worth" and "regulatory net worth," but continues to consist of those items included in "regulatory net worth" as defined by § 561.13. Based upon its supervisory experience and analysis of the industry's capital needs, the Board is revising the structure of its former net worth regulation, 12 CFR 563.13 (1986), to increase insured institutions' capital requirements to 6 percent of total liabilities over a transition period determined by insured institutions' average return on assets with a credit for reducing interest rate risk ("maturity matching credit"), replacing the former qualifying balance deduction, and with an incremental capital requirement ("contingency component") for having specified types of assets. This Board action will better protect insured institutions, accountholders, and the FSLIC insurance fund from interest rate risk, credit risk, and other conditions in the current financial environment that could compromise thrifts' financial stability.

This amendment will take effect on January 1, 1987. Institutions will be required to compute and satisfy these increased capital requirements for the first time on March 31, 1987, the last day of the first quarter of calendar year 1987.

Institutions will be required to capitalize liability growth on or after January 1, 1987, ("increased liabilities") at 6 percent. Institutions must attain the 6 percent capital requirement on their level of liabilities on January 1, 1987, ("base liabilities") over a transition period whose length will be determined by the industry's profitability.

EFFECTIVE DATE: January 1, 1987.

FOR FURTHER INFORMATION CONTACT:

Base and Liability Components: John F. Connolly, Attorney, (202) 377–6455, Jerilyn Rogin, Attorney, (202) 377–7018, or Karen Knopp O'Konski, Attorney, (202) 377–7240, Regulations and Legislation Division, Office of General Counsel;

Contingency Component and Maturity Matching Credit: John F. Connolly, Attorney, (202) 377–6455, or Kathy L. Kresch, Attorney, (202) 377–6417, Regulations and Legislation Division, Office of General Counsel;

Economic Questions and Statistical Studies: Donald J. Bisenius, Financial Economist, (202) 377–6766, Office of Policy and Economic Research;

Supervisory Issues and Growth Regulation: Edward Taubert, Associate Director, Policy Development, (202) 377–6484, Office of Examination and Supervision;

All other aspects not specifically listed above: Gwenn L. Hibbs, Director, (202) 377–7054, or John F. Connolly, Attorney, (202) 377–6455, Regulations and Legislation Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

This regulation is revised pursuant to the Board's general authority under the National Housing Act ("NHA") and specifically under section 403(b), 12 U.S.C. 1726(b), as amended by the Garn-St Germain Depository Institutions Act of 1982, Pub. L. 97–320, section 202(d), 96 Stat. 1469, 1492 (1982) ("DIA").

A. Description of the Proposal

On April 24, 1986, the Board proposed to revise its regulatory capital requirements for insured institutions. Board Res. No. 86–426, 51 FR 16550 (May 5, 1986). The proposal would have permitted insured institutions 6 years to raise their capital from 3 percent to 6 percent of their levels of liabilities on October 1, 1986. All institutions would have been required to have 3 percent capital on base liabilities as of December 31, 1986. The proposal would have required institutions to capitalize liability growth over their base liabilities at 6 percent in the quarter that the increase occurred.

The Board also proposed to modify the contingency factor of the current net worth regulation to require: (1) 10 percent incremental capital on all direct investments; (2) 4 percent incremental capital on land loans and nonresidential construction loans; and (3) 2 percent incremental capital on letters of credit.

The Board further proposed to recognize to a greater extent the risk reduction achieved by an institution's holding a maturity matched portfolio of housing related investments with limited credit risk. Accordingly, the proposal would have modified the qualifying balance deduction by decreasing an institution's capital requirement by an amount equal to the sum of: (1) 2 percent of the institution's eligible liquid assets; (2) 1 or 2 percent of the institution's qualifying adjustable-rate mortgages ("ARMs"), depending on the ARMs' remaining adjustment level; (3) 2 percent of fixed-rate liabilities with remaining maturity of 3 years or more (the dollar weighted average remaining term-to-maturity of liabilities used in this exclusion would have been required to be at least 5 years) for which the institution had a corresponding amount of fixed-rate, permanent 1–4 family residential mortgages or mortgage backed securities (as defined in 12 U.S.C. 1464(c)(1)(S)) with equal or greater maturity; and (4) 2 percent of fixed-rate, permanent 1–4 family residential mortgages or investment grade mortgage backed securities with remaining contractual term-to-maturity of 2 years or less.

The proposal would have limited this qualifying balance deduction. For the first 3 years after the effective date of any final regulation adopted, an institution could not have reduced its regulatory capital below 3 percent. During the fourth through sixth years, an institution could not have reduced its regulatory capital below 4 percent. After the sixth year an institution's regulatory capital could not have dropped below 5 percent.

Finally, the proposal also would have eliminated from the net worth regulation (1) the amortization factor, (2) the sliding scale growth factor, (3) the current base factor calculation, and (4) the preferential growth treatment of institutions with assets of $100 million or less.

B. Discussion of Comments

The Board received 223 comments in response to the proposal. The majority were submitted by insured institutions, including 94 from Federal associations (24 from Federal savings banks) and 86 from state-chartered institutions. Nineteen comments were submitted by trade associations on behalf of their thrift institution members, 14 by commercial banks, 3 by federal and state agencies, 2 by law firms on behalf of thrift institution clients, 2 by members of Congress, 1 by an attorney in his individual capacity, 1 by an economic consulting firm on behalf of its thrift institution client, and 1 by an investment banking firm.

Among the comments submitted by insured institutions, 5 endorsed the proposal, 21 opposed it, and the remainder endorsed the general concept of increasing the level of regulatory capital to 6 percent, but requested modification of specific aspects of the proposal, including the phase-in period. Thirteen of the 14 comments received from commercial banks endorsed the proposal. The Board has carefully reviewed all of the comments, which are more fully discussed below.

1. Statutory Authority

One comment expressed the view that the proposal would exceed the Board's statutory authority. The Board promulgated the proposal based on its authority under section 403(b) of the NHA, 12 U.S.C. 1726(b), as amended by the DIA. The comment contended that the language of the DIA does not authorize the Board to promulgate the proposed amendments, that the legislative history of the DIA conflicts with the Board's assertion of statutory authority, and that the Board is improperly attempting to accomplish indirectly two objectives that it may not accomplish directly—restriction of direct investment and imposition of differential insurance premiums.

The Board believes that these assertions are without merit in view of the express grant of rulemaking authority to the Board in 12 U.S.C. 1726(b). Further, similar arguments were made in comments on adoption of the Board's former regulatory net worth regulation. The discussion of these issues in the preamble of that regulation is equally applicable to the amendments effected by this resolution. The Board therefore incorporates by reference the preamble to the regulation adopted January 31, 1985, entitled "Net-Worth Requirements of Insured Institutions", which amended 12 CFR Parts 561, 563, 570, 571 and 584 (50 FR 6891, Jan. 31, 1985).

2. Procedural Issues

One commenter expressed the view that the comment period following publication of the proposal was too short and requested an extension of an unspecified duration. Some commenters

suggested that the Board defer implementation of the proposed regulations and, instead, set up a task force or committee composed of members of the Board and the industry to determine the best risk based capital system and to decide the proper method and timing of implementation. Another commenter, concerned that the cumulative effects of the Board's recent regulatory actions could restrict the profitability of the industry, requested hearings before the Board adopted any of its proposed regulations.

The Board does not believe that an extension of the comment period, the creation of a task force, or hearings are necessary. The length of the comment period following the proposal was consistent with the rulemaking procedures required by the Board's regulations, the Administrative Procedure Act, 5 U.S.C. 553 ("APA"), the Board's regulation at 12 CFR 508.13 (1986), and the Board's Resolution Regarding Regulatory Simplification, Board Res. No. 80–584, 45 FR 63135 (Sept. 23, 1980). Also, the number (223), detail, and quality of the comments the Board received on the proposal convinces it that the duration of the comment period was adequate. The Board thoroughly considered all comments submitted, including those submitted after the formal 60-day comment period had expired. In response to the comments (as well as on its own initiative as a result of its *Feasibility Study*), the Board has made various modifications to the proposed rule which are fully explained below.

3. General Comments

a. Necessity of the New Regulation

Thirteen commenters stated that the net worth regulation had been in effect for only 18 months and was achieving its goals of restraining overleveraged growth and improving the general capital levels of the industry. These commenters stated that changing the regulation again after such a short time would increase confusion and cost, retard planning, and reduce the credibility of the Board's regulatory process.

The Board agrees that the existing regulation was achieving its desired goals of restricting highly leveraged growth. The regulation was not, however, capable of generating capital levels consistent with thrifts' risk exposure. The Board has decided to build on the risk adjusted structure of that regulation to require an increase in the industry's overall level of capital while continuing to restrict overleveraged growth and imposing incremental capital requirements on potentially high risk assets—land loans, nonresidential construction loans, and direct investments. This new regulation does not penalize any institutions for compliance with the prior regulation. Furthermore, by retaining a similar framework it should avoid undue cost and confusion or disruption of planning, since institutions are currently subject to a similar regulation and reporting requirements.

In fulfilling its regulatory duties to the public, the Board continually reconsiders its policies. *See* 45 FR at 63136 (Board will periodically review regulations). In fact, the Board included in the current net worth regulation a 2-year sunset provision as a means of reassuring the public that during the first 2 years of experience under the regulation the Board would "monitor, on a close and regular basis, both its effect on institutions and . . . various technical issues." 50 FR at 6909. The Board has been following the effect of that regulation and the progress of the industry under it and is adopting this regulation today based on that scrutiny. While the requirements adopted today contain no such sunset provision, the Board is no less committed to tracking experience under them and making prompt changes as needed.

b. Risk Based Deposit Insurance Premiums

The Department of Justice, Antitrust Division ("Division"), contended that a risk based capital regulation is the wrong vehicle to achieve the Board's goals of protecting the FSLIC and eliminating artificial competitive disparities. While the Division agreed that individual thrifts should be required to bear the cost to the FSLIC of riskier investments, the Division urged that the Board should advance these goals through the adoption of risk adjusted deposit insurance premiums rather than the proposed risk adjusted capital requirements. The Division's objection is that highly leveraged investment plans producing revenues in excess of costs, including costs to the FSLIC, are prevented by risk adjusted capital requirements. The Division stated that risk adjusted deposit insurance does not prohibit such capitalization and investment plans, as risk based capital does, but only internalizes those FSLIC costs to thrifts in the form of higher premiums. The Division also favors the more equal competition with banks resulting from raising thrifts' capital requirements to levels closer to those required of banks. The Division has filed similar comments urging adoption of such risk adjusted deposit insurance premiums for other types of depository institutions in rulemaking proceedings before the Board of Governors of the Federal Reserve System ("FRB"), the Office of the Comptroller of the Currency ("OCC"), and the Federal Deposit Insurance Corporation ("FDIC").

The Board supports the concept of risk adjusted deposit insurance premiums and has advocated their adoption before the United States Congress and in other forums. As the Division is aware, however, a large number of complex legal and economic issues attend the development and implementation of such a system. Those issues are being considered by a number of deliberative bodies, including Congress, the bank regulatory agencies, and the Board. The Board will continue its efforts to devise and implement an appropriate risk adjusted deposit insurance premium system. The Board, however, views risk based capital requirements as essential in the absence of risk adjusted premiums. Even with risk based premiums, however, capital requirements are needed to prevent insured institutions from exploiting their advantage as such.

Capital requirements for insured financial institutions are comparable to the deductibles on other types of insurance policies. One reason insurance companies establish deductibles is to reduce the incentives for the insured party to take advantage of its insured position by incurring excessive risks. Capital in an insured financial institution, by forcing the institution's owners to bear losses before the FSLIC pays claims, reduces the incentive for insured financial institutions to exploit their insured positions by taking excessive risks. Adequate capital for risky activities does not prohibit the activities, but only requires that a thrift's owners have more equity at risk.

The need for risk adjusted capital requirements is a direct result of the absence of risk adjusted insurance premiums. Deposit insurance premiums are levied at a flat rate regardless of the risks an institution takes. Flat rate insurance premiums create an incentive to take greater risks than would be taken with risk adjusted premiums. *See* M. Flannery, *Deposit Insurance Creates a Need for Bank Regulation*, Business Review (Federal Reserve Bank of Philadelphia, Jan./ Feb. 1982). Risk adjusted capital requirements offset the adverse effects of this feature by establishing what could be considered an adjustable deductible. While institutions that take excessive risks pay the same insurance premium rate, they

would have a much larger deductible under a risk adjusted capital requirement. By establishing the risk adjusted capital requirement with modifications to the proposal to enhance investment flexibility, the Board is protecting the FSLIC from inordinate risk taking by insured institutions without unduly inhibiting their investment choices.

c. Increased Reliance on Supervision

Some commenters suggested that the Board's goals could better be achieved through closer supervisory monitoring of institutions currently operating with low levels of capital. They argued that the supervisory process is the appropriate method of dealing with poorly run institutions and that the proposed regulation would reduce the flexibility of responsible managers, restricting exercise of their business judgment, and preventing them from competing successfully.

A few commenters warned that the Board must be prepared to deal with the estimated one-third of the industry that will be unable to comply with the new capital requirements. They predicted that the industry's bottom tier would become a drain on its healthier segments. A few commenters addressed this issue by suggesting that the Board provide incentives for strong institutions to make branch or asset acquisitions from weaker institutions or to acquire weaker institutions outright. Seven commenters asserted that institutions in areas of the country that are currently economically depressed (such as the Southwest and the farm belt) would suffer disproportionately from the new capital requirements.

These commenters misunderstand the Board's objectives in the proposal. The Board's purpose is not, as these commenters suggested, to force only weak institutions to raise their capital levels. Rather, the Board believes that the thrift industry as a whole is inadequately capitalized and seeks to remedy that condition by establishing a higher capital requirement for all thrifts. *See* 51 FR at 16452–53. The Board fully intends to continue and to improve its supervision of troubled institutions, but such oversight cannot identify and resolve all problems before they impair institutions' capital buffers. Supervision can not eliminate the need for capital or prevent FSLIC loss. Maintaining solid capital levels is a responsible, essential business practice for all financial institutions, particularly those charged with holding the savings deposits of the general public. Necessary reinforcement of institutions' capital levels cannot be achieved adequately through greater supervisory effort. The examination process often does not permit an examiner to assess an institution's need for enhanced capital until well after that need has arisen. For this reason, the Board concludes that additional examination and supervisory efforts should not be relied upon to the exclusion of adequate, industry-wide capitalization to require thrifts' owners to absorb losses before they have an impact on deposit insurance.

The Board, however, fully intends to increase its examination and supervision of institutions not meeting their capital requirements, using its full powers under section 563.13(d) to address the problems underlying the inadequate capitalization of such institutions.

Since the capital requirements adopted today will increase required capital levels beyond the reach of some institutions, thereby subjecting them to Principal Supervisory Agent ("PSA") supervision pursuant to § 563.13(d), the revised regulation will focus the Board's oversight and remedial efforts at an earlier stage on such institutions, improving the prospects for a successful outcome.

The Board notes that it has made substantial progress in achieving more effective and efficient examination by transfering, as of July 6, 1985, its field examination force to the 12 Federal Home Loan Bank districts under the control of the PSAs. This transfer has enabled the Board to offer more attractive compensation packages and better training to examiners, thereby improving the quality of its examination force. The Board believes that, as its examination force continues to expand and to retain experienced personnel, it will be able to monitor troubled institutions more closely.

Finally, two commenters suggested elimination of the proposed provision under which PSAs may disregard transactions entered into for the purpose of evading the regulatory capital requirements. Consistent with its view that an industry-wide increase in capital levels is both necessary and appropriate at this time, the Board finds it appropriate to retain this provision. Bank regulatory agency examiners have complete discretion and authority to increase institutions' capital requirements on a case-by-case basis over established minimum levels. The Board has determined not to delegate to supervision personnel complete discretion over insured institutions, but it is retaining the provision permitting the PSAs to disregard transactions entered into for purposes of evading the regulatory capital requirements. This provision, which was in the former regulation, has not caused undue confusion and uncertainty about net worth requirements, and there is no reason to think that it will in the future. The Board further notes that this provision, intended to stop evasion of today's final rule, should help reduce the need for formal action by the Board's Office of Enforcement.

The Board intends to use this same provision as contained in current regulations to deal with institutions that substantially increase their liabilities on or before January 1, 1987, in a manner not consistent with their normal growth patterns and business practices. Such practices will be scrutinized to determine if they were undertaken to increase the institution's base liabilities and to avoid treatment of subsequent growth as increased liabilities. The Board will also use this provision if institutions attempt to evade the contingency component requirements of this regulation by transferring certain assets to subsidiaries.

d. Treatment of Thrifts as Banks

Several commenters objected to what they viewed as the Board's modification of thrifts' capital requirements to achieve parity with those of commercial banks. Others opined that the proposal, with its incremental contingency component, could even have the effect of raising savings institutions' capital requirements significantly higher than the 6 percent requirement for commercial banks.

The capital requirements imposed by this final rule, rather than being based on banks' capital needs, reflect the Board's determination that the thrift industry is presently undercapitalized and that gradually raising the levels of regulatory capital to 6 percent will increase the industry's health and help ensure the safety and soundness of the FSLIC fund. This determination is supported by the Board's supervisory experience, economic studies of the thrift industry, and the history of thrifts' capital levels and requirements. Thrifts' capital needs stem from the credit risk and interest rate risk of their overall assets and liabilities, as well as their operating and competitive environment.

The Board continues to believe that thrift institutions fulfill a unique and vital national role of providing long-term, economical home financing, while banks primarily provide commercial credit. Furthermore, the Board recognizes that thrifts' portfolios—unlike typical bank portfolios—are

generally collateralized by residences, commercial buildings, and land.

The fact that thrifts today do engage in types of lending and other activities formerly reserved to banks and are subject to corresponding risks leads the Board to believe that it is appropriate to move toward greater parity of capital standards with banks. Moreover, even traditional thrift portfolios involve higher risk now than in the past as reflected by the fluctuation in interest rates experienced since 1979. Attaining such parity was recommended by the Bush Task Group on Regulation of Financial Services, which concluded that common minimum capital levels for federally insured banks and thrifts are appropriate to improve the overall condition of the financial system. *See Blueprint for Reform* 83–84 (1984).

4. History and Feasibility

a. History of Capital Requirements

In the preamble to its proposal, the Board traced the history of capital requirements applicable to insured institutions, the culmination of which is the current regulatory capital requirements. *See* 51 FR at 16551–52. Such a review demonstrates that under favorable economic conditions, the thrift industry has successfully sustained capital levels much higher than those now in effect. Accordingly, many of the commenters' general concerns about the need for and impact of the regulation are unwarranted.

The Board has imposed regulatory net worth and reserve requirements since at least the 1950s. In 1964, for example, the Board required institutions annually to credit 10 percent of their net income to reserves until their reserves equaled 12 percent of their insured accounts. Board Res. No. 9826, 21 FR 5483 (July 21, 1956). This requirement of a periodic net income credit to reserve accounts was retained until 1972, with periodic modifications in the criteria triggering the credit requirement.

In 1972, the Board replaced this provision with a requirement that insured institutions maintain net worth equal to the greater of 5 percent of insured accounts plus 20 percent of scheduled items plus 5 percent of secured borrowings, or the amount determined by the Asset Composition and Net-Worth Index ("ACNWI"). The ACNWI assigned minimum net worth percentages to specific types of assets. Institutions were also permitted to use average savings balances for the 5 most recent fiscal closings as their savings base. Board Res. No. 72–1415, 37 FR 26579 (Dec. 14, 1972).

In the early 1980s, the Board lowered the reserve and net worth requirements of insured institutions in response to the deteriorated financial condition of thrifts at that time. The industry's generally weak financial position was primarily caused by the large maturity mismatch between assets and liabilities in its members' portfolios and the resulting operating losses when interest rates rose. In 1980, pursuant to the expanded discretion granted it by the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96–221, 94 Stat. 132 ("DIDMCA"), the Board established 4 percent of insured accounts as the minimum reserve level and decreased net worth requirements to 4 percent of liabilities plus 20 percent of scheduled items. Board Res. No. 80–694, 45 FR 7811 (Nov. 18, 1980). In 1982 the DIA gave the Board further discretion to establish such "adequate reserves" requirements as it considered satisfactory. DIA section 202(d) (codified at 12 U.S.C. 1726(b)). The Board reduced the reserve requirement to 3 percent of insured accounts and the net worth requirement to 3 percent of liabilities. Board Res. No. 82–19, 47 FR 3543 (Jan. 26, 1982).

These reductions in the early 1980s in the net worth and reserve requirements of insured institutions from their traditional levels, although responsive to the financial emergency at that time, resulted in significantly reducing the amount of capital that institutions were required to hold. By December 1984, some institutions had minimum capital requirements of less than 1 percent of liabilities.

By adopting the net worth regulation in January 1985, the Board used its authority to reverse this trend and begin the return of these requirements to more traditional and appropriate levels. In response to the high risk strategies and excessive leveraging that low levels of capital encourage, the Board increased its minimum net worth requirements and created the structure of risk incentives and disincentives contained in the net worth regulation. The regulation adopted today continues the task of returning capital requirements to traditional levels, while also adjusting those requirements for the risk stemming from the exercise of thrifts' new, nontraditional powers under the DIDMCA, the DIA, and state legislation.

b. Historical Capital Levels by Industry Segment

The final rule represents a reasonable goal for the capitalization of the thrift industry, not only in terms of historical capital requirements but also in view of recent trends in insured institutions' actual capital levels, influenced in part by the former net worth regulation. This conclusion is the result of a study of the industry's capital levels over the past 10 years conducted by the Board's Office of Policy and Economic Research ("OPER"). *An Analysis of the Proposed Capital Requirements For Thrift Institutions: A Staff Economic Study* (Aug. 15, 1986) ("*Feasibility Study*").

More specifically, the *Feasibility Study* demonstrates that the level of capital held by most insured institutions during the early 1980s was abnormally low by historical standards. While the industry's average capital level during the entire 1970s was always above 5.5 percent of liabilities, it dipped to 3.8 percent in 1982. The Board views it as essential for the industry to return to its traditional capital level.

Second, the *Feasibility Study* shows that the characteristics of thrifts with low net worth ratios have changed. During the late 1970s, most firms with low net worth ratios were both relatively new and profitable. While firms with low net worth ratios were less profitable on the average than firms with higher net worth ratios, over 70 percent were profitable. Therefore they were better able to build up net worth from retained earnings. In no year since 1980 has more than 50 percent of the institutions with low net worth ratios been profitable. Indeed, since 1983, institutions with low net worth ratios on the average have been unprofitable while the rest of the industry on the average has been profitable. Thus, the financial condition of many low net worth institutions is deteriorating, with no improvement in sight.

Third, the majority of the industry is currently profitable and has an average capital level in excess of 5 percent. Out of a total of 3,252 insured institutions in March 1986, 1,684 of them had net worth levels in excess of 5 percent of liabilities. Ninety percent of these institutions were profitable in the first quarter of 1986. Another 961 institutions had net worth ratios between 3 percent and 5 percent in March 1986. Over 85 percent of those institutions were profitable, with the group, as a whole, having an average annualized return on assets ("ROA") during the first quarter of 1986 of 78 basis points.

The Board views these findings as persuasive evidence that most thrifts are returning to their traditional higher capital levels, partially in response to the Board's implementation of higher net worth requirements, and that the large majority of insured institutions will be able to meet the 6 percent capital requirements adopted today.

The Board also recognizes, however, that a substantial group of institutions with less than 3 percent net worth has not emerged from the problems of the early 1980s and has not had a positive ROA in this decade, despite the favorable current economic environment. In fact, the approximately 627 institutions (out of a total of 3,252 institutions) that had net worth below 3 percent in March 1986 had an average annualized ROA of negative 1.02 percent for the period from January 1986 through March 1986. For the same time period, the 1,664 institutions with net worth above 5 percent of liabilities had a positive average annualized ROA of 1.19 percent. The Board does not believe that it would be fulfilling its responsibility to set adequate capital requirements for the industry if it allowed the minority of institutions with net worth below 3 percent to control the establishment of industry-wide capital requirements. Regrettably, much of that group is unlikely to satisfy any reasonable capital standard.

c. Feasibility Study

In addition to analyzing the history of its capital requirements and the industry's capital levels over the past 10 years, the Board studied the feasibility of the industry's reaching the capital goals adopted today. Part of OPER's *Feasibility Study* investigated the extent to which thrift institutions could be expected to satisfy the capital requirements set forth in the Board's regulatory capital proposal. As is discussed at length below, this study indicates that many thrifts already exceed the 6 percent capital requirement established by the final rule and that many others have capital of between 3 and 6 percent. The large majority of such institutions will be able, with reasonable effort, to meet the higher requirements through retained earnings, growth modification, portfolio adjustments, and the sale of equity securities and subordinated debt.

Predictably, the institutions that will experience the greatest difficulty are those that are currently failing their net worth requirements or that are only marginally meeting their requirements. The Board recognizes that these institutions may experience serious problems meeting their new capital requirements. The Board, however, is unwilling to set capital requirements at levels easily attainable by the weakest segment of the industry. To do so would virtually ensure that the industry as a whole would continue to be inadequately capitalized. At the same time, no evidence suggests that currently troubled thrifts will become less troubled if the Board does not revise its capital requirements.

The *Feasibility Study* includes simulation analyses dividing insured institutions into three groups based on whether their levels of regulatory capital as a percentage of liabilities were, as of March 1986, 5 percent or higher, between 3 and 5 percent, or below 3 percent. This trichotomy allows identification of supportable growth rates for each segment of the industry, while not permitting the minority of institutions with low net worth ratios (most of them not meeting their current net worth requirements) and negative ROAs to distort the average capital needs and capabilities of the industry. The analysis projects the feasibility of each group's meeting the proposed regulatory capital requirements under various interest rate, growth, and profitability scenarios. The simulations also investigate the extent to which thrifts could satisfy the current and proposed capital requirements through retained earnings and growth modification. The study also estimates the amount of additional external capital (capital not raised through retained earnings) needed for all institutions to meet the proposed capital requirements.

The simulation analyses project that approximately 2,450 insured institutions will be able to meet their increased capital requirements through retained earnings and growth modification. The approximately 800 remaining institutions will require new external capital to meet the proposed requirement. However, 500 of those institutions already need additional external capital to satisfy the current regulation. Only about 300 additional institutions, about 9 percent of insured institutions, will need to raise external capital. Thus, the proportionate increase from this regulation is modest.

Furthermore, almost 500 of the institutions needing additional external capital are from the bottom tier of the industry—institutions with current net worth levels below 3 percent, some of them well below. Fewer than one-fourth of the over 900 institutions in the middle tier of the industry are projected to require any new external capital to meet the proposed requirements. Less than 5 percent of the top tier will require new external capital.

The amount of new external capital required by institutions with current net worth ratios above 3 percent is projected to be less than $10 billion, and probably will be closer to $5 billion or less. The capital needs of the bottom tier of the industry are substantially greater.

While the proposed capital requirements are projected to reduce somewhat the growth rate experienced by the industry under the current regulation, the study suggests that institutions with current net worth ratios above 3 percent should nonetheless be able on average to grow over 6 percent per year with no additional external capital. Of course, greater growth is attainable if new external capital is raised. Institutions with current net worth ratios less than 3 percent are projected to be able to grow very little without additional external capital.

In sum, the results of the simulation analyses clearly indicate that the proposed capital requirements are attainable and reasonable in light of current net worth levels, portfolio composition, and projected industry profitability.

5. Specific Comments on the Proposal

a. Liability Component

A large majority of commenters concurred with the Board's determination that insured institutions need to increase their current capital levels. Indeed, a large percentage of the letters received from the managers of insured institutions stated that they already were taking steps to shore up their capital for sound management, financial, and economic reasons. While a significant number of the commenters contended that attaining 6 percent capital over 6 years was unrealistic for most institutions, they believed that their own institutions would be able to meet the capital target in the absence of severe adverse circumstances.

Over two-thirds of the commenters stated that attaining 6 percent capital on total liabilities in 6 years and capitalizing increased liabilities at 6 percent immediately is unrealistic and unattainable for many insured institutions. Some commenters argued that the final general capital requirement should be lowered to 4 or 5 percent. Over half of the commenters contended that the 6-year phase-in period to attain 6 percent capital on total liabilities should be extended, and most commenters recommended a 10- or 12-year phase-in period. Many of these commenters stated that going from 3 to 6 percent capital in 6 years will require institutions to generate a 50 basis point return on assets each year even if they do not grow. Their studies indicated that institutions experiencing growth would be required to have dramatically higher profits to meet their capital requirements. These commenters stressed that the industry has never

experienced such a sustained period of profitability.

A number of commenters specifically protested being required to capitalize increased liabilities at 6 percent immediately. These commenters claimed that requiring such immediate capitalization will prevent prudent growth and restrict earnings, thereby inhibiting such institutions' ability to raise capital through the retention of earnings and the sale of equity securities. Several commenters suggested excluding from the calculation of growth increased liabilities resulting from interest credited to the accounts of depositors.

Many commenters suggested modifications to ameliorate the perceived harmful effects of the proposal. First, some commenters asserted that the problem caused by the short phase-in period is exacerbated for those institutions currently under 3 percent net worth because under the proposal such institutions must have a "snapshot" 3 percent net worth on their base liabilities (liabilities on October 1, 1986) as of December 31, 1986. They recommended allowing such institutions to make the transition to 6 percent capital on a straight-line basis from their base factors (12 CFR 563.13(g)(2) (1986)) as of September 30, 1986. The Board has avoided the "snapshot" requirement by the modification discussed below. Second, instead of the proposed incremental capital rates, some of the commenters argued that the Board should either (1) set the incremental requirement 50 or 100 basis points above the current liability factor, or (2) base required incremental capital on a sliding growth scale. This second alternative would require institutions to capitalize increased liabilities at the higher of the current liability factor for base liabilities or a growth factor (3, 4.5, or 6 percent) based on the institution's growth range (less than 15 percent, between 15 and 25 percent, or over 25 percent annually). Third, a few commenters recommended calculating the requirement annually rather than quarterly. Fourth, one commenter requested that the Board adjust the capital requirement for seasonal fluctuations in liabilities, a problem particular to resort areas of the country.

After carefully reviewing all of the comments received on these issues, the Board continues to believe that insured institutions have an immediate need for 6 percent capital on their total liabilities before risk adjustment, as was fully discussed in the proposal. *See* 51 FR at 16552. The industry's current level of required capital does not provide adequate protection for insured institutions, their accountholders, and the FSLIC in light of the economic and financial risks facing the industry.

First, institutions' capital reserves must be large enough to withstand "normal" variations in earnings. Because thrifts' earnings are closely related to interest rate movements, the increased volatility in interest rates since 1979 is reflected in correspondingly increased volatility in institutions' "normal" earnings. This risk from interest rate fluctuations is exacerbated further by the nature of thrift portfolios, which have traditionally been composed of long-term, fixed-rate assets and short-term liabilities.

Second, the Board's decision to reduce reserve and capital requirements in the 1980 to 1983 period was in response to the major financial problems of insured institutions resulting from substantial negative spreads between their asset yields and cost of funds during that period. Current interest rates and the interest rate spreads between institutions' assets and liabilities have returned to 1978 levels, thereby making it feasible for a large majority of institutions to attain higher capital levels. For example, in 1981 and 1982 thrifts' average annualized cost of funds was 10.86 and 11.24 percent, while their average annualized return on mortgages was 9.91 and 10.65. For 1984 and 1985, their average annualized cost of funds was 9.59 and 9.12 percent, while their average annualized return on mortgages was significantly higher, 11.66 and 11.53 percent. Furthermore, as a result of the improvement in thrifts' profits, a favorable market for thrift equity issues, and the effects of the current net worth regulation, the regulatory net worth of thrifts rose to $46.6 billion at the end of 1985, increasing thrifts' average regulatory net worth to liabilities ratio to 4.36 percent from 3.87 percent at the end of 1984. Although current interest rate spreads are favorable to thrifts and their average net worth ratios have increased, the continuing high volatility of the interest rate environment by historical standards demands that capital be increased while feasible to protect institutions and the FSLIC against future adverse interest rate movements.

Third, the competitive environment in which thrifts operate necessitates greater minimum capital requirements. Insured institutions have in recent years been required to compete with other types of financial institutions by offering high investment yields in order to attract and retain deposits and capital. This increased competition reduces operating margins and increases the need for additional capital to help institutions endure adverse economic periods and compete more vigorously.

Fourth, the new expanded asset powers of federally and state-chartered insured institutions have provided beneficial diversification opportunities for institutions, but they have also increased their opportunities for risk taking. Some institutions that have exercised these expanded asset powers without adequate risk evaluation or protection have developed severe asset quality problems previously almost unknown in the thrift industry. Four years ago, roughly 80 percent of the FSLIC's cases were primarily caused by interest rate spread problems, while 20 percent were due primarily to asset quality problems. Recently that ratio has almost completely reversed itself to 30 percent interest rate spread problems and 70 percent asset quality problems. This is particularly significant because resolution of asset quality problems is substantially more costly for the FSLIC. The Board is firmly convinced that institutions' capital requirements must track the risk inherent in their operations and investments, including commercial loans and equity investments.

Fifth, commercial banks currently are required to maintain significantly higher capital ratios than thrifts. The federal bank supervisory agencies generally require ratios of total capital to total assets of not less than 6 percent, with required ratios of primary capital to total assets of not less than 5.5 percent. The FDIC, as did the FRB and the OCC in adopting these standards, fully considered and discussed the needs of insured commercial banks for these levels of capital in the interest of bank safety and soundness. *See* 50 FR 11136 (March 19, 1985). The Board shares these safety and soundness concerns, as modified to reflect the collateralization of a substantial percentage of thrifts' portfolios by residences, commercial buildings, and land.

(i) *Modifications to the Proposal.* Although the Board has determined, based on the *Feasibility Study* and other considerations, that the large majority of institutions meeting their current net worth requirements would be able to satisfy the proposed regulatory capital requirements, the Board has decided, partially in response to commenters, to modify certain aspects of the proposal to aid institutions in meeting the new capital requirements. The changes most directly applicable to attaining the general 6 percent capital requirements

are the Board's decisions (1) to base the phase-in schedule on the profitability of insured institutions during the transition period, and (2) to avoid the "snapshot" 3 percent requirement at the time of the first computation. These modifications are discussed below along with others establishing the maturity matching credit calculated from institutions' interest rates gaps and adjusting the incremental capital requirements for institutions' capitalization ratios.

(ii) *Cumulative Effect.* Many commenters expressed serious concern that the cumulative effect of various legislative and regulatory changes will so impair institutions' earnings that they will be unable to meet the proposed capital requirements. The commenters specifically addressed concerns about the proposed tax reforms, continuation of the FSLIC special assessment, and other Board regulations. They also expressed their concerns about the impact of the Financial Accounting Standards Board's ("FASB") proposed new treatment of loan origination fees. *Accounting for Nonrefundable Fees and Costs Associated with Originating and Acquiring Loans,* December 1985.

The Board has decided to adopt this regulation despite other pending legislative and regulatory proposals for two reasons. First, capital adequacy continues to be a fundamental concern of the Board when considering the health of insured institutions and the protection of the FSLIC fund. Given the importance of capital adequacy, the Board believes that it would be inappropriate to postpone implementation of this regulation or to condition its implementation on the results of other regulatory or legislative activity. Second, the *Feasibility Study* indicates that most institutions will be able to satisfy the higher requirements despite the potential effects of these other legislative or regulatory initiatives. As discussed below, the Board is modifying the phase-in period to accommodate any adverse or beneficial effect from the changing economic circumstances for insured institutions, including such proposed initiatives. Furthermore, the Board will monitor such proposals and their effects on insured institutions and may revisit these issues if warranted.

(iii) *Flexibility for Well Capitalized Institutions.* A number of commenters suggested that well managed institutions with relatively high capital levels should enjoy greater investment and growth flexibility and reduced incremental capital requirements. Some of these commenters further suggested that the incremental capital and growth restrictions should vary inversely with institutions' capital levels and other factors reflecting sound management. The Board adopted these recommendations by making the changes to the proposal explained below.

(iv) *Gambling on High Yield Investments.* A large number of commenters argued that the difficulty of satisfying the proposed capital requirements through earnings on a conservative thrift portfolio would cause institutions to gamble on high yield, high risk strategies (usually devised to avoid the incremental contingency requirements) that could increase institutions' risk of failure and, correspondingly, the risk to the FSLIC. They also state that setting unachievable capital requirements stigmatizes conservative institutions as unsound when the converse may be true.

Although the Board does not view the proposed capital requirements as unachievable, it is responding positively to these and other comments by making the feasibility enhancing modifications explained elsewhere. These changes should reduce the incentive for sound institutions to take inordinate risks to achieve the capital requirements. Naturally, these institutions must continue to take reasonable action to increase their ROA, lower their cost of funds, and improve their operating efficiency. It also should be noted that many of the commenters appeared to assume that institutions could only increase capital through retained earnings, totally disregarding the ability of many stock institutions to raise external capital by selling common stock, preferred stock, and subordinated debt in the pubic market. Many strong mutual institutions can also raise external capital by converting to stock form or issuing subordinated debt.

The Board does recognize that some poorly managed institutions, unable to access the securities market, may attempt ill conceived, high risk strategies. The management of such an institution would, in effect, be choosing to endanger the solvency of the institution through high risk schemes rather than work with the PSA in resolving the problems underlying the institution's continuing low capital position. The Board believes, however, that it cannot responsibly set the capital requirements of insured institutions at levels that such poorly managed, undercapitalized institutions can easily meet. Instead, the Board must rely on its monitoring of such actions and its general enforcement powers to control irresponsible actions by a minority of insured institutions.

(v) *External Sources of Capital.* Some commenters expressed concern that the market will be unable to absorb the necessary level of thrift issuances at full value. They anticipate that a market glut of thrift securities will develop that will harm the marketability and price of the securities, thereby retarding the process of increasing capital.

Furthermore, some commenters contended that if unachievable capital requirements are imposed many sound institutions will be branded as problem institutions vulnerable to tight government control, thus harming the institutions' ability to raise adequate amounts of external capital at reasonable prices. A few commenters also made the point that the capital requirement should not be so high that institutions would be unable to pay dividends to stockholders, thereby thwarting their ability to raise external capital.

In response to these and other comments, the Board has modified the proposal, as discussed elsewhere. These modifications also should allow well capitalized institutions to operate more freely and to pay reasonable dividends.

The *Feasibility Study* finds, moreover, that it is highly practicable for thrifts to raise external capital through the issuance of additional equity securities by stock institutions or through the conversion to stock form by mutual institutions. The study demonstrates that there currently is a bull market in thrift securities. From January 1, 1985, to June 30, 1986, the Standard and Poor's 500 index of the stock market increased in value by 48 percent. Over the same period, a thrift industry stock market index increased by 129 percent, over two and one-half times the increase of the broader index. The OPER *Feasibility Study* attributes this increase to the general rise in the stock market and the influence of interest rate variations on the prices of thrift stocks.

At the end of 1985, there were 1,087 stock institutions (about one-third of the industry) holding $602 billion in assets, 56 percent of the industry's assets. These institutions raised about $2 billion in new equity during 1985 and the first quarter of 1986. Also in December 1985, there were 2,158 mutual institutions holding assets of $468 billion.

The *Feasibility Study* indicates that there is an extremely strong conversion market for the securities of mutual institutions and that conversion constitutes the largest source of new capital for the thrift industry. Typically, the value of a mutual institution is

appraised, and stock is sold in that amount. From 1976 through the first quarter of 1986, a total of $5.5 billion in new equity was issued and sold in this manner. The possibility of mutuals converting and issuing subordinated debt is discussed further below. In short, however, the conversion market presents a large number of mutual institutions with the opportunity, if they choose to use it, to improve their capital positions dramatically.

(vi) *The Need for Mutuals to Convert to Stock Form.* Several commenters objected that the proposal would have forced a large number of insured institutions, particularly mutual institutions, either to convert to the stock form, to merge, or to be liquidated. These commenters expressed concern that mutuals, which serve a valuable purpose by focusing on their communities' home financing needs, would be forced out of existence. Some comments requested that the Board at least simplify the process of conversion.

The Board does not intend to force mutual institutions to convert to the stock form, nor should the new capital regulation necessarily have that effect. Rather, the regulation is intended to raise regulatory capital levels in the industry. Of the 2,158 insured mutual institutions at the end of 1985, 1,101 had regulatory net worth to liability levels of over 5 percent. These institutions either already comply with the final rule or should be able to comply within the transition period without having to convert or raise external capital by other means. Many of the 641 mutual institutions with regulatory net worth to liability levels of between 3 and 5 percent will also be able to comply with the regulation without converting or raising large amounts of external capital.

The Board's studies and experience do indicate, however, that the range of mutual institutions that have converted is so broad that some institutions with low net worth also can raise their regulatory capital levels through conversion. Indeed, the environment for conversion has been extremely hospitable of late, and the conversion process in general has been successful. Between January 1, 1985, and March 31, 1986, 60 mutual institutions converted, raising a total of nearly $1.2 billion in new equity capital. Of these institutions, the average preconversion ratio of regulatory net worth to liabilities was 3.95 percent. This ranged from a low of −.4 percent to a high of 10.8 percent. The average preconversion ratio of net worth to liabilities using generally accepted accounting principles ("GAAP") was 3.3 percent, ranging from a low of 0 percent to a high of 10.8 percent. Moreover, the institutions with preconversion regulatory net worth to liabilities of less than 3 percent that converted during the 1985 to 1986 period raised new capital of $94.5 million. On the average, institutions that converted during this period increased their ratio of regulatory net worth to liabilities by 3.6 percent.

The conversion market has been propelled by a number of factors. First, the positive effect on thrifts' earnings of the decline in interest rates has made thrift issuances attractive to the market. Second, many mutual institutions are attractive to prospective stockholders because they have restructured their portfolios to create solid core earnings that will be relatively immune to interest rate fluctuations. Third, many conversions in 1983 and 1984 were sold with the expectation that the institution would become a takeover candidate.

However, there are viable alternatives for mutual institutions that do not wish to convert. Among other things, thrifts can issue subordinated debt, sell assets, or reduce outstanding liabilities. Furthermore, the Board's modified transition period will allow the earnings of mutual institutions to play an even larger role in meeting their capital requirements.

(vii) *Rejection of Other Recommended Alternatives.* In light of the achievability of these regulatory capital requirements for most institutions meeting their current requirements, and mindful of the modifications to the proposal, the Board has decided that other changes suggested by commenters either are unnecessary or would impair the industry's attainment of a general capital requirement of 6 percent capital adjusted for risk. The sliding scale based on growth rates, although helpful in slowing highly leveraged growth under the prior net worth regulation, is unnecessary under the final rule because all increased liabilities will be capitalized at 6 percent, thereby halting overleveraged growth. Furthermore, requiring 6 percent incremental capitalization reduces the need to raise an unrealistic amount of capital at the end of the transition period.

The *Feasibility Study* has persuaded the Board to reject the suggestions that growth from the crediting of interest to accountholders be excluded and that seasonal adjustments for deposit growth be made. The modifications made by the Board in adopting semiannual adjustments and growth regulation revisions have addressed these issues to the extent warranted.

Finally, the immediate need for increased capital and for institutions to be able to track their capital positions and requirements dissuades the Board from adopting the suggestions for establishing at the beginning of a year a capital requirement to be met at the end of the year and for computing the requirement annually rather than quarterly. The Board rejected this recommendation in 1985 when it adopted the prior net worth regulation. The Board remains convinced that institutions should compute and meet their capital requirements at the end of each quarter.

b. Contingency Component

Almost half of the commenters addressed the proposed amendments to the contingency factor, which a majority supported with certain modifications suggested by many commenters. By far the concern most frequently expressed by comment letters was the lack of grandfathering in the proposal. Many pointed out the difficulties involved in imposing new capital requirements on loans and investments already owned or committed to by an institution. Commenters believed that this would require either the sale of assets, possibly at distress prices, or the immediate setting aside of additional reserves. Commenters argued that for institutions with carefully planned programs, as well as for those with cash flow or liquidity problems, this would be difficult if not impossible. Commenters also felt that it would be unfair to place additional restrictions on investments that were acceptable when made. Upon reconsideration, the Board agrees that hardship could be caused by the imposition of new requirements on existing elements of insured institutions' portfolios. Consequently, the final rule grandfathers direct investments, land loans, and nonresidential construction loans as described below.

Other commenters addressed the general requirement of additional reserves against specified types of assets. A number suggested that classification of assets is a better approach; others favored more stringent limitations on loans to one borrower or aggregate direct investments instead of the proposed revision of the contingency component. These commenters argued that the risks associated by the Board with problem investments could be better identified and controlled by these other methods.

As the Board observed in the proposal, the problem of losses associated with direct investments, land loans and nonresidential construction

loans is addressed to a certain extent by the classification of assets regulation, 12 CFR 561.16c, recently adopted by the Board. This regulation requires additional capital or the establishment of reserves for those assets which, upon examination, are found to be either nonperforming or weak to a substantial degree. Classification is a method for identifying, at an earlier date than is otherwise possible, assets that may result in losses. However, it does not require the institution to provide a cushion of extra capital at the outset of a risky transaction, a time when the institution is more likely to be able to establish reserves against possible future losses. Further, the classification of assets regulation only operates on a case-by-case basis and does not specifically address types of transactions that the Board has found to be inherently risky. Finally, investments in securities—a significant component of direct investment—are excluded entirely from the classification of assets regulation. As a result, the Board has determined that the classification of assets regulation is not a substitute for requiring increased capital reserves against investments involving a high degree of risk.

The Board declines to implement suggestions that the risks associated with these types of investments should be addressed by a loan to one borrower limit or modification of the current limit on direct investments. While a ceiling on equity investments in or loans to a particular entity limits exposure from investments or loans to that entity, it does not provide a cushion against the risk of loss inherent in a program of direct investments or high risk loans to a number of entities. Consequently, the Board does not believe that this type of limit could be substituted for capital requirements for these investments. The Board will consider the interaction between these capital requirements and the direct investment regulation when it examines the direct investment regulation prior to its expiration on January 1, 1987.

Commenters asserted that institutions with careful investment programs and solid underwriting can make direct investments and land and nonresidential construction loans without exposure to abnormal risk. Several commenters contended that for a healthy institution these types of investments contribute to financial strength and profitability, and sought the flexibility to continue making them.

It has been the Board's examination experience, noted in the preamble to the proposal, that losses on direct investments have been due to the speculative nature of those investments. Losses on land loans and nonresidential construction loans stem largely from the underwriting and investment policies of individual institutions. The examples discussed at length in the proposal reveal severe loan underwriting and loan administration deficiencies with regard to these types of loans, including little or no management analysis of project feasibility or the ability of the borrower to repay the loan, failure to verify project progress prior to disbursing draws, and inadequate appraisals.

The Board also recognizes that institutions with low regulatory capital have an incentive to gamble on high returns from heavy investments in nonresidential construction loans, land loans or other high-risk investments because they, not the FSLIC, have much to gain and nothing to lose. Implementing additional capital requirements for such loans would motivate each institution to make prudent operating decisions and to set prudent operating policies by giving the institution a significant stake in adverse as well as positive outcomes of its decisions. Additional capital requirements will discourage irresponsible operating policies because the brunt of losses from "bad" operating policies will fall first on the institution's capital reserve rather than on the FSLIC insurance fund. For these reasons, the Board has concluded that, while an institution should be permitted to exercise independent judgment in selection and implementation of operating policies, the freedom to set such policies must be coupled with the institution's maintenance of adequate regulatory capital.

A number of commenters made specific suggestions for changes in the contingency factor. Many favored imposing additional reserve requirements only when institutions exceed designated levels of direct investments, nonresidential construction loans, and land loans. Others suggested different percentages of required capitalization, including some which were lower and some which were higher than those proposed. Specific suggestions included excluding multi-family construction loans, lines of credit and credit cards, and exempting particular loans or investments of certain institutions based on the institutions' track records, net worth, the loan-to-value ratios of their loans, and other factors.

The Board believes that many of the specific suggestions of the comment letters have merit and is adopting in this final regulation several significant modifications suggested by commenters. The Board upon reconsideration agrees that it is not necessary to require all insured institutions to hold reserves to the same extent against all the items in the contingency factor. The requirement will be based instead on the amount of an institution's capital and the percentage of its assets subject to the contingency component. Moreover, the Board has determined to exclude loans for construction of multifamily residences from the category of construction loans requiring additional capital. With respect to other components of the contingency factor, the Board has decided to retain the capitalization requirements of 2 percent of recourse liabilities and 20 percent of scheduled items, but to require a new reserve only against standby letters of credit. These and other changes will be described more fully below.

c. Maturity Matching Credit

About one-fourth of the commenters addressed the proposal's expansion of the qualifying balance deduction. Most of the commenters generally supported the proposal, but suggested specific changes to further expand this deduction.

The proposal would have expanded the definition of qualifying balances to include an institution's liquid assets as defined in 12 CFR 523.10, plus its qualifying ARMs, plus 1–4 family residential mortgages representing permanent rather than construction financing, and investment grade mortgage related securities with remaining contractual term-to-maturity of 2 years or less, fixed-rate liabilities with remaining term-to-maturity of 3 years or more (the dollar weighted average term-to-maturity of liabilities used in this exclusion had to be at least 5 years) for which the institution has a comparable amount of fixed-rate, permanent, 1-4 family residential mortgages and/or investment grade mortgage backed securities of equal or greater maturity. The proposal would not have permitted an institution to reduce its overall capital requirement below 3 percent for the first 3 years after the proposed effective date. After the third year, an institution would not have been permitted to reduce its overall requirement below 4 percent, and after the sixth year the minimum would have been 5 percent.

Many commenters suggested an expansion of the qualifying balance deduction. Some commenters were of the opinion that the Board should deem

all interest rate sensitive assets eligible for inclusion in the qualifying balance deduction. Others proposed the inclusion of specific interest rate sensitive assets, including ARMs secured by multifamily housing, adjustable-rate consumer loans, all government guaranteed mortgage backed securities, and all liquid assets. Several commenters also suggested that the qualifying balance deduction include passbook accounts, negotiable order of withdrawal ("NOW") accounts, and certificates of deposit ("CDs") subject to substantial early withdrawal penalties rather than only those that may not be withdrawn prior to maturity. Commenters described such assets as "stable sources of funds."

Most of the comments that addressed specific components of the proposal recommended that the Board expand the category of ARMs eligible for inclusion in the qualifying balance deduction. A majority of the commenters who addressed this issue felt that it was unrealistic to require that an ARM have a cap of at least 5 percent above the fully indexed initial rate. Some commenters suggested that the Board should instead require a cap of 5 percent above the actual initial rate or a cap of 4 percent above the fully indexed rate. Other comments advocated the inclusion of ARMs that adjust every 3 years.

Many comments objected to the proposed system of floors below which an institution's required capital could not be lowered. Most comments which addressed this issue suggested that the Board permit qualifying balances to reduce the net worth requirement to 3 percent without the proposed stipulation that the reduction would be decreased after several years. Furthermore, these comments stated that the amount of credit given for qualifying assets should be more closely equivalent to the amount of reserves required for other assets.

The proposal, and previous regulations governing minimum regulatory capital requirements, reflected the Board's determination that the qualifying balance deduction should be a function of the amount of an institution's specific assets and liabilities that tend to generate low interest rate risk. In response to the comments, which almost unanimously criticized the limited numbers and types of items that the Board identified as includable in the qualifying balance deduction, the Board has decided to reconsider its approach to the calculation of this credit. The Board has determined that the qualifying balance deduction should be a measure of an institution's overall interest rate risk and that the most accurate available computation of this risk is the cumulative hedged gap figure. This approach will be explained more fully below.

d. Growth Regulation

One commenter protested that the Board did not have statutory authority to adopt the growth regulation initially in 1985 and therefore cannot retain or revise the regulation. This commenter did concede the Board's authority to establish reserves as a lawful basis for the 4 percent incremental requirement on excess growth, although the commenter disputed the need for this provision.

The Board fully considered a substantial number of comments on this point when it proposed and adopted the former growth regulation and believes that the reasons leading to the regulation's initial adoption continue to support the Board's authority and need to retain the regulation. In short, the Board believes that this control over growth aids the Board to exercise its supervisory responsibility under the National Housing Act and the Federal Home Loan Bank Act to protect the safety and soundness of insured institutions.

A few commenters addressed the Board's proposed changes to § 563.13–1, 12 CFR 563.13–1 (1986), the regulation requiring PSA approval of growth over a 2-quarter period at greater than a 25 percent annual rate. Five commenters thought that the Board should not restrict an institution's growth so long as it is adequately capitalized. Seven commenters discussed the timing of action by the PSA in reviewing and approving growth plans. These commenters thought that the PSA should be required to respond promptly to a growth plan and to refrain from delaying the date for final action on a plan by requesting additional information. Finally, one commenter complained that the effect of the application of the growth regulation to *de novo* institutions and other small institutions would be crippling, preventing such institutions from achieving economies of scale and reaching the point of financial viability.

In retaining the growth regulation, as amended, the Board seeks to ensure that rapid growth is adequately capitalized and is undertaken pursuant to a well considered growth plan under appropriate PSA supervision. The Board's experience in supervising institutions with high growth rates dictates generally that the Board retain its current regulation providing for approval of growth over 25 percent.

The Board has decided, however, to exempt from the prior approval requirement institutions meeting the higher of their fully phased-in capital requirement (6 percent of total liabilities plus contingency component minus maturity matching credit) ("fully phased-in requirement") or 6 percent of total liabilities. The Board has supervisory authority over all institutions, however, it has decided to provide greater growth flexibility to such well-capitalized institutions. These exempted institutions must continue to provide notice to their PSAs, in the same manner as institutions seeking PSA approval of their intention to grow in excess of the standard set by the regulation.

This modification also has the effect of exempting from the pre-approval requirement *de novo* institutions with capital equal to the higher of the fully phased-in requirement or 6 percent of total liabilities, which include the large majority of *de novo* institutions because of their higher capital requirements. *De novo* institutions also are subject to additional requirements under their charters, including PSA review of their business plans for their first 3 years of operation, which eliminate the need for and may conflict with application of the growth regulation. Moreover, this exemption from the pre-approval requirement for *de novo* institutions meeting the higher of their fully phased-in requirement or 6 percent of total liabilities will enable them to achieve economies of scale and expand according to their plans for economic viability under general PSA oversight.

Although the Board is adopting this exemption, it is eliminating the general exemption from the growth regulation for institutions with total assets of $100 million or less. Therefore, only well capitalized institutions satisfying the criteria of the new exemption will not be subject to the regulation. The reasons for the Board's determination to eliminate this exemption were fully set forth in the preamble to its regulatory capital proposal. *See* 51 FR at 16554. As stated there, the fact that an institution has $100 million or less in assets does not protect it or the FSLIC from the ill effects of highly leveraged growth. Termination of this exemption will affect institutions without capital equal to the higher of 6 percent of total liabilities or their fully phased-in requirements. A substantial number of these institutions are non *de novo* institutions that were operating before December 1983 but that have not grown

to $100 million since they commenced operation.

Such institutions are not subject to the same charter requirements as *de novo* institutions, and the Board's supervisory experience shows no reason to extend the exemption from the general regulation for these institutions.

Finally, the Board finds that the procedure established for permitting growth in excess of the regulatory norm is adequate to accommodate the needs of institutions that can demonstrate their ability to undertake adequately capitalized growth. The Board is, however, sensitive to institutions' need to obtain expeditious review of their requests for approval of such higher growth levels. For this reason, the Board sought comment on whether to retain the current requirement that PSAs notify institutions within 10 days of the filing of a growth plan whether they had provided all necessary information or whether additional information was required. After balancing the need for prompt action on growth plans and the administrative burden on the PSAs of acting on applications, the Board has decided to continue the 10-day time period for PSA notification.

The Board has also decided to adopt its proposal to add another standard to those permitting disapproval or conditioning of growth plans. This new standard permits the PSA to base his determination on whether the overall policies, conditions, and operation of the applicant afford a basis for supervisory objection. The PSAs' experience with reviewing growth plans reflects that this addition will aid their overall review determinations.

The Board is also adopting a liberalizing amendment to exclude from the growth regulation securities issuances of finance subsidiaries up to institutions' levels on December 31, 1985. Under the former regulation, when grandfathered securities mature and are replaced by other securities up to the same dollar amount, the amount of new securities must be included in the finance subsidiary's parent institution's total liabilities unless otherwise exempted under § 563.13–2. This amount must be capitalized at 6 percent unless the parent's total liabilities are less than its base liabilities at the end of the quarter in which the new securities are issued. The Board, however, has decided not to include such securities in the parent's growth for that quarter under § 563.13–1. In addition, the Board will use the total liabilities figure used for regulatory capital purposes as the beginning liabilities figure for the next growth computation period. That is, the new non-grandfathered securities issuance will be included in the parent's total liabilities as of the quarter in which issued, with its resulting effect on regulatory capital, but will not be counted for growth purposes. The Board is making this exemption to enable institutions to use the 25 percent annual growth limitation for new liability growth at the parent or finance subsidiary level before requiring PSA approval, rather than needing such approval just to keep its existing level of securities issuances in its finance subsidiary. In short, the growth regulation was not targeted at growth resulting from the Board's decision to include non-duration matched securities issuances through subsidiaries in the total liabilities of parent institutions.

e. Finance Subsidiaries

Ten comment letters addressed the Board's proposal to amend § 563.13–2, which requires the securities issuances of finance subsidiaries and certain other subsidiaries to be included in the total liabilities of their parent institutions for purposes of computing the parent's net worth requirement. This regulation currently provides an exemption from this requirement for securities issuances that are substantially duration matched to the issuance's collateralizing assets and that will remain so matched throughout the life of the securities without active management. In order to limit credit risk and excess overcollateralization without adequate capitalization, the Board proposed to limit this exclusion to those duration matched securities that are collateralized by assets whose market value is less than 110 percent of the gross proceeds of the securities issuance. The Board solicited comment on this issue.

Two commenters concurred with the 110 percent restriction. Six other commenters argued that the Board's proposed limitation would force thrifts to use only high grade, high coupon assets, such as guaranteed mortgage backed securities, to collateralize finance subsidiaries' securities issuances. They asserted that such action would frustrate a primary purpose of creating finance subsidiaries—to liquify "underwater" assets and other lower quality assets and transfer interest rate risk to third parties. Similarly, one commenter contended that the Board would be harming the development of various types of mortgage related securities that would transfer some risk from the FSLIC to the market. Two commenters contended that because the rating agencies require collateralization of 105 percent on a book value basis, such collateralization by premium assets could significantly exceed the 110 percent market value collateral limit. One commenter recommended that the Board achieve its goals of limiting credit risk by applying the incremental capital requirements under the contingency component to the assets of finance subsidiaries. Another comment added an alternative for totally restructuring the current regulation. Finally, one letter suggested that the Board have the PSAs review issuances for credit risk and overcollateralization on a case by case basis.

After consideration of these comments, the Board continues to believe that it must adopt the rule as proposed, restricting the market value of collateral for securities issuances exempted from a regulatory capital requirement to 110 percent of the issuance's gross proceeds, in order to restrict the credit risk often associated with high levels of overcollateralization. Such levels of overcollateralization generally reflect the market's determination that the collateral involves high credit risk. The Board wishes to ensure that it does not provide incentives for the origination or purchase of such risky assets. The Board has concluded, as stated in the proposal, that allowing collateralization by assets with market value up to 110 percent of the gross proceeds of a securities issuance would allow the large majority of mortgage related securities issuances, including almost all that are backed by guaranteed mortgage backed securities, to be exempted if they are duration matched. The Board also will monitor the effects of this limit. The Board is not prohibiting issuances with greater collateralization, but rather is requiring only that such securities be subject to a regulatory capital requirement through inclusion in the parent's total liabilities like any of the parent thrift's liabilities.

The Board has decided not to adopt the other recommendations of commenters, such as relying solely on PSA review. The Board believes it pointless and overly burdensome to provide for PSA review of the credit risk of issuances on a case by case basis. The Board, however, is excluding from the new collateral limitation those issuances to which an insured institution was legally committed, or for which it had definite written plans in existence on or before August 15, 1986, the date of adoption of this regulation. This requirement of a specific plan or commitment by an insured institution applies no matter whether an issuance is made through a third party intermediary or whether an issuance is

part of a shelf-registration type of offering.

f. General Loan Loss Reserves as a Component of Regulatory Capital

Many comments on the Board's proposal for redefining regulatory net worth urged the Board to allow insured institutions to include unallocated (general) loan loss reserves as a component of regulatory capital. They contended that it is prudent for managers to set aside reserves that are limited to absorbing possible future loan losses to cover the credit risk which is inherent in loan portfolios. They argued that unallocated loan loss reserves provide a significant buffer from future losses for insured institutions and the FSLIC and that including such reserves in regulatory capital provides institutions with an incentive to build loss reserves. Additionally, they noted that commercial banks include such loss reserves in primary capital and, therefore, reasoned that the Board should treat these loss reserves in the same manner.

The Board generally agrees with the commenters that general loan loss reserves provide additional protection to insured institutions and may serve to protect the FSLIC from loss. Accordingly, the Board is amending § 561.13(a) to clarify that allowances for loan losses constitute a component of regulatory capital. The Board notes, however, the allowance for loan losses does not include specific reserves of any kind, including those established pursuant to § 561.16c, § 563.17–2, or § 571.1a.

The Board is concerned that insured institutions have not had adequate experience in classifying their own assets and, consequently that they may have difficulty distinguishing between necessary specific reserves and general reserves. Therefore, the Board is revising Section A of its Quarterly Report to distinguish between general and specific reserves and, as to specific reserves, to distinguish between those resulting from appraisals and from classification. The Board intends to monitor carefully the reporting of such reserves.

C. Description of the Final Rule

The Board has fully discussed in the preamble of the proposed regulation and in its response to comments above, its rationale for revising its former net worth requirements. This final regulation incorporates the rationale stated in the preamble of the proposed regulation by reference. *See* 51 FR at 16553–62. This section of the preamble attempts not to repeat that rationale or its discussion above, but rather seeks to explain the provisions of the regulation adopted today in order to aid compliance by insured institutions.

1. Liability Component

The final rule adopted today increases insured institutions' required capital to 6 percent over a transition period the length of which will be determined by the industry's profitability.

Under this regulation, institutions must have 6 percent capital for all liabilities in excess of the book value of their existing levels of liabilities on the effective date of this regulation, January 1, 1987. In short, all growth of all institutions must be capitalized at 6 percent immediately. On the other hand, institutions will have a number of years, which will be determined by industry profitability, to achieve 6 percent capital on their existing level of liabilities. This regulation carries over institutions' current net worth requirements under the former net worth regulation (net of contingency component and qualifying balance deduction) as their initial capital requirements on existing liability levels. Thereafter, these initial capital requirements will increase at various rates depending on whether the carry over rate is above, below, or equal to 3 percent. Institutions with carryover rates of 3 percent ("standard group") will have their requirements on existing liability levels increase at 75 percent of the industry's average annual return on assets. Those institutions with lower initial rates will increase at the higher of 90 percent of the industry's return on assets or the institution's own return on assets until such an institution catches up to the standard group. Its rate will then increase along with the standard group. Those with carryover requirements above 3 percent will stay at their current rates until equalled by standard group's liability factor and thereafter, use the standard group's liability factor.

Turning to a more detailed explanation of these requirements, institutions' required levels of capital on total liabilities before adjustment for their maturity matching credits and contingency components ("liability component") is the sum of (1) their required capital based on the book value of their total liabilities as of January 1, 1987 ("base liabilities") and (2) their required capital based on the book value of total liabilities in excess of base liabilities ("increased liabilities"). The terms base liabilities and increased liabilities refer to levels of institutions' liabilities, not to specific liabilities. Their required capital on increased liabilities ("increased liabilities amount") is equal to 6 percent times the institutions' increased liabilities. Their required capital on base liabilities ("base liabilities amount") will increase from their current net worth requirements (without consideration of the contingency factor or qualifying balances) under the former net worth regulation to 6 percent over an undertermined number of years. The annual rate at which capital on base liabilities must increase will depend upon insured institutions' average return on assets for the prior calendar year, as calculated by the Board each April. Institutions are required to calculate and meet their regulatory capital requirements at the end of each quarter, beginning with the first quarter of 1987.

a. Base Liabilities Amount

The base liabilities amounts of insured institutions are determined by one of three methods depending upon an institution's net worth requirement under the former net worth regulation (12 CFR 563.13 (1986)) (before addition of its contingency component or its credit for qualifying balances) on December 31, 1986. Carrying over institutions' current requirements prevents some institutions from having to have 3 percent capital on existing liabilities on January 1, 1986, but increases the requirement slightly faster to compensate for this lower starting point. The Board adopted this calculation method in response to comments protesting the much simpler method set forth in the proposal that would have increased most insured institutions' liability factors from 3 percent to 6 percent over 6 years at a rate of 50 basis points per year. These comments are fully discussed above.

The portion of an institution's net worth requirement under the former net worth regulation to be carried over is its 1987 base factor ("1987 base factor"). That is, the minimum required amount of net worth under the former net worth calculation (12 CFR 563.13 (1986)) calculated as of December 31, 1986, excluding the contingency factor and before reduction for qualifying balances. Basically, it is the 1986 base factor adjusted for growth and amortization in 1986.

Institutions' 1987 base factors are used to calculate their carry over capital requirements, namely the percentage rate to be applied to institutions' base liabilities to determine their required capital on existing liabilities levels. This percentage (the "base ratio") is comprised of (1) a numerator equal to an institution's 1987 base factor and (2) a denominator equal to an institution's

total liabilities as of December 31, 1986. This base ratio constitutes an institution's initial liability factor under the new regulation and determines the rate at which the institution's liability factor must increase. Institutions' base ratios will be their liability factors for institutions' computations of their base liability amounts on March 31, 1987, and June 30, 1987.

Each April the Board will calculate the industry's profits from the prior calendar year. It will calculate a percentage equal to insured institutions' aggregate average rate of return on their aggregate average level of assets for the prior calendar year ("April calculation"). Institutions' liability factors will increase each July 1 and January 1 based on the Board's annual April calculation. The first April calculation will be computed in April 1987 based on 1986 industry profits. The percentage used in calculating an institution's April calculation will vary based on whether an institution's December base ratio is 3 percent ("standard group") or is less than that amount ("lower group"). The percentage used in the April calculation of insured institutions in the standard group is 75 percent and the percentage used for the lower group is 90 percent. The Board will publish in the Federal Register each April its calculation of the industry's average return on assets for the prior calendar year and the April calculation for the standard group and the general requirement of the lower group (a lower group institution's liability factor will be higher if its return on assets exceeds the industry average). The Board also will publish the quarterly liability factors based on the April calculation of the standard group and the general requirement of the lower group for the coming year.

On July 1 following the April calculation, institutions in the standard group will increase their liability factors by one-half of their April calculations. The first liability factor increases will occur on July 1, 1987 and be based on the April calculation computed in April 1987. These liability factors will be used to calculate institutions' base liabilities amounts at the end of the third and fourth quarters. Such institutions' liability factors will increase by the same percent on the following January and will be used to calculate the institutions' base liabilities amounts at the end of the first and second quarters of the next calendar year.

For example, if the Board calculated in April 1987 that the industry's return on assets for 1986 was 60 basis points, the April calculation for the standard group would be 45 basis points. Therefore, on July 1, 1987, such an institution's liability factor would increase by one-half of this amount (22.5 basis points) to equal 3.225 percent. In the institution's computation of its regulatory capital requirement on September 30, 1987, the institution will multiply its base liabilities (assume $100 million) times its liability factor (3.225 percent) to equal its base liabilities amount, $3,225,000. If the institution's base liabilities increased to $120 million as of December 31, 1987 (perhaps from a branch acquisition), the institution's base liabilities amount on December 31, 1987, would increase to $3,870,000 (3.225 percent times $120 million). For the first and second quarters of 1988, the institution's liability factor would increase to 3.45 percent (3 percent initial rate plus its .45 April calculation computed in April 1986).

It must be remembered that although institutions' liability factors increase based on a return on assets computation, an institution can satisfy its increased capital requirement by using existing capital in excess of its regulatory requirement. Institutions are not required to devote a required percentage of their own return on capital to retained earnings therefore, institutions are not prevented from paying dividends or taking other actions with their own profits as long as they can satisfy their increased capital requirements.

For institutions in the lower group (base ratios below 3 percent), the same procedure and calculation method is used with one exception. Its liability factor will increase each year by the higher of (1) its April calculation using 90 percent instead of 75 percent or (2) 90 percent of the institution's own return on assets based on the data in its Quarterly Reports to the Board. If such an institution's liability factor calculated under this method at the end of a quarter exceeds the liability factor for that quarter of institutions in the standard group, the institution's liability factor shall from that time forward be equal to the liability factor of institutions in the standard group. In short, when the liability factors of these institutions catchup to those of the standard group, those institutions join the standard group.

For example, Institution A may have a base ratio of 2.8 percent. Assuming that the average industry return on assets is 60 basis points each year for five years and that Institution A's own return on assets is lower, the April calculation of the lower group will be 54 basis points each year, compared to 45 for the standard group. Since Institution A's liability factor as of July 1, 1989, would be 4.15 percent and the liability factor of the standard group would be 4.125 percent, Institution A's liability factor will be 4.125 at that time and will be the same as the standard group's liability factor from that time forward.

For institutions whose base ratios exceed 3 percent, such institutions' liability factors shall be their base ratios until their base ratios are exceeded by the liability factors of institutions in the standard group. At that time, such institutions' liability factors shall be equal to the standard group's liability factor and these institutions will join the standard group. The standard group's liability factor for each quarter will be stated by the Board when it publishes its April calculation.

For example, Institution A may have a base ratio of 4 percent for total liabilities, which will serve as Institution A's liability factor until it is less than the standard liability factor. Assuming that the standard group's April calculation is 50 basis points for three years, the standard industry liability factor will reach 4 percent in the quarter beginning January 1, 1989. Thus, Institution A's liability factor will increase by 25 basis points (one-half of the April calculation) on July 1, 1989, and will be used in its calculation of its base liabilities amount on September 30, 1989. Until that time, Institution A will be required to maintain 4 percent capital (its base ratio) on its base liabilities.

b. Increased Liabilities

(i) *General.* The final rule requires that institutions immediately capitalize at 6 percent all liabilities in excess of their levels on January 1, 1987, defined above as increased liabilities. This will provide better portfolio protection for such growth and reduce the need to raise an even larger amount of capital at the end of the transition period for liabilities incurred during the transition period.

As also stated above, the Board is deleting the special lower capital requirement for institutions with assets of $100 million or less in order to better serve the Board's goal of ensuring adequate capital levels and enhanced safety and soundness throughout the industry.

(ii) *De Novo Institutions.* Because the Board believes that it would be inappropriate to allow institutions already required to maintain capital ratios exceeding 3 percent to retreat before moving toward 6 percent, the final rule's liability factor for *de novo* institutions with current capital

requirements of 6 or 7 percent shall be their *de novo* requirements and shall not decrease below 6 percent. This regulation requires *de novo* institutions to continue to satisfy the incremental capital requirements under their contingency components and permits them to gain the benefits of the maturity matching credit for reduced interest rate risk. The minimum required amount of capital for such a *de novo* institution shall be the same as under other institutions' fully phased-in requirements. If an institution's *de novo* requirement, however, is 5 percent (i.e. those *de novo* institutions with 7–6–5 capital requirements that are in their third full fiscal year), it will be treated like any other institution in the higher group. That is, its liability factor will remain 5 percent until that percent is exceeded by the standard group's liability factor and then will increase along with the standard group's liability factor. Such an institution, however, must capitalize increased liabilities at 6 percent immediately.

Similarly, the rule requires other institutions currently required to meet net worth standards exceeding 3 percent (such as institutions formerly insured by the FDIC or by privately funded insurance systems) to maintain their liability factors at the higher of their current liability related capital requirements or the standard group's liability factor. They also must capitalize increased liabilities at 6 percent immediately.

(iii) *Growth Through Merger or Acquisition.* The final rule treats a "merger" (merger, consolidation, or purchase of assets and assumption of liabilities) (referred to as a merger of the "merged" and "continuing" institutions) and "branch acquisitions" (acquisitions of less than substantially all of the liabilities of institutions in which the selling institution continues in operation as a separate entity, which includes but is not limited to branch acquisitions) consistently with their treatment under the former net worth regulation. Certain modifications have been made for consistency with related aspects of the final regulation.

After a merger, the regulatory capital requirement of the continuing institution is computed immediately after the merger by combining the assets, investments, base liabilities, and increased liabilities of the merged and continuing institutions and computing a new liability component, contingency component, and maturity matching credit for the continuing institution. The liability factor of the continuing institution immediately after the merger is a percent derived from a ratio consisting of a numerator equal to the combined base liability amounts of the merged and continuing institutions immediately before the merger and of a denominator equal to the combined base liabilities of the institutions immediately before the merger. The maturity matching credit (see below) of the continuing institution immediately after the merger shall be computed based on the weighted average (weighted by total liabilities) of the one-year and three-year gaps of the merged and continuing institutions six months before the end of the most recent quarter preceding the merger.

In computing the minimum regulatory capital requirement of an insured institution after it has made a branch acquisition, the base liabilities of the acquiring institution beginning in the quarter in which the transaction becomes effective would be increased by the amount of liabilities acquired. The institution making the branch sale would similarly deduct the amount of liabilities sold from its base liabilities.

For example, if an institution with base liabilities on January 1, 1987, of $100 million (and a base liabilities amount of $3 million) acquired $10 million in liabilities on February 1, 1987, from an institution with $50 million in base liabilities, the acquiring institution's base liabilities would increase to $110 million and would be multiplied by the institution's liabilities factor to calculate its base liabilities amount on March 31, 1987. The selling institution's base liabilities would decrease to $40 million.

For purposes of computing institutions' growth for purposes of § 563.13–1 after branch acquisitions and mergers, use the following method. First, the institution's liabilities as of the beginning of the 2-quarter period ("beginning liabilities") are deemed to include any increases in total liabilities from branch acquisitions during the 2-quarter period. In the case of mergers occurring during the 2-quarter period, the beginning liabilities of the combined institution are deemed to include the total liabilities of the merged and continuing institutions as of the first day of that 2-quarter period, and the aggregate growth of the two institutions after that date constitutes the new merged institution's growth.

(iv) *Portions of Former Net Worth Regulation Eliminated.* The Board is eliminating the following provisions of the former net worth regulation (1) the amortization factor; (2) the sliding scale growth factor; (3) the current base factor calculation; and (4) treatment of institutions with assets of $100 million or less. The preamble to the proposal sets forth the Board's rationale for eliminating each of these provisions.

2. Contingency Component

The final rule substantially modifies the contingency factor, which is renamed the "contingency component," because the current provision does not provide a sufficient capital reserve against the risks posed by certain types of investments.

The elements of the contingency component are divided into two categories: fixed reserve elements and variable reserve elements. Assets that are fixed reserve elements are scheduled items, recourse liabilities and standby letters of credit, so designated because the incremental capital required on each does not vary depending on an institution's regulatory capital level or its portfolio concentration in these areas. Of the fixed reserve elements subject to the contingency component, the current incremental capital requirements for scheduled items and recourse liabilities are unchanged. The fixed reserve portion of the contingency component also includes a 2 percent capital requirement applicable to standby letters of credit.

Assets that constitute variable reserve elements are loans for unimproved land, developed building lots, and acquisition and development of land (collectively referred to as "land loans"), direct investments, and nonresidential construction loans. The incremental capital required on each of these assets varies depending on an institution's regulatory capital level and the extent of its portfolio concentration in that area. Under the rule as adopted, institutions that meet the greater of 6 percent of total liabilities or their fully phased-in capital requirement may invest up to 10 percent of their assets in direct investments without being subject to incremental capital requirements. Higher degrees of concentration in direct investments require higher levels of incremental capital. Institutions that do not meet this standard must capitalize direct investments at varying amounts depending upon the institution's net worth level and the extent of portfolio concentration in the asset category. Similar incremental capital requirements apply to land loans, and to nonresidential construction loans. As with direct investments, fully capitalized institutions become subject to additional capital requirements only when land loans and nonresidential construction

loans exceed set levels of portfolio concentration.

a. Direct Investments

As fully explained in the preamble to the proposed regulation, the Board had determined that additional capital is needed for direct investments. This determination is based on over one year's experience with the direct investment regulation and the direct investment component of the contingency factor. It is also supported by the Board's statistical studies indicating that high levels of direct investment are associated with higher FSLIC costs from failed institutions.

However, the Board has also determined, after consideration of the comments and a further review of its empirical studies and supervisory experiences (described in detail in the proposal and incorporated herein by reference), that direct investments made by a well capitalized institution may not require the same specific safeguards as those made by a weaker institution. The possible institutional failures and costs to the FSLIC associated with direct investments are greatest when such investments constitute a large percentage of the investments of an institution with low capital. Consequently, the final regulation establishes a sliding scale incremental capital requirement for direct investments.

For purposes of determining the capital requirement for direct investments the Board has divided institutions into three groups—institutions that do not meet their current capital requirements, those that meet current requirements but have capital less than 6 percent of liabilities or the fully phased-in requirement, whichever is higher, and those that are capitalized at the greater of their fully phased-in level or 6 percent of total liabilities. Compliance with capital requirements for purposes of this test is measured net of variable reserve elements of the contingency component. In other words, an institution calculates what its capital requirement would be absent any requirements for reserves against the variable reserve portions of the contingency component—direct investments, land loans, and nonresidential construction loans. The fully phased-in requirement is the amount of capital that would be required, including the contingency component and the maturity matching credit, at the end of the transition period.

Institutions in the first category will be required to hold incremental capital equal to 10 percent of all direct investments. For institutions in the second category, direct investments up to or equal to 10 percent of assets must be capitalized at 5 percent, and additional direct investments at 10 percent. For institutions in the third category (the best capitalized), the first 10 percent of assets in direct investments requires no incremental capital, the second 10 percent requires 5 percent incremental capital, and investments in excess of 20 percent of assets must be capitalized at 10 percent.

The current net worth regulation effectively grandfathers direct investments made prior to December 10, 1984, and the proposal would have imposed additional capital requirements on all direct investments made since that date. Based on the commenters' contention that imposing a capital requirement on existing investments not currently subject to an incremental capital requirement could prove detrimental to insured institutions, the Board has determined to grandfather these investments. As adopted, the final rule grandfathers all direct investments in an institution's portfolio as of June 30, 1986 except those direct investments subject to an incremental capital requirement under the contingency factor of the former net worth regulation, 12 CFR 563.13(g)(5)(iii) (1986). It also grandfathers investments as to which the institution was legally committed on or before that date, and real estate projects being completed pursuant to definitive plans in existence on or before that date. This date was selected to prevent institutions from seeking to avoid additional capital requirements by making direct investments prior to the effective date of this rule. This grandfather provision applies to specific investments, not to levels of investment: for example, if an institution made a $1 million direct investment on June 1, 1986, which was not at that time subject to incremental capital requirements, it need hold no additional reserves against this investment for purposes of regulatory capital. But if this investment is sold or matures after June 30, 1986, the new $1 million direct investment replacing the prior investment would be subject to the incremental capital requirement of this regulation unless its levels of direct investment and capital did not require the imposition of such an incremental requirement. While grandfathering eliminates incremental capital requirements for these direct investments, it does not preclude counting these assets toward the portfolio concentration levels for determining the marginal incremental requirement. Thus, an institution that had 30 percent of its assets in direct investments on June 30, 1986, would not have to have incremental capital for these investments under the new regulation unless the direct investments were subject to the contingency factor of the former net worth regulation. Additional direct investments would be capitalized at 10 percent even if this institution met its fully phased-in requirement, because more than 20 percent of its assets would be in direct investments.

The proposal would have permitted direct investments by service corporations and operating subsidiaries to be treated as direct investments of the parent as an alternative to imposing a capital requirement on the parent's investment in the subsidiary. The final rule retains this exclusion for direct investments in subsidiaries, provided that all direct investments made by the subsidiary which would be subject to the contingency component if made by the parent are aggregated with those of the parent for purposes of computing the parent's contingency component. The Board notes that if it appears that items other than direct investments that would require reserves if held by the parent are being pushed down into subsidiaries to avoid capitalization, consideration will be given to imposing capital requirements on other types of investments by subsidiaries where the investments would be included in the contingency component if made by the parent.

b. Land Loans and Nonresidential Construction Loans

As indicated above, the final rule includes in the contingency component an incremental capital requirement for land loans and nonresidential construction loans. As the Board fully explained in the proposal, the additional risks inherent in each of these types of assets necessitate an incremental capital requirement.

However, the Board's supervisory experience and statistical studies indicate that land loans and nonresidential construction loans, like direct investments, are most dangerous when they constitute a significant portion of the portfolio of an institution with low capital. Consequently, well capitalized institutions will be permitted to hold certain amounts of such assets without additional capital.

As with direct investments, the Board has divided institutions into three categories depending upon institutions' capital levels relative to their current and fully phased-in requirements. The Board has adopted a sliding scale of

incremental capital requirements for land and nonresidential construction loans based on institutions' capitalization and asset concentration. Under this approach, institutions which do not meet their capital requirements net of variable reserve elements must capitalize land loans and nonresidential construction loans at 4 percent. Institutions in the second category, those which meet current capital requirements net of variable reserve elements, but have capital less than the greater of 6 percent of liabilities or the amount of their fully phased-in requirement must capitalize land loans and nonresidential construction loans at 2 percent for such loans that constitute up to and including 10 percent of assets, and at 4 percent for such loans over 10 percent of assets. Institutions that meet the greater of their fully phased-in requirement net of variable reserve elements or 6 percent of liabilities need hold no reserve against land loans and nonresidential construction loans up to and including 10 percent of assets, and must capitalize such assets at 2 percent to the extent they constitute more than 10 percent and less than or equal to 20 percent of assets, and at 4 percent to the extent they constitute more than 20 percent of assets.

As with direct investments, compliance with capital requirements is measured net of variable reserve elements. An institution's fully phased in requirement is the amount of capital that it would be required to have at the end of the transition period. These requirements apply separately for land loans and nonresidential construction loans. For example, a fully capitalized institution may invest up to 10 percent of its assets in land loans and an additional 10 percent of assets in nonresidential construction loans before triggering additional capital requirements. Like direct investments, specific land loans and nonresidential construction loans made or committed to prior to June 30, 1986 are grandfathered.

Upon further consideration, the Board has determined to amend the proposed definition of nonresidential construction loan, as suggested by some comment letters, to exclude loans for the construction of multifamily housing. This determination is consistent with the current Quarterly Report. The Board has determined not to amend the definition of land loans to exclude undeveloped land to be used for the construction of single family dwellings. Land loans for single family residential development pose risks similar to other land loans and therefore the Board has determined to impose the same capital requirements. Furthermore, the Board notes that land loans may be difficult to classify as to eventual use, and that as soon as there is construction financing loans for the construction of residences will require no further capitalization.

c. Letters of Credit

The final rule imposes a 2 percent capital requirement on standby letters of credit. The FRB recently proposed a rule requiring supplemental capital on letters of credit issued by state member banks, 51 FR 3976 (Jan. 31, 1986), and the FDIC proposed to require capitalization of standby letters of credit.

A standby letter of credit is a contingent liability of the issuer that amounts to the extension of credit to a borrower that is in default on a contract or commercial undertaking. Although some standby letters of credit are collateralized, resembling commercial loans, security is not always provided. For this reason, the final rule requires a modest capital holding against these contingent liabilities.

3. Maturity Matching Credit

The final rule expands the qualifying balance deduction in order to reflect more accurately an institution's interest rate risk exposure. The Board has, therefore, renamed the qualifying balance deduction the "maturity matching credit."

The Board recognizes that by expanding the qualifying balance deduction so as to become the maturity matching credit it is establishing an effective minimum regulatory capital requirement for some institutions of less than 6 percent. This recognizes that a maturity matched portfolio of thrifts' typical housing related investments does not pose the same risk to the FSLIC as would a typical commercial bank portfolio. Furthermore, since institutions specializing in maturity matched housing related investments may have added difficulty in achieving a competitive rate of return on their equity if minimum regulatory capital is set at 6 percent of liabilities, the Board is adopting the maturity matching credit today to allow those institutions to achieve higher leverage and thereby more readily generate a competitive rate of return on equity.

The most comprehensive measure of interest rate risk is duration gap. See F.R. Macauley, *Some Theoretical Problems Suggested by the Movement of Interest Rates, Bond Yields, and Stock Prices in the U.S. Since 1856* (New York: National Bureau of Economic Research, 1938). Duration gap is the difference between duration of assets and duration of liabilities. Duration is a concept of corporate finance which is a time denominated summary measure of the receipt of the cash flows from an asset. For example, since mortgages have periodic interest payments, repayments, and prepayments, the duration of a mortgage is much less than its stated maturity.

While duration gap is a preferable interest rate risk measure, it is operationally difficult to compute. It would require institutions to report the information currently required by Section H of the Board's Quarterly Report in much more detail. This would impose an additional reporting burden.

A comparable measure of interest rate risk that can be derived from the current information provided in Section H of the Quarterly Reports is the maturity gap. The maturity gap is the difference between the dollar value of assets maturing or repricing within a set time period and the dollar value of liabilities maturing or repricing during that same period, all divided by total assets. The maturity gap enables an institution to compute the relative change in earnings that will result from a change in interest rate.

Maturity gaps can be computed for a specified time period. For example the 2–3 year gap compares assets and liabilities repricing in between 2 and 3 years, or for a cumulative time period, the 5 year cumulative gap includes all assets and liabilities maturing or repricing in 5 years or less. The current reporting system also allows an institution to calculate hedged and unhedged gaps. The hedged gap reflects the influence of interest rate swaps, futures, and options on an institution's assets and liabilities. The unhedged gap does not reflect the influence of these hedging techniques.

After carefully reviewing the comment letters and studying the interest rate risk generated by mismatched portfolios, the Board has decided to base the maturity matching credit on a combination of an institution's 1 year and 3 year cumulative hedged gaps.

The Board has determined that the use of the maturity matching credit, a measure of the interest rate risk of an institution's entire portfolio of assets and liabilities at specific times, enhances an institution's ability to assess its overall interest rate risk and is preferable to the use of the qualifying balance deduction. The qualifying balance deduction measured the interest rate risk of specific assets and liabilities. Because the vast majority of assets and liabilities in an institution's portfolio were not identified as a part of the

qualifying balance deduction and could have been grossly maturity mismatched, this calculation may not have as accurately reflected an institution's overall interest rate risk and its corresponding need for capital to offset this risk.

The Board believes that the maturity matching credit gives a better reflection of an institution's overall interest rate risk than the qualifying balance deduction. It is the Board's intention to encourage institutions to manage their interest rate risk through maturity matching. The cumulative hedged gap figure is a measure of maturity matching, and is, therefore, an appropriate calculation to be used for the maturity matching credit. Because an institution with low interest rate risk exposure does not require as much capital to offset this risk as an institution with high interest rate risk exposure, the former is rewarded with a credit against its regulatory capital requirement.

Additionally, the Board believes that the use of the cumulative hedged gap figure (as opposed to specific identifiable assets) allows management greater flexibility to choose the assets and liabilities to be included in the maturity matching credit. The proposed and former regulations requiring a determination of the qualified balance deduction based upon specific assets held by an institution effectively directed management to invest in these assets so as to become eligible for the deduction. The use of the maturity matching credit, as opposed to the qualifying balance deduction, eliminates the Board's selection of the assets to be a credit against an institution's capital requirement. The maturity matching credit adopted by the Board thus allows management the flexibility to invest so as to enhance the institution's profitability in a competitive environment. The Board will carefully monitor institutions' use of the maturity matching credit, especially the use of hedging techniques. To the extent institutions use hedging techniques merely to obtain a credit, the PSA may invoke the evasion principle and disregard the transaction. The amount of credit available to each institution will be figured on a sliding scale with the amount of the credit in inverse proportion to the size of the gap. An institution will get a 1 percent of liabilities reduction in its capital requirement for a 1 year or 3 year cumulative hedged gap with an absolute value less than or equal to 15 percent. Therefore, institutions with both 1 and 3 year gaps less than or equal to 15 percent will receive a 2 percentage point reduction in their capital requirements.

Institutions with 1 year cumulative hedged gaps having an absolute value of greater than 15 percent but less than or equal to 25 percent receive a credit based on their specific gaps. The size of the credit equals [.02005 − (.067 × [the absolute value of Gap])] multiplied by total liabilities. For example, if an institution's 1 year gap has an absolute value of 20 percent, the institution would receive a credit to required capital equal to .67 percent of total liabilities. A comparable credit would be received for a 3 year cumulative hedged gap. Institutions with a 1 year and 3 year cumulative hedged gap of greater than 25 percent would receive no maturity matching credit for such gaps.

The Board recognizes that many institutions have internal control systems that generate hedged gap calculations. Each Federal Home Loan Bank ("district bank") also calculates hedged gaps for the institutions in its district from the information contained in Section H of the Quarterly Report filed with the Board. If insured institutions prefer their own hedged gap calculations to those determined by their district bank, they may use their own figures. However, institutions should be aware that if their reported hedged gaps differ significantly from their district bank's calculation, the PSA of that district bank may disallow the institution's calculation and rely on the district bank's calculation of the institution's gap.

After carefully considering the comment letters and analyzing the problem in greater detail, the Board has decided to eliminate the proposed floor of 5 percent. Therefore, the Board has determined that the maturity matching credit may not reduce an institution's regulatory capital requirement below 3 percent until January 1, 1990 and not below 4 percent after January 1, 1990. It is the Board's opinion that this transitional approach will encourage institutions to reduce their exposure to interest rate risk without permitting such institutions' net worth to be impaired.

The Board is aware of the timing problem that would be presented by requiring that the maturity matching credit be calculated from current gap figures. Because of the short amount of time from an institution's submission of its Quarterly Report and the Board's calculation of the hedged gap figure to the deadline for submission of the next Quarterly Report, it would be difficult if not impossible to use the current hedged gap for this calculation. Therefore, the Board has determined that the applicable cumulative hedged gap figure used in calculating an institution's current regulatory capital requirement will be based upon the Section H data in the Quarterly Report submitted 6 months earlier. The Board does not believe that most institutions' portfolio maturity mismatch will change significantly within a 6-month period so as to affect the hedged gap calculation.

4. Growth Regulation

The Board expressed its continuing concern about unrestrained growth in the preambles to both the proposal, *see* 51 FR at 16554–55, and the former net worth regulation, *see* Board Res. No. 85–79B, 50 FR 6891, 6894–96 (Feb. 19, 1985). As discussed above, the Board is rephrasing the prior growth regulation to clarify that it prohibits institutions from increasing their total liabilities within any 2-quarter period at a rate greater than 12.50 percent (an annualized rate of 25 percent) without prior PSA approval, unless an institution is exempt because their capital is equal to the higher of 6 percent of total liabilities or their fully phased-in capital requirement. Such institutions are exempt from the preapproval requirement but must give their PSAs notice of such growth as under the current regulation. Of course, the PSA will utilize its available supervisory tools if an institution finds that the growth of such an institution creates an unsafe or unsound condition. In addition, the rule authorizes the PSAs of institutions growing at rates in excess of 12.50 percent for a 2-quarter period to impose an incremental capital requirement of up to 4 percent on such excess growth. The final rule also allows the PSA more flexibility in passing upon growth plans by including as a factor upon which a growth plan can be conditioned or disapproved whether the overall policies, conditions, and operation of the applicant afford a basis for supervisory objection.

The following example will illustrate the exemption from the growth regulation for certain finance subsidiary securities issuances. Institution A has $100 million in total liabilities as of the January 1, 1987, and has a finance subsidiary with grandfathered securities of $20 million (consisting of non-duration matched 2 year notes maturing in the second quarter of 1987). Also assume that the parent's total liabilities (also its base liabilities) remain constant through the second quarter of 1987 except for the expiring note issuance and that the parent's liability factor (as discussed below) remains at 3 percent. At the end of the first quarter of 1987 the institution's liability component is 3

percent of $100 million (no increased liabilities). In the second quarter, the parent's total liabilities increase to $120 million (through issuance of replacement non-duration matched notes). Its liability component is now composed of its base liabilities amount (3 percent of $100 million) and its increased liabilities amount (6 percent of $20 million). The Board has decided, as stated above, not to include this $20 million as growth for purposes of the pre-approval requirement of section 563.13–1. If the Board had decided otherwise, the $20 million would constitute 20 percent growth in the second quarter of 1987 and would have prevented issuance of the replacement securities or other reasonable growth including crediting interest to depositors accounts without prior PSA approval. Therefore, the Board is exempting the growth from the replacement of the finance subsidiary issuance.

5. Finance Subsidiary Regulation

Many securities issuances issued directly or indirectly by finance subsidiaries are collateralized with mortgage backed securities issued by, or guaranteed as to principal and interest by the Federal Home Loan Mortgage Corporation, Federal National Mortgage Corporation, or the Government National Mortgage Corporation. The book value of such collateral is usually 103 to 105 percent of the proceeds of the issuance. The Board believes that the 110 percent limitation on the market value of collateral will allow such issuances to continue to be exempted. However, a limited number of securities issuances backed by other types of mortgages and receivables are collateralized (as authorized by the regulation) by assets whose book value is up to 250 percent of the gross proceeds of the securities issued. Such overcollateralization generally reflects market concern for the quality of the underlying collateral and the Board also seeks to remove any regulatory incentive for institutions to originate or purchase assets serving as such dubious collateral.

Accordingly, the final rule excludes from the calculation of a parent's total liabilities only those securities issued by finance subsidiaries after June 30, 1986, that are substantially duration matched and that are collateralized by assets whose market value is less than 110 percent of the gross proceeds of the securities issued. Securities issuances to which an institution is legally committed on or before June 30, 1986, or for which it has specific, written plans on or before that date continue to be excluded from the parent institution's total liabilities.

D. Effective Date

Finally, the Board wishes to reiterate that this final rule becomes effective on January 1, 1987. Insured institutions must compute their regulatory capital requirement under this regulation for the first time on March 31, 1987. As under the current regulation, insured institutions are required to meet this regulatory capital requirement on the date it is computed, which is March 31, 1987, for the first computation. Institutions are reminded again that manipulation of their levels of total liabilities will require use of the evasion provisions by PSAs.

E. Alternatives Considered

The Board has considered a number of alternatives, as demonstrated by the numerous modifications made to the proposed regulation. The Board also considered a number of options while formulating the proposed regulation, but dismissed them for the reasons stated in adopting the proposal and this final regulation. The numerous alternatives recommended by commenters are discussed above with other substantive comments on related issues. Furthermore, a number of these recommendations have been adopted, at least partially, in the final regulation. The Board is not repeating its discussion of these alternatives solutions to avoid redundancy.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following regulatory flexibility analysis:

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

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

3. *Significant alternatives minimizing small-entity impact and agency response.* The Small Business Administration defines a small financial institution as "a commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed $100 million." 13 CFR 121.13(a). Therefore, small entities to which the final rule applies are the 1,742 insured institutions that had assets totaling $100 million or less as of December 31, 1985.

The final rule eliminates the general exemption in the former net worth regulation for institutions with assets of $100 million or less in calculating their growth factors under § 563.13(g)(4) of the Board's regulations and the exemption for such institutions from § 563.13–1 for the reasons discussed above in **SUPPLEMENTARY INFORMATION.** The final rule treats all institutions identically regardless of their size because to do otherwise would be fundamentally inconsistent with the objectives of the rule. The Board's supervisory experience indicates that not only larger institutions but also small insured institutions suffer from undercapitalization, thereby increasing risk to themselves and to the FSLIC.

Although the general exemption from the growth regulation for institutions with assets of $102 million or less has been eliminated, many *de novo* institutions and some other well-capitalized small institutions will be exempt under the growth regulation revisions adopted today. *De novo* institutions are those which have filed with the appropriate Federal Home Loan Bank an application for insurance of accounts, a request for a commitment to insure accounts, or an application to organize a Federal association any of which was not approved prior to December 2, 1983, and the business of which has not been conducted previously under any charter. These institutions are, by virtue of their youth, usually small. They have special capital requirements ranging from 5 to 7 percent of total liabilities (plus contingency component minus maturity matching credit) and also are subject to direct PSA oversight of their business plans for their first 3 years of operation.

In this regulation, the Board has decided to exempt from the growth regulation institutions meeting the higher of 6 percent capital or their fully phased-in capital requirements. This modification has the effect of exempting many *de novo* institutions from the growth regulation because many of them currently are required capital of 6 or 7 percent on total liabilities. Many such institutions, and even some with capital requirements of 5 percent, would be able to meet the higher of 6 percent of total liabilities or their fully phased in requirement. This exemption should help *de novo* institutions to achieve economies of scale and remain strong, viable institutions.

List of Subjects in 12 CFR Parts 561 and 563.

Bank deposit insurance, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Parts 561 and 563, Subchapter D, Chapter V, and references contained

in Chapter V, Title 12, Code of Federal Regulations, as set forth below.

CHAPTER V—FEDERAL HOME LOAN BANK BOARD

1. Chapter V is amended by removing the phrases "net worth" and "regulatory net worth" as they are used in conjunction with or defined in § 561.13 or § 563.13 of this Chapter, and without regard to whether they are hyphenated, and by substituting in lieu thereof the phrase "regulatory capital" in the following sections: §§ 500.31; 531.1 (a), and (d); 531.10(a); 541.17; 543.11–1(c); 545.38(b)(3); 545.73(a); 545.74 (b)(3)(i), (c)(3)(viii), (d)(2), and (d)(4); 545.77(a); 545.82 (c)(2), (d)(4)(ii)(B), and (f)(3)(i); 545.115(a); 546.2(h)(1)(xii); 550.2 (c)(2), and (c)(4); 556.5(b)(2); 561.13 (b), (c), (d), (e), and (f); 563.3–10 (b)(2), (c)(1)(i), (c)(3)(v), and (d); 563.4 (b), (c), and (d); 563.7–4 (i)(2)(v)(*c*), (i)(2)(vii)(*b*), and (i)(2)(x); 563.7–5 (a), (b), and (d)(1)(iii); 563.8–1(e); 563.8–1 (b)(2)(i), and (d)(1)(iv); 563.8–4 (b)(5), (b)(6), and (b)(7); 563.9–3 (a)(4), (b)(1), (b)(5), and (c); 563.9–4; 563.9–6; 563.9–8 (c)(2), (e), (f), and (g); 563.13 (a)(2), (c), (d), (e), and (f); 563.13–2 (c), and (e)(3); 563.17–3(c)(2); 563.17–6(b)(2); 563.22 (e)(1)(xii), and (h)(1)(ii); 563.39–1(c)(2); 563b.1(a)(2); 563b.3 (b)(2), (f)(1), and (g)(2); 563b.26 (a), and (b); 563b.27(c); 563b.32 (a), and (b); 563b.33; 563b.36(c) (1), (2), (3); 563b.37 (f), and (g); 563b.101 Item 7(b)(2) Instructions 2; 563b.101 item 7(f); 563c.10(d)(2); 563c.102; 563g.3; 563g.7(a)(3); 563g.16(b); 563g.17(d); 570.4; 571.1a(a); 571.5 (c)(2), and (k)(3); 571.6 (a)(2), and (d)(4); 572.1 (g)(1), and (j); 572.2(c); 572a.5 (c)(2)(ii), (c)(3), and (c)(4); 574.8 (a), (b)(1)(ii); and 584.5–1.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 561—DEFINITIONS

2. The authority citation for Part 561 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425b and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1489, as amended (12 U.S.C. 1729(f)); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

3. Section 561.13 is amended by revising the heading of the section and paragraph (a) to read as follows:

§ 561.13 Regulatory capital.

(a) The term "regulatory capital" means the sum of all reserve accounts, retained earnings, permanent common stock, permanent preferred stock, nonpermanent preferred stock issued prior to July 23, 1985, mutual capital certificates (issued pursuant to § 563.7–4 of this subchapter), securities which constitute permanent equity capital in accordance with generally accepted accounting principles (if approved by the Corporation), appraised equity capital (as defined in § 563.13(c) of this subchapter), allowances for loan losses except specific allowances, (including those specific allowances established pursuant to § 561.16c, 563.17–2, and 571.1a of this subchapter) and any other nonwithdrawable accounts of an insured institution (excluding any Treasury shares held by the insured institution): *Provided*, that for any nonpermanent instrument qualifying as regulatory capital under this paragraph, either:

(1) The remaining period to maturity or required redemption (or time of any required sinking fund or other prepayment or reserve allocation, with respect to the amount of such prepayment or reserve) is not less than one year, or

(2) The redemption or prepayment is only at the option of the issuing insured institutions and such payments would not cause the insured institution to fail or continue to fail to meet its regulatory capital requirement under § 563.13 of this subchapter; and *Provided further*, that capital stock may be included as regulatory capital without limitation if it would otherwise qualify but for either:

(i) A provision permitting redemption, in the event of a merger, consolidation, or reorganization approved by the Corporation where the issuing institution is not the survivor, or

(ii) A provision permitting a redemption where the funds for redemption are raised by the issuance of permanent stock.

* * * * *

4. Part 561 is amended by adding new § 561.18 and 561.19 to read as follows:

§ 561.18 Land loan.

The term "land loan" means a loan:

(a) Secured by real estate upon which all facilities and improvements have been completely installed, as required by local regulations and practices, so that it is entirely prepared for the erection of structures;

(b) To finance the purchase of land and the accomplishment of all improvements required to convert it to developed building lots; or

(c) Secured by land upon which there is no structure.

§ 561.19 Nonresidential construction loan.

The term "nonresidential construction loan" means a loan for construction of other than one or more dwelling units. A dwelling unit is a unified combination of rooms designed for residence by one family.

PART 563—OPERATIONS

5. The authority citation for Part 563 is revised to read as follows, and the authority citations at the ends of the sections are removed.

Authority: Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425b and 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1489, as amended (12 U.S.C. 1729(f)); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

6. Section 563.13 is amended by revising the heading of the section and paragraphs (a)(1) and (b) to read as follows:

§ 563.13 Regulatory capital requirement.

(a) *Scope.* (1) This section sets forth the requirements for the maintenance by insured institutions of regulatory capital, as defined in § 561.13 of this subchapter. Compliance with the requirements of this section shall be considered to be compliance with the reserve requirements of section 403(b) of the National Housing Act (12 U.S.C. 1726(b)).

* * * * *

(b) *Minimum required amount.* Except as otherwise provided in this section, the minimum regulatory capital requirement for any calendar quarter (commencing with the quarter ending March 31, 1987) shall be an amount equal to the sum of an institution's liability component and contingency component minus its maturity matching credit. An institution shall not use the maturity matching credit to reduce its required amount of regulatory capital below 3 percent of total liabilities for the period from December 31, 1986, until December 31, 1989, or to reduce its required capital below 4 percent of total liabilities on or after January 1, 1990.

(1) *General Definitions:* For purposes of this section:

(i) "Total liabilities" means total assets net of loans in process, specific reserves, and deferred credits other than

deferred taxes, minus regulatory capital as defined in § 561.13 of this subchapter.

(ii) "Base liabilities" means the lower of an institution's level of total liabilities on January 1, 1987, (beginning of day) or the institution's total liabilities at the end of the quarter for which regulatory capital is being computed.

(iii) "Increased liabilities" means an institution's total liabilities in excess of its base liabilities.

(iv) "Liability component," except as otherwise provided in this section, means an amount of capital equal to

(A) For the period commencing January 1, 1987, and ending when an institution's liability factor reaches 6 percent, an institution's base liabilities amount plus its increased liabilities amount; and

(B) Thereafter, 6 percent of total liabilities.

(2) *Calculation of base liabilities amount.* (i) "Base liabilities amount" means an amount of capital which equals the greater of

(A) An institution's base liabilities multiplied by the liability factor for a quarter, or

(B) An institution's base liabilities multiplied by its base ratio.

(ii) "1987 base factor" means the minimum required amount of net worth under the former net worth regulation (12 CFR 563.13(g)(2) (1986)), ("former net worth regulation") calculated as of December 31, 1986, excluding the contingency component and before reduction for qualifying balances. This is the institution's 1987 base factor under the former net worth regulation.

(iii) "Base ratio" means a percent derived from a ratio (A) with a numerator equal to an institution's 1987 base factor; and (B) with a denominator equal to the institution's total liabilities as of December 31, 1986.

(iv) "April calculation" means a percentage of the aggregate annual rate of return on the aggregate average level of assets of all insured institutions collectively. The percentage used for insured institutions in the standard group is 75 percent. The percentage used for insured institutions in the lower group is 90 percent. The Board will calculate the industry's rate of return and the resulting calculations in April of each year based upon the data for the prior calendar year.

(v) "Liability factor" means the percentage rate in any given quarter applied to an institution's base liabilities at the end of that quarter to calculate its base liabilities amount for that quarter.

(A) Institutions with base ratios equal to 3 percent (the "standard group") shall have initial liability factors of 3 percent. This percentage will change each July 1 by one-half of the most recent April calculation for the standard group and will change by the same percentage the following January 1.

(B) Institutions with liability factors below 3 percent ("lower group") shall have initial liability factors equal to their base ratios. This percentage will increase each July 1 by the higher of one-half of the most recent April calculation for the lower group or 90 percent of the institution's own return on assets (data based on its most recent annual report) for the prior calendar year. This liability factor will increase by the same percentage on the following January 1. If for any quarter an institution's liability factor computed under this method exceeds the liability factor of the standard group (as published with the Board's April calculation), the institution shall from that time forward use the liability factor of the standard group.

(C) Institutions with base ratios exceeding 3 percent (the "higher group") shall have initial liability factors equal to their base ratios. Such an institution's liability factor shall remain constant until that liability factor is exceeded by the standard group's liability factor (as published with the Board's April calculation). From that time forward, such an institution's liability factor shall be the standard group's liability factor.

(3) *Calculation of increased liabilities amount.* The "increased liabilities amount" means an amount of capital equal to 6 percent of an institution's total liabilities in excess of its base liabilities.

(4) *Calculation of contingency component.*—(i) *Definitions.* The terms defined in this paragraph are used in determining the contingency component, but may also be used elsewhere in this section.

(A) "Fully phased-in requirement" means an amount of capital equal to 6 percent of total liabilities plus the contingency component minus the maturity matching credit.

(B) "Net fully phased-in requirement" means an amount of capital equal to 6 percent of total liabilities plus the incremental capital requirement on fixed reserve elements of the contingency component minus the maturity matching credit.

(C) "Fully phased-in institution" means an institution meeting its fully phased-in requirement.

(D) "Fixed reserve elements" means scheduled items, recourse liabilities, and standby letters of credit.

(E) "Variable reserve elements" means direct investments, land loans, and nonresidential construction loans.

(ii) *Calculation method.* Contingency component means the sum of:

(A) Two (2) percent of recourse liabilities (as that term is defined in § 561.8 of this subchapter) resulting from the sale of any loan;

(B) Twenty (20) percent of the institution's scheduled items (as that term is defined in § 561.15 of this subchapter);

(C) Subject to the provisions of paragraph (b)(4)(ii)(D) of this section,

(*1*) An amount equal to a percentage of the dollar amount of aggregate direct investment (as defined in § 563.9–8(b)(1) of this subchapter) made after June 30, 1986, determined as follows:

(*i*) For institutions that do not meet their capital requirement, calculated without reference to the variable reserve elements of the contingency component, 10 percent of all direct investments.

(*ii*) For institutions that meet their current capital requirements but whose capital is less than the greater of 6 percent of liabilities or the net fully phased-in requirement, 5 percent of direct investments that constitute up to and including 10 percent of assets, and 10 percent of all other direct investments in excess of 10 percent.

(*iii*) For institutions whose capital is at least equal to the greater of their net fully phased-in capital requirement or 6 percent of liabilities, 5 percent of direct investments that constitute between 10 percent and up to and including 20 percent of assets, and 10 percent of direct investments that constitute more than 20 percent of assets;

(D) For purposes of paragraph (b)(4)(ii)(C) of this section, "aggregate direct investment made after June 30, 1986,"

(*1*) Includes: (*i*) All direct investments made after June 30, 1986; and (*ii*) direct investments made on or before June 30, 1986, that were subject to an incremental capital requirement under the contingency factor of the former net worth regulation (12 CFR 563.13(g)(5)(iii) (1986));

(*2*) Does not include:

(*i*) Direct investments in portfolio on or before June 30, 1986, that were not subject to an incremental capital requirement under the contingency factor of the former net-worth regulation (12 CFR 563.13(g)(5)(iii)(1986));

(*ii*) Direct investments to which an institution was legally committed on or before June 30, 1986; or

(*iii*) Real estate projects completed pursuant to definitive plans in existence on or before June 30, 1986; and

(*iv*) Investments made in any service corporation or operating subsidiary; *Provided*, that any direct investment

made by such service corporation or operating subsidiary which if made by the parent would be included in the parent's contingency component shall be included in the total of such investments of the parent institution;

(E) Subject to the provisions of paragraph (b)(4)(ii)(E)(*2*) of this section,

(*1*) An amount equal to a percentage of the dollar amount of aggregate land loans made after June 30, 1986, determined as follows:

(*i*) For institutions that do not meet their capital requirements, calculated without reference to the variable reserve elements of the contingency component, 4 percent of all land loans.

(*ii*) For institutions that meet their current capital requirements but whose capital is less than the greater of 6 percent of liabilities or the net fully phased-in requirement, 2 percent of land loans constituting up to and including 10 percent of assets, and 4 percent of land loans above that amount.

(*iii*) For institutions whose capital is at least equal to the greater of their fully phased-in capital requirement or 6 percent of liabilities, 2 percent of land loans that constitute between 10 percent and up to and including 20 percent of assets, and 4 percent of land loans above that amount.

(*2*) For purposes of paragraph (b)(4)(ii)(E)(*1*) of this section, "aggregate land loans made after June 30, 1986," means all land loans made after that date, but does not include land loans in portfolio as of that date, or loans to which the institution was legally committed on or before that date;

(F) Subject to the provisions of paragraph (b)(4)(ii)(F)(*2*) of this section,

(*1*) An amount equal to a percentage of the dollar amount of aggregate nonresidential construction loans made after June 30, 1986 determined as follows:

(*i*) For institutions that do not meet their capital requirements, calculated without reference to the variable reserve elements of the contingency component, 4 percent of all nonresidential construction loans.

(*ii*) For institutions that meet their current capital requirements but whose capital is less than the greater of 6 percent of liabilities or the net fully phased-in requirement, 2 percent of nonresidential construction loans constituting up to and including 10 percent of assets, and 4 percent of nonresidential construction loans above that amount.

(*iii*) For institutions whose capital is at least equal to the greater of their net fully phased-in capital requirement or 6 percent of liabilities, 2 percent of nonresidential construction loans that constitute between 10 percent and up to and including 20 percent of assets, and 4 percent of nonresidential construction loans above that amount.

(*2*) For the purposes of paragraph (b)(4)(ii)(F)(*1*) of this section, "aggregate nonresidential construction loans made after June 30, 1986," means all nonresidential construction loans made after that date, but not nonresidential construction loans in portfolio as of that date, or nonresidential construction loans to which the institution was legally committed on or before that date;

(G) Two (2) percent of all standby letters of credit.

(5) *Calculation of maturity matching credit.* The "maturity matching credit" means an amount up to 2 percent of total liabilities by which the minimum regulatory capital requirement imposed under paragraphs (b)(2), (b)(3), and (b)(4) of this section may be reduced based upon an institution's low interest rate risk exposure as reflected by the institution's 1 year and 3 year hedged gap.

(i) *Definitions.* (A) "Hedged gap" means the difference between the dollar value of assets maturing or repricing within a defined time period and the liabilities maturing or repricing during that time period, all divided by total assets. Data are adjusted to reflect anticipated prepayments and hedging activities.

(B) "One-year gap" means the cumulative hedged gap for liabilities and assets maturing or repricing within 1 year.

(C) "Three-year gap" means the cumulative hedged gap for liabilities and assets maturing or repricing within 3 years.

(ii) *Calculation of maturity matching credit.* (A) The minimum regulatory capital requirement imposed by this section shall be reduced by 1 percent of total liabilities for a 1-year gap with an absolute value equal to or less than 15 percent. The capital requirement for institutions with a 1-year gap with an absolute value greater than 15 percent but less than or equal to 25 percent will be reduced by an amount calculated as follows: [.02005−(.067×[the absolute value of Gap])] multiplied by total liabilities. No reduction will be made for a 1-year gap with an absolute value greater than 25 percent.

(B) The minimum regulatory capital requirement imposed by this section shall be reduced by 1 percent of total liabilities for a 3-year gap with an absolute value equal to or less than 15 percent. The capital requirement for institutions with a 3-year gap with an absolute value greater than 15 percent but less than or equal to 25 percent will be reduced by an amount calculated as follows: [.02005−(.067×[the absolute value of Gap])] multiplied by total liabilities. No reduction will be made for a 3-year gap with an absolute value greater than 25 percent.

(C) The total amount of deductions allowed pursuant to this paragraph shall not reduce an institution's minimum regulatory capital requirement under this section below 3 percent of total liabilities for any period up to and including December 31, 1989; or below 4 percent of total liabilities on or after January 1, 1990.

(D) For purposes of determining its maturity matching credit, an institution may use the 1-year and 3-year gaps calculated by its internal systems or the cumulative hedged gap calculated by the institution's Federal Home Loan Bank. The gap will be calculated by the Bank or the institution based on the data in section H of the Quarterly Report filed with the Board by the institution 6 months prior to the Quarterly Report for which the institution is calculating its minimum regulatory capital requirements. If the institution's calculation of its cumulative hedged gap differs significantly from its Federal Home Loan Bank's calculation, the PSA may disallow the institution's calculation and rely on its own calculation of the institution's cumulative hedged gap.

(6) *Special requirements for de novo and certain other institutions.* (i) *"De novo* institution" means an institution which filed with the appropriate Federal Home Loan Bank an application for insurance of accounts, a request for a commitment to insure accounts, or an application to organize a Federal association, that was not approved prior to December 2, 1983, and the business of which has not been conducted previously under any charter.

(ii) The minimum regulatory capital requirement for *de novo* institutions shall be an amount computed in accordance with the provisions of this section applicable to all institutions except that the liability factors of such institutions will differ from the requirement of other institutions. The liability factor of a *de novo* institution (except for a *de novo* institution whose *de novo* application was processed in accordance with § 571.6(a)(2), or a *"de novo"* institution with a liability related requirement of 5 percent on the effective date of the regulation) shall be 7 percent of its total liabilities from the date it commences operations through the last day of its first full fiscal year, and 6 percent of total liabilities thereafter. A *de novo* institution with a liability

related capital requirement of 5 percent on the effective date of this regulation shall be treated the same as other institutions in the higher group. That is, its liability factor shall remain 5 percent until exceeded by the standard group's liability factor and shall thereafter equal the standard group's liability factor.

(iii) *De novo* institutions which elected to have their applications for insurance of accounts processed in accordance with the policy set forth in § 571.6(a)(2) of this subchapter, but that did not also qualify under § 571.6(a)(3), shall maintain a minimum amount of regulatory capital computed in accordance with the provisions of this section applicable to all institutions. However, the liability factor for such an institution shall be 7 percent of its total liabilities for the period from the date it commences operations through the last day of its third full fiscal year, and shall be 6 percent of total liabilities thereafter.

(iv) Institutions other than *de novo* institutions with current liability related capital requirements exceeding those for other institutions under their charters or agreements (including institutions formerly insured by the Federal Deposit Insurance Corporation or by privately funded insurance systems) shall have liability factors equal to the higher of the liabilities related portion of their specifically mandated capital requirements or the liability factor of the standard group.

(7) *Mergers, consolidations, or purchases of assets and assumptions of liabilities.* (i) Except as provided elsewhere in this section, after any merger, consolidation, or purchase of assets and assumption of liabilities (referred to as a "merger" of the "merged" and "continuing" institutions), beginning in the quarter in which the merger becomes effective, the regulatory capital requirement of the continuing institution is computed immediately after the merger based on the combined assets, investments, base liabilities, and increased liabilities of the merged and continuing institutions. The liability factor of the continuing institution shall be a percent derived from a ratio

(A) With a numerator equal to the combined base liability amounts of the institutions immediately before the merger and

(B) With a denominator equal to the combined base liabilities of the institutions. The continuing institution's maturity matching credit shall similarly be computed as a weighted average (using total liabilities) of the 1-year and 3-year gaps of the merged and continuing institutions.

(ii) For any acquisition of less than substantially all of the liabilities of an institution in which the selling institution continues in operation as a separate entity (including, but not limited to, branch acquisitions), the base liabilities of the acquiring institution beginning in the quarter in which the transaction becomes effective shall be the base liabilities of the acquiring institution calculated to include an amount equal to the liabilities so acquired, the institution shall apply its liability factor for the quarter to its increased level of base liabilities acquired from the selling institution. The selling institution shall deduct the amount of liabilities sold from its base liabilities and shall apply its liability factor for the quarter to this reduced level of base liabilities.

(iii) The provisions of this paragraph (b)(7) may be superseded by the Corporation if the Corporation determines that such consolidation, merger, or purchase of assets and assumption of liabilities (including, but not limited to, branch acquisitions) is instituted for supervisory purposes.

(8) *Calculation period and maintenance requirement.* An institution shall calculate its minimum regulatory capital requirement pursuant to this section as of the end of each calendar quarter commencing with the quarter ending March 31, 1987, and shall maintain regulatory capital in an amount not less than the minimum requirement so calculated from the end of the quarter for which the minimum requirement was calculated until the end of the next succeeding calendar quarter.

* * * * *

§ 563.13 [Amended]

7. Amend § 563.13 by removing paragraphs (e), (g), and (i).

8. Amend § 563.13 by redesignating paragraphs (f) and (h) as the new paragraphs (e) and (f), respectively.

9. Section 563.13–1 is revised to read as follows:

§ 563.13–1 Liability growth.

(a)(1) No insured institution, unless exempted by paragraph (b) of this section, shall increase its total liabilities within any 2-quarter period at a rate greater than 12.50 percent without prior approval of the institution's Principal Supervisory Agent ("PSA").

(2)(i) The rate of increase in liability growth under paragraph (a)(1) of this section shall be computed by subtracting an institution's total liabilities as of the beginning of a 2-consecutive-quarter period from its total liabilities as of the end of the 2-consecutive-quarter period and by dividing this amount by the institution's total liabilities as of the beginning of the 2-consecutive-quarter period.

(ii) The method of computation set forth in paragraph (a)(2)(i) of this section shall be used by an institution commencing operations as an insured institution or initially becoming subject to this regulation, although such an institution's first computation under this section shall be made at the end of the second quarter during which the institution operates or is subject to this regulation for all or a portion of the quarter. If an institution commences operation or initially becomes subject to this regulation within a quarter, the institution shall be permitted to grow up to 6.25 percent during that quarter.

(iii) For purposes of computing an institution's growth pursuant to paragraphs (a)(1) and (2) of this section, an institution's total liabilities as of the beginning of a 2-consecutive-quarter period

(A) Shall include any increases in liabilities during the 2-quarter period resulting from the acquisition of substantially less than all of the liabilities of an institution after which the selling institution continues in operation as a separate entity (including, but not limited to, branch acquisitions), and

(B) Shall be equal to the total liabilities of merged or continuing institutions as of the beginning of the 2-quarter period in the case of a merger, consolidation, or purchase of assets and assumption of liabilities that occurs during the 2-consecutive-quarter period.

(3) Notwithstanding the provisions of paragraph (a)(1) or (2) of this section, an insured institution that increases its liabilities through merger, consolidation, or purchase of assets and assumption of liabilities, for which prior review and approval under § 563.22 of this part is required, shall not be required to file an application under paragraph (c) unless such institution otherwise increases its liabilities by an amount in excess of 12.50 percent within any 2-consecutive quarter period.

(b) Any insured institution is exempted from the preapproval requirement of paragraphs (a) and (c) of this section if it has regulatory capital equal to the higher of its fully phased-in capital requirement (6 percent of total liabilities plus contingency component minus maturity matching credit) or 6 percent of total liabilities. Such an institution must provide notice to its PSA of its intention to grow in excess of

the standard set by paragraph (a) of this section.

(c) To obtain prior written approval from its PSA an institution shall submit a written growth plan. A growth plan shall cover a period of time not to exceed 1 year and shall include the following information:

(1) The institution's regulatory capital as of the end of the preceding calendar quarter and its estimated regulatory capital as of the end of the period covered by the growth plan;

(2) The amount of liabilities the institution expects to obtain;

(3) A listing of the proposed sources of and the methods by which the liabilities will be obtained;

(4) The costs, rates, and maturities of liabilities to be obtained; and

(5) The planned uses of any liabilities obtained.

(d) No institution shall alter an approved written growth plan or materially diverge from such a plan without the prior written approval of its PSA.

(e) Within 10 days after the filing of a growth plan or any additional information, the PSA shall notify the applicant in writing either that all information required under paragraph (b) of this section has been filed or that additional specified information must be filed. Unless the PSA takes objection to or conditionally approves the plan within 30 days of the date of written notice that all required information has been filed, the plan shall be deemed to be approved. Based on an institution's growth plan, the PSA may require the institution to maintain not more than 4 percent additional regulatory capital over that required by § 563.13(b)(1) on all or a portion of the institution's growth over the 12.50 percent rate computed in accordance with paragraph (a) of this section. In determining whether to take objection to a growth plan, to approve a growth plan conditionally, or to require additional regulatory capital, the PSA shall consider the following factors:

(1) The effect of the plan upon the institution's regulatory capital;

(2) The risk of the corresponding investments, the likelihood of obtaining the projected return, the level of diversification, and the ability of the institution to underwrite the incremental volume of investments;

(3) The relative maturities of the liabilities and corresponding investments;

(4) The extent to which the liabilities are derived from or through a single source;

(5) The extent to which the interest to be paid on the liabilities conforms with generally prevailing rates for similar liabilities;

(6) The financial strength of the institution, including the level of its regulatory capital, which shall not be less than that required by § 563.13;

(7) The stability of the institution's earnings over the 6 preceding calendar quarters;

(8) The extent to which the institution's overall policies are consistent with economical home financing, as evidenced by whether the institution would comply with the definition of "qualified institution" set forth in § 584.2–2(b) of this chapter; and

(9) Whether the overall policies, conditions, and operation of the applicant afford a basis for supervisory objection.

(f) Total liabilities for purposes of this section shall not include an amount of securities issued through subsidiaries (as defined by § 563.13–2(a)(1)) that does not cause the subsidiary's level of outstanding securities to exceed its level of securities grandfathered pursuant to § 563.13–2(b). Such securities shall be included in total liabilities as defined in § 563.13(b)(1)(i) for all other purposes.

§ 563.13–2 [Amended]

10. Section 563.13–2(c)(1) is amended by adding after the word "management" the phrase "and, if issued after August 15, 1986, collateralized by assets the market value of which is less than 110 percent of the gross proceeds of the securities issuance".

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86–21005 Filed 9–19–86; 8:45 am]

BILLING CODE 6720–01–M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 790

Description of Office—Current Structure and Geographic Responsibilities

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: This rule revises § 790.2 of NCUA Rules and Regulations to reflect the current Central Office structure and the geographic responsibilities of the NCUA Regional Offices.

EFFECTIVE DATE: October 1, 1986.

ADDRESS: National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Benny R. Henson, Director, Administrative Office or Wilmer A. Theard, Director, Administrative Procedures, at the above address or telephone (202) 357–1055.

SUPPLEMENTARY INFORMATION: The organizational structure of the NCUA Central Office has undergone some realignment with corresponding changes in areas of responsibilities since this Part was last revised. Most significant has been the addition of the Office of the Chief Economist, and the elimination of the Office of Consumer Affairs. The geographic responsibilities of three regional offices have been adjusted for a more equitable distribution of work load. This revision is to make § 790.2 reflective to the NCUA current organizational structure.

Regulatory Procedures

The NCUA Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Since the regulation does not create any negative impact on credit unions, the NCUA Board is issuing a final rule without seeking comments from the public.

Paperwork Reduction Act

This rule does not impose a paperwork burden on the public as defined by the Paperwork Reduction Act and implementing regulations, and therefore, will not be submitted for OMB clearance.

List of Subjects in 12 CFR Part 790

Organization and functions.

By the National Credit Union Administration on the 10th day of September, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

PART 790—[AMENDED]

Accordingly, NCUA has amended Part 790, Subpart A, as follows:

1. The authority citation for Part 790 is revised to read as follows and the authority citations following all the Sections of part 790, are removed.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f. Subpart A is also issued under 5 U.S.C. 552. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. Section 790.2 is revised to read as follows:

§ 790.2 Central and regional organization.

(a) *General organization.* The National Credit Union Administration (hereinafter referred to as the

"Administration") is composed of the National Credit Union Administration Board (hereinafter referred to as the "Board"), with a central office in Washington, DC, six regional offices, and a corporation known as the National Credit Union Administration Central Liquidity Facility.

(b) *Central Office*—(1) *The Board.* The Board consists of three members appointed by the President, with the advice and consent of the Senate, for six year terms (except for two of the initial members who will serve staggered two and four year terms). One Board member is designated by the President to be Chairman of the Board. A second member is designated by the Board to be Vice-Chairman. The Board also serves as the Board of Directors of the National Credit Union Administration Central Liquidity Facility.

(2) *Secretary of the Board.* The Secretary of the Board is responsible for the secretarial functions of the National Credit Union Administration Board. The Secretary's responsibilities include preparation of agendas of the meetings of the Board, preparation and maintenance of the minutes of all official action of the Board, and signing and executing all documents adopted and issued by or on behalf of the Board. The Secretary also serves as the Secretary of the National Credit Union Administration Central Liquidity Facility.

(3) *Office of the Executive Director.* The principal duty and responsibility of the Executive Director is to translate NCUA Board policy decisions into workable programs, delegate responsibility for these programs to appropriate staff members, and coordinate the activities of the senior executive staff includes the General Counsel, Internal Auditor, Chief Economist, the Office Directors for Public and Congressional Affairs, Examination and Insurance, Information Systems and the Regional Directors. Because of the nature of the client/lawyer relationship between the Board and General Counsel, and because the Internal Auditor serves as the "eyes and ears" of the Board, these executives may, at times, be directed by the Board not to disclose discussions and/or assignments with anyone else including the Executive Director. On these, and only these occasions, the requirement to keep the Executive Director informed is not operative. In addition to the foregoing, the Executive Director is responsible for managing the Personnel Office, the Controller's Office, and Administrative Office.

(4) *Office of Examination and Insurance.* The Director of this office performs duties relating to the formulation of standards and procedures for examination and supervision of the community of federally insured credit unions; administering, for the NCUA Board, the National Credit Union Share Insurance Fund and reporting upon its performance in the areas of premiums invested, income therefrom, and fund assistance to organizations in need of same. The Director reports to the NCUA Board the results of evaluations in the areas of established goals and the quality of the examination program. The Director serves as the Agency's expert on matters concerning accounting principles and standards, auditing standards, and investments for credit unions, and represents NCUA in areas such as meetings/conventions, with the AICPA, FFIEC and GAO. Additionally, the Director collects data and provides statistical and economic reports and research papers on market trends affecting credit unions.

(5) *Office of General Counsel.* The General Counsel has overall responsibility for all legal matters affecting the Administration and for liaison with the Department of Justice. Specifically, the General Counsel represents the Administration in all litigation and administrative hearings when such direct representation is permitted by law and, in other instances, assists the attorneys responsible for the conduct of such litigation. The General Counsel also provides the Administration with legal advice and opinions on all matters of law. This includes the interpretation of the Federal Credit Union Act, Rules and Regulations, and other statutes and regulations which may affect the Administration and federally insured credit unions. The General Counsel has responsibility for the drafting, reviewing, and publication of all items which appear in the **Federal Register.** This includes rules, regulations, and notices required by law.

(6) *Office of the Internal Auditor.* The Internal Audit is responsible for the scheduling and conduct of independent and objective audits of all NCUA programs and functions to determine compliance with statutory, regulatory requirements and policies for which the Board is responsible pursuant to the Federal Credit Union Act and other Federal statutes as well as NCUA operating policies. Also, the Internal Auditor monitors corrective actions taken for deficiencies detailed in audit reports and conducts special investigations as directed by the NCUA Board Members and Executive Director.

(7) *Office of the Chief Economist.* The Chief Economist is responsible for development and conduct of research plans in support of agency programs in addition to preparation of periodic reports on research activities for the information and use of agency staff, credit union officials, state credit union supervisory authorities, and other government and private groups.

(8) *Office of Public and Congressional Affairs.* The Director of the Office of Public and Congressional Affairs is responsible for the agency's relationship with public and media and liaison with the U.S. Congress and for the analysis and development of legislative proposals and public affairs strategies. The purpose of the office is to attempt to enhance NCUA's relationship with the Congress, credit unions, the media, its own employees, and the public-at-large. Has responsibility for liaison with other executive branch agencies concerning legislative matters.

(9) *Office of Information Systems.* The Director of Office of Information Systems has responsibility for managing and operating the agency's electronic data processing plant and meeting the agency's user needs for reports generated by the system. The Director reports to the Board concerning appraisal and review of analytical and statistical reporting systems for which the office is responsible and determines that such systems meet Administration needs.

(c) *Regional Offices.* (1) The programs of the National Credit Union Administration are conducted through six regions with regional headquarters and assigned geographical areas as set forth in the following chart:

Region No.	Area within region	Office address
I	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, Virgin Island.	441 Stuart Street, 6th Floor, Boston, Massachusetts 02116.
II	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.	1776 G Street, NW., Suite 700, Washington, DC 20006.
III	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.	1365 Peachtree Street, NE., Suite 540, Atlanta, Georgia 30367.
IV	Illinois, Indiana, Michigan, Missouri, Ohio, Wisconsin.	230 S. Dearborn, Suite 3346, Chicago, Illinois 60604.
V	Arizona, Colorado, Iowa, Kansas, Minnesota, Nebraska, New Mexico, North Dakota, South Dakota, Oklahoma, Texas, Utah.	611 East 6th Street, Suite 407, Austin, Texas 78701.

Region No.	Area within region	Office address
VI	Alaska, American Samoa, California, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, Washington.	2890 N. Main Street, Suite 101 Walnut Creek, California 94596.

(2) A Regional Director is in charge of each regional operation. The Regional Director directs the programs of the Administration in the region assigned in accordance with established policies. Includes such duties as directing the chartering, insurance, examination, and supervision programs to promote and assure safety and soundness; managing regional resources to meet program objectives in the most economical and practical manner; and maintaining good public relations with public private, and governmental organizations, Federal credit union officials, credit union organizations, and other groups which exert influence in the assigned region. The Director maintains liaison and cooperation with other regional offices of Federal departments and agencies, State agencies, city and county officials, and other governmental units that impact on credit union activities. He is aided by a Deputy Regional Director. Each region is divided into Examiner districts; groups of examiners are directed by Supervisory Examiners, who in turn report directly to the Regional Director and/or Deputy Regional Director.

(d) *National Credit Union Administration Central Liquidity Facility*—(1) *General organization.* The National Credit Union Administration Central Liquidity Facility ("the Facility") was created by Pub. L. 95–630 to improve general financial stability by providing funds to meet the liquidity needs of credit unions. It is "mixed ownership Government corporation" (Section 856 of the Government Corporation Control Act, 31 U.S.C. 841, et seq.) within the National Credit Union Administration. The Facility's corporate headquarters are located at 1776 G Street, NW., Washington, DC 20456. The Central and Regional Offices of the National Credit Union Administration provide services and information to the Facility on a cost-reimbursable basis and, depending upon need, employees of the Facility may be assigned to the Regional Offices. The Facility is also assisted in its operations by central credit unions designated as "Agent Members" which provide Facility services to other credit unions which do not have direct access to the Facility.

(2) *Board of Directors.* The Facility is managed by the National Credit Union Administration Board which acts as the Facility's Board of Directors ("the Board"). The Chairman of the National Credit Union Administration Board is the Chairman of the Board of Director of the Facility. The Board is assisted in managing the Facility by the following officers who are appointed by and are responsible to the Board: President, Vice President for Credit, Vice President for Finance, Secretary and Treasurer.

(3) *President.* The President is the chief executive officer of the Facility and works under the general supervision of the Board. The President provides overall executive direction and guidance and is responsble for the ongoing management of the Facility. The President manages the Facility staff and their activities both in the central office and the regions; provides general supervision to the other officers of the Facility; and intitiates and maintains working relationships with the credit union community, other Federal and state government authorities, and the banking and investment communities.

(4) *Vice President for Credit.* The Vice President for credit is responsible for planning implementing, and directing programs related to the Facility lending policies, procedures, and regulations. The Vice President for Credit responsibility for directing Facility lending to regular members, agent members and agent group representatives and to monitor lending activity throughout the Facility to assure conformity with policies, procedures and regulations. The Vice President for Credit also develops and maintains a working relationship with state supervisors, state insurance authorities, and Federal financial agencies.

(5) *Vice President for Finance.* The Vice President for Finance is responsible for planning, impementing, and directing borrowing and investment programs for the purpose of financing Facility operations. The Vice President for Finance has responsiblity for directing Facility borrowing from the Federal Financing Bank, the securities market, and from any other source, and also has responsibility for the Facility's investing of funds in the U.S. Government and agency securities. The Vice President for Finance develops and maintains working relationships with the investment and banking communities and with Federal financial agencies.

(6) *Treasurer.* The Treasurer develops and manages the Facility's operational systems for the purposes of monitoring and reporting the use of the Facility funds. The Treasurer establishes accounting policies and procedures for the Facility, and maintains working relationships with Agent members, state supervisors, and insurance corporations, and Federal financial agencies.

(7) *Secretary.* The Secretary of the National Credit Union Administration Board serves as the Secretary of the Facility. The Secretary has responsibility for preparing the Board's agenda and giving all required notices, keeping the minutes of the Board, and maintaining all records of the Facility other than those of a financial nature.

(8) *Operational assistance.* The National Credit Union Administration's regional and central offices provide services to the Facility as needed. The Facility reimburses the Administration for services provided.

[FR Doc. 86–21368 Filed 9–19 86; 8:45 am]
BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86–AWP–20]

Revocation of the Red Bluff, CA, Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Red Bluff, California, control zone. One of the requirements to have a control zone is that hourly and special weather observations must be taken at the airport upon which the control zone is designated. Weather observations must be taken during the times and dates a control zone is effective. Red Bluff, California, will not meet the criteria for retention of the control zone since the Red Bluff Weather Service Office (WSO) will be closed and its functions transferred to the Redding, California WSO. This action will raise the floor of controlled airspace in the vicinity of Red Bluff Municipal Airport to 700 feet above ground level.

EFFECTIVE DATE: 0901 U.t.c., December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297–1649.

SUPPLEMENTARY INFORMATION:

History

On July 11, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revoke the Red Bluff, California, control zone (51 FR 25209). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revokes the Red Bluff, California, control zone. This will raise the floor of controlled airspace to 700 feet above ground level in the vicinity of the Red Bluff Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

PART 71—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

§ 71.171 [Amended]

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

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

2. Section 71.171 is amended as follows:

Red Bluff, California [Removed]

Issued in Los Angeles, California, on September 10, 1986.

Wayne C. Newcomb,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86-21327 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 86-AWA-9]

Alteration of VOR Federal Airway V-77 and Jet Route J-21—OK

Correction

In FR Doc. 86-19173, beginning on page 30334, in the issue of Thursday, August 26, 1986, make the following corrections:

On page 30334, second column, last paragraph, ninth line, "nor" should read "not", and in the thirteenth line, "MOSs' " should read "MOAs' ".

BILLING CODE 1505-01-M

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14 CFR Part 73

[Airspace Docket No. 85-AWA-42]

Alteration of Prohibited Area P-66 Rancho del Cielo, Goleta, CA

Correction

In FR Doc. 86-19072, beginning on page 30208, in the issue of Monday, August 25, 1986, make the following corrections:

§ 73.93 [Corrected]

On page 30209, second column, sixth line under § 73.93 [Amended], "to lat. 31°34'00" N.," should read "to lat. 34°31'00" N.,".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Estradiol Valerate and Norgestomet in Combination

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADA's) filed by CEVA Laboratories, Inc., and G.D. Searle & Co. providing for safe and effective use of a norgestomet (synthetic progestogen) implant and an estradiol valerate/norgestomet injection for synchronizing estrus/ovulation in adult beef cows.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: CEVA Laboratories, Inc., 10560 Barkley, Overland Park, KS 66212, filed a supplement to NADA 134-930 and G.D. Searle & Co., P.O. Box 5110, Chicago, IL 60680, filed a supplement to NADA 97-037 providing for use of an implant containing 6.0 milligrams (mg) of norgestomet and an injection containing 5.0 mg of estradiol valerate and 3.0 mg of norgestomet per 2 milliliters. The supplements provide for use of the product to control timing of estrus to permit synchronized breeding of cycling adult beef cows in addition to the previously approved use in cycling beef heifers and non-lactating dairy heifers.

Approval of the supplement to NADA 134-930 is based on data and information contained in Searle's supplement to NADA 97-037 and incorporated herein by reference. The supplements are approved and the regulations are amended to reflect the approvals. The basis of the approvals is discussed in the supplemental freedom of information summary for NADA 97-037.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

For the supplement to NADA 97-037, the agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the

National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(4).

For the supplement to NADA 134–930, the agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.850 is amended by revising paragraph (c)(2) to read as follows:

§ 522.850 Estradiol valerate and norgestomet in combination.

* * * * *

(c) * * *

(2) *Indications for use.* For synchronization of estrus/ovulation in cycling beef cattle and non-lactating dairy heifers.

* * * * *

Dated: September 12, 1986.

Marvin A. Norcross,

Associate Director for New Animal Drug Evaluation.

[FR Doc. 86–21337 Filed 9–19–86; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of 3-Methylfentanyl into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) to place the narcotic substance, 3-methylfentanyl, into Schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). This action is based on findings made by the DEA Administrator, after a review and evaluation of the relevant data made by both DEA and the Acting Assistance Secretary of Health, that 3-methylfentanyl meets he statutory criteria for inclusion in Schedule I of the CSA. As a result of this final rule, the regulatory controls and criminal sanctions of Schedule I will be applicable to the manufacture, distribution, importation and exportation of 3-methylfentanyl.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1366.

SUPPLEMENTARY INFORMATION: 3-Methylfentanyl is an extremely potent analog of the Schedule II synthetic narcotic analgesic fentanyl. Produced in clandestine laboratories, 3-methylfentanyl has been identified in the illicit drug traffic and associated with scores of overdose deaths since early 1984.

Based on the data available to him in early 1985, the DEA Administrator etermined that scheduling 3-methylfentanyl in Schedule I of the CSA, at least on a temporary basis, was necessary to avoid an imminent hazard to the public safety. Therefore, in the Federal Register notice (50 FR 11690–11692) dated March 25, 1985, the DEA Administrator, pursuant to the emergency scheduling provisions of 21 U.S.C. 811(h), placed 3-methylfentanyl into Schedule I of the CSA for one year effective on April 25, 1985. The temporary scheduling of 3-methylfentanyl was extended until October 25, 1986 in a subsequent Federal Register notice (51 FR 15474–15475).

On April 24, 1986, in a notice of proposed rulemaking published in the Federal Register (51 FR 15501–15502), after an independent review by DEA and a scientific and medical evaluation by the Acting Assistant Secretary for Health of the relevant data regarding 3-methylfentanyl, the DEA Administrator proposed to permanently place 3-methylfentanyl into Schedule I of the CSA pursuant to 21 U.S.C. 811. Interested parties were given until May 27, 1986 to submit comments or objections in writing regarding this proposal. DEA received no comments or objections nor were there any requests for a hearing.

Based upon the investigations and review conducted by DEA and upon the scientific and medical evaluation and recommendation of the Acting Assistant Secretary for Health received in accordance with 21 U.S.C. 811(c), the DEA Administrator, pursuant to the provisions of 21 U.S.C. 811 (a) and (b), finds that:

(1) 3-Methylfentanyl has a high potential for abuse;

(2) 3-Methylfentanyl has no currently accepted medical use in treatment in the United States; and

(3) 3-Methylfentanyl lacks accepted safety for use under medical supervision.

The above findings are consistent with the placement of 3-methylfentanyl into Schedule I of the CSA. The Administrator further finds that 3-methylfentanyl is an opiate as defined in 21 U.S.C. 802(18) since it has an addiction-forming and addiction-sustaining liability similar to that of morphine. Consequently, 3-methylfentanyl is a narcotic since the definition of narcotic, as stated in 21 U.S.C. 802(17)(A), includes: "Opium, opiates, derivatives of opium and opiates."

In accordance with 21 U.S.C. 811(h)(5) the emergency scheduling order for 3-methylfentanyl shall be vacated on the effective date of this final rule permanently placing 3-methylfentanyl into Schedule I of the CSA pursuant to 21 U.S.C. 811(a).

Since 3-methylfentanyl is already under temporary control in Schedule I, all regulations applicable to Schedule I narcotic substances will continue to be effective as of September 22, 1986. The current applicable regulations are as follows:

1. *Registration.* Any person who manufacturers, distributes, delivers, imports or exports 3-methylfentanyl, or who engages in research or conducts instructional activities with respect to this substance, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Security.* 3-Methylfentanyl must be manufactured, distributed and stored in accordance with §§ 1301.71–1301.76 of Title 21 of the Code of Federal Regulations.

3. *Labeling and Packaging.* All labels and labeling for commercial containers of 3-methylfentanyl must comply with the requirements of §§ 1302.03–1302.05,

1302.07 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Quotas.* All persons required to obtain quotas for 3-methylfentanyl shall submit applications pursuant to §§ 1303.12 and 1303.22 of Title 21 of the Code of Federal Regulations.

5. *Inventory.* Every registrant required to keep records and who possesses any quantity of 3-methylfentanyl shall take an inventory pursuant to §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations of all stocks of this substance on hand.

6. *Records.* All registrants required to keep records pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations shall maintain such records on 3-methylfentanyl.

7. *Reports.* All registrants required to submit reports pursuant to §§ 1304.34–1304.37 of Title 21 of the Code of Federal Regulations shall do so regarding 3-methylfentanyl.

8. *Order Forms.* All registrants involved in the distribution of 3-methylfentanyl must comply with the order form requirements of §§ 1305.01–1305.16 of Title 21 of the Code of Federal Regulations.

9. *Importation and Exportation.* All importation and exportation of 3-methylfentanyl shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

10. *Criminal Liability.* The Administrator, Drug Enforcement Administration, hereby orders that any activity with respect to 3-methylfentanyl not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act shall be unlawful.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the placement of 3-methylfentanyl into Schedule I of the Controlled Substances Act will have no impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action involves the permanent control of a substance with no legitimate medical use or manufacture in the United States.

In accordance with the provisions of 21 U.S.C. 811(a), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA (21 U.S.C. 811(a)) and delegated to the Administrator of DEA by Department of Justice Regulations (28 CFR 0.100), the Administrator hereby orders that 21 CFR 1308.11 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Section 1308.11 is amended by redesignating the existing paragraphs (b)(31) through (b)(46) as (b)(32) through (b)(47) and adding a new paragraph (b)(31) as follows:

§ 1308.11 Schedule I.

* * * * *

(b) * * *

(31) 3-Methylfentanyl (*N*-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-*N*-phenylpropanamide), 9813

* * * * *

3. Section 1308.11 is amended by removing paragraph (g)(1) and redesignating the existing paragraphs (g)(2) through (g)(13) as (g)(1) through (g)(12).

Dated: September 15, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–21398 Filed 9–19–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8100]

Income Tax; Taxable Years Beginning After December 31, 1953; OMB Control Numbers Under the Paperwork Reduction Act; Cooperative Hospital Service Organizations

Correction

§ 1.501(e)—1 [Corrected]

In FR Doc. 86–19940 beginning on page 31613 in the issue of Thursday, September 4, 1986, make the following correction: On page 31615, in § 1.501(e)–1(b)(4), in the third column, in the sixteenth line from the bottom, "512(b)(A)(ii)" should read "512(b)(3)(A)(ii)".

BILLING CODE 1505-01-M

26 CFR Parts 46 and 602

[T.D. 8102]

Excise Tax Imposed on the Issuer of Registration-Required Obligation Not in Registered Form

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the excise tax imposed on the issuer or registration-required obligations which are not issued in registered form. This action is necessary because of changes to the applicable law made by the Tax Equity and Fiscal Responsibility Act of 1982. The regulations affect issuers of obligations and provide them with the guidance needed to comply with the law.

DATES: The regulations are generally effective for registration-required obligations not in registered form that are issued after December 31, 1982.

FOR FURTHER INFORMATION CONTACT: Timothy J. McKenna of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202–566–4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1984, the Federal Register published proposed amendments to the Excise Tax Regulations (26 CFR Part 46) under section 4701 of the Internal Revenue Code of 1954 (49 FR 33285). These amendments were proposed to conform the regulations to section 310(b)(4) of the Tax Equity and Fiscal Responsibility Act of 1982 (the Act) (Pub. L. 97–248, 96 Stat. 597). No comments were received. A public hearing was not requested. Accordingly, the proposed amendments are adopted as revised by this Treasury decision.

In General

Section 4701(a) provides that a tax is imposed on any person who issues a registration-required obligation which is not in registered form. The amount of the tax is one percent of the principal amount multiplied by the number of years (including portions thereof) from the date of issuance to the date of maturity. The terms "registration-required obligation" and "registered form" are defined in section 4701(b) as having the same meaning as when used

in section 163(f) relating to the denial of a deduction for interest on certain obligations not in registered form. However, a registration-required obligation does not include any obligation required to be registered under section 103(j). Thus, the tax does not apply to those obligations which would otherwise be exempt from Federal income tax under section 103(a) of any other provision of law. While section 4701 applies generally to obligations issued after December 31, 1982, section 310(d)(3) of the Act also provides that section 4701 does not apply to any obligation issued after December 31, 1982, pursuant to the exercise of a warrant or the conversion of a convertible obligation, if the warrant or convertible obligation was issued before August 10, 1982, and offered or sold outside the United States without registration under the Securities Act of 1933.

In addition, § 46.6011(a)–1(a) relating to the general requirement of making a return, statement or list by a person made liable for any tax imposed by this title, is amended to provide for the filing of Form 720 (Quarterly Federal Excise Tax Return) by those persons liable for the tax under section 4701.

Change in the Regulation

A minor clarification is made in these final regulations under § 46.4701–1(b)(5), relating to the definition of "issuer". The regulations make a cross-reference to § 1.163–5T(d), which generally treats the recipient of the proceeds from the issuance of a pass-through certificate as the issuer of such pass-through certificate. Temporary regulation § 1.163–5T(d) was published in the **Federal Register** on August 20, 1985 (50 FR 33522), along with a cross-referenced notice of proposed rulemaking (50 FR 33552) with respect to which public comments were solicited. When the proposed regulations are published as final regulations, the cross-reference in § 46.4701–1(b)(5) will be revised to refer to those final regulations.

In addition, a new paragraph (b)(7) was added to cross-reference to the definition of "issue price" in section 1273(b).

Regulatory Flexibility Act

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

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 therefore is not required.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB under control number 1545–0023.

Drafting Information

The principal authors of these final regulations are Ada S. Rousso and Timothy J. McKenna of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR Part 46

Banks, Banking, Excise taxes, Insurance, Sugar, Registration-required obligations.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 46 and 602 are amended as follows:

PART 46—[AMENDED]

Paragraph 1. The authority for Part 46 continues to read in part:

Authority: 26 U.S.C. 7805. * * * Sections 46.6011(a)–1 and 46.6011(a)–2 also issued under 26 U.S.C. 6011. * * *

Par. 2. Section 46.0–1 is amended as follows.

a. Paragraphs (a) (3) and (a)(4) are redesignated as paragraphs (a)(4) and (a)(5), respectively, and a new paragraph (a)(3) is inserted immediately after paragraph (a)(2) to read as set forth below.

b. Paragraph (b) is amended by removing the phrase "Subpart C of this part is reserved," and adding in its place "Subpart C of this part relates to the excise tax imposed by section 4701 on issuers of registration-required obligations not issued in registered form."

§ 46.0–1 Introduction.

(a) * * *

(3) The tax on the issuer of registration-required obligations not issued in registered form imposed by chapter 39 of the Internal Revenue Code of 1954 and * * *

* * * * *

Par. 3. A new Subpart C consisting of § 46.4701–1 is added immediately after § 46.4504–1 to read as set forth below.

Subpart C—Excise Tax on Obligations Not in Registered Form

§ 46.4701–1 Tax on issuer of registration-required obligation not in registered form.

(a) *In general.* Section 4701 imposes a tax (determined under paragraph (c) of this section) on any person (referred to as the issuer) who issues an obligation that—

(1) Is a registration-required obligation, and

(2) Is not issued in registered form.

(b) *Definitions*—(1) *Person.* The term "person" includes all governmental entities.

(2) *Obligation.* The term "obligation" includes bonds debentures, notes, certificates and other evidences of indebtedness regardless of how denominated.

(3) *Registration-required obligation.* The term "registration-required obligation" has the same meaning as when used in section 163(f) (and the regulations thereunder) which relates to the denial of a deduction for interest on certain obligations not in registered form. However, the term "registration-required obligation" does not include any obligation which would otherwise be exempt from Federal income tax under section 103(a) or any other provision of law.

(4) *Registered form.* The term "registered form" has the same meaning as when used in section 103(j) (and the regulations thereunder) which relates to obligations which must be in registered form to be tax-exempt.

(5) *Issuer.* Except as provided in § 1.163–5T (d) (relating to pass-through certificates), the "issuer" is the person whose interest deduction would be disallowed solely by reason of section 163(f)(1).

(6) *Date of Issuance.* (i) For obligations intended to be offered to the public, the term "date of issuance" means the date the obligation is first sold to the public at the issue price.

(ii) For an obligation which is privately placed, the term "date of issuance" is the obligation is first sold by the issuer.

(7) *Issue price.* See section 1273 (b) and the regulations thereunder for the definition of "issue price".

(c) *Rate and computation of tax.* The tax under section 4701(a) is imposed in an amount equal to the product of—

(1) 1 percent of the principal amount of the obligation, multiplied by

(2) The number of calendar years (or portions thereof) during the period beginning on the date of issuance of the obligation and ending on the date of maturity.

For purposes of this paragraph, the term "principal amount" for a discounted obligation is the issue price, and for all other obligations, including obligations sold at a premium, the term "principal amount" is the stated redemption price at maturity.

(d) *Payment of tax.* Every person who incurs liability for the tax imposed by section 4701 is required to file a return in accordance with section 6011 and § 46.6011(a)–1 relating to the general requirement of a return, statement or list.

(e) *Effective date.* The provisions of this section shall apply to obligations issued after December 31, 1982, unless issued on the exercise of a warrant or the conversion of a convertible obligation if the warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 and was issued before August 10, 1982. See section 310(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982.

§ 46.6011 [Amended]

Par. 4. Section 46.6011(a)–1(a) is amended by removing the phrase "4371 or 4501(a)" from paragraph (a) wherever it appears and replacing it with the phrase "4371, 4501(a) and 4701".

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101(c) is amended by inserting in the appropriate place in the table:

"§ 46.4701–1(d).....1545–0023".

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved:

J. Roger Mentz,

Assistant Secretary of the Treasury.

August 29, 1986.

[FR Doc. 86–21442 Filed 9–19–86; 8:45 am]

BILLING CODE 4031–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

32 CFR Part 1286

[DLAR 5400.21]

Defense Logistics Agency Privacy Program

AGENCY: Defense Logistics Agency, DoD.

ACTION: Revision of final rule.

SUMMARY: This final rule revises the Defense Logistics Agency Privacy Program which implements the Privacy Act of 1974, as amended (5 U.S.C. 552a), within the Agency. This revision supersedes a final rule (42 FR 45907) published on September 13, 1977, 32 CFR Part 1286—"Personal Privacy and Rights of Individuals Regarding Their Personal Records."

EFFECTIVE DATE: September 22, 1986.

ADDRESS: Headquarters, Defense Logistics Agency, ATTENTION: DLA–XAM, Cameron Station, Alexandria, VA 22304.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (202) 274–6234.

SUPPLEMENTARY INFORMATION: This rule implements the provisions of DoD Directive 5400.11 and DoD Regulation 5400.11–R as published (51 FR 2364) on January 16, 1986, 32 CFR Part 286a—Privacy Act of 1974, As Amended: Department of Defense Privacy Program.

List of Subjects in 32 CFR Part 1286

Privacy.

Accordingly, Title 32 is amended by revising Part 1286 to read as follows:

PART 1286—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

Sec.

Authority: Privacy Act of 1974, Pub. L. 93–579, Stat. 1896 (5 U.S.C. 552a).

§ 1286.1 Purpose and scope.

This Part 1286 implements the Privacy Act of 1974 (5 U.S.C. 552a) and DoD Directive and DoD Regulation 5400.11, Department of Defense Privacy Program (32 CFR Part 286a). It applies to Headquarters, Defense Logistics Agency (HQ DLA) and all DLA field activities.

§ 1286.2 Policy.

It is the policy of DLA to safeguard personal information contained in any system of records maintained by DLA activities and to make that information available to the individual to whom it pertains to the maximum extent practicable. DLA policy specifically requires that DLA activities:

(a) Collect, maintain, use, and disseminate personal information only when it is relevant and necessary to achieve a purpose required by statute or Executive Order.

(b) Collect personal information directly from the individuals to whom it pertains to the greatest extent practical.

(c) Inform individuals who are asked to supply personal information for inclusion in any system of records:

(1) The authority for the solicitation.

(2) Whether furnishing the information is mandatory or voluntary.

(3) The intended uses of the information.

(4) The routine disclosures of the information that may be made outside DoD.

(5) The effect on the individual of not providing all of any part of the requested information.

(d) Ensure that all records used in making determinations about individuals are accurate, relevant, timely, and complete.

(e) Make reasonable efforts to ensure that records containing personal information are accurate, relevant, timely, and complete for the purposes for which they are being maintained before making them available to any recipients outside DoD, other than a Federal agency, unless the disclosure is made under DLAR 5400.14, Availability to the Public of Official Information (32 CFR Part 1285).

(f) Keep no record that describes how individuals exercise their rights guaranteed by the First Amendment of the U.S. Constitution, unless expressly authorized by statute or by the individual to whom the records pertain or is pertinent to and within the scope of an authorized law enforcement activity.

(g) Make reasonable efforts, when appropriate, to notify individuals whenever records pertaining to them are made available under compulsory legal

process, if such process is a matter of public record.

(h) Establish safeguards to ensure the security of personal information and to protect this information from threats or hazards that might result in substantial harm, embarrassment, inconvenience, or unfairness to the individual.

(i) Establish rules of conduct for DoD personnel involved in the design, development, operation, or maintenance of any system of records and train them in these rules of conduct.

(j) Assist individuals in determining what records pertaining to them are being collected, maintained, used, or disseminated.

(k) Permit individual access to the information pertaining to them maintained in any system of records, and to correct or amend that information, unless an exemption for the system has been properly established for an important public purpose.

(l) Provide, on request, an accounting of all disclosures of the information pertaining to them except when disclosures are made:

(1) To DoD personnel in the course of their official duties.

(2) Under 32 CFR Part 1285 (DLAR 5400.14).

(m) Advise individuals on their rights to appeal any refusal to grant access to or amend any record pertaining to them, and to file a statement of disagreement with the record in the event amendment is refused.

§ 1286.3 Definitions.

(a) *Access.* The review of a record or a copy of a record or parts thereof in a system of records by any individual.

(b) *Agency.* For the purpose of disclosing records subject to the Privacy Act among DoD Components, the Department of Defense is considered a single agency. For all other purposes including applications for access and amendment, denial of access or amendment, appeals from denials, and recordkeeping as regards release to non-DoD agencies, DLA is considered an agency within the meaning of the Privacy Act.

(c) *Confidential source.* A person or organization who has furnished information to the Federal Government under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

(d) *Disclosure.* The transfer of any personal information from a system of records by any means of communication to any person, private entity, or Government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

(e) *Individual.* A living citizen of the United States or an alien lawfully admitted to the United States for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf.

(f) *Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

(g) *Maintain.* Includes maintain, collect, use, or disseminate.

(h) *Member of the public.* Any individual or party acting in a private capacity to include Federal employees or military personnel.

(i) *Official use.* Within the context of this part, this term is used when officials and employees of a DLA activity have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

(j) *Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

(k) *Privacy Act.* The Privacy Act of 1974, as amended, 5 U.S.C. 552a.

(l) *Privacy Act request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records. The request must indicate that it is being made under the Privacy Act to be considered a Privacy Act request.

(m) *Record.* Any item, collection, or grouping of information about an individual that is maintained by DLA, including, but not limited to, the individual's education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(n) *Risk assessment.* An analysis considering information sensitivity, vulnerabilities, and the cost to a computer facility or word processing activity in safeguarding personal information processed or stored in the facility or activity.

(o) *Routine use.* The disclosure of a record outside DoD for a use that is compatible with the purpose for which the information was collected and maintained by DoD. The routine use must be included in the published system notice for the system of records involved.

(p) *Statistical record.* A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

(q) *System of Records.* A group of records under the control of a DLA activity from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register.**

§ 1286.4 Responsibilities.

(a) Headquarters Defense Logistics Agency.

(1) The Chief, Resources Management Division, Office of Administration (DLA-XA) will:

(i) Formulate policies, procedures, and standards necessary for uniform compliance with the Privacy Act by DLA activities.

(ii) Serve as the DLA Privacy Act Officer and DLA representative on the Defense Privacy Board.

(iii) Maintain a master registry of system notices published by DLA.

(iv) Develop or compile the rules, notices, and reports required under this part.

(2) The General Counsel, DLA (DLA-G) will:

(i) Serve as the appellate authority for denials of individual access and amendment of records.

(ii) Provide representation to the Defense Privacy Board Legal Committee.

(iii) Advise the Defense Privacy Office on the status of DLA privacy litigation.

(3) The Command Security Officer, Office of Command Security, DLA (DLA-T) will formulate and implement protective standards for personal information maintained in automated data processing systems and facilities.

(b) The Heads of DLA Primary Level Field Activities (PLFAs) will:

(1) Ensure that the collection, maintenance, use, or dissemination of records of identifiable personal information is in a manner that assures that such action is for a necessary and lawful purpose; that the information is timely and accurate for its intended use; and that adequate safeguards are provided to prevent misuse of such information.

(2) Designate a Privacy Act Officer to serve as the principal point of contact on privacy matters.

(3) Ensure the internal operating procedures provide for effective compliance with the Privacy Act.

(4) Establish a training program for those personnel whose duties involve responsibilities for systems of records affected by the Privacy Act.

§ 1286.5 Procedures.

(a) *Individual access.* (1) The access provisions of this part are intended for use by individuals whose records are maintained in systems of records. Release of personal information to individuals under this part is not considered public release of information.

(2) Individuals will address requests for access to personal information about themselves in a system of records to the system manager or to the office designated in the system notice. Before being granted access to personal data, an individual may be required to provide reasonable verification of his or her identity. Identity verification procedures will be simple so as not to discourage individuals from seeking access to information about themselves; or be required of an individual seeking access to records which normally would be available under 32 CFR Part 1285 (DLAR 5400.14).

(i) Normally, when individuals seek personal access to records pertaining to themselves, identification will be made from documents that normally are readily available, such as employee and military identification cards, driver's license, other licenses, permits, or passes used for routine identification purposes.

(ii) When access is requested by mail, identity verification may consist of the individual providing certain minimum identifying data, such as full name, date and place of birth, or such other personal information necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. If notarization of requests is required, procedures will be established for an alternate method of verification for individuals who do not have access to notary services, such as military members overseas.

(3) If an individual wishes to be accompanied by a third party when seeking access to his or her records or to have the records released directly to a third party, the individual may be required to furnish a signed access authorization granting the third party access. An individual will not be refused access to his or her record solely for failure to divulge his or her social security number (SSN) unless it is the only method by which retrieval can be made. The individual is not required to explain or justify his or her need for access to any record under this part.

(4) Disclose medical records to the individual to whom they pertain, even if a minor, unless a judgment is made that access to such records could have an adverse effect on the mental or physical health of the individual. Normally, this determination will be made in consultation with a medical doctor. If it is determined that the release of the medical information may be harmful to the mental or physical health of the individual, send the record to a physician named by the individual and in the transmittal letter to the physician, explain why access by the individual without proper professional supervision could be harmful (unless it is obvious from the record). Do not require the physician to request the records for the individual. If the individual refuses or fails to designate a physician, the record will not be provided. Such refusal of access is not considered a denial for reporting purposes.

(5) Requests by individuals for access to investigatory records pertaining to themselves and compiled for law enforcement purposes are processed under this part or 32 CFR Part 1285 depending on which part gives them the greatest degree of access.

(6) Certain documents under the physical control of DoD personnel and used to assist them in performing official functions, are not considered "agency records" within the meaning of this part. Uncirculated personal notes and records that are not disseminated or circulated to any person or organization (for example, personal telephone lists or memory aids) that are retained or discarded at the author's discretion and over which DLA exercises no direct control, are not considered agency records. However, if personnel are officially directed or encouraged, either in writing or orally, to maintain such records, they may become "agency records," and may be subject to the Privacy Act of 1974 (5 U.S.C. 552a) and this part.

(7) Acknowledge requests for access within 10 working days after receipt and provide access within 30 working days.

(b) *Denial of individual access.* (1) Individuals may be formally denied access to a record pertaining to them only if the record was compiled in reasonable anticipation of civil action; is in a system of records that has been exempted from the access provisions of this part under one of the permitted exemptions; contains classified information that has been exempted from the access provision of this part under the blanket exemption for such material claimed for all DoD records systems; or is contained in a system of records for which access may be denied under some other Federal statute. Only deny the individual access to those portions of the records from which the denial of access serves some legitimate Governmental purpose.

(2) An individual may be refused access if the record is not described well enough to enable it to be located with a reasonable amount of effort on the part of an employee familiar with the file; or access is sought by an individual who fails or refuses to comply with the established procedural requirements, including refusing to name a physician to receive medical records when required or to pay fees. Always explain to the individual the specific reason access has been refused and how he or she may obtain access.

(3) Formal denials of access must be in writing and include as a minimum:

(i) The name, title or position, and signature of the appropriate Head of the HQ DLA principal staff element or primary level field activity.

(ii) The date of the denial.

(iii) The specific reason for the denial, including specific citation to the appropriate sections of the Privacy Act of 1974 (5 U.S.C. 552a) or other statutes, this part, or DLAR 5400.21 authorizing the denial.

(iv) Notice to the individual of his or her right to appeal the denial within 60 calendar days.

(v) The title or position and address of the Privacy Act appeals official, DLA–G, Cameron Station, Alexandria, VA 22304–6100.

(4) The individual will file any appeals from denial of access within 60 calendar days of receipt of the denial notification. DLA–G will process all appeals within 30 days of receipt unless a fair and equitable review cannot be made within that period. The written appeal notification granting or denying access is the final DLA action on access.

(5) The records in all systems of records maintained in accordance with the Office of Personnel Management (OPM) Government-wide system notices are technically only in the temporary custody of DLA. All requests for access to these records must be processed in accordance with the Federal Personnel Manual (5 CFR Parts 293, 294, 297 and 735) as well as this part. DLA–G is responsible for the appellate review of denial of access to such records.

(c) *Amendment of records.* (1) Individuals are encouraged to review the personal information being maintained about them by DLA and to avail themselves of the procedures

established by this part to update their records. An individual may request the amendment of any record contained in a system of records pertaining to him or her unless the system of record has been exempted specifically from the amendment procedures of this part. Normally, amendments under this part are limited to correcting factual matters and not matters of official judgment, such as performance ratings promotion potential, and job performance appraisals.

(2) The applicant must adequately support his or her claim and may be required to provide identification to ensure that they are indeed seeking to amend a record pertaining to themselves and not, inadvertently or intentionally, the record of others. Consider the following factors when evaluating the sufficiency of a request to amend:

(i) The accuracy of the information itself.

(ii) The relevancy, timeliness, completeness, and necessity of the recorded information for accomplishing an assigned mission or purpose.

(3) Provide written acknowledgement of a request to amend within 10 working days of its receipt by the appropriate systems manager. There is no need to acknowledge a request if the action is completed within 10 working days and the individual is so informed. The letter of acknowledgement shall clearly identify the request and advise the individual when he or she may expect to be notified of the completed action. Only under the most exceptional circumstances will more than 30 days be required to reach a decision on a request to amend.

(4) If the decision is made to grant all or part of the request for amendment, amend the record accordingly and notify the requester. Notify all previous recipients of the information, as reflected in the disclosure accounting records, that an amendment has been made and the substance of the amendment. Recipients who are known to be no longer retaining the information need not be advised of the amendment. All DoD Components and Federal agencies known to be retaining the record or information, even if not reflected in disclosure records, will be notified of the amendment. Advise the requester of these notifications, and honor all requests by the requester to notify specific Federal agencies of the amendment action.

(5) If the request for amendment is denied in whole or in part, promptly advise the individual in writing of the decision to include:

(i) The specific reason and authority for not amending.

(ii) Notification that he or she may seek further independent review of the decision by the Office of General Counsel, DLA (DLA–G).

(6) Individual appeals of amendment denials must be submitted to the Office of General Counsel, DLA (DLA–G), Cameron Station, Alexandria, Virginia, 22304–6100 with all supporting materials. DLA–G will process all appeals within 30 days unless a fair review cannot be made within this time limit.

(i) If the appeal is granted, DLA–G will promptly notify the requester and system manager of the decision. The system manager will amend the record(s) as directed and ensure that all prior known recipients of the records who are known to be retaining the record are notifed of the decision and the specific nature of the amendment and that the requester is notified as to which DoD Components and Federal agencies have been told of the amendment.

(ii) If the appeal is denied completely or in part, the individual is notified in writing by the reviewing official that:

(A) The appeal has been denied and the specific reason and authority for the denial.

(B) The individual may file a statement of disagreement with the appropriate authority and the procedures for filing this statement.

(C) If filed properly, the statement of disagreement shall be included in the records, furnished to all future recipients of the records, and provided to all prior recipients of the disputed records who are known to hold the record.

(D) The individual may seek a judicial review of the decision not to amend.

(7) The records in all systems of records controlled by the Office of Personnel Management (OPM) Government-wide system notices are technically only temporarily in the custody of DLA. All requests for amendment of these records must be processed in accordance with the Federal Personnel Manual (FPM). A DLA denial authority may deny a request. However, the appeal process for all such denials must include a review by the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415. When an appeal is received from a DLA denial of amendment of the OPM controlled record, process the appeal in accordance with the FPM and notify the OPM appeal authority listed above. The individual may appeal any DLA decision not to amend the OPM records directly to OPM. OPM is the final review authority for any appeal from a denial to amend the OPM records.

(8) If the reviewing authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement setting forth his or her reasons for disagreeing with the decision not to amend.

(i) If an individual chooses to file a statement of disagreement, annotate the record to indicate that the statement has been filed. Furnish copies of the statement of disagreement to all DoD Components and Federal agencies that have been provided copies of the disputed information and who may be maintaining the information.

(ii) When possible, incorporate the statement of disagreement into the record. If the statement cannot be made a part of the record, establish procedures to ensure that it is apparent from the records that a statement of disagreement has been filed and maintain the statement so that it can be obtained readily when the disputed information is used or disclosed. Automated record systems that are not programmed to accept statements of disagreement shall be annotated or coded so that they clearly indicate that a statement of disagreement is on file, and clearly identify the statement with the disputed information in the system. Provide a copy of the statement of disagreement whenever the disputed information is disclosed for any purpose.

(9) A summary of reasons for refusing to amend may be included with any record for which a statement of disagreement is filed. Include in this summary only the reasons furnished to the individual for not amending the record. Do not include comments on the statement of disagreement. Normally, the summary and statement of disagreement are filed together. When disclosing information for which a summary has been filed, a copy of the summary may be included in the release, if desired.

(d) *Documentation.* Establish a separate Privacy Case File to retain the documentation received and generated during the amendment or access process. There is no need to establish a Privacy Case File if the individual has not cited the Privacy Act or this part. Privacy Case Files shall not be furnished or disclosed to anyone for use in making any determination about the individual other than determinations made under this part. Only the items listed below may be included in the system of records challenged for amendment or for which access is sought. Do not retain copies of unamended records in the

basis record system if the request for amendment is granted.

(1) The following items relating to an amendment request may be included in the disputed record system:

(i) Copies of the amended record.

(ii) Copies of the individual's statement of disagreement.

(iii) Copies of activity summaries.

(iv) Supporting documentation submitted by the individual.

(2) The following items relating to an access request may be included in the basic records system:

(i) Copies of the request.

(ii) Copies of the activity action granting total access. (Note: A separate Privacy Case File need not be created in such cases.)

(iii) Copies of the activity action denying access.

(iv) Copies of any appeals filed.

(v) Copies of the reply to the appeal.

(e) *Fees.* An individual may be charged only for the direct cost of copying and reproduction, computed using the appropriate portions of the fee schedule in DLAR 5400.14 (32 CFR Part 1285) under the provisions of this part. Normally, fees are waived automatically if the direct costs of a given request is less than $30. This fee waiver provision does not apply when a waiver has been granted to the individual before, and later requests appear to be an extension or duplication of that original request. DLA activities may, however, set aside this automatic fee waiver provision when on the basis of good evidence it determines that the waiver of fees is not in the public interest. Decisions to waive or reduce fees that exceed the automatic waiver threshold will be made on a case-by-case basis. Fees may not be charged when:

(1) Copying is performed for the convenience of the Government or is the only means to make the record available to the individual.

(2) The record may be obtained without charge under any other part, directive, or statute.

(3) Providing documents to members of Congress for copying records furnished even when the records are requested under the Privacy Act on behalf of a constituent.

(f) *Disclosures of personal information.* (1) For the purposes of disclosure and disclosure accounting, the Department of Defense is considered a single agency. Records pertaining to an individual may be disclosed without the consent of the individual to any DoD official who has need for the record in the performance of his or her assigned duties. Do not disclose personnel information from a system of records outside the Department of Defense unless the record has been requested by the individual to whom it pertains; the written consent of the individual to whom the record pertains has been obtained for release of the record to the requesting agency, activity, or individual; or the release is for one of the specific nonconsensual purposes set forth in this part or DLAR 5400.14, (32 CFR Part 1285).

(2) Except for releases made in accordance with DLAR 5400.14, (32 CFR Part 1285) before disclosing any personal information to any recipient outside DoD other than a Federal agency or the individual to whom it pertains;

(i) Ensure that the records are accurate, timely, complete, and relevant for agency purposes.

(ii) Contact the individual, if reasonably available, to verify the accuracy, timeliness, completeness, and relevancy of the information, if this cannot be determined from the record.

(iii) If the information is not current and the individual is not reasonably available, advise the recipient that the information is believed accurate as of a specific date and any other known factors bearing on its accuracy and relevancy.

(3) All records must be disclosed if their release is required by the Freedom of Information Act. DLAR 5400.14, (32 CFR Part 1285) requires that records be made available to the public unless exempted from disclosure by one of the nine exemptions found in the Freedom of Information Act. The standard for exempting most personal records, such as personnel records, medical records, and similar records, is found in DLAR 5400.14, section IIIG6 (32 CFR 1285.3(g)(f). Under the exemption, release of personal information can only be denied when its release would be a "clearly unwarranted invasion of personal privacy."

(i) All disclosures of personal information regarding Federal civilian employees will be made in accordance with the Federal Personnel Manual. Some examples of personal information regarding DoD civilian employees that normally may be released without a clearly unwarranted invasion of personal privacy include:

(A) Name.

(B) Present and past position titles.

(C) Present and past grades.

(D) Present and past salaries.

(E) Present and past duty stations.

(F) Office and duty telephone numbers.

(ii) All release of personal information regarding military members shall be made in accordance with the standards established by DLAR 5400.14, (32 CFR Part 1285). While it is not possible to identify categorically information that must be released or withheld from military personnel records in every instance, the following items of personal information regarding military members normally may be disclosed without a clearly unwarranted invasion of their personal privacy:

(A) Full name.

(B) Rank.

(C) Date of rank.

(D) Gross salary.

(E) Past duty assignments.

(F) Present duty assignment.

(G) Future assignments that are officially established.

(H) Office or duty telephone numbers.

(I) Source of commission.

(J) Promotion sequence number.

(K) Awards and decorations.

(L) Attendance at professional military schools.

(M) Duty status at any given time.

(iii) All releases of personal information regarding civilian personnel not subject to the FPM shall be made in accordance with the standards established by DLAR 5400.14 (32 CFR Part 1285). While it is not possible to identify categorically those items of personal information that must be released regarding civilian employees not subject to the FPM, such as nonappropriated fund employees, normally the following items may be released without a clearly unwarranted invasion of personal privacy:

(A) Full name.

(B) Grade or position.

(C) Date of grade.

(D) Gross salary.

(E) Present and past assignments.

(F) Future assignments, if officially established.

(G) Office or duty telephone numbers.

(4) A request for a home address or telephone number may be referred to the last known address of the individual for a direct reply by him or her to the requester. In such cases the requester will be notified of the referral. The release of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, these may be released without prior specific consent of the individual if:

(i) The individual has indicated previously that he or she has no objection to their release.

(ii) The source of the information to be released is a public document such as commercial telephone directory or other public listing.

(iii) The release is required by Federal statute (for example, pursuant to

Federally-funded state programs to locate parents who have defaulted on child support payments (42 U.S.C. Section 653))

(iv) The releasing official releases the information under the provisions of DLAR 5400.14, (32 CFR Part 1285).

(5) Records may be disclosed outside DoD without consent of the individual to whom they pertain for an established routine use. Routine uses may be established, discontinued, or amended without the consent of the individuals involved. However, new or changed routine uses must be published in the Federal Register at least 30 days before actually disclosing any records under their provisions. In addition to the routine uses established by the individual system notices, common blanket routine uses for all DLA-maintained systems of records have been established. These blanket routine uses are published in DLAH 5400.1,[1] DLA Systems of Records Handbook. Unless a system notice specifically excludes a system from a given blanket routine use, all blanket routine uses apply.

(6) Records in DLA systems of records may be disclosed without the consent of the individuals to whom they pertain to the Bureau of the Census for purposes of planning or carrying out a census survey or related activities.

(7) Records may be disclosed for statistical research and reporting without the consent of the individuals to whom they pertain. Before such disclosures, the recipient must provide advance written assurance that the records will be used as statistical research or reporting records; the records will only be transferred in a form that is not individually identifiable; and the records will not be used, in whole or in part, to make any determination about the rights, benefits, or entitlements of specific individuals. A disclosure accounting is not required.

(8) Records may be disclosed without the consent of the individual to whom they pertain to the National Archives and Records Administration (NARA) if they have historical or other value to warrant continued preservation; or for evaluation by NARA to determine if a record has such historical or other value. Records transferred to a Federal Record Center (FRC) for safekeeping and storage do not fall within this category. These remain under the control of the transferring activity, and the FRC personnel are considered agents of the activity which retain control over the records. No disclosure accounting is required for the transfer of records to FRCs.

(9) Records may be disclosed without the consent of the individual to whom they pertain to another agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, provided the civil or criminal law enforcement activity is authorized by law; the head of the law enforcement acitivity or a designee has made a written request specifying the particular records desired and the law enforcement purpose (such as criminal investigations, enforcement of civil law, or a similar propose) for which the record is sought; and there is no Federal statute that prohibits the disclosure of the records. Normally, blanket requests for access to any and all records pertaining to an individual are not honored. When a record is released to a law enforcement activity, maintain a disclosure accounting. This disclosure accounting will not be made available to the individual to whom the record pertains if the law enforcement activity requests that the disclosure not be released.

(10) Records may be disclosed without the consent of the individual to whom they pertain if disclosure is made under compelling circumstances affecting the health or safety of any individual. The affected individual need not be the subject of the record disclosed. When such a disclosure is made, notify the individual who is the subject of the record. Notification sent to the last known address of the individual as reflected in the records is sufficient.

(11) Records may be disclosed without the consent of the individual to whom they pertain to either House of the Congress or to any committee, joint committee or subcommittee of Congress if the release pertains to a matter within the jurisdiction of the committee. Records may also be disclosed to the General Accounting Office (GAO) in the course of the activities of GAO.

(12) Records may be disclosed without the consent of the person to whom they pertain under a court order signed by a judge of a court of competent jurisdiction. Releases may also be made under the compulsory legal process of Federal or state bodies having authority to issue such process.

(i) When a record is disclosed under this provision, make reasonable efforts to notify the individual to whom the record pertains, if the legal process is a matter of public record.

(ii) If the process is not a matter of public record at the time it is issued, seek to be advised when the process is made public and make reasonable efforts to notify the individual at that time.

(iii) Notification sent to the last known address of the individual as reflected in the records is considered reasonable effort to notify. Make a disclosure accounting each time a record is disclosed under a court order or compulsory legal process.

(13) Certain personal information may be disclosed to consumer reporting agencies as defined by the Federal Claims Collection Act. Information which may be disclosed to a consumer reporting agency includes:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual.

(ii) The amount, status, and history of the claim.

(iii) The agency or program under which the claim arose.

(g) *Disclosure accounting.* (1) Keep an accurate record of all disclosures made from any system of records except disclosures to DoD personnel for use in the performance of their official duties or under DLAR 5400.14 (32 CFR Part 1285). In all other cases a disclosure accounting is required even if the individual has consented to the disclosure of the information pertaining to him or her.

(2) Use any system of disclosure accounting that will provide the necessary disclosure information. As a minimum, disclosure accounting will contain the date of the disclosure, a description of the information released, the purpose of the disclosure, the name and address of the person or agency to whom the disclosure was made. When numerous similar records are released (such as transmittal of payroll checks to a bank), identify the category of records disclosed and include the data required in some form that can be used to construct an accounting disclosure record for individual records if required. Retain disclosure accounting records for 5 years after the disclosure or the life of the record, whichever is longer.

(3) Make available to the individual to whom the record pertains all disclosure accountings except when the disclosure has been made to a law enforcement activity and the law enforcement activity has requested that disclosure not be made, or the system of records has been exempted from the requirement to furnish the disclosure accounting. If disclosure accountings are not maintained with the record and the

[1] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304.

individual requests access to the accounting, prepare a listing of all disclosures and provide this to the individual upon request.

(h) *Collecting personal information.* (1) Collect to the greatest extent practicable personal information directly from the individual to whom it pertains if the information may be used in making any determination about the rights, privileges, or benefits of the individual under any Federal program.

(2) When an individual is requested to furnish personal information about himself or herself for inclusion in a system of records, a Privacy Act Statement is required regardless of the medium used to collect the information (forms, personal interviews, stylized formats, telephonic interviews, or other methods). The statement enables the individual to make an informed decision whether to provide the information requested. If the personal information solicited is not to be incorporated into a system of records, the statement need not be given. The Privacy Act Statement shall be concise, current, and easily understood. It must include:

(i) The specific Federal statute or Executive Order that authorizes collection of the requested information.

(ii) The principal purpose or purposes for which the information is to be used.

(iii) The routine uses that will be made of the information.

(iv) Whether providing the information is voluntary or mandatory.

(v) The effects on the individual if he or she chooses not to provide the requested information.

(3) The Privacy Act Statement may appear as a public notice (sign or poster), conspicuously displayed in the area where the information is collected, such as at check-cashing facilities or identification photograph facilities. The individual normally is not required to sign the Privacy Act Statement. Provide the individual a written copy of the Privacy Act Statement upon request. This must be done regardless of the method chosen to furnish the initial advisement.

(4) Include in the Privacy Act Statement specifically whether furnishing the requested personal data is mandatory or voluntary. A requirement to furnish personal data is mandatory only when a Federal statute, Executive order, regulation, or other lawful order specifically imposes a duty on the individual to provide the information sought, and the individual is subject to a penalty if he or she fails to provide the requested information. If providing the information is only a condition of a prerequisite to granting a benefit or privilege and the individual has the option of requesting the benefit or privilege, providing the information is always voluntary. However, the loss or denial of the privilege, benefit, or entitlement sought may be listed as a consequence of not furnishing the requested information.

(5) It is unlawful for any Federal, state, or local government agency to deny an individual any right, benefit, or privilege provided by law because the individual refuses to provide his or her social security number (SSN). However, if a Federal statute requires that the SSN be furnished or if the SSN is required to verify the identity of the individual in a system of records that was established and in use before January 1, 1975, and the SSN was required as an identifier by a statute or regulation adopted before that date, this restriction does not apply.

(i) When an individual is requested to provide his or her SSN, he or she must be told:

(A) The uses that will be made of the SSN.

(B) The statute, regulation, or rule authorizing the solicitation of the SSN.

(C) Whether providing the SSN is voluntary or mandatory.

(ii) Include in any systems notice for any system of records that contains SSNs a statement indicating the authority for maintaining the SSN and the source of the SSNs in the system. If the SSN is obtained directly from the individual indicate whether this is voluntary or mandatory.

(iii) Upon entrance into Military Service of civilian employment with DoD, individuals are asked to provide their SSNs. The SSN becomes the service or employment number for the individual and is used to establish personnel, financial, medical, and other official records. After an individual has provided his or her SSN for the purpose of establishing a record, a Privacy Act Statement is not required if the individual is only requested to furnish or verify the SSNs for identification purposes in connection with the normal use of his or her records. However, if the SSN is to be written down and retained for any purpose by the requesting official, the individual must be provided a Privacy Act Statement.

(6) DLAR 7760.1, Forms Management Program,[2] provides guidance on administrative requirements for Privacy Act Statements used with DLA forms. Forms subject to the Privacy Act issued by other Federal agencies have a Privacy Act Statement attached or included. Always ensure that the statement prepared by the originating agency is adequate for the purpose for which the form will be used by the DoD activity. If the Privacy Act Statement provided is inadequate, the activity concerned will prepare a new statement of a supplement to the existing statement before using the form. Forms issued by agencies not subject to the Privacy Act (state, municipal, and other local agencies) do not contain Privacy Act Statements. Before using a form prepared by such agencies to collect personal data subject to this part, an appropriate Privacy Act Statement must be added.

(i) *Systems of records.* (1) To be subject to this part, a "system of records" must consist of records retrieved by the name of an individual or some other personal identifier and be under the control of a DLA activity. Records in a group of records that *may be* retrieved by a name or personal identifier are not covered by this part. The records *must be*, in fact, retrieved by name or other personal identifier to become a system of records for the purpose of this part.

(2) Retain in a system of records only that personal information which is relevant and necessary to accomplish a purpose required by a Federal statute or an Executive Order. The existence of a statute or Executive order mandating that maintenance of a system of records does not abrogate the responsibility to ensure that the information in the system of records is relevant and necessary.

(3) Do not maintain any records describing how an individual exercises his or her rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal statute or the individual. First Amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(4) Maintain all personal information used to make any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any such determination. Before disseminating any personal information from a system of records to any person outside DoD, other than a Federal agency, make reasonable efforts to ensure that the information to be disclosed is accurate, relevant, timely, and complete for the purpose it is being maintained.

(5) Establish appropriate administrative, technical and physical

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safeguards to ensure that the records in every system of records are protected from unauthorized alteration or disclosure and that their confidentiality is protected. Protect the records against reasonably anticipated threats or hazards. Tailor safeguards specifically to the vulnerabilities of the system and the type of records in the system, the sensitivity of the personal information stored, the storage medium used and, to a degree, the number of records maintained.

(i) Treat all unclassified records that contain personal information that normally would be withheld from the public as if they were designated "For Official Use Only" and safeguard them in accordance with the standards established by DLAR 5400.14 (32 CFR Part 1285) even if they are not marked "For Official Use Only."

(ii) Special administrative, physical, and technical procedures are required to protect data that are stored or being processed temporarily in an automated data processing (ADP) system or in a word processing activity to protect it against threats unique to those environments (see DLAM 5200.1, ADP Security Manual,[3] and Appendix D of this part).

(6) Dispose of records containing personal data so as to prevent inadvertent compromise. Disposal methods such as tearing, burning, melting, chemical decomposition, pulping, pulverizing, shredding, or mutilation are considered adequate if the personal data is rendered unrecognizable or beyond reconstruction.

(i) The transfer of large quantities of records containing personal data (for example, computer cards and printouts) in bulk to a disposal activity, such as the Defense Property Disposal Office, is not a release of personal information under this part. The sheer volume of such transfers makes it difficult or impossible to identify readily specific individual records.

(ii) When disposing of or destroying large quantities of records containing personal information, care must be exercised to ensure that the bulk of the records is maintained so as prevent specific records from being readily identified. If bulk is maintained, no special procedures are required.

(7) When DLA contracts for the operation or maintenance of a system of records or a portion of a system of records by a contractor, the record system or the portion of the record system affected are considered to be maintained by DLA and are subject to this part. The activity concerned is responsible for applying the requirements of this part to the contractor. The contractor and its employees are to be considered employees of DLA for purposes of the sanction provisions of the Privacy Act during the performance of the contract. See the Federal Acquisition Regulation (FAR), section 24.000 (48 CFR Chapter 1).

(j) *System Notices.* (1) A notice of the existence of each system of records must be published in the **Federal Register.** While system notices are not subject to formal rulemaking procedures, advance public notice must be given before an activity may begin to collect personal information or use a new system of records. The notice procedures require that:

(i) The system notice describes the contents of the record system and the routine uses for which the information in the system may be released.

(ii) The public be given 30 days to comment on any proposed routine uses before implementation.

(iii) The notice contains the date on which the system will become effective.

(2) Appendix A of this part discusses the specific elements required in a system notice. DLAH 5400.1[4] contains systems notices published by DLA.

(3) In addition to system notices, reports are required for new and altered systems of records. The criteria of these reports are outlined in Appendixes B and C of this part. No report is required for amendments to existing systems which do not meet the criteria for altered record systems.

(4) System managers shall evaluate the information to be included in each new system before establishing the system and evaluate periodically the information contained in each existing system of records for relevancy and necessity. Such a review will also occur when a system notice amendment or alteration is prepared. Consider the following:

(i) The relationship of each item of information retained and collected to the purpose for which the system is maintained.

(ii) The specific impact on the purpose or mission of not collecting each category of information contained in the system.

(iii) The possibility of meeting the informational requirements through use of information not individually identifiable or through other techniques, such as sampling.

(iv) The length of time each item of personal information must be retained.

(v) The cost of maintaining the information.

(vi) The necessity and relevancy of the information to the purpose for which it was collected.

(5) Systems notices and reports of new and altered systems will be submitted to DLA–XA as required.

(k) *Exemptions.* The Director, DLA will designate the DLA records which are to be exempted from certain provisions of the Privacy Act. DLA–XA will publish in the **Federal Register** information specifying the name of each designated system, the specific provisions of the Privacy Act from which each system is to be exempted, the reasons for each exemption, and the reason for each exemption of the record system.

(1) *General Exemptions.* To qualify for a general exemption, as defined in the Privacy Act, the system of records must be maintained by a system manager who performs as his/her principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities or prosecutors, courts, correctional, probation, pardon, or parole authorities. Such system of records must consist of :

(i) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and containing only identifying data and notations or arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole, and probation status.

(ii) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual.

(iii) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(2) *Specific exemption.* To qualify for a specfic exemption, as defined by the Privacy Act, the systems of records must be:

(i) Specifically authorized under criteria established by an Executive Order to be kept classified in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

(ii) Investigatory material compiled for law enforcement purposes other than material covered under a general

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exemption. However, an individual will not be denied access to information which has been used to deny him/her a right or privilege unless disclosure would reveal a source who furnished information to the Government under a promise that the identity of the source would be held in confidence. For investigations made after September 27, 1975, the identity of the source may be treated as confidential only if based on the expressed guarantee that the identity would not be revealed.

(iii) Maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to 18 U.S.C. 3056.

(iv) Used only to generate aggregate statistical data or for other similarly evaluative or analytic purposes, and which are not used to make decisions on the rights, benefits, or entitlements of individuals except for the disclosure of a census record permitted by 13 U.S.C. 8.

(v) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Military Service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the source would be held in confidence, or prior to September 27 1975, under an implied promise that the identity of the source would be held in confidence.

(vi) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or elimination process.

(vii) Evaluation material used to determine potential for promotion in the Military Services, but only the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. System managers will specify those categories of individuals for whom pledges of confidentiality may be made when obtaining information on an individual's suitability for promotion.

(viii) Exemption rules for DLA systems of records are published in Appendix H of this part.

(l) *Matching Program Procedures.* The OMB has issued special guidelines to be followed in programs that match the personal records in the computerized data bases of two or more Federal agencies by computer (see Appendix E). These guidelines are intended to strike a balance between the interest of the Government in maintaining the integrity of Federal programs and the need to protect individual privacy expectations. They do not authorize matching programs as such and each matching program must be justified individually in accordance with the OMB guidelines.

(1) Forward all requests for matching programs to include necessary routine use amendments and analysis and proposed matching program reports to DLA–XA. Changes to existing matching programs shall be processed in the same manner as a new matching program report.

(2) No time limits are set by the OMB guidelines. However, in order to establish a new routine use for a matching program, the amended system notice must have been published in the **Federal Register** at least 30 days before implementation. Submit the documentation required above to DLA–XA at least 60 days before the proposed initiation date of the matching program. Waivers to the 60 days' deadline may be granted for good cause shown. Requests for waivers will be in writing a fully justified.

(3) For the purpose of the OMB guidelines, DoD and all DoD Components are considered a single agency. Before initiating a matching program using only the records of two or more DoD activities, notify DLA–XA that the match is to occur. Further information may be requested from the activity proposing the match.

(4) System managers shall review annually each system of records to determine if records from the system are being used in matching programs and whether the OMB Guidelines have been complied with.

§ 1286.6 Forms and reports.

DLA activities may be required to provide data under reporting requirements established by the Defense Privacy Office and DLA–XA. Any report established shall be assigned Report Control Symbol DD–COMP(A) 1379.

Appendix A—Instructions for Preparation of System Notices

A. *System identification.* See DLAH 5400.1.[5]

B. *System name.* The name of the system reasonably identifies the general purpose of the system and, if possible, the general categories of individuals involved. Use acronyms only parenthetically following the title or any portion thereof, such as, "Joint Uniform Military Pay System (JUMPS)." Do not use acronyms that are not commonly known unless they are preceded by an explanation. The system name may not exceed 55 character positions including punctuation and spacing.

C. *System location* 1. For systems maintained in a single location provided the exact office name, organizational identity, and address or routing symbol. For geographically or organizationally decentralized systems, specify each level of organization or element that maintains a segment of the system. For automated data systems with a central computer facility and input/output terminals at several geographically separated location, list each location by category.

2. When multiple locations are identified by type of organization, the system location may indicate that official mailing addresses are contained in an address directory published as an appendix to DLAH 5400.1.[6] DLA–XA will obtain information concerning format requirements for preparation of an address directory from the 1st Information Systems Group (1ISG), Room 3A–1066, The Pentagon, Washington, D.C. 20330–6345.

3. If no address directory is used or the addresses in the directory are incomplete, the address of each location where a segment of the record system is maintained must appear under the "System Location" caption. Classified addresses are not listed, but the fact that they are classified is indicated. Use the standard U.S. Postal Service two letter state abbreviation symbols and zip codes for all domestic addresses.

(D) *Categories of individuals covered by the system.* Set forth the specific categories of individuals to whom records in the system pertain in clear, easily understood, nontechnical terms. Avoid the use of broad over-general descriptions, such as "all DLA personnel" or "all civilian personnel" unless this actually reflects the category of individuals involved.

E. *Categories of records in the system.* Describe in clear, nontechnical terms the types of records maintained in the system. Only documents actually retained in the system of records will be described, not source documents that are used only to collect data and the destroyed.

F. *Authority for maintenance of the system.* 1. Cite the specific provisions of the Federal statute or Executive Order that authorizes the maintenance of the system. Include with citations for statutes the popular names, when appropriate (for example, Title 51, United States Code, Section 2103, "Tea-Tasters Licensing Act"), and for Executive Orders, the official title (for example, Executive Order No. 9397, "Numbering

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System for Federal Accounts Relative to Individual Persons").

2. For administrative housekeeping records, cite the directive establishing DLA as well as the Secretary of Defense authority to issue the directive. For example, "Pursuant to the authority contained in the National Security Act of 1947, as amended (10 U.S.C. 133d), the Secretary of Defense has issued DoD Directive 5105.22 (32 CFR Part 359), Defense Logistics Agency (DLA), the charter of the Defense Logistics Agency (DLA) as a separate agency of the Department of Defense under his control. Therein, the Director, DLA, is charged with the responsibility of maintaining all necessary and appropriate records."

G. *Purpose or purposes.* List the specific purposes for maintaining the system of records by the activity. Include the use made of the information within DLA and the Department of Defense (so-called "internal routine uses").

H. *Routine uses.* 1. The blanket routine uses that appear in DLAH 5400.1 [7] apply to all systems notices unless the individual system notice specifically states that one or more of them do not apply to the system. For all other routine uses, when practical, list the specific activity to which the record may be released, to include any routine automated system interface (for example, "to the Department of Justice, Civil Rights Compliance Division," "to the Veterans Administration, Office of Disability Benefits," or "to state and local health agencies").

2. For each routine use identified, include a statement as to the purpose or purposes for which the record is to be released to the activity. Do not use general statements, such as, "to other Federal agencies as required" and "to any other appropriate Federal agency."

I. *Policies and practices for storing, retiring, accessing, retaining, and disposing of records.* This caption is subdivided into four parts:

1. *Storage.* Indicate the medium in which the records are maintained. (For example, a system may be "automated, maintained on magnetic tapes or disks," "manual, maintained in paper files," or "hybrid, maintained in a combination of paper and automated form.") Storage does not refer to the container or facility in which the records are kept.

2. *Retrievability.* Specify how the records are retrieved (for example, name and SSN, name, SSN) and indicate whether a manual or computerized index is required to retrieve individual records.

3. *Safeguards.* List the categories of DLA personnel having immediate access and these responsible for safeguards (such as storage in safes, vaults, locked cabinets or rooms, use of guards, visitors registers, personnel screening, or computer "fail-safe" systems software). Do not describe safeguards in such detail as to compromise system security.

4. *Retention and disposal.* Indicate how long the record is retained. When appropriate, state the length of time the records are maintained by the activity, when they are transferred to a Federal Records Center, length of retention at the Records Center and when they are transferred to the National Archives or are destroyed. A reference to DLAM 5015.1,[8] Files Maintenance and Disposition, or other issuances without further detailed information is insufficient.

J. *System manager or managers and address.* 1. List the title and address of the official responsible for the management of the system. If the title of the specific official is unknown, such as for a local system, specify the local commander or office head as the systems manager.

2. For geographically separated or ogranizationally decentralized activities for which individuals may deal directly with officials at each location in exercising their rights, list the position or duty title of each category of officials responsible for the system or a segment thereof.

3. Do not include business or duty addresses if they are listed in DLAH 5400.1.

K. *Notification procedures.* 1. If the record system has been exempted from subsection (e)(4)(G) the Privacy Act, so indicate.

2. For all nonexempt systems, describe how an individual may determine if there are records pertaining to him or her in the system. The procedural rules may be cited, but include a brief procedural description of the needed data. Provide sufficient information in the notice to allow an individual to exercise his or her rights without referrals to this part.

3. As a minimum, the caption will include:

a. The official title (normally the system manager) and official address to which request is to be directed.

b. The specific information required to determine if there is a record of the individual in the system.

c. Identification of the offices through which the individual may obtain access.

d. A description of any proof of identity required.

4. When appropriate, the individual may be referred to an activity official who shall provide this data to him or her.

L. *Record access procedures.* 1. If the record system has been exempted from subsection (e)(4)(H) of the Privacy Act, so indicate.

2. For all nonexempt record systems, describe the procedures under which individuals may obtain access to the record pertaining to them in the system. When appropriate, the individual may be referred to the system manager or activity official to obtain access procedures. Do not repeat the addresses listed in DLAH 5400.1, but refer the individual to that directory.

M. *Contesting record procedures.* 1. If the record system has been exempted from subsection (e)(4)(H) of the Privacy Act, so indicate.

2. For all nonexempt systems of records, state briefly how an individual may contest the content of a record pertaining to him or her in the system. The detailed procedures for contesting record accuracy, refusal of access or amendment, or initial review and appeal need not be included if they are readily available elsewhere and can be referred to by the public. (For example, "The Defense Logistics Agency rules for contesting contents and for appealing initial determinations are contained in 32 CFR Part.") (DLAR 5400.21).

3. The individual may also be referred to the system manager to determine these procedures.

N. *Record source categories.* 1. If the record system has been exempted from subsection (e)(4)(I) of the Privacy Act, so indicate.

2. For all nonexempt systems of records, list the sources of the information in the system. Specific individuals or institutions need not be identified by name, particularly if these sources have been granted confidentiality.

O. *System exempted from certain provisions of the Privacy Act.* 1. If no exemption has been claimed for the system, indicate "None."

2. If there is an exemption claimed, indicate specifically under which subsection of the Privacy Act is is claimed. Cite the regulation and CFR section containing the exemption rule for the system. (For example, "Parts of this record system may be exempt under Title 5, United States Code, Sections 552a(k)2. and (5), as applicable. See exemption rules contained in 32 CFR Part 1286.") (DLAR 5400.21).

Appendix B—Criteria for New and Altered Record Systems

A. *Criteria for a new record system.* A new system of records is one for which there has been no system notice published in the **Federal Register.** If a notice for a system, of records has been canceled or deleted, before reinstating or reusing the system, a new system notice must be published in the **Federal Register.**

B. *Criteria for an altered record system.* A system is considered altered whenever one of the following actions occurs or is proposed:

1. A significant increase or change in the number or type of indiviudals about whom records are maintained.

a. Only changes that alter significantly the character and purpose of the records system are considered alterations.

b. Increases in numbers of individuals due to normal growth are not considered alterations unless they truly alter the character and purpose of the system.

c. Increases that change significantly the scope of population covered (for example, expansion of a system of records covering a single PLFA's enlisted personnel to include all of DLA enlisted personnel would be considered an alteration).

d. A reduction in the number of individual covered is not an alteration, but only an amendment.

e. All changes that add new categories of individuals to system coverage require a change to the "Categories of individuals covered by the system" caption of the notice and may require changes to the "Purpose(s)" caption.

[7] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304.

[8] Copies may be obtained, if needed, from the Defense Logistics Agency, ATTN: DLA-XP, Cameron Station, Alexandria, VA 22304.

2. An expansion in the types or categories of information maintained.

a. The addition of any new category of records not described under the "Categories of Records in System" caption is considered an alteration.

b. Adding a new data element which is clearly within the scope of the categories of records described in the existing notice is an amendment.

c. All changes under this criterion require a change to the "Categories of Records in System" caption of the notice.

3. An alteration in the manner in which the records are organized or the manner in which the records are indexed and retrieved.

a. The change must alter the nature of use or scope of the records involved (for example, combining records systems in a reorganization).

b. Any change under this critera requires a change in the "Retrievability" caption of the system notice.

c. If the records are no longer retrieved by name or personal identifier, cancel the system notice.

4. A change in the purpose for which the information in the system is used.

a. The new purpose must not be compatible with the existing purposes for which the system is maintained or a use that would not reasonably be expected to be an alteration.

b. If the use is compatible and reasonably expected, there is no change in purpose and no alteration occurs.

c. Any change under this criterion requires a change in the "Purpose(s)" caption and may require a change in the "Authority for maintenance of the system" caption.

5. Changes that alter the computer environment (such as changes to equipment configuration, software, or procedures) so as to create the potential for greater or easier access.

a. Increasing the number of offices with direct access is an alteration.

b. Software releases, such as operating systems and system utilities that provide for easier access are considered alterations.

c. The addition of an on-line capability to a previously batch-oriented system is an alteration.

d. The addition of peripheral devices such as tape devices, disk devices, card readers, printers, and similar devices to an existing ADP system constitute an amendment if system security is preserved.

e. Changes to existing equipment configuration with on-line capability need not be considered alterations to the system if:

(1) The change does not alter the present security posture.

(2) The addition of terminals does not extend the capacity of the current operating system and existing security is preserved.

f. The connecting of two or more formerly independent automated systems or networks together creating a potential for greater access is an alteration.

g. Any change under this caption requires a change to the "Storage" caption element of the systems notice.

C. *Reports of new and altered systems.* Submit a report of a new or altered system to DLA–XA before collecting information and for using a new system or altering an existing system.

D. *Time restrictions on the operation of a new or altered system.* 1. All time periods begin from the date OSD signs the transmittal letters on the reports to OMB and Congress. The specific time limits are:

a. Sixty days must elapse before collection forms or fomal instructions pertaining to the system may be issued.

b. Sixty days must elapse before the system may become operational.

c. Sixty days must elapse before any public issuance of a Request for Proposal or Invitation to Bid for a new ADP or telecommunication system.

Note.—Requests for delegation of procurement authority may be submitted to the General Services Administration during the 60 days' waiting period, but these will include language that the Privacy Act reporting criteria have been reviewed and that a system report is required for such procurement.

d. Normally 30 days must elapse before publication in the **Federal Register** of the notice of a new or altered system and the preamble to the **Federal Register** notice must reflect the date the transmittal letters to OMB and Congress were signed by OSD.

2. Do not operate a system of records until the waiting periods have expired.

E. *Outside review of new and altered systems reports.* If no objections are received within 30 days of a submission to the President of the Senate, Speaker of the House of Representatives, and the Director, OMB, of a new or altered system report, it is presumed that the new or altered systems have been approved as submitted.

F. *Waiver of time restrictions.* 1. The OMB may authorize a Federal agency to begin operation of a system of records before the expiration of time limits described above. When seeking such a waiver, include in the letter of transmittal to DLA–XA an explanation why a delay of 60 days in establishing the system of records would not be in the public interest. The transmittal must include:

a. How the public interest will be affected adversely if the established time limits are followed.

b. Why earlier notice was not provided.

2. Under no circumstances will the routine uses for a new or altered system be implemented before 30 days have elapsed after publication of the system notice containing the routine uses in the **Federal Register**. This period cannot be waived.

Appendix C—Instructions for Preparation of Reports to New or Altered Systems

The report on a new or altered system will consist of a transmittal letter, a narrative statement, and include supporting documentation.

A. *Transmittal Letter.* The transmittal letter shall include any request for waivers. The narrative statement will be attached.

B. *Narrative Statement.* The narrative statement is typed in double space on standard bond paper. The statement includes:

1. *System identification and name.* This caption sets forth the identification and name of the system.

2. *Responsible official.* The name, title, address, and telephone number of the official responsible for the report and to whom inquiries and comments about the report may be directed by Congress, the Office of Management and Budget, or Defense Privacy Office.

3. *Purpose of the system or nature of the change proposed.* Describe the purpose of the new system. For an altered system, describe the nature of the change being proposed.

4. *Authority for the system.* See enclosure 1 of this part.

5. *Number of individuals.* The approximate number of individuals about whom records are to be maintained.

6. *Information on First Amendment activities.* Describe any information to be kept on the exercise of the individual's First Amendment rights and the basis for maintaining it.

7. *Measures to ensure information accuracy.* If the system is to be used to make determinations about the rights, benefits, or entitlements of individuals, describe the measures being established to ensure the accuracy, currency, relevance, and completeness of the information used for these purposes.

8. *Other measures to ensure system security.* Describe the steps taken to minimize the risk of unauthorized access to the system. A more detailed assessment of security risks and specific administrative, technical, and physical safeguards will be available for review upon request.

9. *Relationship to state and local government activities.* Describe the relationship of the system to state or local government activities that are the sources, recipients, or users of the information in the system.

C. *Supporting Documentation.* Item 10 of the narrative is captioned *Supporting Documents.* A positive statement for this caption is essential for those enclosures that are not required to be enclosed. For example, "No changes to the existing DLA procedural or exemption rules (32 CFR Part 1286) are required for this proposed system." List in numerical sequence only those enclosures that are actually furnished. The following are typical enclosures that may be required:

1. For a new system, an advance copy of the system notice which is proposed for publication; for an altered system an advance copy of the notice reflecting the specific changes proposed.

2. An advance copy of any proposed exemption rule if the new or altered system is to be exempted. If there is no exemption, so state in the narrative.

3. Any other supporting documentation that may be pertinent or helpful in understanding the need for the system or clarifying its intended use. While not required, such documentation, when available, is helpful in evaluating the new or altered system.

Appendix D—Word Processing Center (WPC) Safeguards

A. *Minimum Standards of Protection.* All personal data processed using word processing equipment will be afforded the standards of protection required by this

regulation. The special considerations discussed in this enclosure are primarily for Word Processing Centers (WPCs) operating independent of the customer's function. However, managers of word processing systems are encouraged to consider and adopt, when appropriate, the special considerations described. WPCs that are not independent of a customer's function are not required to prepare formal written risk assessments.

B. *WPC Information Flow.* In analyzing procedures required to safeguard adequately personal information in a WPC, the basic elements of WPC information flow and control must be considered. These are: Information receipt, information processing, information return, information storage and filing. WPCs do not control information acquisition or its ultimate use by the customers and, therefore, these are not addressed.

C. *Safeguarding Information During Receipt.* 1. The word processing manager will establish procedures:

a. That require each customer who requests that information subject to this DLAR be processed to identify specifically that information to the WPC personnel. This may be done by:

(1) Providing a check-off type entry on the WPC work requests.

(2) Requiring that the WPC work requests be stamped with a special legend, or that a special notation be made on the work requests.

(3) Predesignating specifically a class of documents as coming within the provisions of this DLAR (such as, all officer effectiveness reports, all recall rosters, and all medical protocols).

(4) Using a special cover sheet both to alert the WPC personnel as to the type information, and to protect the document during transmittal.

(5) Requiring an oral warning on all dictation.

(6) Any other procedures that ensure the WPC personnel are alerted to the fact that personal data subject to this DLAR is to be processed.

b. To ensure that the operators or other WPC personnel who receive data for processing not identified as being under the provisions of this DLAR, but that appear to be personal, promptly call the information to the attention of the WPC supervisor or the customer.

c. To ensure that any request for the processing of personal data which the customer has not identified as being in a system of record, and that appears to meet the criteria set forth in this regulation, is called to the attention of the appropriate supervisory personnel and system manager.

2. The WPC supervisor will ensure that personal information is not inadvertently compromised within the WPC.

D. *Safeguarding Information During Processing.* 1. Each WPC supervisor will establish internal safeguards that will protect personal data from compromise while it is being processed.

2. Physical safeguards may include:

a. Controls on individual access to the center.

b. Machine configurations that reduce external access to the information being processed, or arrangements that alert the operator to the presence of others.

c. Using certain specific machines to process personnal data.

d. Any other physical safeguards, to include special technical arrangements that will protect the data during processing.

3. Other safeguards may include:

a. Using only certain selected operators to process personal data.

b. Processing personal data only at certain times during the day without the WPC manager's specific authorization.

c. Using only certain tapes or diskettes to process and store personal data.

d. Using continuous tapes for dictation of personal data.

e. Requiring all WPC copies of documents to be marked specifically so as to prevent inadvertent compromise.

f. Returing extra copies and mistakes to the customer with the product.

g. Disposing of waste containing personal data in a special manner.

h. Any other local procedures that provide adequate protection to the data being processed.

E. *Safeguarding Information During Return.* The WPC shall protect the data until it is returned to the customer or is placed into a formal distribution channel. In conjunction with the appropriate administrative support personnel and the WPC customers, the WPC manager will establish procedures that protect the information from the time word processing is completed until it is returned to the customer. Safeguarding procedures may include:

1. Releasing products only to specifically identified individuals.

2. Using sealed envelopes to transmit products to the customer.

3. Using special cover sheets to protect products similar to the one discussed in above.

4. Hand-carrying products to the customers.

5. Using special messengers to return the products.

6. Any other procedures that adequately protect products from compromise while they are awaiting return or being returned to the customer.

F. *Safeguards During Storage.* The WPC manager shall ensure that all personal data retained in the center for any purpose (including samples) are protected properly. Safeguarding procèdures may include:

1. Marking will hard copies retained with special legends or designators.

2. Storing media containing personal data in separate files or areas.

3. Marking the storage containers for media containing personal data with special legends or notations.

4. Restricting the reuse of media used to process personal data or erasing the media before reuse.

5. Establishing special criteria for the WPC retention of media used to store and process personal data.

6. Returning the media to the customer for retention with the file copies of the finished products.

7. Discouraging, when practical, the long-term storage of personnal data in any form within the WPC.

8. Any other filing or storage procedures that safeguard adequately any personal information retained or filed within the WPC.

G. *Risk Assessment for WPCs.* 1. Each WPC manager will ensure that a formal, written risk assessment is prepared for each WPC that processes personal information subject to this regulation. The assessment will address the areas discussed in this enclosure, as well as any special risks that the WPC location, configuration, or organization may present to the compromise or alteration of personal data being processed or stored.

2. A risk assessment will be conducted at least every 5 years or whenever there is a change of equipment, equipment configuration, WPC location, WPC configuration or modification of the WPC facilities that either increases or decreases the likelihood or compromise of personal data.

3. Copies of the risk assessment will be retained by the WPC manager and made available to appropriate inspectors, as well as to personnel studying equipment for facility upgrading of personal data.

H. *Special Considerations in WPC Design and Modification.* Procedures will be established to ensure that all personnel involved in the design of WPCs or the acquisition of word processing equipment are aware of the special considerations required when processing personal data subject to this DLAR.

Appendix E—OMB Guidelines for Matching Programs

A. *Purpose.* These guidelines supplement and will be used in conjunction with OMB Guidelines on the Administration of the Privacy Act of 1974, issued on July 1, 1975, and supplemented on November 21, 1975. They replace earlier guidance on conducting computerized matching programs issued on March 30, 1979. They are intended to help agencies relate the procedural requirements of the Privacy Act to the operational requirements of computerized matching. They are designed to address the concern expressed by the Congress in the Privacy Act of 1974 that "the increasing use of computers and sophisticated information technology, while essential to the efficient operation of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information." These guidelines do not authorize activities that are not permitted by law, nor do they prohibit activities expressly required to be performed by law. Complying with these guidelines, however, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited in these guidelines.

B. *Scope.* These guidelines apply to all agencies subject to the Privacy Act of 1974 (5 U.S.C. 552a) and to all matching programs:

1. Performed by a Federal agency, whether the personal records used in the match are Federal or nonfederal.

2. For which a Federal agency discloses any personal records for use in a matching program performed by any other Federal agency or any nonfederal organization.

C. *Effective Date.* These guidelines were effective on May 11, 1982.

D. *Definitions.* For the purpose of the Guidelines, all the terms defined in the Privacy Act of 1974 apply.

1. *Personal Record.* Any information pertaining to an individual that is stored in an automated system of records; for example, a data base which contains information about individuals that is retrieved by name or some other personal identifier.

2. *Matching Program.* A procedure in which a computer is used to compare two or more automated systems of records or a system of records with a set of nonfederal records to find individuals who are common to more than one system or set. The procedure includes all of the steps associated with the match, including obtaining the records to be matched, actual use of the computer, administrative and investigative action on the hits, and disposition of the personal records maintained in connection with the match. It should be noted that a single matching program may involve several matches among a number of participants. Watching programs do not include the following:

a. Matches which compare a substantial number of records, such as, comparison of the Department of Education's defaulted student loan data base with the Office of Personnel Management's Federal employee data base would be covered; comparison of six individual student loan defaultees with the OPM file would not be covered.

b. Checks on specific individuals to verify data in an application for benefits done reasonably soon after the application is received.

c. Checks on specific individuals based on information which raises questions about an individual's eligibility for benefits or payments done reasonably soon after the information is received.

d. Matches done to produce aggregate statistical data without any personal identifiers.

e. Matches done to support any research or statistical project when the specfic data are not to be used to make decisions about the rights, benefits, or privileges of specific individuals.

f. Matches done by an agency using its own records.

3. *Matching Agency.* The Federal agency which actually performs the match.

4. *Source Agency.* The Federal agency which discloses records from a system of records to be used in the match. Note that in some circumstances a source agency may be the instigator and ultimate beneficiary of the matching program, as when an agency lacking computer resources uses another agency to perform the match. The disclosure of records to the matching agency and any later disclosure of "hits" (by either the matching or the source agencies) must be done in accordance with the provisions of paragraph (b) of the Privacy Act.

5. *Hit.* The identification, through a matching program, of a specific individual.

E. *Guidelines for Agencies Participating in Matching Programs.* Agencies should acquire and disclose matching records and conduct matching programs in accordance with the provisions of this section and the Privacy Act.

1. *Disclosing Personal Records for Matching Programs—*

a. *To another Federal agency.* Source agencies are responsible for determining whether or not to disclose personal records from their systems and for making sure they meet the necessary Privacy Act disclosure provisions when they do. Among the factors source agencies should consider are:

(1) Legal authority for the match.

(2) Purpose and description of the match.

(3) Description of the records to be matched.

(4) Whether the record subjects have consented to the match; or whether disclosure of records for the match would be compatible with the purpose for which the records were originally collected; that is, whether disclosure under a "routine use" would be appropriate; whether the soliciting agency is seeking the records for a legitimate law enforcement activity—whichever is appropriate; or any other provision of the Privacy Act under which disclosure may be made.

(5) Description of additional information which may be subsequently disclosed in relation to "hits."

(6) Subsequent actions expected of the source (for example, verification of the identity of the "hits" or followup with individuals who are "hits").

(7) Safeguards to be afforded the records involved, including disposition.

b. If the agency is satisfied that disclosure of the records would not violate its responsibilities under the Privacy Act, it may proceed to make the disclosure to the matching agency. It should ensure that only the minimum information necessary to conduct the match is provided. If disclosure is to be made pursuant to a "routine use" (Section b.3. of the Privacy Act), it should ensure that the system of records contains such a use, or it should publish a routine use notice in the **Federal Register.** The agency should also be sure to maintain an accounting of the disclosure pursuant to Section (c) of the Privacy Act.

c. *To a nonfederal entity.* Before disclosing records to a nonfederal entity for a matching program to be carried out by that entity, a source agency should, in addition to all of the consideration in subparagraph a, above, also make reasonable efforts, pursuant to Section (e)(6) of the Privacy Act, to "assure that such records are accurate, complete, timely, and relevant for agency purposes."

2. *Written Agreements.* Before disclosing to either a Federal or non-Federal entity, the source agency should require the matching entity to agree in writing to certain conditions governing the use of the matching file; for example, that the matching file will remain the property of the source agency and be returned at the end of the matching program (or destroyed as appropriate); that the file will be used and accessed only to match the file or files previously agreed to; that it will not be used to extract information concerning "non-hit" individuals for any purpose, and that it will not be duplicated or disseminated within or outside the matching agency unless authorized in writing by the source agency.

3. *Performing Matching Programs—*

a. Matching agencies should maintain reasonable administrative, technical, and physical security safeguards on all files involved in the matching program.

b. Matching agencies should ensure that they have appropriate systems of records including those containing "hits," and that such systems and any routine uses have been appropriately notices in the **Federal Register** and reported to OMB and the Congress.

4. *Disposition of Records—*

a. Matching agencies will return or destroy source matching files (by mutual agreement) immediately after the match.

b. Records relating to this will be kept only so long as an investigation, either criminal or administrative, is active, and will be disposed of in accordance with the requirements of the Privacy Act and the Federal Records Act.

5. *Publication Requirements—*

a. Agencies, before disclosing records outside the agency, will publish appropriate "routine use" notices in the **Federal Register,** if necessary.

b. If the matching program will result in the creation of a new or the substantial alteration of an existing system of records, the agency involved should publish the appropriate **Federal Register** notice and submit the requisite report to OMB and the Congress pursuant to OMB Circular No. A–108.

6. *Reporting Requirements—*

a. As close to the initiation of the matching program as possible, matching agencies will publish in the **Federal Register** a brief public notice describing the matching program. The notice should include:

1. The legal authority under which the match is being conducted.

2. A description of the matching program including whether the program is one time or continuing, the organizations involved, the purpose or purposes for which the program is being conducted, and the procedures to be used in matching and following up on the "hits."

3. A complete description of the personal records to be matched, including the source or sources, system of records identifying data, date or dates and page number of the most recent **Federal Register** full text publication when appropriate.

4. The projected start and ending dates of the program.

5. The security safeguards to be used to protect against unauthorized access or disclosure of the personal records.

6. Plans for disposition of the source records and "hits."

7. Agencies should send a copy of this notice to the Congress and to OMB at the same time it is sent to the **Federal Register.**

a. Agencies should report new or altered systems of records as described in subparagraph 5b, above, as necessary.

b. Agencies should also be prepared to report on matching programs pursuant to the reporting requirements of either the Privacy

Act or the Paperwork Reduction Act. Reports will be solicited by the Office of Information and Regulatory Affairs and will focus on both the protection of individual privacy and Government's effective use of information technology. Reporting instructions will be disseminated to the agencies as part of either the reports required by paragraph (p) of the Privacy Act, or section 3514 of Pub. L. 96–511.

8. *Use of Contractors.* Matching programs should, as far as practicable, be conducted "in-house" by Federal agencies using agency personnel, rather than by contract. When contractors are used:

a. The matching agency should, consistent with paragraph (m) of the Privacy Act, cause the requirements of that Privacy Act to be applied to the contractor's performance of the matching program. The contract should include the Privacy Act clause required by Federal Personnel Regulation Amendment 155 (41 CFR 1–1.337–5).

b. The terms of the contract should include appropriate privacy and security provisions consistent with policies, regulations, standards, and guidelines issued by OMB, GSA, and the Department of Commerce.

c. The terms of the contract should preclude the contractor from using, disclosing, copying, or retaining records associated with the matching program for the contractor's own use.

d. Contractor personnel involved in the matching program shall be made explicitly aware of their obligations under the Privacy Act and of these guidelines, agency rules, and any special safegurds in relation to each specific match performed.

e. Any disclosures of records by the agency to the contractor should be made pursuant to a "routine use" (5 U.S.C. 552a(b)(3)).

F. *Implementation and Oversight.* OMB will oversee the implementation of these guidelines and will interpret and advise upon agency proposals and actions within their scope, consistent with section 6 of the Privacy Act.

Apendix F—Litigation Status Sheet

1. Case Number.[1]
2. Requester.
3. Document Title or Description.[2]
4. Litigation.
a. Date Complaint Filed.
b. Court.
c. Case File Number.[1]
5. Defendants (DoD Component and individual).
6. Remarks (brief explanation of what the case is about).
7. Court Action.
a. Court's Finding.
b. Disciplinary Action (as appropriate).
8. Appeal (as appropriate).
a. Date Complaint File.
b. Court.
c. Case File Number.[1]
d. Court's Finding.
e. Disciplinary Action (as appropriate).

[1] Number used by the Component for reference purposes.

[2] Indicate the nature of the case, such as "Denial of access," "Refusal to amend," "Incorrect records," or other violations of the Act (specify).

Appendix G—Privacy Act Enforcement Actions

A. *Administrative Remedies.* Any individual who feels he or she has a legitimate complaint or grievance against the Defense Logistics Agency or any DLA employee concerning any right granted by this DLAR will be permitted to seek relief through appropriate administrative channels.

B. *Civil Actions.* An individual may file a civil suit against DLA or its employees if the individual feels certain provisions of the Privacy Act have been violated (see 5 U.S.C. 552a(g), reference (b).)

C. *Civil Remedies.* In addition to specific remedial actions, the Privacy Act provides for the payment of damages, court cost, and attorney fees in some cases.

D. *Criminal Penalties—*

1. The Privacy Act also provides for criminal penalties (see 5 U.S.C. 552a(1).) Any official or employee may be found guilty of a misdemeanor and fined not more than $5,000 if he or she willfully discloses personal information to anyone not entitled to receive the information, or maintains a system of records without publishing the required public notice in the Federal Register.

2. A person who requests or obtains access to any record concerning another individual under false pretenses may be found guilty of a misdemeanor and fined up to $5,000.

Appendix H—DLA Exemption Rules

Exempted Records Systems. All systems of records maintained by the Defense Logistics Agency will be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12356, and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

a. ID: S153.01 DLA–T (Specific Exemption)

1. *System name:* Personnel Security Files.

2. *Exemption:* This system of records is exempted from the following provisions of title 5, United States Code, section 552a: (c)(3); (d); and (e)(1).

3. *Authority:* 5 U.S.C. 552a(k)(2).

4. *Reasons:* The investigatory reports are used by appropriate Security Officers and Commanders or other designated officials as a basis for determining a persons's eligibility for access to information classified in the interests of national defense.

b. ID: S160.50 DLA(T) (Specific Exemption)

1. *System name:* Criminal Incident/ Investigations File.

2. *Exemption:* This system of records is exempted from the following provisions of the Title 5, United States Code, section 552a: (c)(3); (d); and (e)(1).

3. *Authority:* 5 U.S.C. 552a(k)(2).

4. *Reasons:* Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources who would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

For the Director.

Preston B. Speed,

Chief, Administrative Management Branch.

[FR Doc. 86–21320 Filed 9–19–86; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Eligibility to Mail Issues of a Publication at Second-Class Rates

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule changes postal regulations to make it clear that so-called Plus publications must independently qualify for second-class mailing privileges even though they are not regularly published on the same day as a regular issue of the parent periodical. The rule also requires publishers to supply additional information when a change in frequency of issuance is filed or when a new entry application is filed. The regulations included in this final rule completely replace the interim regulations discussed herein.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: On January 24, 1986, the Postal Rate Commission (Commission)

recommended to the Governors of the Postal Service (Governors) that the Domestic Mail Classification Schedule be amended by the addition of § 200.0123. The Governors, on March 3, 1986, approved the recommended decision. Section 200.0123 was made effective on June 8, 1986, giving mailers more than three months to come into compliance with it.

Section 200.0123 acts to prevent a Plus publication from being mailed under the second-class permit of a so-called parent publication whenever the Plus publication is regularly published as the second "issue" of the parent publication on any given day. The Commission, in its recommended decision, said that § 200.0123 was limited to daily newspapers because the record showed that it was daily newspapers which were entering Plus publications as second-class mail even though they were not eligible for that class. The Commission also said that its recommended decision should not be read as authorizing newspapers publishing less frequently than daily to mail Plus publications as second-class mail, and that if such a practice should develop, it believed that the Postal Service could handle it administratively, using the guidelines established in the Commission's recommended decision.

After the Governors' decision, the Postal Service was made aware of plans by two daily newspapers which had separate entry permits for their Sunday-only issues to combine their Monday-through-Saturday issues under one name and one entry permit, and to add a midweek Plus issue to their Sunday-only issue under a slightly different name and under the second entry permit. Other daily newspapers began to follow suit. They would thus circumvent the letter of section 200.0123. They would, however, be violating the clearly expressed intent of the Commission and Governors in recommending, approving, and implementing it. In order to protect and to continue to give effect to that intent, the Postal Service, on July 15, 1986, adopted an interim rule, effective July 20, to prevent the entry of Plus publications which did not appear on the same day as another regular issue of the parent publication, under the second-class permit of the parent publication. 51 FR 25525. Comments were invited on the interim rule, and in response to requests for additional time in which to comment, the comment period was extended to August 28. 51 FR 29922 (August 21, 1986).

Notices were also published in the July 17 and July 24, 1986, issues of the Postal Bulletin, explaining the provisions of the interim rule and adding a requirement that publishers submit a Second-Class Certification Form, PS Form 3541–DX, with each mailing of a publication that is published more often than weekly and with each Form 3510 when the frequency of a publication is changed to more often than weekly. The information on this form is to be used to determine whether an "issue" constitutes a separate publication under the criteria prescribed in the interim rule.

The Postal Service received 14 written comments in response to the interim rule. Summaries of those comments, as well as the disposition of those comments in the final rule, are included in the following paragraphs of this final rule.

Of concern to the greatest number of commenters was the requirement for submission of PS Form 3541–DX to each office of mailing with all mailing statements for each issue of a second-class publication that is published more often than weekly. Of the 14 commenters, 5 second-class publishers indicated that the additional paperwork they would be required to file would prove to be an unreasonable and unnecessary burden since they do not mail the type of "issue" which the form is intended to identify, namely Plus publications.

One commenter, representing four second-class newspaper publishers, suggested that the interim rule constitutes a reclassification for second class that was not specifically dealt with in the Commission's recommended decision because it does not rely on the same criteria used to identify Plus publications that are published on the same day as another regular "issue" of a parent periodical. This commenter said that it would be necessary to return to the Commission to request approval of the changes sought by the interim rule.

Several commenters representing the second-class newspaper industry were concerned that the interim rule, as published, is too broad and that its effect would be to curtail certain traditional second-class mailing practices that are unrelated to the rule's intent of curbing the mailing of Plus publications at second-class rates. Of primary concern is the restriction that would be placed on the percentage of copies of a single regular issue that could be distributed through the mails to nonsubscribers on the same day each week, such as every Tuesday. They emphasized that even though they may regularly sample to more than ten percent nonsubscribers, they consider the issues they use for sampling purposes to be regular issues, since they are the only issues prepared for circulation to their regular subscribers on the sampling days. They contend that these are not separate publications that have been created for circulation to nonsubscribers. One of these publishers further noted that once he exceeds the annual ten percent limit provided for nonsubscriber copies that may be mailed at preferred rates, such as in-county rates, the postage paid at the regular rates on these copies is only slightly less than the amount that would be paid if the copies were mailed at the third-class rates. One of these commenters also feared that the rule would prohibit publishers from continuing a long standing publishing practice of distributing regularly published theme issues, such as Christmas, Easter, or county fair issues, extensively to nonsubscribers.

A third-class mailer commented that the interim rule will correct unfair competitive advantage enjoyed by those second-class publishers that produce publications that closely resemble third-class shoppers, but that can circumvent the rule pertaining to multiple same-day issues and continue to take advantage of the lower second-class rates and better service.

Two third-class mailer associations generally supported the interim rule but felt that the language needs to be refined. One area that needs clarification relates to the question of whether the interim rule would be applied as a separate test or in conjunction with the rule pertaining to same-day issues, DMM section 425.225. In addition, they noted that the omission of the test of reader demand to differentiate between legitimate issues and separate publications may place more severe restrictions on second-class mail than the Commission intended and may also lead to claims of discrimination by some publishers. These commenters favored inclusion of a criterion based on reader demand.

The Postal Service believes there is merit to the suggestion that both DMM sections that deal with Plus publications—sections 425.225 and 425.226—should rely principally on the same identification criterion—demonstrated evidence of demand. We are therefore replacing interim section 425.226 with new section 425.226. It identifies a Plus publication that is not regularly published on the same day as a regular issue of the parent periodical by comparing its nonsubscriber distribution with the nonsubscriber distribution of regular issues of the publication. It applies the same

percentage factors to the identification process that section 425.225 does. Plus publications which are so identified may not be entered under the second-class permit of the parent periodical, but must independently qualify for second-class rates.

Although the Postal Service does not agree that interim section 425.226 constituted an unauthorized reclassification, final section 425.226 answers this criticism by tracking as closely as possible the factors used by the Commission to identify same-day Plus publications. Moreover, final section 425.226 expressly states that it is not to be applied to same-day Plus publications already covered by section 425.225.

Some commenters pointed out that it has been a long standing practice of smaller rural publications to distribute sample copies of a legitimate issue on a regular, but less frequent than weekly, basis in order to expand their subscription lists. This practice predated the Plus publication phenomenon, and there is no evidence that it is used primarily as a total market coverage tool. Section 425.226(b) would therefore allow this sampling practice to continue with limited frequency.

There is also merit to the comments that requiring publications that appear more often than weekly to file Forms 3541–DX with every issue is burdensome, both to the mailer and to our personnel. We are therefore revising sections 441.121 and 444.1 to require that Form 3541–DX be filed only when a Form 3510 is filed to change a publication's frequency, and when an entry application is filed. A change in a publication's frequency of appearance and an application for new entry may both reasonably trigger further investigation, requiring the filing of Form 3541–DX, just as the regular appearance of two issues on the same day may trigger further investigation under DMM § 425.225.

This final rule is being made effective upon publication so as to relieve the restrictions on legitimate sampling practices and the burdensome reporting requirements of the interim regulations as soon as possible.

Accordingly, the Postal Service hereby adopts the following final regulations on this subject as amendments to the Domestic Mail Manual, which are incorporated by reference in the Code of Federal Regulations. See CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3621, 5001; 42 U.S.C. 1973cc–13, 1973cc–14.

PART 4—SECOND CLASS MAIL

2. In 425, a note is added immediately after 425.225b and new 425.226 is added to read as follows:

425.2 Issues and Editions

.22 Issues

.225

* * * * *

Note.—See sections 441.121 and 484 for requirements for filing certification form to establish eligibility of an "issue" under this section.

.226 An "issue" of a newspaper or other periodical shall also be deemed to be a separate publication, for postal purposes, and must independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, when the following conditions are met:

a. the "issue" is published at a regular frequency, such as once each week, but not on the same day as another regular "issue" of the same publication, and

b. more than 10 percent of the total number of copies of the "issue" are distributed on a regular basis, more frequently than once each month, to recipients that do not subscribe to it, and

c. the number of copies of the "issue" distributed to nonsubscribers is more than twice the number of any other regular issue distributed to nonsubscribers during the same week.

Note.—See sections 441.121 and 444.1 for requirements for filing certification form to establish eligibility of an "issue" under this section.

3. Revise 441.121 to read as follows:

441.1 Application Forms and Copies Filed

* * * * *

.12 General Publications

.121 Application. An application for a publication which seeks authorization under 422.2 must be filed on Form 3501, Application for Second-Class Mail Privileges (pink form), at the post office servicing the known office of publication. The publisher must complete all applicable items on Form 3501. When one-half or more of the total copies distributed are purchased by news agents for resale or are consigned to news agents for sale, postmasters will not accept an application on Form 3501, unless the publisher has completed the application by furnishing all of the information called for by questions 30 and 31. If the frequency of the publication will include more than one issue during a week, PS Form 3541–DX (see Exhibit 447, page 3) must be completed by the publisher and submitted with Form 3501.

4. Revise 444.1 to read as follows:

444.1 Change in Title, Frequency, or Office of Publication. An application for reentry must be filed on Form 3510, Application for Additional Entry or Reentry of Second-Class Publication, whenever the name, frequency of issuance, location of the known office of publication, or qualification category (see 422) is changed. When the name or frequency of issuance of a publication is changed, a Form 3510 must be filed at the post office or original entry with two copies of the publication showing the new name or frequency. When the frequency is being changed to one that includes more than one issue during a week, PS Form 3541–DX (see Exhibit 447, page 3) must be completed by the publisher and submitted with Form 3510. When the frequency is being changed to include more than one regular "issue" on any day, PS Form 3541–CX (see Exhibit 484a) must be completed by the publisher instead of PS Form 3541–DX and submitted with Form 3510. When the location of the known office of publication is changed, a Form 3510 must be filed at the new mailing office with two copies of the publication showing the name of the new office as the known office of publication. These copies must be marked to show the percentage of advertising as prescribed in 483. A reentry application need not be filed if the known office of publication is moved to a location served by the same post office. An application for reentry is not required when only the ownership of a publication is changed unless the change disqualifies the publication for an entry which was authorized under 422.3.

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

Fred Eggleston,

Assistant General Counsel, Legislative Division.

BILLING CODE 7710-12-M

U.S. POSTAL SERVICE
SECOND-CLASS CERTIFICATION

INSTRUCTIONS

1. Complete this form and attach it to Form 3510, Application for Additional Entry, Reentry, or Special Rate Request for Second-Class Publication, when the frequency of a second-class publication is being changed to one that includes more than one issue during a week.
2. This form must also be submitted with Form 3501, Application for Second-Class Mail Privileges, if the frequency of the publication will include more than one issue during a week.
3. If the data on this form indicate that the issue is a separate publication, the issue may not be mailed at second-class rates under the authorization granted to the publication named in Part A. It must instead independently meet the applicable second-class eligibility qualifications in 421.2 through 421.4 and 422, DMM, or be mailed at third- or fourth-class rates (see 425.226).

PART A - TO BE COMPLETED BY PUBLISHER/AGENT

Title of Publication	USPS Number	Date of Issue (Issue with greatest nonsubscriber distribution during the week -- report the figures in 1 & 2 below.)

1. Total number of copies of issue of above date distributed by all modes of distribution. 1._____
2. Total number of copies of above issue distributed to nonsubscribers (See DMM 422.221) 2._____
3. Greatest number of copies of any other single issue of the parent publication distributed to nonsubscribers during same week. 3._____

I certify that the information furnished on this form is correct. _____
(Signature of Publisher/Agent required)

PART B - TO BE COMPLETED BY ENTRY POST OFFICE
(Use the figures furnished by the publisher in PART A)

Post Office and State of Mailing

4. Line 2 divided by line 1 = ___._____ X 100 = 4._____X
5. Line 3 x 2 = 5._____

For purposes of determining eligibility to mail at second-class rates

If line 4 is more than 10% AND line 2 is more than line 5, then the issue represented by the figures in PART A, lines 1 and 2, must be treated as a separate publication.

PS Form 3541-DX, September 1986

Exhibit 447 (p. 3) - Form 3541-DX, Second-Class Certification

[FR Doc. 86-21349 Filed 9-19-86; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL-3082-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protecton Agency.

ACTION: Final rule; correction.

SUMMARY: On May 28, 1986 (51 FR 19320), EPA promulgated a rule to amend the regulations for hazardous waste management under the Resources Conservation and Recovery Act by stating more clearly that the listing for spent pickle liquor from steel finishing operations (EPA Hazardous Waste No. K062) applies only to wastes generated by iron and steel facilities. Since promulgation, the Agency has received several questions and comments as to the scope of the modified listing. This notice clarifies the listing and corrects an error.

DATE: This rule becomes effective on September 22, 1986.

FOR FURTHER INFORMATION CONTACT: For general information contact: the RCRA Hotline at (800) 424–9346 toll-free or (202) 382–3000. For information on specific aspects of this rule contact: Jacqueline Sales, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. 20460, (202) 382–4440.

I. SUPPLEMENTARY INFORMATION

A. Background

On May 28, 1986 (51 FR 19320), EPA promulgated a final rule amending the listing for spent pickle liquor (EPA Hazardous Waste No. K062) from steel finishing operations to apply only to spent pickle liquor wastes generated by iron and steel facilities. Previously, the Agency has been interpreting the listing to apply to all industries engaged in steel finishing operations. As a result of this broad interpretation, the Agency received a rulemaking petition from several porcelain enamel companies to amend or clarify the listing to apply only to spent pickle liquor generated by the iron and steel industry. These companies did not agree with the Agency that the pickle liquor generated from their processes was covered under the spent pickle liquor listing. Rather, they assested that spent pickle liquor generated by non-iron and steel industries would be considered hazardous only if it exhibited one or more of the characteristics of hazardous wastes such as corrosivity or extraction procedure (EP) toxicity. After reviewing the original listing, the background documents, and the additional information supplied as a result of the rulemaking petition, the Agency concluded that the correct reading of the scope of the listing would apply the listing only to spent pickle liquor generated by the iron and steel industry.

However, in promulgating the final rule to amend the spent pickle liquor listing, an error was made in defining the scope of the listing. In one section of the preamble and in the regulatory language, the listing was stated incorrectly as applying only to those steel finishing operations that "produce" iron and steel. The Agency had intended the listing to apply to all facilities within the iron and steel industry that generate spent pickle liquor. In fact, this is specified in several other areas of the preamble to the final rule (see 51 *FR* 19320/1 (summary), 51 *FR* 19321/1, and 51 *FR* 12 19301/2). In addition, by applying the listing to spent pickle liquor generated from steel finishing operations of all facilities within the iron and steel industry, the Agency is being consistent with the June 5, 1984, final rule (49 *FR* 23284) which excludes lime stabilized waste pickle liquor sludge (LSWPLS) generated by plants in the iron and steel industry from the "derived-from" rule in 40 CFR 261.3 (c)(2)(i). (LSWPLS is the residue from the treatment of spent pickle liquor.) We thus are correcting and clarifying the language of the final rule to reflect the Agency's stated interest.

B. Correction

The following error has been identified in the preamble of this rule: On page 19321, column, 2, second complete paragraph, line 15—change "finishing operations of plants that produce iron and steel" to "finishing operations of facilities within the iron and steel industry (SIC codes and 331 and 332)".

Dated: September 11, 1986.

J.W. McGraw,

Acting Assistant Administrator

The following correction is made in FR Doc. 86–11869, 51 FR 19320 (May 28, 1986).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to reads follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. Section 261.32 is amended by revising the entry under the iron and steel industry for the hazardous waste listing K062 to read as follows:

§ 261.32 Hazardous Wastes From Specific Sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
Iron and Steel: x x x k062	Spent pickle liquor generated by steel finishing operations of facilities within the iron and steel industry (SIC Codes 331 and 332).	(C,T)

* * * * *

[FR Doc. 86–21387 Filed 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Additions to List of Abandonment Docket Numbers

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In the appendix to Part 1152 of the Interstate Commerce Commission regulations in the *Code of Federal Regulations*, there is a list of abandonment docket numbers (AB numbers) to be used by rail lines as identification numbers when filing an abandonment application with the Commission. The list of numbers currently in the appendix has not been updated since 1976. This notice adds to that list of AB numbers.

EFFECTIVE DATE: This notice is effective upon publication in the **Federal Register**

FOR FURTHER INFORMATION CONTACT: Wyjean Garrett (202) 275–7141.

SUPPLEMENTARY INFORMATION: No prior notice of this rule change is necessary since this notice merely updates existing information.

This notice will not affect the quality of the human environment, the conservation of energy resources, or small entities.

List of Subjects in 49 CFR Part 1152

Railroads.

Rule changes appear in the appendix to this notice.

By the Commission.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for Part 1152 is revised to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 16 U.S.C. 1247(d); 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

Appendix [Amended]

2. The appendix to Part 1152 is amended as follows:

(a) The names of the rail lines numbered AB 24 and AB 86 are revised to read as follows:

AB 24 ..... Fort Worth Belt Railway Co.
AB 86 ..... Cheswick and Harmar RR. Co.

(b) AB numbers 132 through 278 are added to the appendix to read as follows:

APPENDIX

AB No.	Name of Carrier
*	* * * *
132	The Akron & Barberton Belt RR. Co.
133	Warren and Quachita Valley Ry. Co.
134	State of Vermont (Agency of Transportation, Dept. of Rail, Waterway & Motor Carriers).
135	Condon, Kingria & Southern RR. Co.
136	Chicago South Shore & South Belt RR. Co.
137	Augusta RR. Co.
138	McCloud River RR. Co.
139	Providence & Worcester RR. Co.
140	Hoboken Shore RR. Co.
141	Kanawha Central RR. Co.
142	New Orleans Lower Coast RR. Co.
143	Jacksonville Terminal Co.
144	Tidewater Southern Ry. Co.
145	Carrollton RR. Co.
146	Columbia Newberry & Laurens RR. Co.
147	Gainesville-Midland RR. Co.
148	Durham & Southern RR. Co.
149	Winston-Salem Southbound RR. Co.
150	Highpoint Thomasville and Denton RR. Co.
151	Hayal RR. Co.
152	Clinchfield RR. Co.
153	Mount Hood Ry. Co.
154	Texas, Oklahoma & Eastern RR. Co.
155	DeQueen and Eastern RR. Co.
156	Delaware & Hudson Ry. Co.
157	Richmond, Frederick, Potomac RR. Co.
158	Pittsburgh & Lake Erie RR. Co.
159	Monongahela Ry. Co.
160	Montour RR. Co.
161	Pittsburgh, Chartiers & Youghiogheny RR. Co.
162	Youngstown & Southern RR. Co.
163	Raritan River RR. Co.
164	Texas South Eastern RR. Co.
165	East Troy Municipal RR. Co.
166	Vermont Ry. Co.
167	Conrail (Consolidated Rail Corp.)
168	Lake Erie & Eastern RR. Co.
169	Toledo, Angola & Western RR. Co.
170	Sunset Ry. Co.
171	Fairport, Painesville & Eastern Ry. Co.
172	Fort Wayne Union Ry. Co.
173	Detroit, Toledo Shore Line RR. Co.
174	Central Vermont Ry. Co.
175	Duluth, Winnipeg & Pacific RR. Co.
176	Valley & Siletz RR. Co.
177	Minnesota, Dakota & Western Ry. Co.
178	Hillsdale County Ry. Co.
179	The Apache Ry. Co.
180	The Lowville & Beaver RR. Co.
181	East Camden & Highland RR. Co.
182	The Youngstown and Northern RR. Co.
183	Union RR. Co.
184	McKeesport Connecting RR. Co.
185	The Lake Terminal RR. Co.
186	The Newburgh & South Shore Ry. Co.
187	Northhampton & Bath RR. Co.
188	Johnstown & Stony Creek RR. Co.
189	Connellsville & Monongahela Ry. Co.
190	Carbon County Ry. Co.
191	Colorado Southern Ry. Co.
192	Birmingham Southern RR. Co.
193	Canton RR. Co.
194	Grafton & Upton RR. Co.
195	The Mobile & Gulf RR. Co.
196	Atlanta & Saint Andrews Bay Ry. Co.
197	Cedar Rapids and Iowa Ry. Co.
198	Chicago & Illinois Midland Ry. Co.
199	The Long Island RR. Co.
200	Escanaba & Lake Superior RR. Co.
201	Minneapolis Northfield & Southern Ry. Co.
202	Montpelier & Barre RR. Co.
203	Mississippi Ry. Co.
204	Cape Fear Ry. Co.
205	Washington, Idaho & Montana RR. Co.
206	The Louisiana & Pine Bluff Ry. Co.
207	Arkansas & Louisiana Missouri Ry. Co.
208	Wolfeboro Rail Road Co., Inc.
209	Brooklyn Eastern District Terminal
210	New York, Susquehanna & Western RR. Co.
211	Rahway Valley RR. Co.
212	Kansas City Public RR.
213	Canadian Pacific
214	Vanderburg County RR. Co.
215	New Jersey, Indiana, Illinois RR. Co.
216	Norfolk & Franklin & Danville Ry. Co.
217	South Brooklyn Ry. Co.
218	Livonia, Avon & Lakeville RR. Co.
219	New York Dock Ry. Co.
220	Skaneateles Short Line RR. Co.
221	Toole Valley Ry. Co.
222	San Francisco Belt RR.
223	Narragansett Pier RR. Co. Inc.
224	Port Authority of New York & New Jersey.
225	Portland Traction Co.
226	The Toledo Terminal RR. Co. (Toledo RR.).
227	Wheeling & Lake Erie Ry. Co.—WLE.
228	Chelatchie Prairie Railroad, Inc.—CR.
229	Praire Central Ry. Co.
230	Washington County RR. Co.
231	Staten Island Railroad Corporation—SIRC.
232	Kansas Southwestern Ry. Co.
233	Fresno Interurban Ry. Co.
234	Prairie Trunk Ry. Co.
235	Butte Anaconda Pacific Ry. Co.
236	Camas Prairie RR. Co.
237	Pend Orville Valley RR., Inc.
238	Port Everglades Ry.
239	Sierra RR. Co.
240	Cambria and Indiana, RR. Co.
241	Arcata and Mad River RR. Co.
242	Maryland and Pennsylvania RR. Co.
243	Virginia Blue Ridge Ry.
244	Oklahoma, Kansas and Texas RR. Co.
245	Oregon, Pacific and Eastern RR. Co.
246	Yreka Western RR. Co.
247	Alabama Southern RR. Co., Inc.
248	Bolivar Southern RR. Co.
249	The Mobile & Gulf RR. Co.
250	Cadiz RR. Co.
251	Louisiana Midland Ry. Co.
252	Northern Missouri RR. Co.
252	Bear Creek Mainline RR.
254	Providence & Worcester RR. Co.
255	Frankport & Cincinnati RR.
256	Ottumwa Connecting RR.
257	Sand Springs Ry. Co.
258	Central California Traction Co.
259	Vermont Ry. Inc.
260	Rarus Ry. Corp.
261	Staten Island Rapid Transit Operating Authority.
262	Norfolk and Portsmouth Belt Line RR. Co.
263	Staten Island Ry. Corp.
264	Vermont & Massachusetts RR. Co.
265	State of Vermont and Vermont Ry., Inc.
266	California Western RR. Co.
267	Vandalia RR. Co.
268	Portland Terminal Co.
269	Iowa Terminal RR. Co.
270	Sumpter & Choctaw Ry. Co.
271	Chicago & Illinois Midland Ry. Co.
272	Morristown & Erie Ry. Inc. 273
273	Camino, Placerville & Lake Tahoe RR. Co.
274	Chesapeake Western Ry.
275	Fourteen—Eleven Corp.
276	Nashville and Ashland City RR.
277	West Virginia Northern RR. Inc.
278	The Eastern Shore RR. Inc.

[FR Doc. 86-21380 Filed 9-19-86; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 51180-5180]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands Area; Inseason Adjustments

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

ACTION: Notice of inseason adjustments.

SUMMARY: NOAA announces the apportionment of amounts of the Alaska groundfish reserve to supplement domestic annual harvest (DAH) and total allowable level of foreign fishing (TALFF) of sablefish and conditions the supplemental amount of the reserve to be used only for bycatch while harvesting other Alaska groundfish species in the Bering Sea subdistrict. Groundfish are apportioned according to the regulations implementing the fishery management plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intent of this action is to assure optimum use of all Alaskan groundfish species while conserving sablefish stocks.

EFFECTIVE DATE: September 17, 1986.

ADDRESSES: Comments should be mailed to Robert W. McVey, Alaska

Region, National Marine Fisheries Service (Regional Director), P.O. Box 1668, Juneau, Alaska 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Resource Management Specialist, Alaska Region, NMFS), 907–586–7229.

SUPPLEMENTARY INFORMATION:

Background

The total allowable catches (TACs) for various groundfish species are established under the FMP which was developed by the North Pacific Fishery Management Council under the Magnuson Fishery Conservation and Management Act and is implemented by regulations appearing at 50 CFR 611.93 and Part 675. The TACs are apportioned initially among DAH, reserve, and TALFF. DAH, in term, is composed of domestic annual processing (DAP) and joint venture processing (JVP) fisheries.

Under §§ 611.93(b)(2) and 675.20(b), the reserve amount is to be apportioned to DAH and/or TALFF during the fishing year. As soon as practicable after April 1, June 1, and August 1, or on other dates as are deemed necessary, the Secretary of Commerce apportions to DAH all or part of the reserve that he finds will be harvested by U.S. vessels during the remainder of the year, and apportions to TALFF the remaining portion of the reserve that will not be apportioned to DAH, except that part or all of the reserve may be withheld if an apportionment would adversely affect the conservation of groundfish resources or prohibited species. When the initial DAH and TALFF for 1986 were established (51 FR 956, January 9, 1986), DAH and TALFF were supplemented with 29,857 metric tons (mt) from the initial 300,000 mt reserve, reducing the reserve to 270,143 mt. On April 25, 1986, the JVP portion of DAH for pollock (Aleutian Islands subarea), yellowfin sole, and other flatfish and TALFF for pollock (Bering Sea subarea) were supplemented by 135,072 mt from the reserve (April 30, 1986, 51 FR 16058). On May 14, 1986, the Bering Sea area sablefish DAP portion of DAH was supplemented with 500 mt from the reserve (May 19, 1986, 51 FR 18333). On July 10, the Bering Sea area sablefish and Pacific Ocean perch DAP portions of DAH were supplemented by 400 mt and 250 mt, respectively, from the reserve (July 15, 1986, 51 FR 25529). On July 31, DAH and TALFF were supplemented by 112,280 mt from the reserve, reducing it to 21,641 mt (July 31, 1986, 51 FR 27412) as follows:

Apportionments from reserve were made to the following Aleutian Island subarea categories: 15,380 mt was transferred to JVPs for pollock (15,000 mt), rockfish (250 mt), sablefish (80 mt), and squid (50 mt). In the Bering Sea subarea, 40,000 mt of DAP and 20,000 mt of reserve for pollock was transferred to pollock JVP and the DAP category "other species" was supplemented by 500 mt from reserves.

Apportionments to TALFF were made from the nonspecific reserves of Bering Sea subarea pollock (51,228 mt), yellowfin sole (14,425 mt), "other flounders" (4,330 mt), and Pacific cod (16,417 mt).

Apportionments to DAH

In the Bering Sea subdistrict the DAP catch of sablefish through August 23, 1986, had reached 2,707 mt. The Director, NMFS Alaska Region (Regional Director), projects that the sablefish TAC of 3,067 mt will be taken by September 8, 1986. The Regional Director has determined that continued landing of limited amounts of sablefish as bycatch incidental to the harvest of other groundfish species would not result in overfishing of sablefish stocks.

Therefore, NOAA apportions 200 mt of reserve to the DAP portion of sablefish DAH on the condition that it be used for bycatch only in the DAP fisheries. Thus, U.S. vessels may continue fishing for other groundfish species provided that their take of sablefish does not exceed 20 percent of their take as defined at § 675.2 under *Directed fishing*.

Apportionments to TALFF

NOAA also apportions 10 mt of reserve to the Bering Sea subarea sablefish TALFF. The initial specification of 95 mt was calculated using a rate thought to provide sufficient bycatch of sablefish for the original 368,295 mt total TALFF amount. However, actual sablefish bycatch rates have been slightly higher than anticipated in certain foreign fisheries, and the total TALFF has been increased to 567,847 mt. Therefore, a small supplement to the Bering Sea subdistrict sablefish TALFF is required to allow the TALFF fisheries to continue.

Comments and Responses

The Assistant Administrator finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice is necessary to benefit groundfish fishermen who otherwise would have to forego substantial amounts of other groundfish species if all fisheries were closed as a result of achieving previously specified TACs for sablefish. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

Other Matters

This action is taken under the authority of 50 CFR 675.20(b) and 50 CFR 611.93(b), and complies with Executive Order 12291.

List of Subjects in 50 CFR Parts 611 and 675

Fisheries.

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

Dated: September 17, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

TABLE 1.—BERING SEA/ALEUTIAN ISLANDS REAPPORTIONMENTS OF TAC

[Metric tons]

		Current	This action	Revised
Sablefish.....	DAP	[1] 2,726	+200	2,926
(Bering Sea Area only).	JVP	[1] 246	.....	246
TAC=3,277; EY=3,000.	TALFF	[1] 95	+10	105
Total (TAC=2,000,000).	DAP	[2] 286,749	+200	286,949
	JVP	[2] 1,123,763	.....	1,123,763
	RES	[2] 21,641	−210	21,431
	TALFF	[2] 567,847	+10	567,857

[1] From notice published July 15, 1986 (51 FR 25529).
[2] From notice published July 31, 1986 (51 FR 27412).

[FR Doc. 86–21411 Filed 9–17–86; 3:41 pm]

BILLING CODE 3510–22–M

50 CFR Part 672

[Docket No. 60597–6097]

Groundfish of the Gulf of Alaska; Notice of closure

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

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish optimum yield (OY) allocated to trawl gear as retainable incidental catch (bycatch) in the Eastern Regulatory Area of the Gulf of Alaska has been reached and that further retention of sablefish by trawl gear must be prohibited as of September 17, 1986. Closure of the area to the retention of sablefish by trawl gear is necessary to limit the harvest of sablefish to the 5 percent of the OY that is specified under Federal regulations. This closure is a management measure intended to allocate the sablefish resource between

hook-and-line and trawl gear as required by the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP).

DATES: Effective at noon (1200 hours), Alaska Daylight Time (ADT), September 17, 1986, until midnight (2400 hours), Alaska Standard Time (AST), December 31, 1986. Public comments are invited on this closure until October 2, 1986.

ADDRESS: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data upon which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the Alaska Regional Office, NMFS, Federal Builidng, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Chief, Fisheries Management Operations Division, NMFS), 907–586–7228.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act) provides for inseason adjustments of fishing seasons and areas. Regulations at § 672.22(a) specify that these adjustments will be made by the Secretary of Commerce under procedures set out in that section.

Section 672.2 defines three regulatory areas in the Gulf of Alaska. One of these is the Eastern Regulatory Area. The OY for sablefish in this area is 6000 metric tons (mt). Section 672.24(b)(1) of the regulations restricts the take of sablefish in this area by trawl gear to 5 percent of the OY as bycatch only, or 300 mt.

Catch data compiled by the Regional Director from weekly catch reports from catcher/processors operating in the Eastern Gulf of Alaska indicate that the trawl catch in this area has exceeded 300 mt.

On June 3, 1986, the Secretary promulgated an Emergency interim rule (51 FR 20659, June 6, 1986) providing that sablefish must be treated as a prohibited species after the trawl bycatch allocation of 5 percent of the OY had been taken. The purpose of this regulation was to allow trawlers to continue to harvest other groundfish species in the management area, provided that the incidental catch and discard of sablefish did not result in overfishing of sablefish. This emergency regulation expired on September 2, 1986, but was extended for a second 90-day period on September 2, 1986 (51 FR 30663, August 28, 1986).

The Regional Director has reviewed the status of sablefish stocks in the Gulf of Alaska and the bycatches of sablefish that might be taken in other directed groundfish trawl fisheries in the Eastern Regulatory Area and finds that declaring sablefish a prohibited species will not result in overfishing of sablefish. Therefore, the retention of sablefish by vessels fishing with trawl gear is prohibited after noon (1200 hours) on September 17, 1986.

This closure will be effective when this notice is filed for public inspection with the **Federal Register** and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of closure may be submitted to the Regional Director at the ADDRESS above. Comments received, and the necessity of this closure will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Allocation of the sablefish resource between hook-and-line and trawl gear in the Eastern Regulatory Area as required by the FMP will be jeopardized unless this closure takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and that its effective date should not be delayed.

This action is taken under the authority of §§ 672.22 and 672.24 and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: September 17, 1986.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86–21412 Filed 9–17–86; 3:42 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 51, No. 183
Monday, September 22, 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

Agricultural Marketing Service

7 CFR Part 980

Vegetable Import Regulations for Onions; Proposed Change in Effective Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and request for comments.

SUMMARY: This proposed rule would change the effective period of the onion import regulation to reflect a change in the effective period of the quality requirements of Idaho-Eastern Oregon onions under Marketing Order 958. This action is required under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

DATE: Comments are due by October 22, 1986.

ADDRESS: Interested persons are invited to submit written comments concerning this action. Comments should be sent in duplicate to the Docket Clerk, F&V, AMS, Room 2085–S, U.S. Department of Agriculture, Washington, DC 20250. Comments should reference the date and page number of this issue of the Federal Register, and will be made available for public inspection at 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.

The onion import regulation has been in effect since December 4, 1961 (26 FR 10632, November 14, 1961) and has helped assure the importation of good quality onions.

This proposal would change paragraphs (a)(1)(ii), (a)(2), and (b)(1) of the onion import regulation (7 CFR 980.117; 43 FR 5499, February 9, 1978) to reflect a change in the effective period of the quality requirements established under Marketing Order 958 for Idaho-Eastern Oregon onions (7 CFR 958.328; 50 FR 50157, December 9, 1985). This proposal is required under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." Section 8e provides that whenever a Federal marketing order is in effect for onions, the importation of onions shall be prohibited unless the onions meet the grade, size, quality, and maturity provisions of that order. Furthermore, section 8e provides that whenever two marketing orders regulating onions produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces onions in most direct competition with the imported onions.

The requirements for onion imports are comparable to those effective under Marketing Order 958 for Idaho-Eastern Oregon onions (7 CFR Part 958) or those effective under Marketing Order 959 for South Texas onions (7 CFR Part 959), depending upon which area happens to be the dominant shipper and in most direct competition with the imported commodity. Both Federal marketing orders are effective under the Act.

The change in quality requirements for Idaho-Eastern Oregon onions extended their effective period from 10 consecutive months (August 1 to June 1) to a year. That change requires this proposed rule so that the onion import regulation would be based upon the Idaho-Eastern Oregon requirements in all months except the approximately mid-March through May period when South Texas has historically been the dominant shipper. South Texas onions are regulated from March 10 through June 15, except that after June 1 there are no applicable grade, size, quality, and maturity requirements. (47 FR 8551, March 1, 1982; 48 FR 7427, February 22, 1983)

List of Subjects in 7 CFR Part 980

Marketing agreements and orders, Imports, Onions.

PART 980—VEGETABLES; IMPORT REGULATIONS; ONIONS

1. The authority citation for 7 CFR Part 980 continues to read as follows:

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

2. Section 980.117 Import regulations; onions (43 FR 5499, February 9, 1978) is hereby proposed to be amended by revising paragraphs (a)(1)(ii), (a)(2), and (b)(1) to read as follows:

§ 980.117 Import regulations; onions.

(a) * * *

(1) * * *

(ii) Since December 9, 1985, grade, size, quality, and maturity regulations have been in effect pursuant to these orders during the period August through July;

* * * * *

(2) Therefore it is hereby determined that: Imports of onions during the June through approximately mid-March period are in most direct competition with the marketing of onions produced in designated counties in Idaho and in Malheur County, Oregon, covered by Order No. 958, as amended (7 CFR Part 958), and during the approximately mid-March through May period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Order No. 959, as amended (7 CFR Part 959).

(b) * * *

(1) During the June through approximately mid-March period of each marketing year, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are

regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

* * * * *

Dated: September 16, 1986.

Joseph A. Gribbin,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 86-21372 Filed 9-19-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-NM-178-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the installation of a smoke detector system in the main cargo/passenger cabin in those CASA Model C-212 series airplanes that have been converted from passenger to cargo configuration. A smoke detector system is necessary for the cargo configuration to alert the crew to impending or existing fire conditions in the main cabin.

DATE: Comments must be received on or before November 11, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-178-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construccionés Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-2909. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-M-178-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Spanish Dirección General de Aviación Civil (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition, which exists on certain Contrucciones Aeronauticas S.A. (CASA) Model C-212 series airplanes. When the main cabin is converted from a passenger configuration to an approved cargo configuration, in accordance with CASA Service Bulletin 212-25-35, dated October 23, 1985, or other procedure, it is necessary to install a smoke detector system in the main cabin to alert the flight crew of impending or existing fire conditions in the main cabin. CASA has issued Service Bulletin 212-26-06, dated October 23, 1985, which describes the smoke detector system installation. The DGAC has classified the installation as mandatory for the cargo configuration.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the previously mentioned service bulletin.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $663 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,966.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($983). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to all CASA Model C-212 series airplanes when converted to a cargo configuration in accordance with CASA Service Bulletin 212-25-35, dated October 23, 1985, or other modifications, certificated in any category. Compliance is required within 9 months after the effective date of this AD, or prior to conversion to a cargo configuration, whichever occurs later. In the cargo configuration, to preclude an undetected fire in the main cabin, accomplish the following, unless previously accomplished:

A. Install a smoke detector system in accordance with CASA Service Bulletin 212-26-06, dated October 23, 1985.

B. Alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 12, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21330 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-31-M

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14 CFR Part 39

[Docket No. 86-NM-169-AD]

Airworthiness Directives; CASA Model C-212 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the crew door on certain CASA Model C-212 series airplanes to provide a protective cover for the internal door handle. Installation of the protective cover is necessary to preclude inadvertent opening of the door, which could result in rapid decompression of the airplane and a hazardous condition for passengers in the vicinity of the door.

DATE: Comments must be received on or before November 11, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Construccionés Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-09. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-169-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: The Spanish Dirección General de Aviatión Civil (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which exists on certain Construcciones Aeronauticas S.A. (CASA) Model C-212 series airplanes. It has been found that the crew door in the left hand side of the forward fuselage is susceptable to inadvertent opening because the internal door handle is unprotected. Should a door open inadvertently during flight, it could lead to rapid decompression of the airplane and create a hazardous condition for passengers in the vicinity of the door.

CASA issued Service Bulletin 212-52-16, October 23, 1985, which prescribes a modification to the door to cover the handle. The service bulletin has been classified as mandatory by the DGAC.

This airplane model is manufactured in Spain and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the door handle in accordance with the previously mentioned service bulletin.

It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Modification parts are estimated at $316 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $13,952.

For the reasons discussed above, the FAA has determined that this document (1) involves proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($436). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

1. The authority citation for Part 29 continues to read as follows:

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

CASA: Applies to CASA Model C-212 series airplanes, serial numbers as listed in CASA Service Bulletin 212-52-16, dated October 23, 1985, certificated in any category. Compliance is required within 9 months after the effective date of this AD. To prevent inadvertent opening of the crew door in flight, accomplish the following, unless previously accomplished:

A. Install a protective cover over the crew door internal handle in accordance with CASA Service Bulletin 212-52-16, dated October 23, 1986.

B. Alternate means of compliance or adjustment of compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

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

All persons affected by this proposal who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Construccionés Aeronauticas S.A., Getafe, Madrid, Spain. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 12, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21329 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-185-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, which requires repetitive inspection and, as necessary, replacement of all main and nose landing gear wheel bearings. The FAA has determined that a certain group of wheel bearings, which the existing AD requires to be inspected, may be eliminated from the repetitive inspection requirement.

DATES: Comments must be received no later than November 11, 1986.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-185-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Lium, Systems and Equipment Branch, ANM-130S, telephone (206) 431-2946. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-185-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion: On May 20, 1986, the FAA issued AD 86-11-01, Amendment 39-5322 (51 FR 19324; May 29, 1986), which requires operators of Boeing Model 747 series airplanes to perform an initial and repetitive inspections of all main and nose landing gear wheel bearings, and to replace, as necessary, any damaged bearings found; these inspections are to be accomplished in accordance with an inspection schedule established by a date code stamped on the bearings. This action was promoted by reports of premature year of wheel bearings.

Following issuance of AD 86-11-01, the FAA received a Petition of Reconsideration from the manufacturer of the wheel bearings, stating that the following statements in the AD preamble referring to wheel bearings date-stamped prior to date code "LS", were inaccurate:

> . . . These bearings are also subject to a requirement for a periodic inspection and removal, as necessary, because of an incident where a bearing failure caused a wheel to fail on takeoff, with a portion of the wheel puncturing the wing fuel tank, and spilling fuel on the runway. The failure was determined to be due to the bearing having excessive case hardening . . .

Upon further investigation, the FAA has determined that there is insufficient data to support the conclusions quoted above. Further, the FAA has received no other information that would substantiate the requirement for repetitive inspections for those bearings date-stamped prior to codes "LS." Therefore, this Notice proposes to eliminate repetitive inspection requirements for those bearings.

Since this proposed amendment would merely eliminate certain inspection requirements, it would impose no additional economic burden on any operator.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 747 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator,

the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By amending Airworthiness Directive 86-11-01, Amendment 39-5322 (51 FR 19324; May 29, 1986), by deleting paragraph B.3.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on September 12, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21328 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-181-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-81, -82, and -83 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) applicable to McDonnell Douglas DC-9-80 series airplanes, equipped with certain Air Cruiser Company emergency evacuation slides, that would require modification of the tailcone emergency exit evacuation slide deployment strap clip. This proposal is prompted by reports of automatic slide deployment malfunction and/or jamming, which, if not corrected, could jeopardize the safe evacuation of the airplane.

DATE: Comments must be received no later than November 11, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-181-AD, 17900 Pacific Highway South, C-68966. Seattle, Washington 98168. The applicable service information may be obtained from Air Cruiser Company, P.O. Box 180, Belmar, New Jersey 07710-0180. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Stacho, Aerospace Engineer, Systems & Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communication received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-181-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Three instances have been reported where the Air Cruiser emergency evacuation slide installed at the tailcone emergency exit of DC-9-80 series aircraft failed to automatically deploy. The tailcone of the DC-9-80 series airplanes is designed to depart the aircraft when the tailcone emergency exit is used to provide an emergency egress means. When the tailcone departs the airplane, the evacuation slide is designed to be automatically deployed and inflated.

In the three instances, which occurred during company production tersting at McDonnell Douglas, the deployment lanyard toggle jammed against the deployment strap clip. This condition can cause a delay in having the slide ready for use or, in the worst case, totally jam and not allow the slide to be manually deployed. The deployment failures noted happened after approximately 100 successful deployments at McDonnell Douglas.

Air Cruiser has modified the deployment lanyard clip to prevent the interference. Evacuation slides D29984-103 and -109, prior to serial number 0093, were shipped with the unmodified clip. This Ad proposes to require modification of these deployment lanyard clips. This modification will minimize the potential for jamming of the deployment lanyard clip and failure of the tailcone slide to deploy automatically.

Air Cruiser Company issued Service Bulletin 304-25-3, dated January 21, 1986, which describes a modification of the deployment lanyard clip to prevent the interference.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require modification of the deployment lanyard clip in accordance with the service bulletin previously mentioned.

It is estimated that up to 93 airplanes of U.S. registry would be affected by this proposed AD, and it would take approximately 2 manhours per airplane to accomplish the required action, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7440.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9-80 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9-81, -82, and -83 series airplanes, certified in any category, equipped with Air Cruiser Company emergency exit evacuation slide part numbers D29984-103 and -109 having serial numbers prior to 0093. Compliance required as indicated, unless previously accomplished.

To prevent jamming during deployment of the emergency evacuation slide accomplish the following:

A. Within 6 months after the effective date of this AD, modify the emergency evacuation slide deployment strap clip in accordance with Air Cruiser Service Bulletin 304-25-3 dated January 21, 1986, or later revision approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received the appropriate service documents from the manufacturer may obtain copies from request to the Air Cruisers Company, P.O. Box 180, Belmar, New Jersey 07719-0180. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

Issued in Seattle, Washington, on September 12, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

FR Doc. 86-21332 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 85-ASW-17]

Airworthiness Directives; Sikorsky Model S-61L, S-61N, S-61NM, S-61R, S-61A, and S-61V Series Helicopter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend an existing airworthiness directive (AD) which requires frequent inspections of main rotor blades to detect a possible spar crack on Sikorsky S-61 series helicopters used in certain types of external cargo operations. The proposed amendment would reduce the frequency of the blade inspections for those helicopters used in FAR Part 133 (external load) operations that conduct six or less external load lifts per flight hour. The proposed amendment is also needed to prevent operators who conduct more than six cargo lifts per hour from operating with a cracked main rotor blade spar which could result in the loss of the helicopter.

DATE: Comments must be received on or before October 27, 1986.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Federal Aviation Administration, Southwest Region, Office of the Regional Counsel, Attn: Docket No. 85-ASW-17, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76106, or delivered in duplicate to Room 158 at the above address. Comments delivered must be marked: Docket No. 85-ASW-17.

Comments may be inspected between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

A copy of the applicable service bulletins (SB) and rotorcraft flight manuals (RFM) may be obtained from Sikorsky Aircraft, Division of United Technologies, North Main Street, Stratford, Connecticut 06601, Attn: S-61 Commercial Product Support Department.

A copy of the pertinent sections of the above documents is contained in the Rules Docket, Office of the Regional Counsel, Southwest Region, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 85-ASW-17." The postcard will be date/time stamped and returned to the commenter.

Amendment 39-5129 (50 FR 38507), AD 85-18-05, currently requires frequent inspections of the main rotor blades to detect a possible spar crack and prevent in-flight separation of a blade on Sikorsky S-61 series helicopters used in certain types of external cargo operations, such as logging. After issuing Amendment 39-5129, the FAA has determined that the AD only considered the high number of turnaround occurrences typical of logging operations and the potential of rapid crack propagation rates on the main rotor blade spar. Although it was not intended, Part 133 (rotorcraft external load) operators will low turnaround occurrences are unnecessarily burdened with extra visual blade inspection method (VBIM) and in-cockpit blade inspection method (CBIM) in the AD, as presently worded. Therefore, the proposed amendment would remove these helicopters from the applicability statement and would cause the inspection of the main rotor blade spar pressure indicators (VBIM) and in-cockpit blade inspection system (CBIM) to revert to the inspection requirements of Amendment 39-1971 (39 FR 33791), AD 74-20-07, as amended by

Amendments 39-1969, 39-2152, 39-2439, and 39-4895 (Rev. 5) for those Sikorsky Model S-61 series helicopters engaged in six or less external load lifts per flight hour.

Conclusion: The FAA has determined that this proposed regulation involves approximately eight helicopters engaged in nonlogging Part 133 external cargo operations, and the approximate reduced cost would be $580 per aircraft for each 50 hours' time in service. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the FAR as follows:

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

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85.

§ 39.13 [Amended]

2. By amending Amendment 39-5129 (50 FR 38507), AD 85-18-05, by revising the applicability paragraph as follows:

Remove the phrase "are operating" and replace with "are engaged in more than six external cargo lifts per flight hour."

Issued in Fort Worth, Texas, on September 10, 1986.

R.G. Knight,

Acting Director, Southwest Region.

[FR Doc. 86-21333 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 86-NM-180-AD]

Airworthiness Directive: McDonnell Douglas Model DC-9 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD) that would require the installation of a "tailcone unlatched/missing" warning system on McDonnell Douglas DC-9 series airplanes. This proposal is prompted by reports of inadvertent tailcone deployments. This action is necessary to minimize the potential for an inadvertently deployed tailcone becoming a hazard to incoming or outgoing aircraft during night or IFR conditions by being on the active runway, unknown to the flight crew.

DATE: Comments must be received no later than November 11, 1986.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-180-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Stacho, Aerospace Engineer, Systems & Equipment Branch, ANM-130L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6323.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summerizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rule Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (ATTN: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-180-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

There have been numerous instances of inadvertent tailcone deployments on DC-9 series airplanes. The tailcone is designed to leave the aircraft when the tailcone emergency exit is used to provide an emergency egress means. The inadvertent tailcone deployments have been due to a number of reasons, including unintentional movement of the interior or exterior tailcone emergency exit operating handle and improper rigging of the tailcone release mechanism. In an effort to preclude inadvertent tailcone deployments, the McDonnell Douglas Company (MDC) revised the maintenance manual rigging instructions to clarify the procedures for properly checking the security of the tailcone locking mechanism. MDC also published information on the proper operation of the tailcone exit door emergency operating handle as well as the normal, non-emergency door operating handle on DC-9-80 series airplanes.

Inadvertent tailcone deployments on the ground while the aircraft is static, while undesirable, will not cause a hazard or any damage to the aircraft. Tailcone unlatching during flight will not cause the tailcone to depart the aircraft because of aerodynamic loads on the tailcone in flight, and the tailcone will not depart until the aircraft is on the ground below flying speed. The FAA has determined that a potential hazard to other aircraft exists if the tailcone departs the aircraft on an active runway during night or IFR operation for the period of time it takes the crew of the affected aircraft to realize the tailcone is missing. Hazards associated with such a condition would be minimized by providing the flight crew of DC-9 series airplane with a positive means to indicate the tailcone is not properly latched and/or attached.

McDonnell Douglas is currently developing a system which is intended to meet the requirements of this proposed AD. MDC plans to install such a system on production aircraft starting in December 1987. MDC also plans to have a service bulletin available for modification of in-service DC-9-80 aircraft by December 1986.

Since this condition is likely to exist on other airplanes of the same type design, an airworthiness directive (AD) is being proposed which would require the installation of a visual warning system which will signal the appropriate

flight crew member when the tailcone is not fully latched and/or properly attached. The FAA proposes that this "tailcone unlatched/missing" warning system be installed within 18 months from the effective date of this AD; this will provide operators with sufficient time to install such a system. Operators can develop their own system for installation, if they so desire.

It is estimated that approximately 800 airplanes of U.S. registry would be affected by this AD, that it would take approximately 20 manhours per airplane to accomplish the required action, that the material cost would be $250 per airplane, and that the average labor cost would be $40 per manhour. It is estimated that this modification could be incorporated during normal aircraft maintenance with no additional aircraft down time required. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $840,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-9 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent a tailcone from departing the aircraft, unknown to the flight crew, accomplish the following:

A. Within 18 months after the effective date of this airworthiness directive (AD), install a visual warning means, which is approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, that will signal the appropriate flight crew members when the tailcone is not fully latched and/or properly attached.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

Issued in Seattle, Washington, on September 12, 1986.

Joseph W. Harrell,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-21331 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-13-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; Loans Sold With or Without Rights of Recourse

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The VA (Veterans Administration) is proposing to amend its regulations on the sale of loans to provide for sale either with or without rights of recourse. Currently all loans are sold with recourse. These regulations will allow the VA to dispose of Government assets in the most economical way possible.

DATES: Comments must be received on or before October 22, 1986. The VA proposes to make these regulations effective 30 days after publication as final regulations.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection in room 132, Veterans Service Unit, at the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 5, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond L. Brodie, Assistant Director for Loan Management (261), Loan Guaranty Service, Department of Veterans Benefits, Veterans Administration, Washington, DC 20420 (202) 389-3668.

SUPPLEMENTARY INFORMATION: When a VA-guaranteed loan goes into default and is subsequently foreclosed, the VA has the option of either paying the guaranteed portion of the loan, or if it is in the best interest of the VA, to acquire and resell the property securing the loan. When the VA resells the property, many times it is with VA financing as a vendee loan. Periodically vendee loans are sold to investors. These loans, known as "4600" loans, are currently sold to investors with a repurchase agreement pursuant to 38 CFR 36.4600. If the loan goes into default and the default cannot be cured, the VA takes back the loan and makes a cash payment to the holder of the loan consisting of the price paid to the VA when the loan was purchased, less repayments received by the holder which were applied to the principal, plus any advances made by the holder to cover maintenance, repairs, taxes, assessments, and other allowable items.

Section 1820(a)(5) of title 38, U.S. Code authorizes the Administrator of Veterans Affairs to sell loans upon such terms and for such prices as the Administrator determines to be reasonable. VA's historical practice of selling all vendee loans with repurchase agreements is based on the fact that the VA guarantee results in a higher price being obtained for a loan than would be obtainable if the loan were sold without a guarantee of payment. The VA now proposes to also sell loans without a repurchase agreement; i.e., without recourse. While the sale of some loans without repurchase agreements can be expected to reduce the proceeds of loan sales to some extent, there will also be a reduction in outlays as VA will not be obligated to repurchase vendee loans which go into default after they are sold. Only a portion of vendee loans will be sold without recourse at this time. Other vendee loans will continue to be sold with recourse. This proposal is part of a Government-wide effort to determine the best means of disposing of Government assets and thereby reduce the Federal Budget deficit.

The Administrator hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, sections 601-612. These changes will affect only the nature of the investment which is offered when the VA sells some of its vendee loans without recourse (i.e., not

Federally guaranteed). All investors in the market place will make independent decisions on whether to bid on such an investment, and their bids will set the market value of such loans. Therefore, while these changes will slightly alter the nature of some of these investments, no regulatory paperwork, administrative, or any other type of burden would be imposed on small entities by these changes. Also, vendee loans have historically been purchased for the most part by large financial institutions, rather than by small entities. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulation, and are not considered major regulation changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of $100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, Government agencies, or geopgraphic regions; nor will they have other 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.

(Catalog of Federal Domestic Assistance Program Number 64.114)

These amendments are proposed under authority granted the Administrator by sections 210(c) and 1820 of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—Housing and community development, Manufactured homes, Veterans.

Approved: August 11, 1986.

Thomas. K. Turnage,

Administrator.

PART 36—[AMENDED]

In 38 CFR, Part 36, Loan Guaranty, § 36.4600 is proposed to be amended by revising paragraphs (a), (b) and (c) introductory text to read as follows:

§ 36.4600 Sale of loans, gurantee of payment.

(a) Whenever loans are sold by the Veterans Administration, they will be clearly identified as loan sold with or without recourse.

(b) The payment of all loans sold with recourse shall be guaranteed in accordance with the provisions of this section.

(c) Wherever the term "holder" appears in this section it shall mean the purchaser of a loan sold by the Administrator and any subsequent transferee or assignee of such loan. The holder of each loan sold subject to guaranty shall be deemed to have agreed with the Administrator as follows:

(38 U.S.C. 210(c); 1820)

* * * * *

[FR Doc. 86-21334 Filed 9-19-86; 8:45 pm]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3084-3]

Approval and Promulgation of Implementation Plans; New Hamsphire Sulfur-in-Fuel; James River Corp.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan revision submitted by the State of New Hampshire. This revision raises the sulfur-in-oil limit at the James River Corporation, Groveton, from 1.0% sulfur by weight to 2.2%. This source was excluded from recent revisions to the statewide sulfur-in-fuel limitation. No change in actual emissions will occur as a result of this revision, and allowable emissions will be reduced through new permit conditions on operation. The intended effect of this revision is to federally approve the state regulation that allows this source to burn higher sulfur fuel.

DATE: Comments must be received on or before October 22, 1986.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2312, JFK Federal Bldg., Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Bldg., Boston, MA 02203; and at the New Hampshire Air Resources Agency, Health and Welfare Building, Hazen Drive, Concord, NH 03301.

FOR FURTHER INFORMATION CONTACT: Susan Kulstad, (617) 223-4865; FTS 223-4865.

SUPPLEMENTARY INFORMATION: On January 22, 1986, the Director of the New Hampshire Air Resources Agency (the New Hampshire Agency) submitted a revision to the New Hampshire State Implementation Plan (SIP). This revision allows an increase in the sulfur-in-oil content at James River Corporation (James River-Groveton) from no more than 1.0% sulfur to no more than 2.2%. The revision also includes amended permits that restrict operation at James River-Groveton and ultimately reduce allowable sulfur dioxide (SO_2) emissions.

Background

New Hampshire's regulation of fuel burning sources in the New Hampshire portion of the Androscoggin Valley Interstate Air Quality Control Region (Coos County), PART Air 402.02(c)(1), has allowed the continuous burning of oil with no more than 2.2% sulfur by weight since 1973. On July 12, 1973 and December 21, 1982, the New Hamsphire Agency submitted a revision to its SIP to raise the allowable sulfur content of No. 5 and No. 6 residual oils and crude oil. The revision was to allow the use of oil with no more than 2.2% sulfur by weight in Coos County.

The SIP revision for Coos County excluded James River-Groveton and another fuel burning source. Further technical support was needed for the two excluded sources to ensure that there would be no violation of the National Ambient Air Quality Standards (NAAQS). On March 23, 1984, EPA published a final notice approving statewide revisions of the sulfur-in-fuel limit (49 FR 11094) including the revision for Coos County except for the two sources.

New Technical Support

On January 22, 1986, the State of New Hampshire submitted technical support demonstrating that the NAAQS for SO_2 will not be violated if James River-Groveton is regulated under the higher sulfur-in-fuel limitation. James River-Groveton is located in an area of complex terrain, and initial screening modeling performed with the EPA Valley model predicted violations of the NAAQS. New Hampshire and the EPA Regional Office judged these predictions to be unrealistic based on experience with similar sources in similar complex terrain settings. EPA, New Hampshire, and James River-Groveton discussed alternative methods of demonstrating attainment and agreed to use monitoring in lieu of modeling. All parties agreed to a monitoring program using the Valley model results to locate worst case

impact sites. Data were collected from September, 1983 to October, 1984.

Calculations were performed on monitored values to roll them up to represent impacts at maximum operating load and the allowable percent sulfur-in-oil (2.2%). EPA has reviewed the State's technical data. The SO_2 monitoring data, adjusted for load and percent sulfur-in-fuel, confirm that the Valley model overpredicted impacts and that the NAAQS are not threatened. Reported concentrations are based on running averages and are below the NAAQS for SO_2. Before roll-up calculation, the second highest 24-hr monitored concentration over the field of monitors was 57% of the NAAQS.

Additionally, an operating limit equivalent to the burning of no more than 25,000 gallons per day of 2.2% sulfur-in-oil has been imposed at the source in a license issued by the New Hampshire Agency, reducing allowable SO_2 emissions at the source by 1,340 tons per year. The pertinent license conditions will be incorporated by reference upon final approval of this SIP revision. Modeling of the licensed allowable emissions to account for building downwash in simple terrain with the ISC model also shows no violations of the NAAQS.

James River-Groveton has burned 2.2% sulfur oil since the adoption of the state regulation in 1973. Therefore, this revision will not result in increases of actual emissions and will not result in the consumption of any Prevention of Significant Deterioration increment. An analysis of interstate impacts also showed that this revision will not interfere with the attainment or maintenance of the NAAQS in any other state. EPA's stack height regulations are not an issue here as the stacks are less than 65 meters in height and the source emits less than 5,000 tons per year of SO_2. For more details on EPA's review see the technical support document available at the locations listed in the ADDRESSES section of this notice.

The monitoring program conducted in support of these revisions does not meet all of the precise requirements set forth in EPA's current guidance on the use of monitored data in lieu of modeled estimates. However, EPA is proposing to accept the attainment demonstration on the basis of the following mitigating factors.

First, the source is small relative to other major SO_2 sources in the nation (1,576 tons per year allowable emissions of SO_2) and has been burning the higher sulfur fuel for at least 13 years. Because of the operating restrictions, this revision also results in a net reduction in allowable SO_2 emissions. Thus, there will be no degradation of the existing air quality which is attaining the NAAQS. Second, the genesis of the agreement on the monitoring program predates EPA's guidance on monitoring in lieu of modeling, and the program was later formalized in a letter issued to James River-Groveton pursuant to section 114 of the Clean Air Act. In summary, we are ratifying status quo actual emissions and reducing allowable emissions to eliminate an outstanding discrepancy between the Federal and state SIPS.

Proposed Action

EPA is proposing to approve the revision for the James River Corporation in Groveton to burn up to 2.2% sulfur oil submitted on January 22, 1986.

Order 5 U.S.C. section 605(b), the Administrator certifies that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides.

Authority: 42 U.S.C. 7401–7642.

Dated: April 28, 1986.

Michael R. Deland,

Regional Administrator, Region I.

[FR Doc. 86–21389 Filed 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–9–FRL–3084–1]

Approval and Promulgation of Implementation Plans; Rules and Regulations From the Arizona and Maricopa County, Arizona Departments of Health Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Two submittals were received from the State of Arizona. The first submittal concerns the Maricopa County Department of Health Services (MCDOHS), and consists of a particulate rule and a volatile organic compound (VOC) rule. The second submittal concerns the Arizona Department of Health Services (ADOHS), and consists of an excess emissions rule. EPA has evaluated the rules and has found them to be consistent with the requirements of the Clean Air Act and 40 CFR Part 51. Today's notice proposes to approve the rules for incorporation into the Arizona State Implementation Plan (SIP).

DATES: Comments may be submitted up to 30 days following the date of publication of this notice.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air Management Division, State Implementation Plan Section (A–2–3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

Copies of the proposed revisions are available for public inpsection during normal business hours at the EPA Region 9 office and at the following locations:

Arizona Department of Health Services, State Health Building, 1740 West Adams Street, Phoenix, Arizona 85007

Maricopa County Health Department, at Maricopa County Department of Health Services, 1825/1845 East Roosevelt, Phoenix, Arizona 85006

FOR FURTHER INFORMATION CONTACT: Kathy M. Diehl, Environmental Engineer, State Implementation Plan Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7644 FTS: 454–7644.

SUPPLEMENTARY INFORMATION:

Background

The State of Arizona submitted the following rules and regulations to the EPA concerning the MCDOHS and the ADOHS on the dates indicated:

Maricopa County Department of Health Services

April 17, 1985

Rule 31—Emissions of Particulate Matter

Rule 33.1A, C—Gasoline, Petroleum or Petroleum Distillate Loading Facilities (<20,000 gpd)

Arrizona Department of Health Services

October 24, 1985

Rule 9–3–309—Excess Emissions

Evaluations

Maricopa County Rule 31 is a particulate rule. It was revised so that the district now controls particulate emissions from non-point sources. The rule strengthens the SIP.

Rule 33.1 A,C was not changed except for deletion of a leak-reading effective date. The rule is consistent with CTG requirements.

ADOHS Rule 9–3–309 is an excess emissions rule. It was revised to define emissions in excess of emission

limitations as a violation. the rule is consistent with the EPA malfunction policy.

A copy of EPA's detailed evaluations are available for inspection at the EPA's Region 9 office in San Franciso.

Proposed Action

EPA proposes to approve MCDOHS Rule 31 because it improve the County's existing particulate matter control strategy. However, on January 4, 1983, EPA disapproved the Maricops County particulate matter SIP as a whole because it failed to demonstrate timely attainment of the particulate matter standard. At the same time, EPA imposed a ban on construction of new major sources of particulate matter. See 48 FR 253. Today's proposal in no way affects this disapproval of the overall particulate matter SIP or the construction ban, which will remain in place. Today's action merely proposes to add Rule 31 to the existing SIP. In addition, since EPA is not taking action on the complete SIP, EPA has not reviewed Rule 31 to determine whether or not the Rule represents Reasonably Available Control Technology (RACT) for non-point source. EPA will make a RACT determination when Maricops County submits and EPA takes action on the full participate matter SIP.

EPA proposes to approve MCDOHS Rules 33.1A, C under section 110 of the Clean Air act because it is consistent with the Clean Air Act and 40 CFR 51 Section 22.

EPA proposes to approve the Arizona Department of Health Services' Rule 9–3–309, "Excess Emissions." under Section 110 of the Clean Air Act because it is consistent with the Clean Air Act and 40 CFR Part 51 Sections 19 and 22. The rule strengthens the SIP.

A copy of EPA's detailed evaluations, including recommendations, are available for inspection at the EPA Region 9 office in San Francisco.

Regulatory Process

lUnder 5 U.S.C 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. See 46 FR 8709.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen doxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401.7642.

Dated: June 30, 1986.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 21388 Filed 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[Region II Docket No. 63 (FRL–3084–5)]

Designation of Areas for Air Quality Planning Purposes; Revisions to Attainment Status Designations for the State of New Jersey

AGENCY: Environmental Protecton Agency.

ACTION: Proposed rule.

SUMMARY: This notice announces the Environmental Protection Agency's proposed approval of a request from New Jersey to revise the air quality designation of the City of Bridgeton from "does not meet secondary standards" to "better than national standards" for the particulate matter secondary standard. Such designations are required by section 107(d) of the Clean Air Act. This action means that the air quality in Birdgeton will be designated as better than the particulate matter secondary standard.

DATE: Comments must be received on or before October 22, 1986.

ADDRESSES: All comments should be addressed to: Christopher J. Daggett, Regional Administrator, Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

Copies of the State's request are available for public inspection during normal business hours at:

U.S. Environmental Protection Agency, Air Programs Branch—Room 1005, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278

State of New Jersey, Department of Environmental Protection, Division of Environmental Quality, John Fitch Plaza, CN 027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, U.S. Environmental Protection Agency, Region II Office, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION: Section 107(d) of the Clean Air Act directed each state to submit to the Administrator of the Environmental Protection Agency (EPA) a list of national ambient air quality standard attainment status designations for all areas within the state.

EPA received such designations from the states and promulgated them on March 3, 1978 (43 FR 8962). As authorized by the Clean Air Act, after EPA review and approval, these designations have been revised from time to time at a state's request.

State Submittal

On October 25, 1985 the New Jersey Department of Environmental Protection (NJDEP) submitted a request to revise the air quality designation for the City of Bridgeton from "does not meet secondary standards" to "better than national standards" for attainment of the particulate matter secondary standards. This redesignation request is based on a review of existing air quality monitoring data and enforceable emission redcutions within the City of Bridgeton. The State submitted additional information clarifying its original submission on February 13, 1986.

EPA's Review Criteria

In order for EPA to approve particulate matter redesignation requests involving changes from "does not meet standards" to "better than national standards," EPA requires a state to satisfy the following criteria:

1. Eight consecutive quarters of the most recent quality assured, representative ambient air quality data showing attainment of ambient particulate matter standards.

2. Evidence of an implemented EPA approved control strategy for particulate matter.

3. Evidence that air quality improvements are not related to an economic downturn or to temporary reductions in emissions that will be reversed in the future.

4. Dispersion techniques are not responsible for the improvement in air quality.

EPA's Findings and Proposed Action

Based on its review of the submitted information, EPA finds that the City of Bridgeton is in attainment of the secondary standards for particulate matter. Therefore, EPA is proposing to approve New Jersy's request. This proposed approval is based upon EPA's determination that NJDEP has satisfied the criteria for redesignation.

Specifically, six consecutive years (from 1977 through 1982) of quality assured ambient particulate matter data from a monitor at the Bridgeton Municipal Building were analyzed. The

annual geometric means varied between 36 $\mu g/m^3$ and 44 $\mu g/m^3$, below the 60 $\mu g/m^3$ secondary standard. The highest 24-hour concentration in the entire data set was 110 $\mu g/m^3$, which is below the secondary standard of 150 $\mu g/m^3$.

However, significantly higher particulate matter concentrations were recorded in 1977 and 1979 at another monitor in an area in the immediate vicinity of a local glass manufacturing facility. In fact, these higher particulate matter concentrations were the basis of the original nonattainment designation. Since that time, this glass manufacturing facility has permanently shut down.

The operating permits for this facility were returned to the NJDEP in 1984 and the facility cannot reopen without applying for appropriate State permits and certificates. Any reapplication to operate would subject the facility to new source review procedures and a demonstration that its operation will not cause or contribute to a violation of any ambient air quality standard. These requirements are part of the EPA approved State Implementation Plan. (See N.J.A.C. 7:27–8.1 et. seq. and 7:27–18.1 et. seq.). Consequently, EPA has concluded that air quality standards will continue to be attained throughout the Bridgeton area. Additionally, there is an EPA approved implementation plan for particulate matter which is being implemented everywhere in the State.

EPA's proposed approval of this redesignation request is based on the requirements of sections 107 and 301 of the Clean Air Act and applicable EPA guidelines. Interested persons are invited to comment on the subject proposal and on whether it meets Clean Air Act requirements. Comments received by October 22, 1986, will be considered in EPA's final decision. All comments received will be available for inspection in the Region II Office of EPA, at 26 Federal Plaza, Room 1005, New York, New York 10278.

Under 5 U.S.C. section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709). The Office of Management and Budget has exempted the rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, and Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: March 7, 1986.

Christopher J. Daggett,

Regional Administrator.

[FR Doc. 86–21391 Filed 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 81

[A–9–FRL–3084–2]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations in California and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Through this notice EPA proposes to approve the California and a part of the Nevada requests for the redesignation of Placer County, California and Washoe and Carson City Counties, Nevada to attainment for carbon monoxide (CO). EPA action on the remainder of the Nevada request will be the subject of a separate Federal Register notice. Upon redesignation, the affected areas will not need to meet any further Part D, nonattainment area planning requirements. The purpose of this notice is to invite public comment on the redesignation of the areas, as proposed.

DATE: Written comments must be received on or before October 22, 1986.

ADDRESSES: Comments may be sent to Kevin Golden at the EPA Regional Office address listed below. Copies of EPA's technical support document for this action are available for public inspection during normal business hours at the EPA Region 9 Office and at the following locations:

California Air Resources Board (ARB), P.O. Box 2815, 1102 "Q" Street, Sacramento, CA 95812

Placer County Air Pollution Control District, 11491 "B" Avenue, Auburn, CA 95603

Nevada Department of Conservation and Natural Resources (NDCNR), Division of Environmental Protection, 201 S. Fall Street, Carson City, NV 89710

Washoe County Air Quality Division, Washoe County District Health Department, Wells Avenue at Ninth, Reno, NV 89520

Tahoe Regional Planning Agency, 2155 South Avenue, South Lake Tahoe, CA 95731

FOR FURTHER INFORMATION CONTACT: Morris I. Goldberg, Technical Evaluation Section (A–2–1), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–7651, FTS: 454–7651.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8970), EPA promulgated its first attainment status designations, as authorized at paragraph 107(d)(2) of the Clean Air Act, as amended. EPA designated all of the Lake Tahoe Air Basin as nonattainment for CO, as requested by California and Nevada. These nonattainment designations are codified separately by state at 40 CFR 81.305 and 81.329.

On May 4 and 5, 1983, California and Nevada, respectively, requested redesignation action be taken by EPA. California requested that the portion of Placer County in the Lake Tahoe Air Basin be redesignated to attainment while Nevada requested that all of the Nevada side of the Basin (Washoe, Carson City and Douglas Counties) be redesignated to attainment. Action on the Douglas County part of the Nevada request will be proposed separately by EPA.

On July 14 and 26, 1983, EPA responded to the May 1983 redesignation requests from Nevada and California, respectively. Both States were informed that redesignation of the more urbanized portions of the areas requested would not be possible at that time. The California ARB was informed that additional documentation would be needed before the Tahoe City area of Placer County could be redesignated because the Park Service had reportedly measured a violation of the 8-hour CO standard at a discontinued monitoring site five years earlier.

The State of Nevada, NDCNR, was informed that redesignation of the Nevada portion of the south shore bi-state urban core area would not be possible because of the EPA redesignation policy which requires that areas with sources which contribute to violations be retained as nonattainment areas for planning purposes. This portion of the redesignation request will be the subject of a separate EPA action.

Evaluation

At the suggestion of EPA, the ARB modeled both the 1978/79 emission and meteorological conditions, in an attempt to recreate the violation at the old Park Service site, and also the current emissions to demonstrate that there were no current violations. The modeling results fell far short of predicting a violation and EPA suggested that the redesignation would require monitoring. After additional monitoring was completed in 1984/85,

EPA concluded that the only measured CO violation in the north shore area (1978/79) was highly suspect. The conservative nature of station and probe siting problems and the low measured concentrations encountered in 1984/85, together with the lack of any quality-assurance information on the 1978/79 data, indicated that the area probably never had a violation. The Nevada counties being considered in this action have no measured or modeled air quality data.

Although measured data is incomplete, the modeling and monitoring required by EPA confirm the EPA premise that areas with few sources and low populations are not anticipated to experience CO violations or to contribute significantly to violations in "urban core" areas.

This premise, contained in redesignation criteria guidance provided to California and Nevada on December 28, 1984 and January 2, 1985, respectively, also allows EPA to redesignate the more rural areas, but also requires that the more urbanized areas close to the measured violations be retained as nonattainment areas. This policy has been supported by the 9th Circuit, U.S. Court of Appeals in *Western Oil and Gas Association, et al.*, v. *EPA*, Case Nos. 83–7831 and 84–7403, filed on July 30, 1985.

EPA believes that this action is appropriate and that separate actions on the Nevada request are consistent with EPA policy since information submitted and approved as a part of the California Nonattainment Area Plan (NAP) shows little traffic movement from the north to the south shore areas of the lake. Thus, the northern parts of the Lake Tahoe Air Basin contribute insignificantly to the measured violations in El Dorado County, California. EPA also believes that no violations ever existed in Placer, Washoe, or Carson City Counties, because the few sources and low population of the area are not conducive to the formation of sufficient quantities of CO to cause violations. The general criteria for redesignation to attainment, two-years of quality-assured, violation-free ambient air quality data and the implementation of EPA approved control measures, are not appropriate in such rural CO areas which should have been designated attainment originally.

For CO, certain minimum size requirements exist for nonattainment areas which have not been shown to be free of measured or modeled violations. National policy specifies that the urban core area is the minimum size of a CO nonattainment area. No urban core area exists in the portions of the Lake Tahoe Air Basin proposed for redesignation through this notice.

Proposed Action

EPA has reviewed the requests by the California ARB and the (Nevada) NDCNR and has determined that the Placer County, California and the Washoe and Carson City Counties, Nevada portions of the Lake Tahoe Air Basin should be proposed for redesignation from nonattainment to attainment for CO.

Regulatory Process

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

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7642.

Dated: June 12, 1986.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 86–21390 Filed 9–19–86; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 261

[SW-FRL-3083-6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposal To Deny Petitions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by five petitioners to exclude their wastes from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. The effect of this action, if promulgated, would be to deny the exclusion of certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261; thus, all the petitioned wastes would be considered hazardous.

The Agency had previously evaluated three of the petitions which are discussed in today's notice. Based upon our review at that time, all three of the petitioners were granted temporary exclusions. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these petitions and the other two petitions included in this notice have been evaluated for the factors for which the wastes were originally listed, as well as other factors and toxicants which reasonably could cause the wastes to be hazardous. Based upon these evaluations, the Agency has determined that the petitioning facilities have not substantiated their claims that the wastes are non-hazardous. The Agency, therefore, is proposing to deny the exclusions of wastes from all five petitioning facilities and revoke the three temporary exclusions.

In addition to the proposed denials, the Agency is presenting its preliminary results of the toxicity testing that has been conducted on nickel that will be used for the evalution of allowable concentrations of nickel in wastes. (See Appendix I of this notice.) These results do not suggest that the interim nickel level should be changed at this time; rather it suggests that the final regulatory standard for nickel will be no greater than the interim level, and is likely to be lower. We are proposing, therefore, to deny a petition if the concentration of nickel at the compliance point (using the VHS model) exceeds the interim standard for nickel. All five of the petitions being proposed for denial today are, in fact, being denied solely on their high nickel levels.

DATES: EPA will accept public comments on the proposed decision to deny these petitions until October 14, 1986. Any person may request a hearing on these proposed denials by filing a request with Bruce Weddle, whose address appears below, by October 7, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (WH–562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSP/OSW

(WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-86-NIDP-FFFFF".

Requests for a hearing should be addressed to Bruce Weddle Director, Permits and State Programs Division, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The RCRA regulatory docket for these proposed denials is located at U.S. Environmental Protection Agency, 401 M Street SW. (sub-basement), Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding Federal holidays. Call Mia Zmud at (202) 475-9327 or Kate Blow (202) 382-4675 for appointments. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Lori DeRose, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5096.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing Section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (i.e., ignitability, corrosivity, reactivity, and extraction procedure [EP] toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria for which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.)

In addition to wastes listed as hazardous in 40 CFR § 261.31 and § 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3(c) and (d)(2).) Again, the substantive standard for "delisting" is: (1) That the waste not meet any of the criteria for which it was listed originally; and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).)

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the factors for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original factors), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (*i.e.*, those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste at levels of regulatory concern, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit this data to the Agency. In this case, the petitioner should submit an explanation of why any constituents from Appendix VIII of Part 261, for which no testing was done, would not be present in the waste or, if present, why they would not pose a toxicological hazard.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a groundwater

transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicants from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliancepoint concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance-point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. For example, for wastes that are managed in landfills the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (*i.e.*, any waste exhibiting extract concentrations equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less that same level). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. In fact, the Agency has used this approach in evaluating each of the petitioned wastes discussed in today's publication. As a result of this evaluation, the Agency is proposing to deny the petitions discussed in this notice.

It should be noted that the Hazardous and Solid Waste Amendments of 1984 require the Agency to provide notice and an opportunity for public comment before a final rule is made to grant or deny an exclusion. All of the denials proposed today will not become effective unless and until they are made final. A notice of final denial will not be published until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The Agency proposes to deny the following exclusion requests:

General Motors Corporation/Chevrolet-Pontiac-Canada Group, Pontiac, Michigan;
Lacks Industries, Grand Rapids, Michigan;
Light Metals Coloring Company, Inc., Southington, Connecticut;
PEC Industries, Orlando, Florida;
Radford Army Ammunition Plant, Radford, Virginia.

I. General Motors Corporation/ Chevrolet-Pontiac-Canada Group

A. Petition for Exclusion

General Motors Corporation, Chevrolet-Pontiac-Canada Group (CPC), located in Pontiac, Michigan, is involved in the manufacture and assembly of automobiles. In September of 1981, CPC petitioned the Agency to exclude its wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed).

Based upon the Agency's review of their petition, CPC was granted a temporary exclusion on November 22, 1982 (see 47 Federal Register 52674). The Agency's basis for granting the temporary exclusion (at that time) was the low migratory potential of the constituents of concern, namely cadmium, hexavalent chromium, nickel, and cyanide (complexed). Since that time, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, these Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was originally listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) As a result, the Agency has re-evaluated CPC's petition to: (1) Determine whether the temporary exclusion should be made final based on the factors for which the waste was originally listed; and (2) evaluate the wastes for additional factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous.[3] This notice presents the results of the Agency's re-evaluation of this petition.

In support of their petition, CPC has submitted a detailed description of its production and wastewater treatment processes, including schematic diagrams; total constituent analyses and Oily Waste EP toxicity test results of the sludge for cadmium, total chromium, and nickel; and total constituent analyses and distilled water leach test results for cyanide. CPC also submitted results from Oily Waste EP toxicity tests for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease analyses on representative samples collected from the dewatered sludge. In addition, CPC submitted a list of all raw materials used in the manufacturing process. The Agency requested and reviewed this information, as noted above, in order to determine whether any hazardous constituents, other than those for which the waste was originally listed, could be present in the waste at levels of regulatory concern.

CPC manufactures and assembles automobiles. In the production process, automobile components are degreased, phosphated, electroplated, coated, painted, or electropainted. Metallic and acid wastes are segregated from alkali and oily wastes. Chromium in the metallic and acid wastes is reduced by

[1] The Agency proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency has not completed its evaluation of the comments on this proposal, however. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] Since the granting of the temporary exclusion, CPC changed its plating operations, closing down certain operations. As a result of this change and the new requirements of the Amendments, the Agency requested additional information from CPC. This information was submitted on November 14, 1985.

sulfur dioxide prior to lime neutralization, polymer flocculation, and clarification. Alkali and oily wastes are treated with acid, alum, polymers, caustic, and flocculant, and are subsequently clarified. The segregated sludges are combined, thickened, dewatered by vacuum filtration, accumulated in a pile, and taken to a landfill.

To characterize the wastewater treatment sludge and adequately show its variability, four samples were collected at one-week intervals. To ensure that each sample was representative of the sludge, several subsamples were collected from random locations in the sludge pile, and composited each sampling day. CPC claims that these samples are representative of any variation of the listed and non-listed constituent concentrations in the wastestream since the manufacturing and treatment processes do not vary. CPC further claims that the use of raw materials does not vary over time. Consequently, they believe that the samples collected and analyzed fully characterize their waste.

Total constituent analyses of the sludge for the listed constituents revealed the maximum concentrations presented in Table 1.

TABLE 1.—ANALYSES OF LISTED CONSTITUENTS

	Maximum total concentration (ppm)
Cd	4
Cr (total)	1,600
Ni	1,000
CN (total)	3

As the samples had an oil and grease content of between 15 and 18 percent by weight, Oily Waste EP toxicity analyses were performed on the sludge samples for both the listed constituents and the non-listed metals.[4] Table 2 presents the maximum concentrations detected from oily EP toxicity test results.

In addition to these analytical tests, CPC had its sludge tested for reactivity as defined in § 261.23(a). In normal laboratory handling, the sludge samples did not generate gases or vapors, and did not react violently with water or acid. CPC also submitted a list of raw materials used in their manufacturing and wastewater treatment processes. This list indicated toluene, xylene, methyl ethyl ketone, and phenol were used in the manufacturing process. As explained in the next section, however, the Agency did not request CPC to analyze for these containments. CPC estimates its average total annual generation of sludge to be approximately 2230 tons (2204 cu. yds.); maximum annual generation is not expected to exceed 2980 tons (2944 cu. yds.).

TABLE 2.—ANALYSES OF CONSTITUENTS OF CONCERN

	Maximum oily EP leachate concentration (ppm)
Cd	<0.03
Cr (total)	0.23
Ni	12.0
CN (total) [1]	0.10
As	0.04
Ba	<0.5
Pb	0.16
Hg	<0.011
Se	<0.01
Ag	<0.06

[1] From distilled water leach test. Distilled water is used rather than the normal acidic EP extraction medium to avoid the destruction of cyanide during the extraction procedure.

B. Agency Analysis and Action

Based on the data presented in its petition, CPC has not demonstrated to the Agency that its wastewater treatment sludge is non-hazardous. The Agency considers the sampling procedure used by CPC to be adequate. By compositing several randomly located subsamples into one sample each sampling day, CPC ensured that each sample was representative of the sludge generated that day. We also believe that a one-month sampling period is sufficient since there are no seasonal changes in the manufacturing process or raw materials and CPC is not a job shop. This point was confirmed in that the range of total concentrations and spike concentration percent recovery of the constituents of concern and the non-listed metals in the sludge did not vary significantly. The Agency, therefore, concludes that the analytical information provided by CPC is representative of the waste constituents contained in its wastewater treatment sludge.

The Agency evaluated the mobility of the waste constituents in the sludge using the vertical and horizontal spread (VHS) model.[5] Table 3 presents the compliance point concentrations for constituents of concern and the non-listed metals predicted by the VHS model, based on CPC's maximum expected sludge generation (2980 tons) and maximum Oily Waste EP leachate levels.

For all the EP toxic metals, the sludge exhibited concentrations less than the National Interim Primary Drinking Water Standards at the compliance point. In addition, cyanide concentrations, at the compliance point, did not exceed the U.S. Public Health Service suggested drinking water standard.[6]

The VHS model, however, predicts that the annual maximum expected sludge generation rate would result in compliance-point nickel concentrations much greater than the regulatory level of concern. Moreover, using the average of the nickel leachate concentrations (8.7 ppm) and the calculated upper limit of 95-percent confidence interval (11.64 ppm), the VHS model computes compliance point concentrations of 1.2 ppm and 1.61 ppm, respectively (both above the regulatory standard) when using the maximum expected amount of sludge generated annually. Even using the average annual sludge generation rate, expected compliance point nickel concentrations could be as high as 1.44 ppm, which is significantly greater than the regulatory level of concern.

TABLE 3.—COMPLIANCE POINT CONCENTRATIONS FOR CONSTITUENTS OF CONCERN

	VHS model: Calculated maximum compliance point concentrations (ppm)	Regulatory Standards (ppm)
Cd	0.004	0.01
Cr total	0.032	0.05
Ni	1.665	0.350
CN total	0.014	0.20
As	0.0006	0.05
Ba	0.069	1.0
Pb	0.022	0.05
Hg	0.0015	0.002
Se	0.001	0.01
Ag	0.008	0.05

The Agency previously stated that it would not deny any nickel content until toxicity studies on nickel that were being conducted were completed, and a final regulatory level had been established (see 50 FR 20247, May 15, 1985). Although these studies have not been completed, the preliminary results indicate that the final regulatory standard for nickel will be no greater than 0.35 mg/l; in fact, these studies suggest that the regulatory level will be less than the interim standard of 0.35 mg/l. We, therefore, believe it now appropriate to make a decision on the hazardousness of a waste due to its

[4] See 49 **Federal Register** 42591, October 23, 1984, for the applicability of the Oily Waste EP leachate analysis.

[5] See 50 FR 7882, Appendix I (February 28, 1985) for a detailed explanation of the development of the VHS model for use in the delisting program. See also 50 FR 48896, November 27, 1985 for the final version of the VHS model.

[6] Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962, (0.2 ppm).

nickel content; in this case, we believe the level of nickel in the waste and its potential to leach from the waste is of regulatory concern.[7]

In addition, based on a review of CPC's list of raw materials used in the manufacturing process, naptha, and petroleum oils as well as the Appendix VIII hazardous constituents toluene, xylene, methyl ethyl ketone, and phenol could be expected to be found in the sludge. The Agency did not request that CPC test its sludge for these (and other) hazardous constituents, however, because of the presence of high concentrations of nickel in the sludge.

Thus, the Agency concludes that CPC's wastewater treatment sludge could prove to be hazardous to both human health and the environment, and as such, should be subject to regulation under 40 CFR Parts 262 through 266 and the permitting standards of 40 CFR Part 270. The Agency, therefore, proposes to deny the petition and revoke the temporary exclusion granted to the General Motors Corporation, Chevrolet-Pontiac-Canada Group, located in Pontiac, Michigan, for its wastewater treatment sludge, as described in its petition. (CPC was notified in a letter, dated March 18, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that CPC's petition be denied due to the potential of this waste to contaminate ground water with nickel. CPC did not respond to the Agency's letter.)

II. Lacks Industries, Grand Rapids, Michigan

A. Petition for Exclusion

Lacks Industries (Lacks), located in Grand Rapids, Michigan, is involved in the decorative plating of metal die casted parts. Lacks petitioned the Agency to exclude its metal hydroxide sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations, except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The petitioned waste was generated as a result of electroplating operations that ceased in July 1984. The metal hydroxide waste generated by those operations presently is being stored in an on-site surface impoundment.[8]

Lacks claims that EP toxicity tests of its sludge have yielded concentrations below permissible levels for all of the EP toxic metals, including the constituents of concern for EPA Hazardous Waste No. F006—cadmium, hexavalent chromium, nickel, and cyanide (complexed). Lacks further claims that no hazardous substances, other than those for which the sludge was tested, were used or are likely to be present in the metal hydroxide sludge.

In support of their petition, Lacks has submitted descriptions, including schematic diagrams, of the manufacturing and treatment processes that contributed to the subject waste. Lacks claims that these descriptions represent all of the manufacturing and treatment processes that have contributed to the waste. Lacks also submitted a list of all feed materials used in the manufacturing processes; a list of the materials used or produced at the plant that either were discharged into the waste stream or were likely to enter the waste; results from EP toxicity analyses for all the EP toxic metals and nickel; and results of total constituent analyses for cyanide. In addition, Lacks submitted test results for total oil and grease, and assessments of the waste for ignitability, corrosivity, and reactivity, on samples taken from the waste in the on-site surface impoundment. The Agency requested much of this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Prior to July 1984, Lacks was engaged in cyanide copper/duplex nickel/chrome electroplating of zinc die-casted parts at their Grand Rapids, Michigan plant. Rinse waters containing nickel, chromium, and cyanide were treated via: (1) Alkaline chlorination; (2) chromium reduction where hexavalent chromium is reduced to trivalent chromium via sulfonation; or (3) neutralization, which merged the chromium and cyanide wastes with the nickel, acid, and caustic streams. The treated rinse waters were discharged to a series of seepage lagoons for final ground water discharge. The lagoons have been in use since 1963.

The waste under consideration for exclusion consists of sludges dredged from seepage Lagoons #1 and #2 stored in Lagoon #3. Lagoon #3 has also received treated rinse waters (from overflows due to dike failures). Approximately 15,540 cubic yards of metal hydroxide sludge is being stored in Lagoon #3, the only lagoon for which Lacks requested an exclusion. If an exclusion is granted, Lacks claims that it will cap the surface impoundment with 2 feet of compacted clay. This layer will be covered with 4 inches of top soil and will be seeded. A run-off control system also will be installed and in-place monitoring wells will continue to be monitored.[9]

The first seven composite samples were collected from December 8, 1983 through July 11, 1984. One additional composite sample was collected on August 5, 1985, and submitted in a supplement to the original petition. The first seven samples represented the entire area of the surface impoundment and were approximately equidistant from each other. Each composite sample consisted of three samples, collected at 1-, 3-, and 5-foot depths, from each of the seven sampling points.

EP toxicity analyses for the listed constituents revealed the maximum concentrations reported in Table 1.[10]

TABLE 1.—MAXIMUM CONCENTRATIONS (MG/L)

Constituent	EP leachate analyses
Cd	<0.005
Cr (total)	0.42
CN (total)	0.19
Ni	31

EP toxicity analyses for the remaining EP toxic metals produced the maximum concentrations reported in Table 2. The maximum total oil and grease content and of the waste was reported as 1,700 ppm. In addition, Lacks provided test data indicating that the sludge is not ignitable, corrosive, or reactive.

[7] See Appendix I of this notice for a summary of the development of the Agency's interim standard of nickel. See also 50 *FR* 20247, May 15, 1985.

[8] Lacks originally submitted their petition in June 1985. Before their submission, the Hazardous and Solid Waste Amendments (HSWA) of 1984 were enacted. In part, the amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous (See section 222 of the Amendments, 42 U.S.C. 6921(f)). Since the petition was incomplete, additional information was requested from Lacks. This information was submitted to the Agency on October 31, 1985.

[9] Ground water monitoring data for this facility was supplied to the Agency with the petition. Lacks provided four quarterly samples (1983–84) from up- and downgradient wells which was collected in accordance with RCRA (Subpart F) and with Michigan state regulations. This data indicates that the plant operations have adversely impacted the ground water at the site, although not to a large degree.

[10] Lacks did not provide total constituent analyses results.

Furthermore, Lacks submitted a list of raw materials used in their process.

TABLE 2.—MAXIMUM CONCENTRATIONS (MG/L)

Constituent	EP leachate analyses
As	<0.005
Ba	4.4
Pb	<0.05
Hg	<0.001
Se	<0.005
Ag	<0.01

Based on the Agency's review of this list, several other Appendix VIII hazardous constituents, other than those tested for, were used in the process. Lacks did not evaluate its waste for the presence of any organic Appendix VIII constituents.

B. Agency Action and Analysis

Based on the data presented in its petition, Lacks has not demonstrated to the Agency that the sludge contained in its on-site surface impoundments is non-hazardous. The Agency believes that Lacks' sampling process was intended to record any vertical or horizontal stratification of the waste occurring in the impoundment. Although samples taken from the on-site surface impoundment may be representative of the disposed waste, complete depth core composite analyses are usually required. Since the sludges in Lagoon #3 have been found to be as deep as 15' (average depth 12–14'), the Agency is concerned that the sampling scheme (which sampled only to a depth of 5') is not sufficient to evaluate the impounded sludge in Lagoon #3.

The Agency has evaluated the mobility of the toxic constituents in Lacks' waste using the vertical and horizontal spread (VHS) model.[11] This evaluation uses the total volume of waste (15,540 cubic yards) and the maximum reported EP leachate test results as input parameters. Maximum predicted compliance point concentrations for the listed constituents are reported in Table 3. The calculated compliance-point concentrations for the non-listed constituents are listed in Table 4. Maximum EP leachate values are used in the evaluation because the few samples submitted by Lacks do not permit any other statistically valid value to be used to evaluate the waste. The regulatory standards to which the compliance point concentrations are compared are also presented in Tables 3 and 4.

[11] See footnote 5.

TABLE 3.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituent	Impounded sludge	Regulatory standard
Cd	<0.0008	0.01
Cr (total)	0.066	0.05
CN (total)	0.030	0.20
Ni	4.9	0.35

TABLE 4.—VHS MODEL: PREDICTED COMPLIANCE POINT CONCENTRATIONS (MG/L)

Constituent	Impounded sludge	Regulatory standard
As	<0.0008	0.05
Ba	0.70	1.0
Pb	<0.008	0.05
Hg	<0.0002	0.002
Se	<0.0008	0.01
Ag	<0.002	0.05

The sludge exhibited cadmium levels (at the compliance point) below the National Interim Primary Drinking Water Standard and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[12] The sludge, however, exhibits chromium levels above the National Interim Primary Drinking Water Standard (NIPDWS) for chromium and nickel levels above the Agency's Interim Health Advisory. The Agency previously stated that it would not deny any petition for its nickel content until the toxicity studies on nickel that were being conducted were completed, and a final regulatory level had been established (see 50 FR 20247, May 15, 1985). Although these studies have not been completed, the preliminary results indicate that the final regulatory standard for nickel will be no greater than 0.35 mg/l; in fact, these studies suggest that the regulatory level will be less than the interim standard of 0.35 mg/l. We, therefore, believe it now appropriate to make a decision on the hazardousness of a waste due to its nickel content; in this case, we believe the level of nickel in the waste and its potential to leach from the waste is of regulatory concern.[13] These constituents, therefore, are of regulatory concern.

The Agency concluded, through the use of the VHS model, that none of the other EP toxic metals are present in the impounded sludge at levels of regulatory concern (*i.e.*, none are above the Agency's individual regulatory standards at the compliance point in the VHS model—see Table 4).

The Agency has also concluded that several hazardous organic constituents may be present in the waste. In particular, in reviewing the list of raw material supplied by Lacks, several organic compounds, including formaldehyde, will be present in the waste. Lacks did not evaluate its waste for the presence of organic constituents. The Agency, therefore, considers the petition incomplete.

The Agency believes that, based upon the constituents and factors evaluated, the metal hydroxide wastes previously generated by electroplating operations at the Lacks Industries plant in Grand Rapids, Michigan cannot be considered non-hazardous. The prediction of nickel and chromium levels (at the compliance point) using the VHS model reveals concentrations that exceed the regulatory standards and indicates a potential for the sludge to leach nickel and chromium at sufficient levels to contaminate ground water. In addition, information necessary for the Agency to fully evaluate the waste was not provided by Lacks, thus making the petition incomplete. The Agency, therefore, proposes to deny this petition for exclusion of the metal hydroxide sludges presently stored on-site by Lacks Industries at its Cascade Road site in Grand Rapids, Michigan.[14]

III. Light Metals Coloring Company, Inc.

A. Petition for Exclusion

Light Metals Coloring Company, Inc. (Light Metals), located in Southington, Connecticut, is an aluminum finishing job shop. Light Metals has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern for this waste are hexavalent chromium and cyanide (complexed).

Based upon the Agency's review of their petition, Light Metals was granted a temporary exclusion on November 22, 1982 (see 47 FR 52675). The basis for granting the exclusion was the low concentration and/or the immobile nature of the constituents of concern (hexavalent chromium and complexed cyanide) in the waste. Since that time, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional

[12] See footnote 6.

[13] See footnote 7.

[14] Lacks was notified in a letter, dated January 10, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Lacks' petition be denied due to the potential of this waste to contaminate ground water with nickel and chromium. Lacks did not respond to the Agency's letter.

constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Light Metals. This information was submitted on April 14, 1984, June 5 and September 16, 1985. As a result, the Agency has re-evaluated Light Metals' petition to: (1) Determine whether the temporary exclusion should be made final based on the criteria for which it was originally listed and (2) evaluate the waste for factors (other than those for which the waste was originally listed) to determine whether the waste is non-hazardous. Today's notice is the result of our re-evaluation of their petition.[15]

In support of their petition, Light Metals has submitted a detailed description of its manufacturing and wastewater treatment processes, including schematic diagrams; total constituent analyses and EP toxicity test results of the sludge for total chromium; and total constituent analyses and distilled water leach test results for cyanide. Light Metals also submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, selenium, silver, and nickel, and total oil and grease analyses on representative waste samples. Light Metals further submitted a list of raw materials used in the manufacturing and wastewater treatment processes. The Agency requested much of this information, as noted above, to determine if hazardous constituents, other than those for which the waste was originally listed, are present in the waste at levels of regulatory concern.

Light Metals is an aluminum finishing job shop. Surface preparation processes include cleaning (in acid or alkaline baths), etching, and bright dipping. The conversion coating processes (alodine and anodizing) provide corrosion protection to the aluminum surface. Post-finishing operations consist of dyeing and sealing (nickel acetate solution, nickel salts, or potassium dichromate are used).

Rinsewaters from the chrome bearing tanks are pretreated with sodium hydrosulfite to reduce hexavalent chromium to the trivalent state. The chrome bearing wastewater then flows to a pH adjustment tank (caustic soda added), where it mixes with the remainder of the rinsewaters. Neutralized wastewater flows to a settling tank where an anionic polymer is added to improve settling. (The rinsewater and solution drag-out from the dye area is not combined with the rinsewater from the conversion coating operation; rather, it is collected and discharged to the sanitary sewer). Sludge is piped from the settling tank to drying beds approximately once a week. Effluent from the settling tank enters two polishing lagoons; sludge that forms in these lagoons is pumped to the drying beds as required. Sludge is accumulated in the drying beds for up to 90 days, and it is then pumped to a main storage lagoon. This surface impoundment is the subject of the petition.

Light Metals collected and analyzed 4 core samples, one taken from each corner of the surface impoundment, in support of their initial petition (April, 1981); additional samples were collected in August and October, 1981, in order to provide cyanide test results. In February, 1984, Light Metals' storage surface impoundment was further sampled. In particular, the surface impoundment was divided into 4 quadrants, and in each quadrant six core samples were taken. These cores were sampled at the surface, mid-depth, and bottom; four composite samples were collected, in total, from the impoundment. Light Metals claims that these samples are representative of the listed and non-listed constituent concentrations in the waste. Although Light Metals is a job shop, they claim that production processes do not vary greatly; in addition, they state that the raw materials used remain consistent. Light Metals, therefore, claims that the samples collected are representative of their waste.

The maximum total constituent and EP leachate values for the listed constituents of concern are presented in Table 1.

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analyses (mg/kg)	EP leachate values (mg/l)
Cr (total)	1656	[1]<0.01
CN	2.85	[2]<0.2

[1] Hexavalent chromium is the listed constituent for this waste; however, the level of leachable total chromium is low enough that a determination of hexavalent chromium is unnecessary.
[2] Cyanide leachate results are distilled water EP toxicity test results (the oily waste EP is not applicable).

The maximum total constituent and EP leachate values for the non-listed metals are presented in Table 2.

TABLE 2.—MAXIMUM CONCENTRATIONS

	Total constituent analyses (mg/kg)	EP leachate values (mg/1)
As	<0.5	<0.1
Ba	293	<0.1
Cd	<1	<0.005
Pb	66.8	0.11
Hg	<0.5	<0.005
Se	<0.5	<0.005
Ag	<1	<0.01
Ni	9200	12.7

The total oil and grease concentrations found in Light Metals' waste is <0.1 percent. Light Metals also submitted a list of raw materials (as well as Material Safety Data Sheets) used in their process. This list indicated that no other Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Light Metals claims that the volume of sludge currently present in the surface impoundment is approximately 2500 cubic yards.

B. Agency Analysis and Action

The Agency believes that Light Metals' past wastewater treatment system may produce a hazardous sludge. The Agency believes that the samples collected by Light Metals were non-biased and adequately reflect any variations that may occur in the surface impoundment. The random core samples are assumed to represent any vertical and horizontal stratification that may have occured in the impoundment although this demonstration is usually made by analyses of the complete depth of the core. The key factor that could vary toxicant concentrations in the waste would be the use of different raw materials due to changes in the product line being manufactured. Although Light Metals is a job shop, they state that the finishing operations performed " at the facility are consistent. In addition, this petition is for a finite volume of waste. The Agency, therefore, believes that the samples collected are representative of the waste contained in the impoundment.

The Agency has evaluated the mobility of the constituents from Light Metals' waste using the vertical and horizontal spread (VHS) model.[16] The

[15] The wastewater treatment system described in Light Metals' petition involves sludge drying beds and a storage surface impoundment. The petition is based on samples collected and analyzed from the storage impoundment (the drying beds were not sampled as part of the petition; the temporary exclusion, therefore, does not cover them). No new material, however, has been added to the impoundment since September, 1985; Light Metals has installed a filter press, and the waste currently generated is not included in this petition.

[16] See footnote 5.

Agency's evaluation using Light Metals, 2500 cubic yards of sludge and the maximum reported EP leachate values as input parameters, has generated the maximum predicted compliance-point concentrations, for the listed constituents, exhibited in Table 3.[17] (Where leachate concentrations were below the detection limit, the value of the detection limit was used to predict these concentrations.)

TABLE 3.—CALCULATED COMPLIANCE POINT CONCENTRATIONS (mg/l)

	Compliance point concentration	Regulatory standard
Cr (total)	0.001	0.05
CN	0.03	0.2

The predicted maximum level at the compliance point for chromium is well below the National Interim Primary Drinking Water Standard, while the predicted cyanide level is below the level of regulatory concern.[18]

The Agency also used the VHS model to determine the potential hazard of the non-listed EP toxic metals—see Table 4.

TABLE 4.—CALCULATED MAXIMUM COMPLIANCE POINT CONCENTRATIONS (mg/l)

	Compliance point concentrations	Regulatory standard
As	0.013	0.05
Ba	0.013	1
Cd	<0.001	0.01
Pb	0.001	0.05
Hg	<0.001	0.002
Se	0.001	0.01
Ag	0.001	0.05
Ni [1]	1.62	0.35

[1] The maximum nickel EP leachate value is used in the VHS model calculations; however, even if the average EP leachate value were used, a concentration of 1.03 mg/l of nickel is predicted to reach the compliance point. This level still far exceeds the regulatory standard.

All of the EP toxic metals are below their regulatory standards at the compliance point. The nickel level, however, far exceeds the interim regulatory standard. The Agency previously stated that it would not deny any nickel content until the toxicity studies on nickel that were being conducted were completed, and a final regulatory level had been established (see 50 FR 20247, May 15, 1985). Although these studies have not been completed, the preliminary results indicate that the final regulatory level will be less than the interim standard of 0.35 mg/l; in fact, these studies suggest that the regulatory level will be less than the interim standard of 0.35 mg/l. We, therefore, believe it now appropriate to make a decision on the hazardousness of a waste due to its nickel content; in this case, we believe the level of nickel in the waste, and its potential of leach from the waste, is of regulatory concern.[19]

The Agency believes that the waste contained in surface impoundment at the Light Metals facility has not been rendered non-hazardous by the waste treatment system used at Light Metal's facility, located in Southington, Connecticut. The analysis of the sludge using the VHS model indicates the potential of the waste to leach nickel and contaminate the ground water. The Agency, therefore, proposes to deny this petition for exclusion of the surface impoundment at Light Metals Coloring Company, Inc., located in Southington, Connecticut. The Agency is also proposing to withdraw the temporary exclusion held by Light Metals.[20]

IV. PEC Industries

A. Proposed Denial

PEC Industries (PEC), located in Orlando, Florida, manufactures printed wiring boards for use in automobiles, weigh scales, and other electronic equipment. PEC has petitioned the Agency to exclude its electroplating wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. PEC claims that these sludges do not meet the criteria for which they were listed.[21]

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). PEC claims that its wastewater treatment process generates non-hazardous sludges from its filter press because the constituents of concern, although present in the sludge, are in essentially an immobile form. PEC further claims that this waste is not hazardous for any other reason.

In support of its petition, PEC submitted descriptions of its production and treatment processes, including a schematic diagram; test results of total constituent and EP toxicity tests for cadmium and nickel; and total constituent test results for total chromium and total cyanide. In addition, PEC submitted results from total constituent tests for arsenic, barium, lead, mercury, selenium, and silver; EP toxicity test results for barium and lead; and results of EP extraction tests for cyanide. The Agency requested additional information from PEC on July 23, 1985. To date, none of this information has been received by EPA. Thus, we consider the petition incomplete.[22]

PEC's manufacturing process includes several different plating operations: electroless copper plating, electrolytic copper and solder plating, and electroless nickel (nickel-gold tab) plating. These lines contribute a number of compounds to the waste stream, including cleaners, strippers, and acids, in addition to the plating baths. The plating of gold is the only plating operation containing cyanide, and the gold plating tank is never introduced into the waste treatment system.[23]

Tank dumps and rinse waters from the plating processes are pumped into a treatment tank and mixed with waste acid and alkaline solutions. Sodium hydroxide is used to adjust the pH, and ferrous sulfate is added in proportion to the quantities of wastewaters from electroless copper solutions entering the treatment system. Outflow from the tank goes to a pH adjustment tank, where pH is brought to a range of 9–11 in order to precipitate the metal hydroxides. The wastes are held in the tank until they are pumped to one of two vertical leaf horizontal tank pressure filters. Prior to filtration, diatomaceous earth is added

[17] The maximum EP leachate values were used in the VHS model to determine constituent concentrations at the compliance-point due to the relatively small sample population.

[18] See footnote 6.

[19] See footnote 5.

[20] The Agency notified Light Metals in a letter dated January 6, 1986, that the Characterization and Assessment Division of the Office of Solid Waste would recommend to the Assistant Administrator for Solid Waste and Emergency Response that Light Metals' petition be denied. Light Metals declined to exercise its option to withdraw the petition.

[21] PEC originally submitted its petition on September 2, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. See section 222 of the Amendments, 42 U.S.C. 6921(f). Since these factors were not completely addressed in PEC's petition, additional information was requested from PEC. This information has not yet been received by the Agency.

[22] See the public docket for records of the additional information requested and the Agency's basis for requesting this additional information.

[23] The rinse waters from gold plating are recycled separately through electrolytic and ion-exchange systems to recover gold.

as a filter aid. Effluent from the treatment system is further pH-adjusted and discharged to the City of Orlando's municipal sewers. Sludge from the filter presses is deposited in a dumpster prior to final off-site disposal.

During February and March 1982, grab samples of the sludge were taken from the tank filters once each day for five working days, then composited into single weekly samples for analysis. Four composite samples were obtained in this fashion. PEC claims that the manufacturing processes represented by these samples are uniform and that the use of raw materials does not vary over time. PEC claims, therefore, that the samples collected are representative of any variation in the listed and non-listed constituent concentrations of the waste.

The total constituent and EP toxicity analyses of the filter cake for the listed constituents revealed the maximum concentrations reported in Table 1. Blanks indicate no tests were performed.

TABLE 1.—MAXIMUM CONCENTRATIONS

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
Cd	1.2	0.16
Cr (total)	25.8	
Ni	590	[1] 14.3
CN (total)	1.01	<0.005
CN (free)	0.82	

[1] This EP value represents the maximum reported value for nickel after the installation of a drag-out line to remove nickel. Prior to the installation, the maximum reported nickel leachate value was 20.54 mg/l.

The maximum total constituent and EP toxicity analysis values for the non-listed constituents in the filter cake are reported in Table 2. Blanks indicate that no tests were performed.

TABLE 2.—MAXIMUM CONCENTRATIONS

	Total constituent analysis (mg/kg)	EP leachate analysis (mg/l)
As	<5	
Ba	19	<0.15
Pb	578	0.98
Hg	<0.02	
Se	<1	
Ag	<3	

PEC did not provide a list of raw materials used in its process. We, therefore, do not know whether any other toxicants are present in the waste out levels of regulatory concern. PEC also did not provide data on the other hazardous waste characteristics of corrosivity, ignitability, and reactivity, nor did it evaluate the total oil and grease content of the sludge. The petitioner claims to generate a maximum of 720 tons of sludge annually.

B. Agency Analysis and Action

PEC has not demonstrated to the Agency that the filter press cake generated from its treatment system is non-hazardous. The Agency believes (based on the data provided) that the four weekly composites collected in 1982 were non-biased. The Agency also believes that the samples reflect the variation that may occur in the waste, since the facility is not a job shop and production does not vary seasonally. Since no raw materials list was provided and we have no indication how variably they are used, however, it may be that the samples are in fact not totally representative. The Agency, therefore, believes that the samples collected may be representative of the waste generated by PEC.

The Agency has evaluated the mobility of the constituents from PEC's waste using the vertical and horizontal spread (VHS) model.[24] The Agency's evaluation of the 720 tons of filter cake generated annually and the maximum leachate concentrations, using the VHS model, has produced the compliance point concentrations for the listed constituents shown in Table 3.[25]

TABLE 3.—CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	Filter cake	Regulatory standard
Cd	0.0075	0.01
Cr (total)	[1]0.06	0.05
Ni	0.67	0.35
CN^-	0.00023	0.20

[1] The extract value for total chromium used in the VHS calculation was derived by dividing the total concentration of total chromium by 20, simulating the minimum dilution expected in the EP Toxicity test, or the maximum extract concentration assuming 100% of the chromium present in the waste was mobile.

Cadmium did not exceed (at the compliance point) its NIPDWS nor does cyanide exceed the U.S. Public Health Service's suggested drinking water standard.[26] Chromium, however, was found (at the compliance point) to exceed the National Interim Primary Drinking Water Standards (NIPDWS),[27] while nickel was found to exceed the interim regulatory level for nickel. The Agency previously stated that it would not deny any nickel content until the toxicity studies on nickel that were being conducted were completed, and a final regulatory level had been established (see 50 FR 20247), May 15, 1985). Although these studies have not been completed, the preliminary results indicate that the final regulatory standard for nickel will be no greater than 0.35 mg/l; in fact, these studies suggest that the regulatory level will be less than the interim standard of 0.35 mg/l. We, therefore, believe it is now appropriate to make a decision on the hazardousness of a waste due to its nickel content. In this case, we believe the level of nickel in the waste, and its potential to leach from the waste, is of regulatory concern.[28]

The VHS analysis for the non-listed constituents produced the concentrations found in Table 4.[29]

[24] See footnote 5.

[25] See footnote 17.

[26] See footnote 6.

[27] The Agency believes that the evaluation of hazardous wastes in the context of delisting should include the use of chromium standards which are based upon total chromium (e.g., the EP toxicity characteristic). The acute toxicity of hexavalent chromium is well documented, and Cr (VI) has been incorporated in numerous hazardous waste listings as a constituent of concern. The Agency has information, however, which indicates that trivalent chromium, a less toxic form of chromium, is readily interconvertible with Cr (VI) in a number of environmental scenarios. Recent Agency studies on aqueous systems have determined that Cr (III) in ground water may be readily converted to Cr (VI) by chlorination (commonly used to disinfect drinking water supplies), at a rate dependent on pH. (Clifford, Dennis, and Jimmy Man Chau. 1984. The fate of chromium (III) in chlorinated water. Draft report prepared for MERL/ORD, U.S. EPA, Cincinnati, Ohio.) The potential to form Cr (VI) exists for the entire pH range of most ground waters (Battelle, Pacific Northwest Laboratories, 1986). Geochemical behavior of chromium species. Interim report no. EA–4544, prepared for Electric Power Research Institute, Palo Alto, California). Cr (III) has also been found to oxidize readily to Cr (VI) under conditions found in many soils. This reaction is catalyzed by oxidized manganese, such as manganese dioxide which is commonly present in soils and sediments (Bartlett, R. and Bruce, James. 1979. Behavior of Chromium in Soils: III. Oxidation. J. Envir. Qual. 8(1):31–35). Earlier findings of the potential interconvertibility of chromium species convinced the Agency to set its chromium water standard on the basis of total chromium, not hexavalent chromium. The EP toxicity characteristic was also set on the basis of total chromium. EPA's proposal to amend the characteristic to apply to hexavalent chromium (45 FR 72029–72033, October 30, 1980; see also 48 FR 22170–22171, May 17, 1983) has not been made final, and is not likely to be made final. A recommended maximum contaminant level (RCML) of 0.12 mg/l has been proposed for total chromium (50 FR 46936–47016, November 13, 1985). This new RCML value is a non-enforceable health goal that serves as an initial stage for establishment of drinking water standards. A revised maximum contaminant level (MCL) for chromium will be proposed when the RCML is promulgated. Until such time that a new standard is established, the Agency will continue to use the current MCL for total chromium, which is the National Interim Primary Drinking Water Standard of 0.05 mg/l.

[28] See footnote 7.

[29] Only barium and lead, one none of the other non-listed constituents, were tested using the extraction procedure.

TABLE 4.—CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

	Filter cake	Regulatory standard
Ba	<0.007	1.0
Pb	0.046	0.05

As part of the Agency's delisting spot-check program, EPA personnel visited PEC Industries on June 26, 1984, in order to obtain and test samples of PEC's waste. A total of four representative samples of recently generated waste were collected with a pile sampler from the waste dumpster and from waste piles beneath the filter presses. These samples were subjected to an approved analytical program at a laboratory contracted by EPA. Total constituent and EP toxicity analyses of the spot-check wastes for the listed and non-listed constituents yielded the values shown in Table 5.

TABLE 5.—MAXIMUM CONCENTRATIONS

	Total EP Constituent Analysis (mg/kg)	Leachate Analysis (mg/l)
As	<8	<0.02
Ba	16	<0.5
Cd	2.7	0.048
Cr(total)	64	<0.2
Pb	6600	13.7
Hg	0.11	<0.001
Se	<7.5	<0.02
Ag	<0.65	<0.02
Ni	3200	21.1

The sludges sampled by EPA demonstrated EP toxicity levels for lead in excess of the EP toxicity characteristic (5.0 mg/l) in three of the four samples tested. The EP leachate values have also been evaluated by the Agency's VHS model, and the results are given in Table 6.

TABLE 6.—CALCULATED COMPLIANCE POINT CONCENTRATIONS (mg/l)

	Spot-check sample	Regulatory standard
As	<0.0009	0.05
Ba	<0.023	1.0
Cd	0.0022	0.01
Cr	<0.009	0.05
Pb	0.64	0.05
Hg	<0.00005	0.002
Se	<0.0009	0.01
Ag	<0.0009	0.05
Ni	0.98	0.35

The VHS evaluation of the EPA spot-check samples supports the Agency's evaluation of the sludge tested earlier by PEC. EPA's analysis indicates that lead and nickel both exceed their respective standards, and are of regulatory concern to the Agency.

The Agency believes that, based upon the constituents and factors evaluated, PEC's wastewater treatment sludge is hazardous. Due to the potential for this waste to leach toxic metals and contaminate ground water, and because samples of the waste have been shown to meet the EP toxicity characteristic for lead, the Agency does not feel that this waste should be excluded from regulatory control. Also, PEC did not provide much of the additional information requested by EPA in order to evaluate the waste, which causes the petition to be incomplete.[30] The Agency, therefore, proposes to deny the delisting petition filed by PEC Industries of Orlando, Florida because the waste has been shown to be EP toxic for lead, the potential for ground water contamination by the waste, as predicted by the VHS ground water model, is high, and because the petition is incomplete.

V. Radford Army Ammunition Plant

A. Petition for Exclusion

Radford Army Ammunition Plant (RAAP), located in Radford, Virginia, manufactures TNT. RAAP has petitioned the Agency to exclude its red water, presently listed as EPA Hazardous Waste No. K047—Pink/red water from TNT operations. This waste is listed solely for its reactivity.

Based upon the Agency's review of their petition, RAAP was granted a temporary exclusion on December 16, 1981 (see 46 FR 61275). The basis for granting the exclusion was the nonreactive nature of the waste. On November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Amendments require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous. (See section 222 of the Amendments, 42 U.S.C. 6921(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from RAAP. This information was submitted on November 4, 1983, and January 7 and March 11, 1986. As a result, the Agency has re-evaluated RAAP's petition to: (1) Determine whether the temporary exclusion should be made final based on the criteria for which it was listed and (2) evaluate the waste for factors (other than those for which the waste was originally listed) to determine whether the waste in non-hazardous. Today's notice is our re-evaluation of their petition.

In support of their petition, RAAP has submitted a detailed description of its manufacturing and wastewater treatment processes, including schematic diagrams; reactivity test results, including "Number 8 Blasting Cap," "Zero Gap," "Deflagration to Detonation Transition (DDT)," and "Impact Sensitivity" tests [31] and results from reactive cyanide and sulfide analyses. RAAP has also submitted EP toxicity test results for the EP toxic metals and nickel; total constituent analysis and distilled water leach test result for cyanide; and total oil and grease analyses on representative water samples. RAAP further submitted analytical test results for toluene concentrations in the red water, and a list of raw materials used in the manufacturing and wastewater treatment processes. The Agency requested this information, as noted above, to determine whether hazardous constituents, other than those for which the waste was listed, are present in the waste at levels of regulatory concern.

In RAAP's manufacturing process, toluene is continuously reacted with nitrating acids of successively higher strengths to form crude trinitrotoluene (TNT). The crude TNT is processed through a series of counter-current hot water and sodium sulfite washes to remove impurities. The TNT is then separated from the water, dried, and solidified. Effluent waste from the purification phase of the TNT production (red water and small quantities of pink water) flow to settling tanks. The red water (with pink water) is collected in stainless steel tanks that are contained in concrete dikes, and then pumped to tank trucks for off-site disposal.[32] RAAP claims that its red water is not reactive, and that it is not hazardous for any other reason.

RAAP's initial petition was based on red water generated by TNT operations in 1970; approximately 200 samples were collected over a three month period in 1970, and tested for reactivity with a number 8 blasting cap. In 1974, fire and

[30] PEC was notified of the Agency's spot-check findings in a letter dated July 23, 1985. In this letter, PEC was asked to explain the apparent discrepancies between the data submitted to the Agency in the original petition and the data collected during the spot-check visit, and to submit the additional information deemed necessary by the Agency to fully evaluate PEC's waste. No response was received by EPA.

[31] The methods for these tests are available in the RCRA docket.

[32] RAAP currently sells its red water to Champion Paper Company, located in Canton, N.C. The red water is valuable for its sodium sulfate content and its calorific property.

explosion damaged the TNT facility. RAAP submitted a delisting petition requesting a conditional temporary exclusion for the red water generated when TNT production was back on line. The samples that were analyzed in 1970 were wet and characterized by a 30 to 38 percent solids content with a maximum nitroaromatics content of 12 percent. (The conditional temporary exclusion was, therefore, contingent upon the red water meeting this description.) RAAP began production of TNT in May, 1983; samples were collected from each shipment of red water to Champion Paper Co. (approximately 20 per month), and subjected to reaction with a number 8 blasting cap. This data, as well as percent solids, percent nitroaromatics, percent sodium sulfate, density, and pH information was also submitted to the Agency for each red water shipment from July, 1983 through May, 1984.

Five one-gallon samples were also collected from an opentopped 5,000 gallon tank (one day's accumulation) in November and December, 1985, and analyzed for the EP toxic metals, nickel, and cyanide; total cyanide; toluene; and total oil and grease. Furthermore, the Bureau of Mines reactivity tests were performed on one sample of red water generated in November, 1985; the red water did not react explosively to the intense shock and flame stimuli in the Zero Gap, DDT, and impact sensitivity tests. RAAP claims that the manufacturing processes performed at the facility are operated in a consistent manner and that the use of raw materials does not vary over time. Consequently, RAAP believes that the samples collected adequately characterize their waste.

EP toxicity test results of the red water revealed the maximum concentrations reported in Table 1.[33]

TABLE 1.—WEIGHTED MAXIMUM EP CONCENTRATIONS

Constituent	EP leachate analyses (mg/l)
As	0.006
Ag	0.16
Ba	1.1
Cd	0.1
Cr (total)	0.22
Hg	0.001
Pb	0.49
Se	0.005
Ni	0.59
CN	1.8

[33] The results from leachate tests performed on RAAP's red water were reported as the metals' concentration in the filtrate and the metals' concentration in the extracted solid (the liquids were not combined prior to analysis). The values reported above are, therefore, weighted averages of these concentrations:

(concentration in the extracted solid)(ml of sample) + (concentration in the filtrate)(ml of sample)—(total ml of leachate).

Total cyanide concentrations in RAAP's waste ranged from 65 to 105 ppm. Reactive cyanide and reactive sulfide levels were <0.3 ppm; the maximum total oil and grease value reported was 0.08 percent. Toluene was not detected at a detection limit of 2 ppm in the red water samples. RAAP also submitted a list of raw materials used in their TNT manufacturing process. This list indicated that no Appendix VIII hazardous constituents, other than those tested for, are used in the process or are expected to be present in the red water. RAAP claims to generate a maximum of, approximately, 10,000 tons of red water annually.

B. Agency Analysis and Action

RAAP has not demonstrated to the Agency that the red water generated from TNT operations is non-hazardous. The Agency believes that the five daily grab samples collected from the holding tank adequately characterize any variation which may occur in the petitioned waste. The TNT manufacturing process is consistent over time; the facility also does not act as a job shop or have seasonal product variations. We, therefore, conclude that the analytical data provided by RAAP is representative of the water currently generated.

RAAP performed many reactivity tests on the red water. The characteristics of reactive waste, as defined in § 261.23, were addressed by RAAP as follows: the red water is a chemically stable mixture consisting of inorganic salts and small amounts of organic compounds dissolved in water that will not undergo violent change; it will not react violently with water (water is an inherent and basic part of the TNT purification process); the solids do not react with water to form a reactive or explosive material; red water is chemically stable so that toxic gases, vapors, or fumes will not be generated in a quantity sufficient to present a danger to human health or the environment (reactive cyanide and sulfide content (<0.3 ppm) are not of regulatory concern through an air contamination route. The Agency believes these levels to be low enough to preclude the generation of hazardous levels of toxic gases); red water is not detonatable in the approximate 35/65 solids/water mixture ratio produced at RAAP (over 200 No. 8 blasting cap detonation tests yielded negative results); and heating of red water under confinement will not cause it to react explosively. The DDT, Zero Gap, and impact sensitivity tests on the red water demontrate that the waste is stable when exposed to flame, detonators, and impacts; however, only one sample was tested with these methods. The regulations require a minimum of four samples be analyzed in order to support an exclusion petition (§ 260.22(h)). These specific reactivity tests, therefore, are not considered sufficient to demonstrate the non-reactive nature of the red water.

The Agency also has evaluated the mobility of the inorganic constituents from RAAP's waste using the VHS model.[34] The Agency's evaluation of RAAP's approximately 10,000 tons of red water generated annually, and the maximum EP extract levels calculated for the waste, has produced the compliance point concentrations exhibited in Table 2. Maximum EP values were used in the VHS model because RAAP submitted data on only five samples.

TABLE 2.—COMPLIANCE POINT CONCENTRATIONS (mg/l)

	Compliance point concentration	Regulatory standard
As	0.001	0.05
Ba	0.17	1
Cd	0.016	0.01
Cr (total)	0.036	0.05
Pb	0.078	0.05
Hg	0.0002	0.002
Se	<0.001	0.01
Ag	0.026	0.05
Ni	0.094	0.35
CN	0.29	0.2

The red water exhibited arsenic, barium, chromium, mercury, selenium, and silver levels at the compliance point below their respective regulatory standards. The nickel level is below the Agency's interim regulatory standard.[35] The red water, however, exhibits cadmium and lead levels, at the compliance point, above the National Interim Primary Drinking Water Standards, and cyanide levels above the U.S. Public Health Service's suggested drinking water standard.[36] These

[34] See footnote 5.

[35] See footnote 7.

[36] See footnote 6.

constituents, therefore, are of regulatory concern.[37]

The toluene concentration in RAAP's waste is not of regulatory concern (not detected at 2 ppm); the regulatory standard for toluene in drinking water is 10 ppm.

The Agency believes that the red water generated by the TNT operations at RAAP is hazardous. The analysis of the red water using the VHS model indicates the potential of the red water to leach lead, cadmium, and cyanide and contaminate ground water at levels of regulatory concern. The Agency, therefore, proposes to deny this petition for exclusion of red water generated by Radford Army Ammunition Plant at its Radford, Virginia facility, and to revoke the previously granted temporary exclusion.[38]

VI. Effective Date

The Hazardous and Solid Waste Amendments of 1984 amended 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This is the case for two of the petitions included in today's notice since this rule, if promulgated, would not change the existing requirements for the handling of their wastes, since these facilities are already obligated to treat their wastes as hazardous during the Agency's review of their petition. Therefore, this rule, if promulgated, will become effective immediately for these petitioners.

For the three petitioners having their temporary exclusions revoked and their petitions denied, these facilities will be required to revert back to handling their wastes as they did before being granted these exclusions (*i.e.*, they must handle their waste as hazardous). These petitioners would need some time to come into compliance with the RCRA hazardous waste management system. Accordingly, the effective date of revocation and denial of final exclusions of these temporary exclusions would be six months after publication in the **Federal Register.**

VII. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to a requirement of a Regulatory Impact Analysis. This proposal, which would revoke temporary exclusions and would deny the exclusion petitions submitted by certain facilities, is not major. The affect of this proposal would increase the overall costs for the facilities which currently have a temporary exclusion. The actual costs to these companies, however, would not be significant. In particular, in calculating the amount of waste that is generated by these three facilities that currently have temporary exclusions and considering a disposal cost of $300/ton, the increase to these facilities is approximately $4.6 million, well under the $100 million level constituting a major regulation. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment, a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will have the effect of increasing overall waste disposal costs for the three facilities which currently have temporary exclusions. Some of the facilities may be considered small entities, however, and this rule only affects three facilities across different industrial segments. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: September 16, 1986.

J.W. McGraw,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

APPENDIX I—Criteria Used for the Evaluation of Wastes for its Nickel Content

In light of the preliminary results obtained from toxicological studies, the Agency has decided to use 0.35 mg/1 as the regulatory standard for nickel (both to grant and to deny petitions) for the VHS model portion of our petition evaluation. For purposes of deciding whether to grant delisting petitions based on the nickel content of a waste, the Agency has been using 0.35 mg/1 as the interim Agency standard; this standard is compared to the value calculated (at the compliance point) by the VHS model. This interim standard was based on an expert panel review of the reproductive effects study conducted by Ambrose et al. (1976). (See 50 FR 20247, May 15, 1985.)

We also decided not to deny any petitions based solely on nickel due to the flaws in the experimental studies used to derive the interim standard of 0.35 mg/1. The Agency, at that time, chose to propose but not to make final decisions (*i.e.*, defer action) for petitioned wastes exhibiting VHS compliance point values in excess of the interim standard. These decisions were deferred until the Agency completed its own toxicological feeding studies on nickel in rats.

The Agency has not yet completed these studies, but believes that the data that has now been collected are now suitable as a bases for denying petitions exhibiting compliance-point concentrations in excess of 0.35 mg/1. The Agency has collected statistically defensible data that indicate that the final calculated regulatory standard will be at or below the current Agency's interim nickel standard.

Today's decision is based on the interim results recorded from the Agency's 90 day subchronic bioassay conducted in Sprague-Dawley CD rats using $NiCl_2$ in water, administered by gavage. The in-life segment of this study was completed during the week of April 22, 1986. The interim results, summarized in Table 1, indicate a no observed effect level of 5 mg/kg/day. Assuming an uncertainty factor of 10 for interspecies conversion, 10 for sensitive subgroups, and 10 for subchronic duration, the estimated reference dose (RFD) is 0.005 mg/kg/day, or 0.20 mg/1.[1] This indicates that the Agency's regulatory standard for nickel, when the Agency's studies are completed, should be below the interim advisory of 0.350 mg/1. As a result of this data, the Agency will use 0.350 mg/1 as the regulatory standard for nickel for the VHS model portion of our petition evaluation.

The Agency is also conducting a rat multi-generation fertility and reproductive study of $NiCl_2$ in drinking water. This study will not be completed until October 1986. A detailed description of both the subchronic bioassay and the reproductive study are available in the RCRA docket.

TABLE 1.—INTERIM FINDINGS—SUBCHRONIC BIOASSAY

Dose	Male	Female
Survival:		
Vehicle control	20/20	20/20
5 mg/kg/day	19/20	20/20
35 mg/kg/day	21/25	20/25

[37] The upper limit of a 95 percent confidence interval for lead (0.44) and cyanide (1.54) also predict compliance point concentrations above the regulatory standards.

[38] The Agency notified RAAP in a letter dated May 19, 1986, that the Characterization and Assessment Division would recommend to the Assistant Administrator for Solid Waste and Emergency Reponse that RAAP's petition be denied. RAAP declined to exercise its option to withdraw the petition.

[1] Verified Reference Doses (RFD's) of the U.S.E.P.A.; ECAO–CIN–475, January, 1988.

TABLE 1.—INTERIM FINDINGS—SUBCHRONIC BIOASSAY—Continued

Dose	Male	Female
100 mg/kg/day	1/30	1/30
Body Weight (grams):		
Vehicle control	471	289
5 mg/kg/day	455	285
35 mg/kg/day	402	271
100 mg/kg/day	268	230

[FR Doc. 86-21392 Filed 9-19-86; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[BERC-365-P]

Medicare Program; Changes to Criteria for Determination of Reasonable Charges

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Medicare regulations governing reasonable charges for certain physician services furnished in outpatient settings and payment for the purchase of used durable medical equipment. The former revision would reduce inappropriate Medicare payment and the latter is intended to encourage the sale of used equipment.

In addition, to correct a program inequity and to simplify program administration, we are proposing to extend, for services furnished on or after January 1, 1987, one of the provisions of section 9304 of the Consolidated Omnibus Budget Reconciliation Act of 1985. The provision we would extend deals with determining customary charges for physicians who have terminated their compensation agreements with a hospital.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 22, 1986.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-365-P, P.O. Box 26676, Baltimore, Maryland 21207

If your prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC;

or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-365-P. Comments received timely will be available for public inspection as they are received, which is generally about three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT:

Charles Spalding, Durable Medical Equipment, (301) 594-5431

Stanley Weintraub, All Other Issues, (301) 597-5345

SUPPLEMENTARY INFORMATION:

I Background

In 1965, with the addition of title XVIII to the Social Security Act (the Act), the Medicare program was established to pay part of the costs of health care services furnished to eligible beneficiaries. Part A of the program (Hospital Insurance) provides basic health insurance protection against the costs of inpatient hospital care and other inpatient or home health care. Part B of the program (Supplementary Medical Insurance) provides coverage of most physician services and other medical and health services not covered under Part A.

Generally, sections 1814 and 1886 of the Act authorize payment to be made for provider services furnished under Part A on a prospective payment or reasonable cost basis through Medicare contractors known as fiscal intermediaries. Sections 1833 and 1842 of the Act provide that payment for most physician and other medical and health services furnished under Part B is made on a reasonable charge basis through Medicare contractors known as carriers. There are currently some exceptions to the rule of Part B payments made on a reasonable charge basis such as hospital outpatient services, which are reimbursed on a reasonable cost basis, and diagnostic laboratory services, which are reimbursed under a fee schedule.

Under section 1842(b)(3) of the Act, when payment is made on a charge basis, the charge must be "reasonable." In determining the reasonableness of a charge for Medicare purposes, carriers are required to consider the following factors and, in general, payment for the service is to be based on the lowest of these factors:

- The actual charge.
- The customary charge for similar services generally made by the physician or supplier furnishing the service.
- The prevailing charge in the locality for similar services. The prevailing charge may not exceed the 75th percentile of the customary charges of physicians or suppliers in the locality and an economic index limits the annual increases in prevailing charges for physician services.
- Other factors that are necessary and appropriate to use in judging whether the charge is inherently reasonable.
- In the case of medical services, supplies, and equipment that, in the judgment of the Secretary, do not vary widely in quality from one supplier to another, the lowest charge levels at which the services or supplies are widely and consistently available in the locality.

In this document, we are proposing to make changes in the current regulations governing the reasonable charge methodology as follows:

- For services furnished on or after January 1, 1987, the customary charges for physicians who terminate a compensation agreement with a provider would be equal to the 50th percentile of customary charges in the area rather than the physicians' compensation-related customary charges.
- The payment limitation of physician services furnished in outpatient settings would be expanded to include the services of physicians who are reimbursed on a compensation-related charge basis and surgical services that are routinely furnished in physicians' offices and are not included in the list of covered ambulatory surgical center services.
- The regulations would be revised to allow suppliers to give less than a full warranty to beneficiaries who purchase used durable medical equipment.

These proposals are discussed below in detail.

II. Discussion of Proposed Changes

A. Determination of Customary Charges for Former Hospital-Compensated Physicians and Other Former Provider-Compensated Physicians

Generally, for Medicare purposes, a physician must have actual charge data from at least three months within a charge year in order for a customary charge screen to be computed for the physician. As described in section 5010.4 of the Medicare Carriers Manual (HCFA Pub. 14-3), until a new physician has the

minimum three months of actual charges at the time of a regular update, the customary charge for each service furnished by the physician will be based on the 50th percentile of the array of weighted customary charges the carrier uses to determine the prevailing charge in the locality for the same service and specialty group. The use of the 50th percentile of weighted customary charge guarantees that the new physician's customary charges for a service is set at a level that is no lower than the customary charges of established physicians with the same specialty who furnished at least 50 percent of those services in the same locality.

However, under 42 CFR 405.551(e), physicians whose lack of charge data stems from the fact that they were previously compensated by a provider for their services furnished to individual provider patients must retain their compensation-related customary charges until they have accumulated the necessary three months of charge data at the time of a customary charge update. This policy has been severely criticized by physicians who have recently terminated a compensation agreement with a hospital since, as a result of the physician fee freeze provisions of section 2306 of the Deficit Reduction Act of 1984 (Pub. L. 98–369), section 5(b) of the Emergency Extension Act of 1985 (Pub. L. 99–107), and section 9301 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), there was no customary charge update from July 1, 1983 until May 1, 1986.

Consequently, physicians who terminated agreements with hospitals during that time and just prior to it have continued to receive Medicare payment on the basis of their compensation-related customary charges, which are generally lower than the 50th percentile of customary charges.

In order to offer these physicians some relief, Congress added section 9304(b) to Pub. L. 99–272. Under the provisions of section 9304(b)(1) of Pub. L. 99–272, a physician who at any time during the period beginning on October 31, 1982 and ending on January 31, 1985 was a hospital-compensated physician (that is, a physician who is compensated by a hospital for furnishing covered Medicare physician services to the patients of that hospital) but who, as of February 1, 1985, was no longer a hospital-compensated physician, has, for purposes of payment for physician services furnished on or after May 1, 1986 and before January 1, 1987, his or her customary charges based on his or her actual charges billed during the 12-month period ending March 31, 1985. However, if the physician was not a participating physician on September 30, 1985 and continues to be nonparticipating as of May 1, 1986, the updated customary charges are deflated by multiplying them by .85. This deflation is to approximate 1982 charge levels, on which other continuing nonparticipating physicians' customary charges are based.

Under section 9304(b)(2) of Pub. L. 99–272, a physician who ends his or her compensation agreement with a hospital during the period beginning on February 1, 1985 and ending on December 31, 1986 (who thus does not have three months of actual or direct charge experience during the period April 1, 1984 through March 31, 1985, upon which the customary charge update that will be effective May 1, 1986 is to be calculated) has his or her customary charges determined in the same manner as if the physician was a new physician. Thus, for services furnished during the 8-month period beginning on May 1, 1986, these physicians previously compensated by a hospital receive the same 50th percentile customary charge applicable to new physicians, that is, the 50th percentile of the updated or the nonupdated array of customary charges depending on the physician's participation status. The provisions of section 9304 of Pub. L. 99–272 are self-implementing, and we have already instructed the carriers to begin making payment under those provisions.

Since section 9304(b)(2) of Pub. L. 99–272 is effective only through December 31, 1986, this policy is only a temporary deviation from our existing regulatory policy that provider-compensated physicians who terminate their compensation agreement will continue to be paid on the basis of their compensation-related customary charges until they accumulate the necessary charge data at the time of a charge update. However, we are proposing to extend this policy to apply to all provider-compensated physicians. For services furnished on or after January 1, 1987, we would treat physicians who terminate a compensation agreement with a provider the same way we currently treat new physicians. We would set these physicians' customary charges at the 50th percentile of the array of weighted customary charges the carrier uses to determine the prevailing charge in the locality for the same service and specialty group, until the next regular update at which the physicians have accumulated three months of pertinent actual charge data. We would revise § 405.551(e) to make this change.

We believe this revision would accomplish two objectives. First, it addresses a problem that many physicians who terminate their compensation agreements with a provider have brought to our attention. When a physician terminates his or her compensation agreement with a provider and begins billing patients directly, that physician incurs billing costs for the first time. These billing costs are not reflected in the physician's compensation-related customary charges. Therefore, because the 50th percentile of customary charges is, in most cases, higher than compensation-related customary charges, the 50th percentile customary charge would be a more equitable customary charge to apply to the physician until there is an update of customary charges based on the physician's actual charges, given the physician's newly-assumed billing costs and the acknowledged failure of the compensation-related customary charge to reflect these costs.

In addition, extending this policy beyond December 31, 1986 would help reduce administrative confusion that would result from the carriers having to switch customary charge screens for some physicians on January 1, 1987; that is, for those physicians who ended their compensation agreement after February 1, 1985 and who still do not have three months actual charge data available for the January 1, 1987 update. In these cases, the carrier will have to switch from the 50th percentile of customary charges back to compensation-related customary charges for services furnished on or after January 1, 1987. Similarly, our proposal would avoid subjecting physicians to two separate interim customary charge screens while they await a customary charge update based on their own actual charges. We believe it would simplify program administration and reduce confusion for both carriers and physicians to extend the effect of the provisions of section 9304(b)(2) of Pub. L. 99–272 by regulation to apply to services furnished on or after January 1, 1987.

Although section 9304(b)(2) of Pub. L. 99–272 specified that only hospital-compensated physicians are affected by the temporary policy it set forth, we would, for the sake of equity, extend the policy to all provider-compensated physicians beginning with services furnished on January 1, 1987.

B. Limitation on Payment for Physician Services Furnished in Outpatient Settings

In general, Medicare payment that is made on a reasonable charge basis for similar physician services is the same even if the services are furnished in different settings. No payment distinction is made between a service furnished by a physician in his or her office and one furnished by the physician in a hospital or some other facility. However, a physician who furnished a service in the office setting has incurred related office overhead expenses (for example, salaries, equipment, and utilities) that are not incurred by the physician whose services are furnished in a facility setting.

Under the authority of sections 1842(b)(3) following (F) and 1861(v)(1)(K) of the Act, regulations located at § 405.502(f) limit payment for physician services in facility outpatient settings to 60 percent of the prevailing charge for the service. The purpose of this limitation is to ensure that Medicare does not make duplicate payments for overhead expenses by paying both the facility and the physician for those overhead expenses. This limit applies to physician services furnished in hospital outpatient departments (including clinics and emergency rooms) and comprehensive outpatient rehabilitation facilities (CORFs) if the services are of the same type as services routinely furnished in physicians' offices in the local area.

As set forth in current § 405.502(f)(3), the following are the physician services that are not covered by the outpatient limit.

- Rural health clinic services.
- Surgical services furnished in an ambulatory setting.
- Services furnished in a hospital emergency room that are necessary to prevent the death or serious impairment of the health of the individual.
- Services that are reimbursed on a compensation-related charge basis as specified in § 405.551.
- Anesthesiology services.
- Diagnostic and therapeutic radiology services.

For more background on the outpatient limit and the exemptions to that limit as listed above, see 47 FR 43610–43616, October 1, 1982.

We are proposing to eliminate the exemptions for the services of physicians who are reimbursed on a compensation-related charge basis and certain ambulatory surgical services. The services of physicians reimbursed on a compensation-related charge basis were originally exempted by the final rule that established the outpatient limit, which was published on October 1, 1982 in the **Federal Register** (47 FR 43610). Those services were exempted because of conflicting provisions included in a proposed rule that was also published on October 1, 1982 (47 FR 43578). Under those proposed regulations, which dealt with payment for physician services furnished in providers, combined billing would have been expanded so that payment for physician services reimbursed on a compensation-related basis would have been made to the provider and would have been subjected to the reasonable compensation equivalent (RCE) limits. However, in the final rule on physician services furnished in providers, published on March 2, 1983 (48 FR 8902), the RCE limits were not applied to physician services to individual patients reimbursed on a compensation-related basis, and we proposed to eliminate combined billing rather than to expand it. In a subsequent final rule that dealt with this same issue, published on September 1, 1983 (48 FR 39740), combined billing was eliminated. Therefore, since these services continue to be subject to the routine reasonable charge rules, there is no basis for continuing to exempt them from the outpatient limits applicable to other physician services.

We are also proposing to remove the exemption for ambulatory surgical services that are not covered surgical procedures for purposes of facility payments to ambulatory surgical centers (ASCs) (§ 416.65) and that are routinely furnished in physicians' offices in the carrier's area. The current regulations exempt all surgical services furnished in an ambulatory setting. This exception was established in order to avoid any inconsistency with statutory provisions designed to encourage the performance in an ambulatory setting of certain surgical procedures that are frequently furnished on an inpatient hospital basis. Therefore, the exception should not apply to all ambulatory surgery.

It is unreasonable to apply the outpatient limit to services on the ASC list since, by definition, those services are routinely performed on an inpatient hospital basis and are not routinely performed in physicians' offices in the area. See § 416.65. Also, section 1833(a)(1)(F) of the Act and § 416.110 of our regulations provide for payment to physicians of the full Medicare reasonable charge amount on assigned claims for services furnished in connection with surgical procedures on the ASC list (that is, for surgery that cannot be safely or is not routinely performed in a physician's office setting and is instead commonly performed on an inpatient hospital basis) when they are performed on an ambulatory basis. We believe that application of the outpatient limit to surgical services included on the ASC list might produce a result that is inconsistent with the objectives of the ASC provision, which is to encourage ambulatory surgery for the covered procedures. Applying the limit might result in higher physician payment for a surgical procedure performed on an inpatient basis than for the same procedure performed on an outpatient basis.

On the other hand, it is reasonable for the outpatient limit to apply to surgical services *not* on the ASC list because, for those services, there is no need to promote the movement of the surgery from the impatient to the outpatient setting. Those services are already routinely performed on an outpatient basis. Instead, the objective for surgical services not on the ASC list should be to make sure that Medicare does not pay twice for overhead cost when the service is performed in a facility's outpatient department. Therefore, the ambulatory surgery exemption, in this proposed regulation, would be narrowed so that it excludes from the limit only those ambulatory surgical services included on the ASC list.

We note that the outpatient limit does not apply to *any* services furnished in ASCs even those services not on the ASC list. Under the provisions of both section 1861(v)(1)(K) of the Act and § 405.502(f), the outpatient limit applies only to services furnished in hospital outpatient departments and CORFs. This policy would continue under the proposed regulations. As discussed above, the outpatient limit would not be used to reduce physician payments for procedures on the ASC list that are furnished in ASCs, CORFs, or hospital outpatient departments because these procedures are routinely furnished on a hospital inpatient basis and are not routinely furnished in physicians' offices.

Regarding services not included on the ASC list (that is, those services for which Medicare does not make a facility fee payment to the ASC), it is unreasonable for us to assume that the facility and not the physician incurs the overhead costs and thus exclude overhead costs from the Medicare payment to the physician (that is, apply the outpatient limit). In fact, for these services not included on the ASC list, it is possible that the physician incurs overhead costs by either owning the

ASC or paying the ASC a fee for the use of the facility.

C. Payment for Used Durable Medical Equipment

Section 1889 of the Act sets forth the payment rules concerning purchase or rental of new and used durable medical equipment (DME) under the Medicare Part B program. Implementing regulations located at § 405.514 establish three methods of payment for DME: Lease-purchase, lump-sum payment for purchase, and rental charges.

As authorized by section 1889(b) of the Act, § 405.514(k) requires the carrier to waive the Part B coinsurance amount for the purchase of used DME if it is at least 25 percent cheaper than new DME. Section 405.514(k)(2) provides that in order to qualify for the waiver, a commercial supplier must furnish the beneficiary with a warranty for the used equipment that is equivalent to the warranty it would offer buyers of comparable new equipment. We included this requirement in the regulations to protect beneficiaries from suppliers that attempt to sell them items that do not meet their needs, are worn out, or are in poor condition.

The DME industry has protested that this requirement is discriminatory and unreasonable. After reassessing this policy, we agree that it may not be reasonable to expect the industry to fully guarantee used equipment; however, we believe that the suppliers are in a good position to determine and ensure the safety and suitability of equipment. Therefore, we would revise § 415.514(k)(2) to require that the supplier need only offer a limited warranty on used DME.

This limited warranty would have to provide for the following:

- Guarantee that the used equipment is in good working order and has no defects in workmanship and material.
- If the equipment fails within half the period of time specified by the manufacturer's warranty for new equipment, the supplier would pay for the replacement (including labor costs) of faulty parts or would replace the item of equipment with another.

We believe that this revision would eliminate a large impediment to the sale of used equipment and at the same time provide for continuing protection of the beneficiaries. If the used equipment fails after the warranty period, the Medicare program would reimburse the beneficiary for any necessary repairs or replacement of the item in accordance with current operational policy.

III. Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish an initial regulatory impact analysis for any proposed regulations that are likely to meet criteria for a "major rule". A major rule is one that would result in—

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or any geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Based on the available data, we believe that the various provisions contained in this proposed rule would have a negligible or inestimable effect. We currently do not possess data that would permit us to estimate the effect of our proposal to permit physicians who terminate their provider compensation agreement to be paid on the basis of the 50th percentile of customary charges rather than their compensation-related customary charges. While we are unable to estimate the impact of this provision on physicians, we expect that it would generally benefit physicians by allowing them to receive higher payments for services furnished to beneficiaries. We believe that the proposal to expand the payment limitation on outpatient services would achieve negligible savings for the Medicare program. We expect that the provision to allow suppliers of DME to give less than a full warranty to beneficiaries who purchase used equipment would have no measurable economic effect.

For these reasons, this proposal does not meet the criteria for a major rule. Therefore, we are not preparing an initial regulatory impact analysis.

B. Regulatory Flexibility Analysis

Consistent with the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians and suppliers of DME to be small entities.

This proposal is expected to affect only a small number of physicians and to have either a negligible or inestimable effect on these physicians, and to have no measurable effect on payment for DME. Therefore, we have determined, and the Secretary certifies, that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis has not been prepared.

IV. Other Required Information

A. Response to Public Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we cannot acknowledge or respond to them individually. However, we will consider all comments that are received by the date and time specified in the "Date" section of this preamble and, if we proceed with a final rule, we will respond to those comments in the preamble to that rule.

B. Paperwork Reduction Act

The proposed rule does not impose information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

List of Subjects in 42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are proposing to amend 42 CFR Part 405, Subpart E as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart E—Criteria for Determination of Reasonable Charges; Reimbursement for Services of Hospital Inpatient Interns, Residents, and Supervising Physicians

1. The authority citation for Subpart E is revised to read as follows:

Authority: Secs. 1102, 1814(b), 1832, 1833(a), 1842(b) and (h), 1861(b) and (v), 1862(a)(14), 1866(a), 1871, 1881, 1886, 1887, and 1889 of the Social Security Act as amended (42 U.S.C. 1302, 1395f(b), 1395k, 1395l(a), 1395u(b), and (h), 1395x(b) and (v), 1395y(a)(14), 1395cc(a), 1395hh, 1395rr, 1395ww, 1395xx, and 1395zz).

2. Section 405.502 is amended by revising paragraph (f) to read as follows:

§ 405.502 Criteria for determining reasonable charges.

* * * * *

(f) Determining charge payments for certain physicians' services furnished in outpatient settings—(1) *General rule.* If physician services of the type routinely furnished in physicians' offices are furnished in outpatient settings, carriers determine the reasonable charge for those services by applying the limits described in paragraph (f)(5) of this section.

(2) *Definition.* As used in this paragraph (f), *"Outpatient settings"* means—

(i) Hospital outpatient departments, including clinics and emergency rooms; and

(ii) Comprehensive outpatient rehabilitation facilities.

(3) *Services covered by limits.* The carrier establishes a list of services routinely furnished in physicians' office the area. The carrier has the discretion to determine which professional services are routinely furnished in physicians' offices, based on current medical practice in the area. Listed below are some examples of routine services furnished by office-based physicians.

Examples

Review of recent history, determination of blood pressure, ausculation of heart and lungs, and adjustment of medication.

Brief history and examination, and initiation of diagnostic and treatment programs.

Treatment of an acute respiratory infection.

(4) *Services excluded from limits.* The limits established under this paragraph do not apply to the following:

(i) Rural health clinic services.

(ii) Surgical services included on the ambulatory surgical center list of procedures published under § 416.65(c) of this chapter.

(iii) Services furnished in a hospital emergency room that are necessary to prevent the death or serious impairment of the health of the individual.

(iv) Anesthesiology services and diagnostic and therapeutic radiology services.

(5) *Methodology for developing limits*—(i) *Development of a charge base.* The carrier establishes a charge base for each service identified as a routine office-based physician service. The charge base consists of the prevailing charge in the locality for each such service adjusted by the economic index. The carrier uses the prevailing charges that apply to services by nonspecialists in office practices in the locality in which the outpatient setting is located.

(ii) *Calculation of the outpatient limits.* The carrier calculates the charge limit for each service by multiplying the charge base amount for each service by .60.

(6) *Application of limits.* The reasonable charge for physician services of the type described in paragraph (f)(3) of this section that are furnished in an outpatient setting is the lowest of the actual charges, the customary charges in accordance with § 405.503, the prevailing charges applicable to these services in accordance with § 405.504, or the charge limits calculated in paragraph (f)(5)(ii) of this section.

3. Section 405.514 is amended by revising paragraphs (a) and (k)(2) to read as follows:

§ 405.514 Payment for durable medical equipment.

(a) *Purpose.* This section specifies criteria and procedures for making payments for the purchase or rental of new and used durable medical equipment for beneficiaries under Part B of the Medicare program. It implements section 1889 of the Act.

* * * * *

(k) *Waiver of coinsurance for purchase of used equipment.* * * *

(2) If used equipment is purchased from a commercial supplier, the supplier must given the beneficiary a warranty that assures the following:

(i) The used equipment is in good working order and has no defects in workmanship or material.

(ii) If the equipment fails within one-half the period of time specified by the manufacturer's warranty for the same equipment when new, the supplier pays for replacement of faulty parts (including labor costs) or replaces the item of equipment at no cost.

* * * * *

4. In § 405.551, paragraph (e) is revised to read as follows:

§ 405.551 Reasonable charges for physician services in providers: General provisions.

* * * * *

(e) *Change of agreements.* If a physician who has been compensated by or through a provider (or other entity) for physician services to individual patients ends his or her compensation agreement and instead bills all patients, or their insurers, directly for his or her services, the carrier determines the physician's customary charge for a service based on the 50th percentile of the weighted customary charges used to establish the prevailing charge for the service until there is a general revision of the customary charge screen for which the physician has three months of actual charge experience during the charge year that is used to calculate the revision. However, if a physician terminates a direct billing arrangement and enters into a compensation agreement with a provider, the carrier determines compensation-related customary charges in accordance with paragraph (d) of this section except that during the first year, the total payments made on the basis of the compensation-related charges may not exceed what total payment would have been under the physician's former direct billing practice.

* * * * *

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

Dated: July 7, 1986.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: August 13, 1986.

Otis R. Bowen, M.D.,

Secretary.

[FR Doc. 86-21319 Filed 9-19-86; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-358, RM-5384]

Radio Broadcasting Services; Rupert, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Inland Broadcasting Company proposing the substitution of Class C Channel 223 for Channel 221A at Rupert, Idaho, and modification of the Class A license for Station KNAQ(FM). The proposal could provide Rupert with its first wide area coverage station.

DATES: Comments must be filed on or before November 6, 1986, and reply comments on or before November 21, 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: Lester W. Spillane, 1040 Main Street—Suite 302, Napa, California 94559, (Attorney to Petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-358, adopted August 26, 1986, and released September 15, 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. 86-21342 Filed 9-19-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-359, RM-5369]

Radio Broadcasting Services; Churubusco, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Consumers Aid, Inc., proposing the allotment of FM Channel 274A to Churubusco, Indiana, as the community's first FM service.

DATES: Comments must be filed on or before November 6, 1986, and reply comments on or before November 21, 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: Richard J. Hayes, Jr., Attorney at Law, 1359 Black Meadow Road, Spotsylvania, Virginia 22553. (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-359, adopted September 3, 1986, and released Spetember 15, 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.

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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.

Mark Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-21343 Filed 9-19-86; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-357, RM-5418]

Radio Broadcasting Services; Ankeny, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document request comments on a petition filed by Ankeny Broadcasting Corporation proposing the substitution of Channel 223C2 for Channel 292A at Ankeny, Iowa, and modification of the license of Station KJJY(FM), Ankeny, Iowa, to specify operation on Channel 223C2 as that community's first wide coverage area FM service. Finalization of this proposal is contingent upon the grant of a pending application filed by Station KOEL-FM, Oelwein, Iowa, to move its transmitter site which will eliminate a short spacing problem.

DATES: Comments must be filed on or before November 6, 1986, and reply comments on or before November 21, 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: Roger J. Metzler, Esq., Farrand, Malti, Cooper & Metzler, P.O. Box 7329, San Francisco, CA 94120 (Counsel to Petitioner)

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-357, adopted August 26, 1986, and released September 15, 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. 86-21344 Filed 9-19-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-356, RM-5351]

Radio Broadcasting Services; Webb City, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Don Stubblefield, proposing the allotment of FM Channel 281A to Webb City, Missouri. This allotment could provide a second FM broadcast service for the Community.

DATES: Comments must be filed on or before November 6, 1986, and reply comments on or before November 21, 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: James E. Price, Sterling Communications, Inc., Suite 418, Uptain Building, Chattanooga, Tennessee 37411-4065, (consultant to the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-356, adopted August 25, 1986, and released September 15, 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, N.W., 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. 86-21345 Filed 9-19-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-351, RM-5338]

Television Broadcasting Services; Slidell, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Ron Hunter (North Shore Television) proposing to assign UHF Television Channel 54 to Slidell, Louisiana, as that community's first television channel.

DATES: Comments must be filed on or before November 6, 1986, and reply comments on or before November 21, 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: Ron Hunter, President, Northshore Television, 397 Fairway Drive, New Orleans, LA 70124 (Petitioner); and Early D. Monroe, Jr., EDM & Associates, Inc., 1234 Massachusetts Ave., NW., Washington, DC 20005 (Consultant to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, (202) 634-6530, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 86-351, adopted August 25, 1986, and released September 15, 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 of 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

Television broadcasting.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-21346 Filed 9-19-86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 183
Monday, September 22, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Certification of Central Filing System; MI

The Statewide central filing system of Mississippi is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Dick Molpus, Secretary of State, for farm products produced in that State as follows:

Apples
Apricots
Artichokes
Asparagus
Avocados
Bananas
Barley
Beans, Butter
Beans, Dry
Beans, Lima
Beans, Snap
Bean, Waxed
Beets
Berries, Black
Berries, Blue
Berries, Straw
Broccoli
Brussels Sprouts
Cabbage
Carrots
Cauliflower
Celery
Cherries
Coffee
Collards
Corn
Corn, Sweet
Cotton
Cucumbers
Dates
Eggplant
Escarole
Figs
Flaxseed
Garlic
Grapes (and Raisins)
Grapefruit
Hay
Hops
Irish Potatoes
Kiwi
Legumes
Lemons
Lettuce
Limes
Maple Syrup
Melons, Cantelopes
Melons, Honey Dew
Melons, Water
Milo
Mint
Mushrooms
Mustards
Nectarines
Nutmeg
Oats
Olives
Onions
Oranges
Papayas
Peaches
Peanuts
Pears
Peas, Dry
Peas, Field
Peas, Green
Pecans
Peppers
Persimmons
Pineapple
Plums (& Prunes)
Pomegranates
Popcorn
Rape Seed
Rice
Rye
Sorghum Grain
Soybeans
Spinach
Sugar Beets
Sugar Cane
Sunflower Seeds
Sweet Potatoes
Tangelos
Tangerines
Taro
Tea
Tobacco
Tomatoes
Trees
Turnips
Walnuts
Wheat
Muscadine
Pumpkins

Cattle (and Calves)
Catfish/Fish
Chickens
Ducks
Eggs, Hatching
Geese
Goats
Guineas
Hogs
Horses
Lambs and Sheep
Mules
Quail
Turkeys
Earthworms
Shellfish

Eggs
Flowers
Grass
Honey
Milk
Mohair
Shrubbery
Wool
Cotton Seed

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: September 17, 1986.

B.H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86-21373 Filed 9-19-86; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

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: International Trade Administration
Title: Commodity Classification and Information Requests
Form Number: Agency—EAR-370.11, 372.6, 399.1; OMB—N/A
Type of Request: New collection
Burden: 3,600 respondents; 1,800 reporting hours
Needs and Uses: An exporter who has questions about the applicability of the Export Administration Regulations to a export transaction must provide certain information. The information in used by the Department to decide whether or not the transaction requires an export license.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements
Form Number: Agency—N/A; OMB—0648-0135
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 250 respondents; 2,250 reporting hours
Needs and Uses: The Saltonstall-Kennedy Act authorizes a grants program for fisheries research and development. Information is used to decide which projects should be funded.
Affected Public: Individuals; state or local governments; businesses or other for-profit institutions; federal agencies; non-profit institutions; and small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Federal Fisheries Permit—Amendment L
Form Number: Agency—N/A; OMB—0648-0097
Type of Request: Revision of a currently approved collection
Burden: 10 new respondents; 10 new reporting hours
Needs and Uses: The Fishery Management Plan (FMP) for the Pelagic Fisheries of the Western Pacific Region was prepared by the Western Pacific Fishery Management Council under the authorization of the Magnuson Fishery Conservation and Management Act. Among the management measures proposed in the FMP is a Federal permit requirement for use of experimental fishing gear. The information obtained from the experimentation will be used to provide a basis for considering the need to amend the FMP to allow a change in gear and fishing practices.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Other—per trip
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Applications for and Reports Under Registration as an Agent or Tanner
Form Number: Agency—N/A; OMB—N/A
Type of Request: Existing collection in use without an OMB control number
Burden: 35 respondents; 25 reporting hours
Needs and Uses: The Marine Mammal Protection Act allows Alaskan natives to take marine mammals for specified purposes. Possession of the marine mammals must be by the Alaskan natives or registered agents or tanners. The information is used to determine suitability of applicants and to monitor activities.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion, annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395-3785

Agency: National Oceanic and Atmospheric Administration
Title: Oceanic Gamefish Investigations—Big Game Fishing Log
Form Number: Agency—NOAA 88-904; OMB—0648-0031
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,000 respondents; 330 reporting hours
Needs and Uses: NOAA is responsible for conducting investigations into the status of commercial and sport fish, including their abundance, and for conducting research on marine fishes of interest to receational fishermen. Data is gathered by personal interview with anglers or their boat captains immediately after they return from a fishing trip in a tournament. Information is used for research, stock assessments, and support of management/ allocation decisions.
Affected Public: Individuals
Frequency: On occasion
Respondent's Obligation: Voluntary
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 16, 1986.

Edward Michals,

Departmental Clearance Officer, Information Management Division Office of Information Resources Management.

[FR Doc. 86-21420 Filed 9-19-86; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

[C-791-007]

Certain Steel Products From South Africa; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration Import Administration, Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

SUMMARY: On August 14, 1984, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain steel products from South Africa. The review covers the period July 1, 1981 through December 31, 1982 and eleven programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, the Department has determined the total bounty or grant to be zero for Vantin, Ltd., 0.16 percent *ad valorem* for Highveld Steel and Vanadium Corporation, and 3.78 percent *ad valorem* for all other firms for the period of review. We consider any rate less than 0.50 to be *de minimis*.

EFFECTIVE DATE: September 22, 1986.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 1982, the Department of Commerce ("the Department") published in the Federal Register (47 FR 39379) a countervailing duty order on certain steel products from South Africa. We began this review of the order under our old regulations and published the preliminary results of our review on August 14, 1984 (49 FR 32426). On October 28, 1985, after the promulgation of our new regulations, an exporter/ producer, Highveld Steel and Vanadium Corporation, requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review. The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

On September 4, 1985, we revoked the order effective October 1, 1984. We received no request for review for the period January 1, 1983 to September 30, 1984. Therefore, this is the last administrative review of the order.

Scope of the Review

Imports covered by the review are shipments of South African carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet, cold-rolled carbon steel sheet, galvanized carbon steel sheet, hot-rolled carbon steel bars, hot-rolled alloy steel bars, and cold-formed carbon steel bars. The products are fully described in the appendix to this notice. We are clarifying the definition of cold-formed carbon steel bars to exclude explicitly wire that is cut into lengths, in conformity with the intention of the original investigation.

The review covers the period July 1, 1981 through December 31, 1982 and eleven programs: (1) Export Incentive Program—Categories A, B, and D; (2) government assumption of financing charges; (3) exemption from the payment of stamp duties; (4) a loan from the General Levy and Import Subsidy Scheme; (5) Industrial Development Corporation loans; (6) preferential rail rates; (7) loans to uncreditworthy companies; (8) government equity participation; (9) government loan guarantees; (10) regional decentralization program; and (11) beneficiation allowances for mineral processors. There are four known exporters of these products to the United States.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. At the result of two exporters, the Highveld Steel and Vanadium Corporation ("Highveld") and the South African Iron and Steel Corporation ("ISCOR"), we held a public hearing on October 4, 1984.

Comment 1: Highveld argues that the Department should publish company-specific rates in this case. A country-wide rate is inappropriate when a significant differential exists among the benefits received by different companies. In addition, calculating company-specific rates presents no administrative difficulties since the Department already has collected all the

information needed to calculate such rates.

Department's Position: We recently stated our position on this issue in *Portland Hydraulic Cement and Cement Clinker from Mexico* (50 FR 51732, December 19, 1985). That notice stated in part:

> A central purpose of the [countervailing duty] law is to encourage foreign governments not to provide competitive benefits to their exporting industries. The best way to accomplish that end is by continuing to treat the foreign government as the central actor, rather than by piecemeal policing of individual companies to encourage them not to use programs offered by those foreign governments.

In that case, we did publish a separate rate for companies receiving zero or *de minimis* benefits and did not include those benefits in the weighted-average rate for all other companies. For the final results of this review, we calculated the following rates for each program that provided countervailable benefits during the review period:

	Highveld	Weighted-average all other firms
Export incentive program	0.16	2.41
Government assumption of financing charges	0	0.42
Exemption from the payment of stamp duties	0	0.06
Loan from general levy and import subsidy scheme	0	0.09
Industrial Development Corporation loans	0	0.77
Preferential rail rates	0	0.03
	0.16	3.78

We found one company, Vantin, Ltd., did not receive any benefits.

Because Vantin's and Highveld's rates are zero or *de minimis*, we are publishing separate rates for those companies and are not including them in our weighted-average. The rate for the two other companies for which we have information (ISCOR and Titan Industrial Corporation) is the weighted-average rate.

Comment 2: ISCOR argues that the Department erred in assuming that the company's carried-forward loss was made up entirely of Category D deductions from previous years. Since those deductions were only part of the carried-forward loss, the Department has overstated the benefit from Category D deductions. In addition, the Department should limit the benefit to the deduction that was available in the year of review, as it did in the preliminary notice in South African carbon steel wire rod case.

Department's Position: Category D deductions earned by a company in a year when it has no tax liability can be added to the company's carried-forward loss. The benefit from these deductions results when the company uses its carried-forward loss to reduce its taxable income. We did not assume that ISCOR's entire carried-forward loss consisted of Category D deductions. Rather, because ISCOR did not provide a breakdown its carried-forward loss, we assumed as best information available that all previous, unused Category D deductions were included in the carried-forward loss used to reduce taxable income in 1981. Under this assumption, we allocated to fiscal year 1981/82 all benefits from Category D deductions taken in and prior to 1981. Unlike this case, the carbon steel wire rod case only covers entries made in ISCOR'S 1982/83 fiscal year and does not cover fiscal year 1981/82 entries. Therefore, the benefit from this program in the carbon steel wire rod case does not include benefits allocated to fiscal year 1981/82.

Comment 3: ISCOR argues that the benefit from the South African government's assumption of 70 million rand of ISCOR's financing charges in 1978 should be expensed in that year. There are no rational reasons for the Department to allocate this benefit over 15 years.

Department's Position: In the appendix to the final affirmative countervailing duty determination and order on cold-rolled carbon steel flat-rolled products from Argentina (49 FR 18006, April 26, 1984) ("the Subsidies Appendix"), we stated that the cash flow does not provide guidance in allocating the benefit from a grant since the difference in cash flow occurs only at a single moment in time (when the grant is received). Also, we have consistently maintained that we are not bound by accounting practices when choosing an allocation period. Instead, as mandated by Congress, we seek an allocation period that reflects the commercial and competitive benefit of the subsidy. The commercial and competitive benefit of the forgiveness of 70 million rand in financial charges obviously has economic effects that extend beyond the year of receipt. In order to measure this benefit, we have chosen a standard period—the average useful life of an industry's renewable physical assets as determined by the U.S. Internal Revenue Service. For the steel industry, the period is 15 years. This standard offers predictability in the outcome of the Department's proceedings and eliminates inconsistent results among companies or countries.

Comment 4: ISCOR argues that the Department should not have added a dividend yield to the earnings yield when calculating the national rate of return on equity in South Africa because the earnings yield incorporates the dividend yield.

Department's Position: We agree and have adjusted our calculations accordingly. Because of this correction, we determine the benefit to ISCOR from the government's assumption of financing charges to be 0.42 percent *ad valorem*. No other programs are affected by this change.

Comment 5: ISCOR argues that Act 96 of June 23, 1982 did not exempt it from the payment of stamp duties for the period 1968 through 1982. The purpose of Act 96 was to deprive ISCOR of a legal defense which otherwise would have precluded any liability for stamp duties after 1982. ISCOR had not been liable for any duties prior to the Act, and, therefore, Act 96 could not confer a subsidy.

Department's Position: Act 96 confirmed that ISCOR was not liable during the period 1968 to 1982 for duties that had been levied by the Stamp Duty Act of 1968. ISCOR's special exemption from stamp duties when other South African companies were liable for similar duties constitutes a countervailable benefit to ISCOR.

Comment 6: ISCOR argues that it received no Industrial Development Corporation ("IDC") loans during the review period and, therefore, received no countervailable benefits from such loans. In support of its contention, ISCOR's auditors and the IDC submitted statements that ISCOR had received no such loans.

Department's Position: At verification, we were allowed to see a worksheet listing loans, but ISCOR did not allow us to tie this worksheet to the company's loan ledger or to actual loan documents. Since we were not allowed to verify the completeness of the worksheet, we determine as the best information available that ISCOR did receive IDC loans and that the benefit is equal to the highest *ad valorem* benefit received by a South African company from this program in any other African case. The statement from ISCOR and the IDC cannot resolve the issue in light of the failed verification.

Comment 7: ISCOR and Highveld argue that the differential between export and domestic railroad rates did not provide a benefit during the review period because this differential was offset by new contracts that were signed by ISCOR and Highveld in 1983 but backdated to April 1, 1982. To carry out the retroactive provisions of these contracts, the South African Transport

Services ("SATS") made reconciliations of past consignment notes to account for differences between the actual rates charged after April 1, 1982 and the rate in the contracts. These reconciliations were finished by March 1984, when SATS collected from ISCOR (the only company for which reconciliations were necessary) the difference between what the company actually paid and what it should have paid according to the contract. Because ISCOR made this payment, there is no benefit from the railroad rate differential.

ISCOR further argues that although it did not make this interest-free payment until 1984, the Department should not find an interest benefit for the late payment. SATS has a general policy of not charging interest on accounts receivable, so interest-free payments are generally available.

Department's Position: During the investigation, the South African government agreed to charge the same rail rate for all steel shipments that met certain full-car and full-train load conditions regardless of destination. Previously, only export shipments had been eligible for this lower rate. These charges were to become effective on April 1, 1982, but SATS did not make the change until July 1982. In 1983, SATS signed contracts with those South African steel producers whose shipments had previously been eligible for the special export rates. These contracts confirmed the adjustments SATS made in July 1982. However, the new contract rates were made retroactive to April 1, 1982. These retroactive changes meant that SATS had to make reconciliations—some reflecting overpayments, others underpayments—for all shipments after April 1, 1982.

When we published our preliminary notice, SATS had not been able to demonstrate that it had completed the rail rate reconciliations. Since that time, it has shown us that the reconciliations were completed in March 1984. These reconciliations showed that ISCOR had been undercharged. Therefore, SATS debited ISCOR's account for the underpayment, but did not charge interest. SATS found that Highveld did not owe anything.

Since SATS eliminated the rail rate differential in July 1982 and then, as a result of the contracts, established new rates retroactive to April 1, 1982 that also eliminated the differential, we determine that preferential rail rates did not provide a benefit during the review period.

However, since SATS did not charge ISCOR interest on its underpayments, we treated this late payment as a short-term, interest-free loan. We consider the nature of this underpayment to differ from SATS's normal accounts receivable and, therefore, reject ISCOR's contention that SATS does not charge interest on these accounts. We determine the benefit to ISCOR from this interest-free payment to be 0.03 percent *ad valorem.*

Comment 8: In its preliminary results in this case, the Department stated that before publishing its final results, it might give further consideration to the issue of whether investment in ISCOR was commercially reasonable. ISCOR argues that the Department has already adequately considered these issues both in its original investigation and in its preliminary results of this review. In addition, because the Department had indicated that it considers more recent rather than more remote data when making decisions on the reasonableness of investment, there is no need for it to consider the years prior to 1977.

Department's Position: In our preliminary results of review, we relied primarily on a trend analysis from 1978 through 1982 to evaluate the commercial reasonableness of investment in ISCOR.

However, under the methodology outlined in the Subsidies Appendix, we look to see whether a benefit from an equity infusion exists in each year of a 15-year period, the average useful life of renewable physical assets in the industry under review. Therefore, it is reasonable for the Department to consider infusions before 1978 because they might still provide benefits to ISCOR during the review period. Since ISCOR lost money in 1973 and 1974, there is good reason to establish whether equity infusions during that period were commercially reasonable.

ISCOR misunderstands the Department's policy of looking more closely at a company's recent performance when considering whether investments are commercially reasonable. If we are reviewing investments in 1975, we would give more weight to a company's performance in the early 1970's than in the mid-1960's. This policy does not that mean we only analyze equity investments in those years closest to the review period.

For our analysis of the commercial reasonableness of investment in ISCOR, *see* Comment 10.

Comment 9: Bethlehem Steel, an interested party in this proceeding, argues that the Department incorrectly adjusted ISCOR's profitability figures when analyzing the commercial reasonableness of equity investment in the company. ISCOR's use of replacement rather than historical costs for depreciation purposes is, contrary to the Department's assertion, consistent with generally accepted accounting principles in South Africa. Further, if the Department is going to make this adjustment, it should also adjust ISCOR's profits by using the customary 15-year lifetime for depreciation of assets rather than the 25 years used by ISCOR.

Department's Position: Although it may be a generally accepted accounting practice in South Africa to make an adjustment to income to reflect increased replacement cost of fixed assets, we have found that companies rarely follow this practice. In fact, according to a publication of the National Council of Chartered Accountants in South Africa, this adjustment should be part of a supplementary income statement and historical cost information should still be included to assist in the comparability of financial statements across the broad business sector. ISCOR itself realizes its policy is rare. In its 1977 annual report, it states, "This provision, like other conservative accounting practices which the Corporation has applied since 1952, has, at times, been lost sight of when comparing ISCOR's results with those of other companies." Finally, we note that this provision does not represent funds that are actually leaving the company. The provision is included under distributable reserves in the balance sheet, and the company considers the funds to be available for financing its present requirements.

South African accounting principles state that depreciation should be based on a company's estimate of the useful life of its assets. ISCOR reports that such an estimate is the basis of its depreciation schedule. Since we have no information (other than the petitioner's allegation) that its use of 25 years represents an attempt by ISCOR to inflate unfairly its profits, we have not made any adjustments to ISCOR's depreciation figures.

Comment 10: Bethlehem argues that the South African government has viewed ISCOR as an instrument of policy rather than as a financial investment, and its equity infusions from fiscal 1974 through 1980 were on terms inconsistent with commercial considerations.

Department's Position: For the ten years prior to the review period, we reviewed ISCOR's financial results, the statements of the company's management, and the general outlook for the industry. We evaluated the

company's financial statements on an historical cost basis.

This evaluation shows that ISCOR made a profit in every year except in fiscal years 1974 and 1975. The company had a positive net income before interest and taxes and a positive cash flow from operations in every year. The company's liquidity ratios were generally in good order except in fiscal years 1974 and 1975 when the quick ratio was weak. Those two years were also years when ISCOR had negative returns on equity and on sales. These ratios improved in 1976, fell off in 1977 and 1978, and then remained fairly strong through 1982. The company's debt load, as shown by its debt/equity ratio, grew in the early 1970's, reaching a peak in 1976 at a ratio of slightly greater than two to one. It then tapered off to more manageable levels over the rest of the decade. Although its debt level was high, ISCOR earned enough to cover its interest charges in all years except 1974 and 1975.

ISCOR's results in the mid-1970's are attributable in part to an expansion program the company began in the early 1970's. At that time, South African demand for steel exceeded the domestic supply, and market projections by ISCOR indicated that this situation would continue throughout the decade. Based on those market projections, it was reasonable for ISCOR to begin an expansion program at that time. As the chairman's report for 1975 indicates, this expansion, along with the increased interest charges to finance the expansion, accounts for ISCOR's poor return in those years. The report also states that government price controls added to the problem. Nevertheless, considering the costs of its expansion program and the effects of the oil shortage, ISCOR's financial results in 1974 and 1975 do not indicate that the company was an unreasonable investment. In the last half of the 1970's, ISCOR's financial situation improved, although its interest charges remained high. Yet, considering the general slump in the worldwide steel industry at that time, ISCOR's results were those of a relatively healthy company.

The Department considers a company to be a reasonable commercial investment if it can generate a reasonable rate of return within a reasonable period of time. Although ISCOR's financial results were weak in the mid-1970's, the company did not suffer from deep or continuing losses. We therefore determine that equity investments in ISCOR were consistent with commercial considerations for the fiscal years from 1973/74 through 1982.

Final Results of Review

After reviewing all the comments received, we determined the total bounty or grant to be zero for Vantin, Ltd., 0.16 percent *ad valorem* for Highveld Steel and Vanadium Corporation, and 3.78 percent *ad valorem* for all other firms for the period of review. We consider any rate less than 0.50 to be *de minimis*.

The Department will instruct the Customs Service to assess no countervailing duties on shipments of this merchandise from the two firms with zero or *de minimis* rates and countervailing duties of 3.78 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after June 17, 1982, and exported on or before December 31, 1982.

Becausae the Department has revoked this order effective October 1, 1984, we will instruct the Customs Service not to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 355.10 of the Commerce Regulations (50 FR 32556, August 13, 1985).

Dated: September 16, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary Import Administration.

Appendix—Description of Products

For purposes of this review:

1. The term "carbon steel structural shapes" covers hot-rolled, forged, extruded or drawn, or cold-formed or cold-finished carbon steel angles, shapes, and sections, which do not conform completely to the respective specifications set forth in the headnote to schedule 6, Part 2, Subpart B3, of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, or tie plates, and do not include any tubular products. These products are not drilled, not punched and not otherwise advanced having a maximum cross-sectional dimension of 3 inches or more, as currently classifiable under items 609.8010, 609.8020, 609.8025, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

2. The term "hot-rolled carbon steel plate" covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, 607.6625, or 607.9400 of the TSUSA; and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc, including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross-section with a width at least four times the thickness in the cast condition or processed only through primary mill hot rolling are not included.

3. The term "hot-rolled carbon steel sheet" covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a hot-rolled carbon steel product, whether or not corrugated or crimped, whether or not pickled, and whether or not painted or varnished; not cold-rolled; not cut; not pressed, and not stampted to non-rectangular shape; not coated or plated with metal; over 8 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness and over 12 inches in width as currently provided for in items 607.6610, 607.6710 through 607.6740, 607.8320, 607.8342, or 607.9400 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF HOT-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 607.6610 AND 607.8320).*

4. The term "cold-rolled carbon steel sheet" covers the following cold-rolled carbon steel products. Cold-rolled carbon steel sheet is a cold-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness; as currently provided for in items 607.8320 or 607.8350 through 607.8360 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEM 607.8320).*

5. The term "galvanized carbon steel sheet" covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or

plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.1100, 608.1310, 608.1320, or 608.1330 of the TSUSA. *NOTE THAT THE DIFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 AND 608.1100).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

6. The term "hot-rolled carbon steel bars" covers hot-rolled alloy steel products, other than those of stainless or tool steel, of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, as currently provided for in items 606.8310, 606.8330, or 606.8350 of the TSUSA.

7. The term "hot-rolled alloy steel bars" covers hot-rolled alloy steel products, other than those of stainless or tool steel, of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, as currently provided for in item 606.9700 of the TSUSA.

8. The term "cold-formed carbon steel bars" covers cold-formed carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, as currently provided for in items 606.8805 or 606.8815 of the TSUSA. Cold-formed carbon steel bars does not include cold-rolled carbon steel products cut to length, or any cross-sectional dimension less than 0.703 inch in maximum cross-sectional dimension, or if of rectangular cross section, not over 0.25 inch in thickness and not over 0.50 inch in width.

[FR Doc. 86-21421 Filed 9-19-86; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Cancelling Staged Entry for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

September 18, 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 22, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On July 23, 1986, a notice was published in the **Federal Register** (51 FR 26459), which, among other things, established staged entry periods for imports of skirts and culottes of man-made fibers in Category 642, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on April 25, 1986 and extended through July 23, 1986. Inasmuch as it has been determined that these staged entry periods are no longer needed, they are being cancelled.

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.

September 18, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, I request that, effective on September 22, 1986, you cancel the staged entry period established in the directive of July 18, 1986 for man-made fiber textile products in Category 642, produced or manufactured in the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-21499 Filed 9-18-86; 3:53 pm]

BILLING CODE 3510-DR-M

Import Control Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

September 17, 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 23, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On May 19 and July 28, 1986, notices were published in the **Federal Register** (51 FR 18354 and 26922), which announced that the Government of the United States had requested consultations with the Government of the Republic of Korea concerning man-made fiber and cotton textile products in Categories 650, 363 and 626. These requests were made on the basis of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea.

The United States has decided, inasmuch as no mutually satisfactory solution concerning these categories has been reached, to establish specific limits for man-made fiber and cotton textile products in Categories 650, 363 and 626, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, at levels of 15,235 dozen (Category 650), 1,685,284 numbers (Category 363) and 1,955,818 square yards (Category 626). These levels will be in effect unless as a result of consultations different levels will be established. 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 (47 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), in and Statistical Headnote 5, Schedule 3 of the

Tariff Schedules of the United States Annotated (1986).

William H. Huston III,

Chairman, Committee for the Implementation of Textile Agreements.

September 17, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs
Department of the Treasury, Washington, DC. 20229.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 23, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber and cotton textile products in Categories 650, 363 and 626, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, in excess of the following restraint limits:

Category	12-month restraint limits[1]
650	15,235 dozen.
363	1,685,284 numbers.
626	1,955,818 square yards.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

Textile products in Categories 650, 363 and 626 which have been exported to the United States prior to January 1, 1986 shall not be subject to this directive.

Textile products in Categories 650, 363 and 626 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-21418 Filed 9-19-86; 8:45 am]

BILLING CODE 3510-DR

Increasing the Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

September 17, 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 23, 1986. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and November 16, 1984, as amended, between the Governments of the United States and the Socialist Republic of Romania and at the request of the Government of the Socialist Republic of Romania, the limit established for man-made fiber sweaters in Category 645/646 is being increased by 6 percent carryforward for goods produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986. In addition, carryforward used in the previous agreement year, amounting to 11,755 dozen, is being deducted from the adjusted limit resulting in a limit for the current agreement year of 221,990 dozen.

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 17, 1986.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Mr. Commissioner: On December 20, 1985 the Chairman of the Committee for the Implementation of Textile Agreements, directed you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Romania, and exported during 1986 in excess of designated restraint limits. The Chairman further advised you that these limits are subject to adjustment.[1]

Effective on September 23, 1986, paragraph one of the directive of December 20, 1985 is hereby amended to include an adjusted limit of 221,990 dozen [2] for man-made fiber textile products in Category 645/646, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-21419 Filed 9-19-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and November 16, 1984, as amended, between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) Specific limits may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (2) consultations may be held to adjust the restraint levels for categories not subject to specific limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any imports exported after December 31, 1985.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Computer Applications to Training and Wargaming

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Computer Applications to Training and Wargaming will meet in closed session on October 23-24, 1986, at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study how to integrate anticipated advances in computer technology with ongoing simulation efforts, supporting training and wargaming for joint warfighting.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Panel meetings, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Dated: September 16, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86–21378 Filed 9–19–86; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 15 October 1986.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 S. Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II § 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 16, 1986.

[FR Doc. 86–21379 Filed 9–19–86; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the energy information collections listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The collection number(s); (2) Collection title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Affected public; (7) An estimate of the number of respondents annually; (8) Annual respondent burden, i.e., an estimate of the total number of hours neeeded to respond to the collection; and (9) A brief abstract describing the proposed collection and, briefly, the respondents.

DATES: Comments must be filed on or before October 22, 1986. Last notice published Friday, September 12, 1986 (51 FR 32518).

ADDRESS: Address comments to Mr. Vartkes Broussalian, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments may also be addressed to, and copies of the submissions obtained from, Mr. Gross at the address below.

FOR FURTHER INFORMATION CONTACT: John Gross, Director, Data Collection Services Division (EI–73), Energy Information Administration, M.S. 1H–023, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585 (202) 252–2308.

SUPPLEMENTARY INFORMATION: If you anticipate commenting on a collection, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise Mr. Broussalian of your intent as early as possible.

Issued in Washington, DC, September 17, 1986.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

Collection No.	Collection title	Type of request	Responses frequency	Response obligation	Affected public	Number of respondents annually	Respondent burden hrs annually	Abstract
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
FERC								
FERC–80	Licensed hydropower development recreation report.	Extension	Temporary stand-by.	Mandatory	Business or other for profit, farms, individual or households.	1	1	Part 1, Section 10a of the Federal Power Act requires that a licensee submit to the Commission for approval plans, maps and specifications which will present a comprehensive plan for improving or developing a waterway or waterways for beneficial public uses, including recreation.

[FR Doc. 86–21436 Filed 9–19–86; 8:45 am]

BILLING CODE 6450–01–M

Publication of Alternative Fuel Price Ceilings and Incremental Price Threshold for High Cost Natural Gas

The Natural Gas Policy Act of 1978 (NGPA) (Pub. L. 95–621) signed into law on November 9, 1978, mandated a new framework for the regulation of most facets of the natural gas industry. In general, under Title II of the NGPA, interstate natural gas pipeline companies are required to pass through certain portions of their acquisition costs for natural gas to industrial users in the form of a surcharge. The statute requires that the ultimate costs of gas to the industrial facility should not exceed the cost of the fuel oil which the facility could use as an alternative.

Pursuant to Title II of the NGPA, section 204(e), the Energy Information Administration (EIA) herewith publishes for the Federal Energy Regulatory Commission (FERC) computed natural gas ceiling prices and the high cost gas incremental pricing threshold which are to be effective October 1, 1986. These prices are based on the prices of alternative fuels.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, Jr., Department of Energy, Energy Information Administration, 1000 Independence Avenue, SW., Room BE–034, Washington, DC 20585, Telephone: (202) 252–6077.

Section I

As required by FERC Order No. 50, computed prices are shown for the 48 contiguous States. The District of Columbia's ceiling is included with the ceiling for the State of Maryland. FERC, by an Interim Rule issued on April 2, 1981, in Docket No. RM79–21, revised the methodology for calculating the monthly alternative fuel price ceilings for State regions. Under the revised methodology, the applicable alternative fuel price ceiling published for each of the contiguous States shall be the lower of the alternative fuel price ceiling for the State or the alternative fuel price ceiling for the multistate region in which the State is located.

The price ceiling is expressed in dollars per million British Thermal Units (BTU's). The method used to determine the price ceilings is described in Section III.

Dollars per Million BTU's	
State:	
Alabama [1]	$1.57
Arizona [1]	1.36
Arkansas [1]	1.55
California [1]	1.36
Colorado [2]	1.48
Connecticut [1]	1.55
Delaware [1]	1.70
Florida	1.23
Georgia	1.54
Idaho [2]	1.48
Illinois	1.27
Indiana [1]	1.48
Iowa	1.65
Kansas	1.60
Kentucky	1.48
Louisiana	1.36
Maine [1]	1.55
Maryland [1]	1.70
Massachusetts	1.49
Michigan [1]	1.48
Minnesota [1]	1.81
Mississippi [1]	1.57
Missouri	1.51
Montana [2]	1.48
Nebraska [1]	1.81
Nevada [1]	1.36
New Hampshire [1]	1.55
New Jersey [1]	1.70
New Mexico [1]	1.55
New York	1.70
North Carolina [1]	1.57
North Dakota [1]	1.81
Ohio	1.37
Oklahoma [1]	1.55
Oregon [1]	1.36
Pennsylvania	1.52
Rhode Island [1]	1.55
South Carolina [1]	1.57
South Dakota [1]	1.81
Tennessee [1]	1.57
Texas [1]	1.55
Utah [2]	1.48
Vermont [1]	1.55
Virginia	1.56
Washington	1.31
West Virginia	1.45
Wisconsin [1]	1.48
Wyoming [2]	1.48

[1] Region based price as required by FERC Interim Rule, issued on April 2, 1981, in Docket No. RM–79–21.
[2] Region based price computed as the weighted average price of Regions E, F, G, and H.

Section II. Incremental Pricing Threshold for High Cost Natural Gas

The EIA has determined that the volume-weighted average price for No. 2 distillate fuel oil landed in the greater New York City Metropolitan area during July 1986 was $14.35 per barrel. The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which the incremental pricing threshold becomes effective. The prices found in *Platt–s Oilgram Price Report* are given for each trading day in the form of high and low prices for No. 2 fuel oil in Metropolitan New York and Northern New Jersey. A lag adjustment factor was calculated using the average of the low posted price for these two areas for the ten trading days ending September 15, 1986, and dividing that price by the corresponding average price computed from prices published by Platt's for the month of July 1986. This lag adjustment factor was applied to the July price yielding $17.94 per barrel. In order to establish the incremental pricing threshold for high cost natural gas, as identified in the NGPA, Title II, section 203(a)(7), this price was multiplied by 1.3 and converted to its equivalent in millions of BTU's by dividing by 5.8. Therefore, the incremental pricing threshold for high cost natural gas, effective October 1, 1986, is $4.02 per million BTU's.

Section III. Method Used To Compute Price Ceilings

The FERC, by Order No. 50, issued on September 29, 1979, in Docket No. RM79–21, established the basis for determining the price ceilings required by the NGPA. FERC also, by Order No. 167, issued in Docket No. RM81–27 on July 24, 1981, made permanent the rule that established that only the price paid for No. 6 high sulfur content residual fuel oil would be used to determine the price ceiling. In addition, the FERC, by Order No. 181, issued on November 6, 1981, in Docket No. RM81–28, established that price ceilings should be published for only the 48 contiguous States on a permanent basis.

A. Data Collected

The following data were required from all companies identified by the EIA as sellers of No. 6 high sulfur content (greater than 1 percent sulfur content by weight) residual fuel oil: for each selling price, the number of gallons sold to large industrial users in the months of May 1986, June 1986, and July 1986.[1] All reports of volume sold and price were identified by the State into which the oil was sold.

B. Method Used To Determine Alternative Price Ceilings

(1) Calculation of Volume-Weighted Average Price

The prices which will become effective October 1, 1986, (shown in Section I) are based on the reported price of No. 6 high sulfur content residual fuel oil, for each of the 48 contiguous States, for each of the 3

[1] Large Industrial User—A person/firm which purchases No. 6 fuel oil in quantities of 4,000 gallons or greater for consumption in a business, including the space heating of the business premises. Electric utilities, governmental bodies (Federal, State, or Local), and the military are excluded.

months, May 1986, June 1986, and July 1986. Reported prices for sales in May 1986 were adjusted by the percent change in the nationwide volume-weighted average price from May 1986 to July 1986. Prices for June 1986 were similarly adjusted by the precent change in the nationwide volume-weighted average price from June 1986 to July 1986. The volume-weighted 3-month average of the adjusted May 1986 and June 1986, and the reported July 1986 prices were then computed for each State.

(21) Adjustment for Price Variation

States were grouped into the regions identified by the FERC (see Section III.C.). Using the adjusted prices and associated volumes reported in a region during the 3-month period, the volume-weighted standard deviation of prices was calculated for each region. The volume-weighted 3-month average price (as calculated in Section III.B.(1) above) for each State was adjusted downward by two times this standard deviation for the region to form the adjusted weighted average price for the State.

(3) Calculation of Ceiling Price

The lowest selling price within the State was determined for each month of the 3-month period (after adjusting up or down by the percent change in oil prices at the national level as discussed in Section III.B(1) above). The products of the adjusted low price for each month times the State's total reported sales volume for each month were summed over the 3-month period for each State and divided by the State's total sales volume during the 3 months to determine the State's average low price. The adjusted weighted average price (as calculated in Section III.B. (2)) was compared to this average low price, and the higher of the values was selected as the base for determining the alternative fuel price ceiling for each State. For those States which had no reported sales during one or more months of the 3-month period, the appropriate regional volume-weighted alternative fuel price was computed and used in combination with the available State data to calculate the State alternative fuel price ceiling base. The State's alternative fuel price ceiling base was compared to the alternative fuel price ceiling base for the multistate region in which the State is located and the lower of these two prices was selected as the final alternative fuel price ceiling base for the State. The appropriate lag adjustment factor (as discussed in Section III.B.4) was then applied to the alternative fuel price ceiling base. The alternative fuel price (expressed in dollars per gallon) was multiplied by 42 and divided by 6.3 to estimate the alternative fuel price ceiling for the State (expressed in dollars per million BTU's).

There were insufficient sales reported in Region G for the months of May 1986, June 1986, and July 1986. The alternative fuel price ceilings for the States in Region G were determined by calculating the volume-weighted average price ceilings for Region E, Region F, Region G, and Region H.

(4) Lag Adjustment

The EIA has implemented a procedure to partially compensate for the two-month lag between the end of the month for which data are collected and the beginning of the month for which ceiling prices become effective. It was determined that *Platt's Oilgram Price Report* publication provides timely information relative to the subject. The prices found in *Platt's Oilgram Price Report* publication are given for each trading day in the form of high and low prices for No. 6 residual oil in 20 cities throughout the United States. The low posted prices for No. 6 residual oil in these cities were used to calculate a national and a regional lag adjustment factor. The national lag adjustment factor was obtained by calculating a weighted average price for No. 6 high sulfur residual fuel oil for the ten trading days ending September 15, 1986, and dividing that price by the corresponding weighted average price computed from prices published by Platt's for the month of July 1986. A regional lag adjustment factor was similarly calculated for four regions. These are: One for FERC Regions A and B combined; one for FERC Region C; one for FERC Regions D, E, and G combined; and one for FERC Regions F and H combined. The lower of the national or regional lag factor was then applied to the alternative fuel price ceiling for each State in a given region as calculated in Section III.B. (3).

Listing of States by Region

States were grouped by the FERC to form eight distinct regions as follows:

Region A

Connecticut	New Hampshire
Maine	Rhode Island
Massachusetts	Vermont

Region B

Delaware	New York
Maryland	Pennsylvania
New Jersey	

Region C

Alabama	North Carolina
Florida	South Carolina
Georgia	Tennessee
Mississippi	Virginia

Region D

Illinois	Ohio
Indiana	West Virginia
Kentucky	Wisconsin
Michigan	

Region E

Iowa	Nebraska
Kansas	North Dakota
Missouri	South Dakota
Minnesota	

Region F

Arkansas	Oklahoma
Louisiana	Texas
New Mexico	

Region G

Colorado	Utah
Idaho	Wyoming
Montana	

Region H

Arizona	Oregon
California	Washington
Nevada	

Issued in Washington, DC, September 18, 1986.

L.A. Pettis,

Deputy Administrator, Energy Information Administration.

[FR Doc. 86-21500 Filed 9-22-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE-FRL-3084-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, (202) 382-2740 or FTS 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Studies Under the National Pesticide Hazard Assessment Program

(EPA ICR #0890). (This collection is new.)

Abstract: Information is needed to assess the extent of human exposure to pesticides throughout the United States and the severity of health effects related to such exposure. These two studies, one on hospitalized pesticide poisonings, the other on pesticide residues in groundwater, will be used to support the development of pesticide registration standards for the protection of human health.

Respondents: Selected hospitals, selected farm owners/operators.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0095, Precertification Exemption, Test Exemption, was approved 8/29/86 (OMB #2060-0007; expires 8/31/89).

EPA ICR #0222, Noncompliance of Motor Vehicles with Federal Emissions Standards, was approved 8/29/86 (OMB #2060-0086; expires 8/31/89).

EPA ICR #0969, Final Authorization for Hazardous Waste Management Programs, was approved 8/21/86 (OMB #2050-0041; expires 8/31/89).

Comments on all parts of this notice may be sent to:

Nanette Liepman, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460

and

Carlos Tellez, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, DC 20503

Dated: September 16, 1986.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 86-21393 Filed 9-19-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51641 (FRL-3084-8)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty two such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-1639 and 86-1640, December 4, 1986

P 86-1641, 86-1642, 86-1643, 86-1644, 86-1645, 86-1646, 86-1647 and 86-1648, December 7, 1986

P 86-1649, 86-1650, 86-1651, 86-1652, 86-1653, 86-1654, 86-1655, and 86-1656, December 8, 1986

P 86-1657, 86-1658, 86-1659, 86-1660, 86-1661, 86-1662, 86-1663 and 86-1664, December 9, 1986

P 86-1665, 86-1666, 86-1667, 86-1668, 86-1669 and 86-1670, December 10, 1986

Written comments by:

P 86-1639, and 86-1640, November 4, 1986

P 86-1641, 86-1642, 86-1643, 86-1644, 86-1645, 86-1646, 86-1647 and 86-1648, November 7, 1986

P 86-1649, 86-1650, 86-1651, 86-1652, 86-1653, 86-1654, 86-1655 and 86-1656, November 8, 1986

P 86-1657, 86-1658, 86-1659, 86-1660, 86-1661, 86-1662, 86-1663 and 86-1664, November 9, 1986

P 86-1665, 86-1666, 86-1667, 86-1668, 86-1669 and 86-1670, November 10, 1986

ADDRESS: Written comments, identified by the document control number "[OPTS-51641]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-1639

Manufacturer. Confidential.

Chemical. (G) Octadecanoic acid, glycol ester.

Use/Production. (G) Industrial metal working. Prod. range: 182,000 to 455,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: a total of 40 workers, up to 8 hrs/da, up to 22 day/yr.

Environmental Release/Disposal. 140 kg/batch released to water with 10 to 40 kg/batch to land. Disposal by Publicly Owned Treatment Works (POTW), Resource Conservation and Recovery Act (RCRA) and landfill.

P 86-1640

Importer. Ciba-Geigy Corporation.

Chemical. (G) Amine Salt of a phosphinic acid derivative.

Use/Import. (S) Extreme pressure/antiwear additive for lubricants. Import range: Confidential.

Toxicity Data. Acute oral: 1,043 mg/kg; Irritation: Skin-Extreme, Eye-Severe.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 86-1641

Manufacturer. Caschem, Incorporated.

Chemical. (G) Castor oil ester.

Use/Production. (S) Used for coating and elastomers. Prod. range: Confidential.

Toxicity Data. Acute oral: 50 mg/kg; Irritation: Skin-Non-irritant; Inhalation: 2mg/L/hr.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1642

Manufacturer. Confidential.

Chemical. (G) Hydroxyfunctional polyurethane.

Use/Production. (G) Coating for open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1643

Manufacturer. Confidential.

Chemical. (G) Polyolefin alkoxy silane graft.

Use/Production. (S) Resin for manufactured articles. Prod. range: Confidential.

Toxicity Data. Acute oral: 11.3 mg/kg; Irritation: Skin-Moderate, Eye-Moderate.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-1644

Manufacturer. Confidential.

Chemical. (G) Poly (alkylene, alkylene acetate) alkoxy silane-polymer.
Use/Production. (S) Resin for manufactured articles. Prod. range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1645

Manufacturer. Confidential.
Chemical. (G) Poly (olefin, olefin ester) alkoxy silane polymer.
Use/Production. (S) Resin for manufactured articles. Prod. range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1646

Manufacturer. The Dow Chemical Company.
Chemical. (S) 1,3-di(4-methylphenylethenyl) benzene.
Use/Production. (G) Industrial chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 gm/kg; Irritation: Skin-Non-irritant, Eye-Non-irritant; LC_{50} 48 hrs (Daphnia magna): 0.18 mg/1.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1647

Importer. Confidential.
Chemical. (G) Unsaturated polyester.
Use/Production. (G) Decorative and protective coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1648

Manufacturer. Monsanto Company.
Chemical. (S) 1-oxa-4-azaspiro[4.5]decane, 4-(dichloroacetyl).
Use/Production. (G) Herbicide ingredient. Prod. range: Confidential.
Toxicity Data. Acute oral: 2,600 mg/kg; Acute dermal: 5 gm/kg; Irritation: skin-Slight, Eye-Slight; Ames test: Non-mutagenic
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P–86–1649

Manufacturer. Confidential.
Chemical. (S) Amines, dicoco alkylmethyl, N-oxide.
Use/Production. (G) Surface active agent for commercial and consumer detergents. Prod. range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. 1 to 23 kg/batch released to water. Disposal by POTW.

P–86–1650

Manufacturer. Confidential.
Chemical. (S) Decanamine, N-decyl-N-methyl-, N-oxide.
Use/Production. (G) Surface active agent for commercial and consumer detergents. Prod. range: Confidential
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. 1 to 23 kg/batch released to water. Disposal by POTW.

P–86–1651

Manufacturer. Confidential.
Chemical. (S) Decanamine, N-methyl-N-octyl-, N-oxide.
Use/Production. (G) Surface active agent for commercial and consumer detergents. Prod. range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. 1 to 23 kg/batch released to water. Disposal by POTW.

P–86–1652

Manufacturer. Confidential.
Chemical. (S) Octanamine, N-methyl-N-octyl-, N-oxide.
Use/Production. (G) Surface active agent for commercial and consumer detergents. Prod. range: Confidential.
Toxicity Data. No data on PMN substance submitted.
Exposure. Confidential.
Environmental Release/Disposal. 1 to 23 kg/batch released to water. Disposal by way of POTW.

P–86–1653

Manufacturer. Miranol Chemical Company, Incorporated.
Chemical. (G) Hydroxylated alkyl ether sultaine.
Use/Production. (S) Site limited and industrial, cleaners and degreasers. Prod. range: 30,000 to 120,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 2 hrs/da, up to 8 da/yr.
Environmental Release/Disposal. 1 to 4 kg/batch released to water. Disposal by sewer.

P–86–1654

Manufacturer. Confidential.
Chemical. (G) Urea urethane acrylate.
Use/Import. (S) Industrial resin for adhesive. Prod. range: 4,500 to 32,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 21 workers, up to 3 hrs/da, up to 94 da/yr.
Environmental Release/Disposal. 8 to 56 kg/batch released to land. Disposal by approved landfill.

P–86–1655

Manufacturer. Essex Specialty Products Incorporated.
Chemical. (G) Aminofunctional polysilane adduct.
Use/Production. (S) Site limited intermediate for use in polymer synthesis of coatings. Prod. range: 5,850 to 15,600 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: dermal, a total of 2 workers, up to 4 hrs/da.
Environmental Release/Disposal. No release.

P–86–1656

Manufacturer. King Industries.
Chemical. (G) Urea urethane acrylate.
Use/Production. (G) Coatings additive. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: a total of 2 workers, up to 2 hrs/da, up to 30 da/yr.
Environmental Release/Disposal. Confidential.

P–86–1657

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) 3-Acryloxypropyltrimethoxysilane.
Use/Production. (S) Industrial coatings, applications, and miscellaneous uses. Prod. range: 5,000 to 50,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to ¼ hr/da, up to 17 da/yr.
Environmental Release/Disposal. 2.0 kg/batch released to land. Disposal by RCRA.

P 86–1658

Manufacturer. Dynamit Nobel Chemicals.
Chemical. (S) p-t-butylphenethylchlorosilane.
Use/Production. (S) Industrial protecting group in organic synthesis. Prod. range: 5,000 to 50,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers, up to ¼ hr/da, up to 17 da/yr.

Environmental Release/Disposal. .9 kg/batch release to land. Disposal by RCRA.

P 86–1659

Manufacturer. Confidential.
Chemical. (G) Metalated alkylphenol copolymer.
Use/Production. (G) Open, non-dispersive use for coatings. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1660

Manufacturer. Confidential.
Chemical. (G) Alkylated polyether.
Use/Production. (G) Additive having open industrial use. Prod. range: 20,000 to 155,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Processing: a total of 53 workers, up to 6 hrs/da, up to 209 da/yr.
Environmental Release/Disposal. 9 to 20 kg/batch released to land. Disposal by approved landfill.

P 86–1661

Manufacturer. Confidential.
Chemical. (G) Alkyd resin.
Use/Production. (G) Printing ink vehicle. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1662

Manufacturer. Confidential.
Chemical. (G) Halogenated phosphate ester.
Use/Production. (G) Additive for plastics. Prod. range: Confidential.
Toxicity Data. Acute oral: 5.0 gm/kg; Skin sensitization: Non-sensitizer; Irritation: Skin-Mild, Eye-mild, Ames test: non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86–1663

Manufacturer. The Dow Chemical Company.
Chemical. (G) Double 1,1 diphenyl ethylene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 gm/kg; Irritation: Skin-Non-irritant, Eye-Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1664

Manufacturer. The Dow Chemical Company.
Chemical. (G) Double 1,1 diphenyl ethylene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5.0 gm/kg; Irritation: Skin-Non/irritant, Eye-Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1665

Manufacturer. Confidential.
Chemical. (G) Unsaturated phthalic polyester.
Use/Production. (S) Industrial chemical intermediate. Prod. range: 560 to 1,070,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 50 workers, up to 8 hrs/da, up to 158 da/yr.
Environmental Release/Disposal. Trace to 125 kg/batch released

P 86–1666

Manufacturer. Confidential.
Chemical. (G) Acrylated phthalic polyester.
Use/Production. (G) Industrial polymer coating with an open, industrial use. Prod. range: 800 to 1,600,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 61 workers, up to 8 hrs/da, up to 260 hrs/yr.
Environmental Release/Disposal. 3 to 105 kg/batch released to land. Disposal by incineration and approved landfill.

P 86–1667

Manufacturer. GAF Chemicals Corporation.
Chemical.
(G) Pentacosapolyunsaturated acid.
Use/Production. (G) A totally contained component of an industrial film product. Prod. range: Confidential.
Toxicity Data. Acute oral: > 5 gm/kg; Irritation: Skin-Non-irritant, Eye-Mild.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86–1668

Manufacturer. Minnesota Mining and Manufacturing Company.
Chemical. (G) Aliphatic polyether polyurethane.
Use/Production. (G) Industrial and commercial binder resin. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86–1669

Manufacturer. Minnesota Mining and Manufacturing Company.
Chemical. (G) Aliphatic polyether polyurethane.
Use/Production. (G) Industrial and commercial binder resin. Prod. rnge: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86–1670

Manufacturer. De Mille Chemical Corporation.
Chemical. (G) Vegetable oil, modified, reaction products with mixture of ethoxylated alkanols.
Use/Production. (G) Industrial detergent for cleaning and softening and heavy weight fabrics. Prod. range: 7,500 to 15,000 kg/yr.
Toxicity Data. Irritation: Skin-Non-irritant, Eye-Moderate.
Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. 1 kg/batch released to water. Disposal by POTW.

Dated: September 12, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–21396 File 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

[A–4–FRL–3083–8]

PSD Permit for the Hillsborough County Energy Recovery Facility, Brandon, Fl

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Prevention of Significant Deterioration (PSD) permit issued to the Hillsborough County Department of Solid Waste on July 7, 1986, became effective on August 11, 1986. The permit was issued for the construction of a 1200 ton per day municipal solid waste incineration facility with electrical generation capability.

DATE: This action is effective as of August 11, 1986, the effective date of the PSD permit. Construction must begin within eighteen (18) months of this date or the permit will become invalid.

ADDRESSES: Copies of the PSD permit, permit application, preliminary and final determinations are available for public

inspection upon request at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 345 Courtland Street NE. Atlanta, Georgia 30365

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: Wayne Aronson of the EPA Region IV, Air Programs Branch at the Atlanta address given above, telephone (404) 347–4901; (FTS) 257–4901.

SUPPLEMENTARY INFORMATION: On December 13, 1985, the Hillsborough County Department of Solid Waste submitted an application to construct three 400 ton per day municipal solid waste incinerators near Brandon, Florida. The preliminary determination was issued by the Florida Department of Environmental Regulation (DER) on March 25, 1986, and the public comment period commenced on April 7, 1986. The Final Determination was issued by the Florida DER on May 30, 1986. Comments on the determinations were made by both EPA and the Hillsborough County Department of Solid Waste in reference to various permit conditions. No other comments were received during the public comment period.

The federal PSD permit was issued on July 7, 1986, and became effective on August 11, 1986. The effective date of this permit constitutes final Agency action under 40 CFR § 124.19(f)(1) and Section 307 of the Clean Air Act, for purposes of judicial 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 21, 1986. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)). If construction does not commence within eighteen (18) months after the effective date, that is, by February 11, 1988, or if contstuction is not completed within a reasonable time, the permit shall expire and the authorization to constuct shall become invalid.

Secs. 160–169 of the Clean Air Act (42 U.S.C. 7470–7479))

Date: September 9, 1986.

Lee A. DeHihns, III,

Deputy Regional Administrator.

[FR Doc. 86–21394 Filed 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59224B; (FRL–3084–9)]

Certain Chemical; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substance Control Act (TSCA), TME–86–50. The test marketing conditions are described below.

EFFECTIVE DATE: September 5, 1986.

FOR FURTHER INFORMATION CONTACT: Monica Chatmon, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Environmental Protection Agency, RM. E–613, 401 M St. SW., Washington, DC 20460, (202–382–2259).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–86–50. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed those specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME–86–50. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced.

2. The applicant must maintain records of dates of the shipments to the customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bill of lading that accompanies each shipment of the TME substance.

T–86–50.

Date of Receipt: July 9, 1986.

Notice of Receipt: July 21, 1986 (51 FR 26187).

Applicant: Confidential.

Chemical: (G) Anionic Polymer.

Use: (S) Textile Finish.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: Six Months.

Commencing on: September 5, 1986.

Risk assessment: EPA identified no significant concerns for human health effects. Therefore, the test market substance will not pose any unreasonable risk of injury to health. The Agency did identify potential adverse effects on aquatic organisms. However estimated releases of test market substance during manufacturing and use were below the level of concern. Therefore, under these conditions the test market substance will not pose any unreasonable environmental risk.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restriction of an exemption should any new information come to its attention which casts significant doubt on its findings that the test market substance activities will not present any unreasonable risk of injury to health or the environment.

Dated: September 5, 1986.

Edwin F. Tinsworth,

Acting Director, Office of Toxic Substances.

[FR Doc. 86–21395 Filed 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3083–7]

Public Health and Environmental Exposure Assessment, Availability; Unison PCB Separation Facility, Henderson County, KY, and Notice of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Announcing the availability of the public health and environmental exposure assessment, Unison PCB Separation Facility, Henderson County,

Kentrucky (EPA 906/9–86 141) and a public hearing on the document.

SUMMARY: EPA recently completed a study addressing a proposed Toxic Substances Control Act (TSCA) operating permit for an alternate method of PCB disposal. This permit is to be used by a facility owned by UNISON, Inc. and located in Henderson County, Kentucky. Estimates of the potential exposure from UNISON's activities in the Henderson area are provided. Estimates of how great these exposures are likely to be and their duration are also presented. A characterization of the risk associated with these exposure estimates is then described.

EPA will hold a public hearing on Monday, November 10, 1986, to receive public and agency comments on the Public Health and Environmental Exposure Assessment. The hearing will be at 4:30 p.m. in the auditorium of the South Junior High School, 800 South Alves Street, Henderson, Kentucky.

Both written and oral comments will be accepted and a transcript of the hearing will be made. Lengthy or technically complex statements should be summarized for the oral presentation. If possible, copies of the statements should be presented prior to the oral presentation. The Hearing Officer reserves the right to fix reasonable limits on the time allowed for oral statements.

The hearing record will remain open and additional written comments may be submitted until November 25, 1986. All additional comments that are received during the comment period will be considered as part of the hearing record.

Following the close of the comment period, EPA will evaluate all issues which were raised. EPA will then make a final decision regarding issuance of the TSCA operating permit.

ADDRESSES: Copies of "The Public Health and Environmental Exposure Assessment, Unison PCB Separation Facility, Henderson County, Kentucky" may be obtained by contacting Robert C. Cooper, Project Officer, Environmental Assessment Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, GA 30365, 404/347–3776 or FTS 257–3776.

Dated: September 12, 1986.

Jack E. Ravan,

Regional Administrator.

[FR Doc. 86–21397 Filed 9–19–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–772–DR]

Major Disaster and Related Determinations; Texas

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–772–DR), dated September 10, 1986, and related determinations.

DATED: September 10, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

NOTICE: Notice is hereby given that, in a letter of September 10, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93–288), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from tornadoes on May 1, 1984, is of sufficient severity and magnitude to warrant a major-disaster declaration under Public Law 93–288. I therefore declare that such a major disaster exists in the State of Texas.

To the extent authorized by law, Federal assistance pursuant to this major disaster declaration will be provided by the Department of Education.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert D. Broussard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Texas to have been affected adversely by this declared major disaster and is designated eligible as follows:

The Motley County Independent School District for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86–21374 Filed 9–19–86; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–773–DR]

Major Disaster and Related Determinations; Maryland

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–773–DR), dated September 10, 1986, and related determinations.

DATED: September 10, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646–3616.

NOTICE: Notice is hereby given that, in a letter of September 10, 1986, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L 93–288), as follows:

I have determined that the damage in certain areas of the State of Maryland resulting from severe storms and flooding during the period November 4–6, 1985, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93–288. I therefore declare that such a major disaster exists in the State of Maryland.

To the extent authorized by law, Federal assistance pursuant to this major disaster declaration will be provided by the Department of Education.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for administrative expenses.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mr. Robert J. Adamcik of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Maryland to have been affected adversely by this declared major disaster and is designated eligible as follows:

The Oldtown School in Allegany County for assistance as authorized by the President's declaration.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director.

[FR Doc. 86-21375 Filed 9-19-86; 8:45 pm]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, 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.: 203-010894-001
Title: Australia-U.S. Discussion Agreement
Parties:
ABC Containerline, N.V. (ABC)
Columbus Line
Associated Container Transportation (Australia) Ltd. (Pace Line)
Pacific Australia Direct Line
Shipping Corporation of New Zealand Limited

Synopsis: The proposed amendment would admit ABC as a party to the agreement. The parties have requested a shortened review period.

Agreement No.: 203-010999
Title: Ecuador Discussion Agreement
Parties:
United States Atlantic and Gulf/Ecuador Freight Association
Navierta Consolidata, S.A.

Synopsis: The proposed agreement would permit the parties to meet, exchange information and agree upon rates and charges. It would not authorize a common tariff or require adherence to any agreement reached.

Agreement No.: 203-011000
Title: PAD Line/ScanCarriers Discussion Agreement
Parties:
Pacific Australia Direct Line
ScanCarriers

Synopsis: The proposed agreement would permit the parties to rationalize service in the U.S.-Australia trades and to agree, voluntarily, upon rates and conditions of service, rates and conditions offered in service contracts, sailing schedules, service frequency and ports to be served. The parties may utilize a common agent, but are not authorized to publish a common tariff and have no obligation to adhere to any agreement reached on rates and conditions in the trade. The parties have required a shortened review period.

By Order of the Federal Maritime Commission.

Dated: September 17, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86-21409 Filed 9-19-86; 8:45 am]

BILLING CODE 6730-01-M

[Fact Finding Investigation No. 15]

Practices of Various Entities Operating as Intermediaries for the Transportation of Goods in the United States Waterborne Foreign Commerce; Order of Investigation

The through transportation of goods in our waterborne foreign commerce may involve the services of many different entities other than an ocean common carrier, as defined by section 3(18) of the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1702(18). In addition to inland carriers and terminal operators, the following entities may become involved at one time or another: (1) A non-vessel-operating common carrier (NVOCC), as defined by section 3(17) of the 1984 Act, 46 U.S.C. app. 1702(17); (2) an ocean freight forwarder, as defined by section 3(19) of the 1984 Act, 46 U.S.C. app. 1702(19); (3) a shippers' association, as defined by section 3(24) of the 1984 Act, 46 U.S.C. app. 1702(24); (4) a broker, as defined by 49 U.S.C. 10102(1); (5) a freight forwarder, as defined by 49 U.S.C. 10102(9); (6) a domestic shippers' association, referred to in 49 U.S.C. 10562(3); and (7) an export trading company authorized pursuant to 46 U.S.C. 4013.[1] Some of these are subject to regulation by the Federal Maritime Commission (FMC or Commission), some by the Interstate Commerce Commission, and some are subject to no regulation.

Many of these entities are attempting to operate as "shippers"[2] in international ocean transportation and, as such, are entering into service contracts[3] and forming or joining shippers' associations.[4] In addition, it appears that the operations of some of these entities may qualify them as NVOCCs, regardless of what they may be calling themselves.[5] The relationships between these entities and the underlying users of their services during the course of these activities is also a matter of interest to the Commission. The Commission believes, however, that considerable confusion exists over the operations of, and the proper roles to be played by, these entities in our waterborne foreign commerce.

Because these issues are of general public interest, the Commission has determined to institute, pursuant to Subpart R of its Rules of Practice and Procedure, 46 CFR 502.281 *et seq.*, a nonadjudicatory investigation into the practices of various entities which, though not the owners of the cargo shipped, nor the persons to whom delivery is made, may be operating as shippers or carrers in our waterborne foreign commerce. At the conclusion of this investigation, the Commission will be able to determine whether any additional rules are necessary or whether legislative changes might be recommended.

Therefore, it is ordered, That pursuant to sections 11 and 12 of the Shipping Act

[1] This list is not intended to be inclusive, but rather representative to the entities involved in through transportation. Any other entity which is not the owner of the cargo or the person to whom delivery is made, which nonetheless operates as a shipper or common carrier could also be the subject to this proceeding.

[2] Section 3(23) of the 1984 Act, 46 U.S.C. app. 1702(23), provides:

"shipper" means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

[3] Section 3(21) of the 1984 Act, 46 U.S.C. app. 1702(21), provides:

"service contract" means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a commitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

Service contracts are further subject to the provisions of section 8(c) of the 1984 Act, 46 U.S.C. app. 1707(c).

[4] Section 3(24) of the 1984 Act, 46 U.S.C. app. 1702(24), provides:

"shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

[5] The problem of certain entities acting as NVOCCs, but not filing tariffs with the Commission was the subject of a petition of the U.S. Atlantic-North Europe Conference and the North Europe-U.S. Atlantic Conference for a rule regarding the term "shipper." Although the Commission by separate Order served this date is denying this petition, it has nonetheless served as the catalyst for the instant investigation.

of 1984, 46 U.S.C. app. 1710 and 1711, and Subpart R of Title 46 of the Code of Federal Regulations, a nonadjudicatory investigationis hereby instituted into the practices of various entities which are acting as intermediaries for the transportation of goods in our waterborne foreign commerce;

It is further ordered, That the Investigative Officer shall be David R. Miles of the Commission. Mr. Miles shall direct the investigation and shall be assisted by such staff as may be assigned by the Commission's Managing Director;

The Investigative Officer shall have the full authority of the Commission to hold public or nonpublic sessions, to resort to all compulsory processes authorized by law (including the issuance of subpoenas), to administer oaths and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission;

It is further ordered, That any person having an interest and desiring to participate in this proceeding, shall file a statement with the Investigative Officer, describing its interest on or before October 17, 1986;

It is further ordered, That the Investigative Officer shall issue to the Commission interim progress reports every three months and a final report of findings and recommendations no later than one year after publication of this Order in the **Federal Register**, all such reports to remain confidential unless and until the Commission rules otherwise; and

It is further ordered, That Notice of this Order be published in the **Federal Register.**

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 86-21410 Filed 9-19-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Keycorp, et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competiton, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 10, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *KeyCorp*, Albany, New York, and Key Bancshares of New York, Inc., Albany, New York; to engage *de novo* through their subsidiary, Key Mortgage Funding, Inc., in the business of originating mortgage loans for sale in secondary markets and of servicing loans sold pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by October 8, 1986.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to engage *de novo* through its subsidiary Norwest Financial Escrow System California, Inc., Des Moines, Iowa, in performing functions or activities that may be performed by a trust company (including activities of a fiduciary, agency, or custodial nature) in a manner authorized by Federal or state law pursuant to § 225.25(b)(3) of the Board's Regulation Y. These activities will be conducted in the State of California.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Claydesta Bancshares, Inc.*, Midland, Texas; to engage *de novo* through its subsidiary, Claydesta Mortgage and Management Corp., Midland, Texas, in making, acquiring and/or servicing loans for itself or for the account of others of the type made by a mortgage company pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 16, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-21348 Filed 9-19-86; 8:45 am]

BILLING CODE 6210-01-M

Commerce Bancorp et al.; Formations of; Acquistions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 10, 1986.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Commerce Bancorp, Inc.*, Marlton, New Jersey; to acquire 100 percent of the voting shares of Commerce Bank/Pennsylvania, N.A., Philadephia,

Pennsylvania. Comments on this application must be received by October 14, 1986.

B. *Federal Reserve Bank of Cleveland* (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to merge with First National Corporation, Bloomington, Indiana. Comments on this application must be received by October 14, 1986.

C. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *NCNB Corporation*, Charlotte, North Carolina; to acquire 100 percent of the voting shares of The Prince William Bank, Dumfries, Virginia, a *de novo* bank. Comments on this application must be received by October 14, 1986.

2. *Peoples Bancorporation*, Rocky Mount, North Carolina; to merge with Mid-South BancShares, Inc., Sanford, North Carolina, and thereby indirectly acquire Mid-South Bank and Trust Company, Sanford, North Carolina.

D. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *Florida National Banks of Florida, Inc.*, Jacksonville, Florida; to acquire 97.78 percent of the voting shares of Southern National Bank of Broward County, Pompano Beach, Florida.

2. *G.S.B. Investments, Inc.*, Gainesville, Florida; to acquire 80 percent of the voting shares of Keystone Securities, Inc., Keystone Heights, Florida, and thereby indirectly acquire Keystone State Bank, Keystone Heights, Florida.

E. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Crest Bancorp, Inc.*, Roberts, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Roberts State Bank, Roberts, Illinois. Comments on this application must be received by October 8, 1986.

2. *DuPage Financial Corporation*, Naperville, Illinois; to acquire 100 percent of the voting shares of Allied Bancshares of Illinois, Inc., Joliet, Illinois, and thereby indirectly acquire East Joliet Bank, Joliet, Illinois. Comments on this application must be received by October 8, 1986.

3. *First American Bankshares, Inc.*, Fort Atkinson, Wisconsin; to become a bank holding company by acquiring 80 percent or more of the voting shares of First American Bank and Trust Co., Fort Atkinson, Wisconsin.

4. *First Community Bankshares*, Milton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers Bank, Milton, Wisconsin.

5. *Greatbanc, Inc.*, Itasca, Illinois; to acquire at least 50.5 percent of the voting shares of FNB Bancorp, Inc., Chicago Heights, Illinois, and thereby indirectly acquire First National Bank in Chicago Heights, Chicago Heights, Illinois.

6. *Lane Financial, Inc.*, Northbrook, Illinois; to acquire 100 percent of the voting shares of Bank of Westmont, Westmont, Illinois.

7. *STAR Financial Group, Inc.*, Marion, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Madison County, Anderson, Indiana; Citizens National Bank of Whitley County, Columbia City, Indiana; Security Bank, Elwood, Indiana; The Hamilton Bank, Hamilton, Indiana; Citizens National Bank of Grant County, Marion, Indiana; Central Bank and Trust, Muncie, Indiana; and Bank of Henry County, New Castle, Indiana.

F. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Bancorp of Mississippi*, Tupelo, Mississippi; to acquire an additional 39.92 percent of the voting shares of First Mississippi National Corporation, Hattiesburg, Mississippi, and thereby indirectly acquire First Mississippi National Bank, Hattiesburg, Mississippi.

2. *Central Bancompany*, Jefferson City, Missouri; to acquire 100 percent of the voting shares of Bank of Lake of the Ozarks, Osage Beach, Missouri.

G. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Bank Shares Incorporated*, Minneapolis, Minnesota; to acquire 27.06 percent of the voting shares of First Brookdale State Bank, Brooklyn Center, Minnesota. Comments on this application must be received by October 14, 1986.

2. *Dakota Company, Inc.*, Minneapolis, Minnesota, through its subsidiary South Dakota Bancorp, Inc., Minneapolis, Minnesota; to acquire 96 percent of the voting shares of Security State Bank, Doland, South Dakota. Comments on this application must be received by October 16, 1986.

H. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American Capital Corporation*, Centerville, Texas; to merge with Fairfield Bancshares, Inc., Fairfield, Texas, and thereby indirectly acquire Fairfield State Bank, Fairfield, Texas. Comments on this application must be received by October 14, 1986.

2. *Fairfield Financial Corporation*, Fairfield, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Fairfield Bankshares, Inc., Fairfield, Texas, and thereby indirectly acquire First National Bank, Fairfield, Texas.

I. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Puget Sound Bancorp*, Tacoma, Washington; to acquire 100 percent of the voting shares of Gig Harbor National Bank, Gig Harbor, Washington. Comments on this application must be received by October 14, 1986.

Board of Governors of the Federal Reserve System, September 16, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-21347 Filed 9-19-86; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85N-0547]

Allergenic Substances; Policy on Licensure of Oral Products Intended to Determine Allergies, Products Intended As adjuncts to Allergy Skin Tests, and Materials Intended For Patch Tests of Humans

AGENCY: Food and Drug Administration, DHHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its regulatory policy with respect to products intended to determine, by oral challenge, whether a person is allergic to certain chemicals in foods or drugs, products intended as adjuncts in allergy skin tests, and materials intended for patch tests of humans for allergy diagnosis. FDA is publishing this notice in response to requests from interested parties that the agency clarify its regulatory policy concerning these products.

DATE: Written comments by November 21, 1986.

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

20857. License applications may be submitted to the Director, Office of Biologics Research and Review (HFN-825), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892.

FOR FURTHER INFORMATION CONTACT:

About this notice: Michael L. Hooton, Center for Drug and Biologics (HFN-362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8049.

About licensing and labeling requirements: Michael G. Beatrice, Center for Drugs and Biologics (HFN-825) Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-443-5433.

SUPPLEMENTARY INFORMATION:

Background

Interested persons have requested that FDA announce its regulatory policy on: (1) Products intended to determine, by oral challenge, allergy to certain chemicals, such as bisulfites, contained in food; (2) products intended as adjunctive positive controls when allergenic skin testing is performed; and (3) certain chemicals or reagents not currently licensed as a biological product or available as ingredients in marketed new drugs, that are intended for use in patch testing of humans to determine hypersensitivity.

Section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(g)(1)) defines the term "drug" as meaning, in part, "articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals." Section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)) identifies a biological product as "any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man." The products discussed in this document are intended to determine, or to assist in the determination of, the hypersensitivity of individuals to certain substances that cause allergenic diseases. Therefore, the products are drugs as defined in section 201 of the act and are also subject to licensure under section 351 of the Public Health Service Act. Consequently, FDA has the option of regulating the products as either new drugs or biological products. FDA has decided that the products are to be regulated as biological products subject to licensure. These products are also drugs, but will not be regulated as new drugs. The agency believes that it is appropriate to announce its regulatory policy regarding the products in a public notice so that the requirements are clear to all interested persons.

Products Intended by Oral Challenge to Determine Certain Allergies

Potassium metabisulfite is a product with the potential to determine, by oral challenge, whether a person is allergic to bisulfites contained in food. In a letter to FDA dated November 21, 1984, a firm interested in producing a product containing potassium metabisulfite in gelatin capsules for use in oral challenge to determine whether a person is allergic to bisulfites asked the agency for an advisory opinion on the regulatory status of this type of product.

FDA responded to the request on November 6, 1985, by issuing an advisory opinion under the provisions of 21 CFR 10.85. Consistent with its November 6, 1985, advisory opinion, FDA is announcing that any reagent, including potassium metabisulfite, intended to determine by oral challenge whether a person is allergic to certain chemicals contained in food or drugs is a biological product subject to licensure under section 351 of the Public Health Service Act and the applicable regulations, including 21 CFR Parts 600 through 680. Any oral challenge product similar to potassium metabisulfite will be regulated by FDA as a licensed biological product because the clinical reactions in individuals are compatible with allergic reactions. Although the agency does not view the "new drugs" provisions of the act as applying to these products under these circumstnaces, the agency does believe that the other provisions of that act relating to drugs do apply to these products.

Products Intended As Adjuncts in Allergy Skin Test Diagnosis

Histamine phosphate may be labeled for intended use adjunctively as a positive control either prior to or at the time of performing diagnostic cutaneous and intrademal skin tests using allergenic extracts. Histamine phosphate marketed solely as a positive control for skin tests with allergenic extracts is not currently licensed nor the subject of a new drug application. A manufacturer of histamine phosphate has asked FDA to clarify the regulatory status of the product when its use is intended as an adjunct in allergy skin test diagnosis.

FDA is announcing that any product intended for use as a positive control with allergenic skin tests, including histamine phosphate, must be labled for such a use and licensed under section 351 of the Public Health Service Act. The use of histamine phosphate as a control at the time of skin tests is important to learn if the skin is in a normally reactive state. A failure to react to histamine phosphate could indicate that the test is not being properly applied or that the patient has recently taken medication that is inhibiting the reactivity of the skin. Because of the routine use of controls at the time of skin testing to determine hypersensitivity, FDA believes that it is important to assure that histamine phosphate and similar products are properly manufactured and labeled for their allergenic diagnostic uses. This notice does not affect histamine phosphate that is the subject of an approved new drug application and is labeled for uses other than as a control for diagnostic skin tests.

Materials Intended For Patch Tests of Humans

Patch test kits include chemicals and reagents that are dissolved in an appropriate solvent (e.g., acetone, petroleum) and applied to the skin to determine a patient's sensitivity. The oleoresins of certain plants (e.g., poison ivy) have been licensed by FDA under the Public Health Service Act for many years for patch test diagnosis. Recently, the American Academy of Dermatology, Inc. (AAD), has asked FDA to state its regulatory policy regarding chemicals or reagents (e.g., nickel salts) assembled as a kit and intended for patch testing that are not currently licensed nor the subjects of approved new drug applications.

FDA is announcing that any chemical or reagent that is intended for commerical marketing, used for patch testing in humans, and not already the subject of an approved new drug application, is considered a biological product and subject to licensure under the Public Health Service Act and the applicable regulations, including apropriate labeling indicating use for diagnosis of hypersensitivity. The patch test is an important tool for physicians in determining the sensitivity of patients to the material in the patch test. Because patch testing is intended to determine allergenic hypersensitivity, FDA believes that patch test materials should be considered biological products and licensure will be required. This notice does not affect any patch test substance that is an ingredient in a product that is

the subject of an approved new drug application and meets all the provisions of § 310.103 (21 CFR 310.103) or is exempted from the antibiotic certification requirements of the act and certain other conditions are met (see 21 CFR 310.103 (a) and (b) and 433.26 (c) and (d), respectively).

Content of License Applications

Any manufacturer that is interested in producing and marketing in interstate commerce a product that is subject to this notice may submit an establishment and/or product license application and proposed labeling in accordance with 21 CFR Part 601 to the Office of Biologics Research and Review. Product license application forms for this purpose are available from the Office of Biologics Research and Review, Division of Product Certification (HFN–825), 8800 Rockville Pike, Bethesda, MD 20892.

The product license application for those manufacturers not currently licensed to manufacture biological products or an amendment to the establishment license application for those manufacturers currently so licensed. The establishment applications should describe the facility in terms of compliance with the current good manufacturing practice regulations for drugs (21 CFR Parts 210 and 211). Establishment license application (amendment) forms are available from the Division of Product Certification (HFN–825), Office of Biologics Research and Review (address above).

Interested persons may, on or before November 21, 1986, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider the comments to determine if modifications to the regulatory policy discussed in this document are warranted. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice of regulatory policy supersedes any previously issued correspondence from FDA regarding the products discussed in this notice.

Dated: September 12, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86–21338 Filed 9–19–86; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Advisory Committee to the Director, NIH; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Advisory Committee to the Director, NIH, on October 16–17, 1986, at the National Institutes of Health, Bethesda, Maryland 20892. The meeting will take place on October 16 from 1:00 p.m. to 5:00 p.m., and on October 17 from 9:00 a.m. to approximately 3:30 p.m., in Building 31, C Wing, Conference Room 10. The topic for discussion at this meeting is "The Human Genome." The meeting will be open to the public.

The Executive Secretary, Jay Moskowitz, Ph.D., National Institutes of Health, Shannon Building, Room 137, Bethesda, Maryland 20892, (301) 496–3152, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information.

Dated: September 15, 1986.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 86–21404 Filed 9–19–86; 8:45 am]

BILLING CODE 4140–01–M

National Arthritis Advisory Board; Notice

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Arthritis Advisory Board and its subcommittees on October 22, 1986, 8:00 a.m. to 5:00 p.m. at the Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Arthritis Advsiory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: September 15, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–21405 Filed 9–19–86; 8:45 am]

BILLING CODE 4140–01–M

National Diabetes Advisory Board; Notice

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Diabetes Advisory Board and its subcommittees on November 24, 1986, 8:30 a.m. to adjournment, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the longrange plan to combat diabetes mellitus. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: September 15, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–21406 Filed 9–19–86; 8:45 am]

BILLING CODE 4140–01–M

National Digestive Diseases Advisory Board; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board and its subcommittees on December 10, 1986, 8:30 a.m. to adjournment, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22202. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland, 20852, (301) 496–6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: September 15, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–21407 Filed 9–19–86; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of the Cardiology Advisory Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, October 27–28, 1986, Building 31C, Conference Room 7, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:00 a.m. on October 27 to adjournment on October 28. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Room 4A31, Building 31, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, telephone (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: September 15, 1986.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 86–21408 Filed 9–19–86; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 1085, Block 75, West Delta Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on September 12, 1986.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1420 South Clearview Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected States, local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: September 15, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86–21321 Filed 9–19–86; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

Eisenhower National Historic Site

AGENCY: National Park Service; Eisenhower National Historic Site, Interior.

ACTION: Notice of release of draft general management plan, public meeting and comment period.

SUMMARY: The National Park Service has developed a Draft General Management Plan which will guide the future operation of Eisenhower National Historic Site. This draft document will be sent to all interested parties for their review and comment.

The public review period will begin September 8, 1986 and end on October 23, 1986. The public is encouraged to comment on the draft during this period. A public meeting is scheduled to assist in this effort.

DATE: October 1, 1986 7:00 p.m.

ADDRESS: Gettysburg National Military Park, Cyclorama Center Auditorium, Gettysburg, PA.

SUPPLEMENTARY INFORMATION: Public comments made during this phase of the planning process will be considered before a Final General Management Plan is approved. Comments should be addressed to: Superintendent, Gettysburg National Military Park, Gettysburg, PA 17325.

Dated: September 9, 1986.

William Supernaugh,

Regional Director, Mid-Atlantic Region.

[FR Doc. 86–21448 Filed 9–19–86; 8:45 am]

BILLING CODE 4310–70–M

Women's Rights National Historical Park Advisory Commission; Meeting

AGENCY: National Park Service, Women's Rights National Historical Park Advisory Commission, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Women's Rights National Historical Park Advisory Commission. Notice of this meeting is required under the Federal Advisory Commitee Act.

DATES: October 8, 1986, 9:00 am to 4:00 pm; October 9, 1986, 9:00 am to 12:00 noon.

ADDRESS: Women's Rights National Historical Park, 116 Fall Street, P.O. Box 70, Seneca Falls, New York 13148.

FOR FURTHER INFORMATION CONTACT: Judy Hart, Superintendent, Women's Rights National Historical Park, 116 Fall Street, P.O. Box 70, Seneca Falls, New York 13148, (315) 568–2991.

Judy Hart,

Superintendent, Women's Rights National Historical Park.

September 11, 1986.

[FR Doc. 86–21447 Filed 9–19–86; 8:45 am]

BILLING CODE 4310–70–M

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service, Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

Date: September 26, 1986, 7:00 p.m.

Inclement weather reschedule date: October 10, 1986.[1]

ADDRESS: Town of Tusten Hall, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware Scenic and Recreational River, Drawer C, Narrowsburg, NY 12764–0159, (717) 729–8251.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include revision of the draft river management plan. The meeting will be open to the public.

Any member of the public may file with the council a written statement concerning agenda items. The statement should be addressed to the Upper Delaware Citizens Advisory Council, P.O. Box 84, Narrowsburg, NY 12764. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware Scenic and Recreational River, River Road, 1¾ miles North of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: September 11, 1986.

Don H. Castleberry,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 86–21446 Filed 9–19–86; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Ciba-Geigy Corp.; Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 14, 1986, Pharmaceuticals Division, Ciba-Geigy Corporation, Regulatory Compliance, SEF 1030G, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Methylphenidate.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 22, 1986.

Dated: September 16, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–21399 Filed 9–19–86; 8:45 am]

BILLING CODE 4410–09–M

Du Pont Pharmaceuticals; Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 28, 1986, Du Pont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than October 22, 1986.

Dated: September 16, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–21400 Filed 9–19–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86–37]

Larry R. Killough, M.D., Texarkana, TX; Order To Show Cause and Hearing

Notice is hereby given that on March 24, 1986, the Drug Enforcement Administration, Department of Justice, issued to Larry R. Killough, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificate of Registration, AK3231999, issued to him at the Joseph & Killough Clinic, Suite 101, 1300 South Main Street, Searcy, Arkansas 72143, and deny any pending application for renewal of such registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, September 30, 1986, in Courtroom No. 10, Room 309, U.S. Claims Court, 717 Madison Place, NW., Washington, DC.

Dated: September 15, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86–21401 Filed 9–19–86; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 86–25]

Robert Vidor, M.D., Kearny, NJ, New York, NY; Order To Show Cause; Hearing

Notice is hereby given that on March 24, 1986, the Drug Enforcement Administration, Department of Justice, issued to Robert Vidor, M.D., an Order To Show Cause as to why the Drug Enforcement Administration should not revoke his DEA Certificates of Registration, AV467003 and AV2808422, and deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration,

[1] Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, October 7, 1986, in Room 316, Hall of Records, Superior Court Complex, Martin Luther King Boulevard and West Market Street, Newark, New Jersey.

Dated: September 15, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-21403 Filed 9-19-86; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 85-58]

Regal Pharmaceutical Co., Inc., Removal of Stay

On November 6, 1985, the Administrator of the Drug Enforcement Administration (DEA) issued a final order denying the applications for renewal of DEA Certificate of Registration PRO147593, Previously issued to Regal Pharmaceutical Company, Inc., 363 Great Road, Bedford, Massachusetts 07130. This order was published at 50 FR 48518, November 6, 1985, and become effective on December 9. 1985.

On December 5, 1985, the Administration of DEA received a letter dated November 29, 1985 from William Haddad, President of Regal Pharmaceutical Co., Inc., requesting a hearing. In light of Mr. Haddad's letter, and in order to avoid repetitiuos administrative proceedings, the Administrator granted Regal Pharmaceutical Co., Inc., a stay of his November 6, 1985 final order. The conditions of the stay included that all controlled substances in possession of the firm were to be placed under seal by DEA Investigatiors, and that the firm neither order or attempt to fill orders for controlled substances. The matter was referred by the Administration to Administrative Law Judge Francis L. Young for a hearing. A hearing was subsequently scheduled for August 14, 1986 in Boston, Massachusetts. Mr. Haddad was informed of this fact in a Memorandum to the Parties from Administrative Law Judge Francis L. Young dated June 27, 1986. A Notice of Hearing was published in the **Federal Register** on July 17, 1986, 51 FR 25957.

Neither Mr. Haddad nor any representative of Regal Pharmaceutical Co., Inc. appeared at the designated location for the hearing in Boston, Massachusetts on August 14, 1986. On August 21, 1986, Administrative Law Judge Francis L. Young issued an Order terminating the proceedings before him.

The Administrator finds that pursuant to 21 CFR 1301.54, Regal Pharmaceutical Co., Inc. has waived its opportunity for a hearing. The Administrator, therefore, removes the stay of denial issued by him on December 9, 1985, and hereby orders the reinstatement of his final order found at 50 FR 48518, November 6, 1985, effective October 22, 1986. The Administrator further orders that the controlled substances placed under seal by DEA Investigators pursuant to the stay shall be transferred by Regal Pharmaceutical Co., Inc. to another person properly registered with DEA after notification to DEA investigators, or destroyed under the supervision of DEA Investigators prior to October 22, 1986.

Dated: September 15, 1986.

John C. Lawn,

Administrator.

[FR Doc. 86-21402 Filed 9-19-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Voluntary Protection Programs to Supplement Enforcement and to Provide Safe and Healthful Working Conditions; Notice of Changes

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of Changes to the Voluntary Protection Programs.

SUMMARY: OSHA announces modifications and clarifications of the conditions and requirements for the Voluntary Protection Programs (VPP) which initially were announced for implementation on July 2, 1982 (47 FR 29025) and revised October 29, 1985 (50 FR 43804).

A review of the revised notice (50 FR 43804) revealed certain omissions, vague statements and questions not addressed. This notice corrects, adjusts and clarifies the requirements of the VPP which were described in the announcement of revisions (50 FR 43804) and updates provisions in line with new OSHA policies for the chemical industry.

EFFECTIVE DATE: October 1, 1986.

FOR FURTHER INFORMATION CONTACT: James Foster, Room N3637, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210 (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

On January 19, 1982, the Occupational Safety and Health Administration ("OSHA" and the "agency") published a notice in the **Federal Register** (47 FR 2796) requesting information and comment about several possible initiatives to provide incentives for voluntary safety and health protection efforts by employers and employees. The agency invited public comment on the specified programs and requested suggestions for alternative programs. Comments were to be submitted by March 15, 1982.

The agency received numerous comments from businesses, unions, trade associations, State Labor Departments, and others. All submissions were made part of the official record and were considered.

Based on the agency's analysis of these comments, on July 2, 1982 (47 FR 29025), OSHA announced implementation of three Voluntary Protection Programs which contained in a simplified form the most desirable aspects of the program ideas addressed by public comment.

On Tuesday, October 29, 1985 (50 FR 43804) OSHA announced changes and clarifications to the VPP based on three years experience with the programs. Those changes were effective December 2, 1985.

In reviewing and implementing 50 FR 43804, the agency noted the need for several clarifications which are contained herein. This notice supersedes 50 FR 43804, October 29, 1985.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. (the "Act" and the "OSH Act"), was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions which establish the legislative mandate for the Voluntary Protection Programs.

". . . (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safer and healthful working conditions;"

". . . (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;"

". . . (5) by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;"

". . . (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment."

C. Structure of Notice

Section II deals with the rationale for the changes.

Section III revises the VPP and supersedes 50 FR 43804.

II. Rationale for Changes

A. Chemical Leaks/Spills

In view of the seriousness of the consequences which may result from a significant chemical leak/spill, the agency has determined that investigations will be made of any such events which occur at VPP sites using normal enforcement procedures, in the same way that complaints and serious accidents are handled. The programs are revised to reflect this decision (Section III.C.2. and L.3.).

B. Alignment With Consultation Program Elements

Since the revision notice was published in October, the Office of Consultation Programs has modified the presentation of the basic elements of an effective safety and health program. Because it is the agency's intent that the requirements for VPP include the same basic elements, the programs are revised to reflect those changes. Safety and health planning is addressed as part of management commitment because planning is a management function (Section III.E.3.a.). With planning removed, the element previously called "Safety Planning, Rules, and Work Procedures" is now called "Hazard Correction and Control" with safety rules and work procedures being just one of the ways to address the correction and control (Section III.E.3.e.(2)).

C. Job Hazard Review

Some applicants have been confused by the requirements for job hazard review (Section III.E.3.e.(1)(d)). This change attempts to clarify further OSHA's expectations regarding job hazard review.

D. Frequency and Coverage of General Industry Self-Inspections

Originally, the agency left open the frequency with which self-inspections should be conducted so long as it was appropriate for the worksite. At least yearly coverage of the entire site was required to allow flexibility for large sites. It has been OSHA's experience that effective safety and health programs provide for monthly inspections, at a minimum, and much more frequent coverage of the site. This change requires at least monthly inspections with at least quarterly coverage of the entire worksite in general industry (Section III.E.3.e.(1)(c)(i)). If the OSHA onsite review team thinks that the size and/or nature of the worksite permits less frequent inspections or less frequent coverage of the whole site, they can explain why this is so in their report and recommend approval under III.E.3.h. Inspection frequency in the construction industry was addressed in 50 FR 43804 and remains unchanged.

E. Employee Participation

The language describing active employee participation in general industry led some applicants to think all examples were required. This change makes clear that any one of the examples would be acceptable, as well as providing flexibility regarding other types not mentioned. (Section III.E.3.e.(4)(a)).

F. Clarification of Requirements for Try and Demonstration Programs

In appropriating the consultation safety and health program elements which were being adopted simultaneously with the VPP revisions, the agency incorrectly specified that only three basic elements were required for Try and the Demonstration Program. The intent was to include all the elements required for Star. This change makes that clear. (Section III.F.3.a. and Chapter III.G.2.a.).

G. Termination When Participant Site Is Purchased by Another Company

Because we had seen an example of a participating site being bought by another company with little interest in safety and health and the resulting problems that occurred, the decision was made to terminate any site that was bought out. Since that time, it has become apparent that some buyers can be as interested in safety and health as the original owners. For that reason, the agency has decided to look at each case individually and evaluate management commitment before deciding to terminate. This change is reflected in this notice (Section III.O.1.b.).

H. Termination for Lack of Progress Under the Try Program

An additional change has been made in the termination policy regarding the Try Program. The previous language specified that one cause for termination from Try would be that "no perceptible movement" has been made toward accomplishing the goals. That language has been changed to "no significant progress," which more clearly reflects the intent of the agency (Section III.O.2.b.(2)).

III. The Voluntary Protection Programs, as Revised

A. Purpose of the Voluntary Protection Programs

OSHA has long recognized that compliance with its standards cannot by itself accomplish all the goals established by the Act. The standards, no matter how carefully conceived and properly developed, will never cover all unsafe activities and conditions. Furthermore, limited resources will never permit regular or exhaustive inspections of all of the Nation's workplaces. In addition, employers and employees, because of their day-to-day experience in the workplace, acquire a special knowledge of the processes, materials and hazards involved with the job. This knowledge, combined with the ability to evaluate and address unique hazards quickly and to provide rewards for positive action, can be used by employers to improve workplace safety and health in ways simply not available to OSHA.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, site-specific occupational safety and health programs. These programs are comprised of management systems for preventing or controlling occupational hazards. The systems not only ensure that OSHA's standards are met, but go beyond the standards to provide the best feasible protection at that site.

When employers apply for and achieve approval for participation in the VPP, they are removed from programmed inspection lists. This frees OSHA's inspection resources for visits to establishments that are less likely to meet the requirements of the OSHA standards. VPP participants enter into a new relationship with OSHA in which safety and health problems can be approached cooperatively, when and if they arise.

Participation in any of the programs does not diminish existing employer and employee rights and responsibilities under the Act. In particular, OSHA does not intend to increase the liability of any party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health

program are not assuming the employer's statutory or common law responsibilities for providing safe and healthful workplaces or undertaking in any way to guarantee a safe and healthful work environment.

The programs included in the VPP are voluntary in the sense that no employer is required to participate but that any employer may volunteer for application to one of the VPP. Compliance with OSHA standards and applicable laws remains mandatory.

Approval for participation is determined by the Assistant Secretary for Occupational Safety and Health.

B. Purpose of This Notice

This notice describes the qualifications criteria for approval of participation in the Voluntary Protection Programs (VPP), and the conditions of participation, termination of or withdrawal from participation and means of reinstatement.

C. Program Description

1. *General.* The VPP are voluntary programs which provide recognition, and removal from programmed inspection lists, to qualified employers. They emphasize the importance of worksite safety and health programs in meeting the goal of the Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions . . ." through official recognition of excellent safety and health programs, assistance to employers in the efforts to reach a level of excellence and the use of the cooperative approach to resolve safety and health problems.

The VPP consist of two major programs, Star and Try, plus a demonstration program to permit demonstration and/or testing of experimental approaches which differ from the two established programs. In addition, within the Star and Try Programs there are some variations between general industry and construction industry requirements.

2. *Recognition.* By approving an applicant for participation in the VPP, OSHA recognizes that the applicant is providing, at a minimum, the basic elements of ongoing systematic protection of workers at the site which makes routine Federal enforcement efforts unnecessary. The symbols of this recognition are certificates of approval and the right to use flags showing the program in which the site is participating. The participant may also choose to use program logos in such items as letter-head or award items for employee contests.

In addition to removing approved worksites from programmed inspection lists (but not from valid, formal employee safety and health complaint inspections, investigations of significant chemical spills/leaks, nor fatality/catastrophe investigations), OSHA will provide the opportunity to work cooperatively with the agency both in the resolution of safety and health problems and in the promotion of effective safety and health programs through such means as presentations before organizations such as the National Safety Congress. Each approved site will have a designated OSHA Contact Person to handle information and assistance requests.

D. Aspects Common to All VPP

1. *The Eligible Applicant.*

a. *Site Management.* Management at a site which is either independent or part of a corporation can make application to the VPP for that site.

b. *Corporate Management.* The management of a corporation may apply to the VPP on behalf of one or more sites in the corporation. This type of application is particularly appropriate when corporate staff provide one or more aspects of the site safety and health program.

c. *General Contractors and Organizations Providing Overall Management at Multi-Employer Sites.* At multi-employer sites, such as in the construction industry, the only eligible applicant is the one which can control safety and health conditions of all employees at the site, such as the general contractor or the owner.

d. *Organizations Representing Groups of Small Businesses in the Same Industry.* OSHA will consider, for demonstration programs, applications from organizations providing health and safety program services to groups of small businesses of the same industry (at the three or four digit SIC level) in a limited geographical area. All sites must meet requirements and will be subject to onsite review.

2. *Assurances.* Applications for all VPP must be accompanied by certain assurances describing what the applicant will do if the application is approved for participation in one of the VPP. The applicant must assure that:

a. All employees, including newly hired employees when they reach the site, will have the VPP explained to them, specifically including employee rights under the program and under the Act.

b. All hazards discovered through self-inspections, accident investigations or employee notification will be corrected in a timely manner.

c. If employees are given health and safety duties as part of the applicant's safety and health program, the applicant will assure that those employees will be protected from discriminatory actions resulting from the duties, just as Section 11(c) of the Act protects employees for the exercise of rights under the Act.

d. Employees shall have access to the results of self-inspections and accident investigations upon request (in construction, this requirement may be met through the joint labor-management committee).

e. For construction, injury records for *all* work done at the site will be recorded *together* and the injury rates for that site will be maintained at or below the national average for that type of construction; and,

f. The following information will be retained and available for OSHA review:

(1) Written safety and health program;

(2) Copies of the log of injuries and illnesses and the OSHA 101 or its equivalent;

(3) Monitoring and sampling records if applicable;

(4) Agreement between management and the collective bargaining agent(s) concerning the functions of the safety committee and its organization where applicable;

(5) Minutes of each committee meeting where applicable;

(6) Committee inspection records where applicable;

(7) Management inspection and accident investigation records;

(8) Records of notifications of unsafe or unhealthful conditions received from employees and action taken, taking into account appropriate privacy interests; and,

(9) Annual internal safety and health program evaluation reports (described below in E.3.i.(5)).

g. Each year by February 15, the participating site will send notification to the designated OSHA Contact Person, described under Section IV. N., of the site's injury incidence and lost work day case rates, hours worked and estimated average employment for the past full calendar year.

3. *Unionized Sites.* When a site covered by an application for any of the VPP has a significant portion of its employees organized by one or more collective bargaining units, the authorized agent must either sign the application or submit a signed statement indicating that the collective bargaining agent(s) do(es) not object to participation in the program. Without such concurrence, OSHA will not approve program participation.

4. *Inspection/Interaction History.* If the applicant has been inspected in the last three years, the inspection, abatement and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health and include no upheld willful violations during those last three years.

E. The Star Program

1. *Purpose.* The Star Program is based on the characteristics of the most comprehensive safety and health programs used by American industry. It aims to recognize leaders in injury and illness prevention programs who have been successful in reducing workplace hazards and to encourage others to work toward such success.

2. *Term of Participation.* The term for participation in an approved Star Program is unlimited, contingent upon continued favorable triennial evaluation. In the construction industry, participation is ended with the completion of construction work at the site.

3. *Qualifications for the Star Program.*

a. *Management Commitment and Planning.* Each applicant must be able to demonstrate top-level management commitment to occupational safety and health in general and to meeting the requirements of VPP. Management systems for comprehensive planning must address safety and health.

(1) *Commitment to Safety and Health Protection.* As with any other management system, authority and responsibility for employee safety and health must be integrated with the management system of the organization and must involve employees. This commitment includes:

(a) Clearly established policies and results-oriented objectives for worker safety and health protection which have been communicated to all employees;

(b) Authority and responsibility for safety and health protection clearly defined and implemented; accountability through evaluation of supervisors; and a system for rewarding good and correcting deficient performance;

i. The general industry applicant must have a documented system for holding all line managers and supervisors accountable for safety and health.

ii. The construction applicant must demonstrate that, at a minimum, the project manager and contractor superintendents are held accountable for safety and health conditions within their areas of responsibility.

(c) Commitment of adequate resources to workplace safety and health, in staff, equipment, promotion, etc.; and

(d) Top management involvement in worker safety and health concerns, including clear lines of communication with employees and setting an example of safe and healthful behavior.

(2) *Commitment to VPP Participation.* Management must also clearly commit itself to meeting and maintaining the requirements of the VPP for which application is made.

(3) *Planning.* Planning for safety and health must be a part of the overall management planning process. In construction, this includes pre-job planning and preparation for different phases of construction as the project progresses.

b. *Experience.* All elements of the safety and health program must be in place and have been implemented for a period of not less than a year before Star approval at both general industry and construction sites. Adequate written guidance must be available prior to Star approval.

c. *Rates.* The general industry applicant must have an average of both lost workday injury case rates and injury incidence rates for the most recent three-year period at or below the most recent specific industry (at the three or four digit level) national average published by BLS. For the construction application, the average injury incidence rate and lost workday injury case rate for at least the last full year at the site applied for, including all workers of all subcontractors of the site, must be at or below the national average for that type of construction according to the most precise SIC code. The SIC for the site is based on the type of construction project, not individual trades.

d. *Contract Workers.* All applicants, whether in general industry, construction or other specialized industry, must be able to demonstrate that all contractors and subcontractors will follow worksite safety and health rules and procedures applicable to their activities while at the site, including special precautions necessary as a result of their activities.

(1) Except where precluded by government regulations, participants should be able to demonstrate that they have considered the safety and health programs and performance of major contractors during the evaluation and selection process, especially in operations such as construction where contractors and sub-contractors are a routine aspect of business arrangements.

(2) In general industry, when the contractor's activities are not part of the overall operation and include special skills and hazards beyond the participant's expertise, the participant's responsibility is not expected to extend beyond proper diligence and prudence in both the selection and the oversight of the contractor.

e. *Written Safety and Health Program.* The Star Program requirement includes all critical elements of the basic safety and health program described below. All aspects of the safety and health program must be appropriate to the size of the worksite and the type of industry.

(1) *Hazard Assessment.* Management of safety and health programs must begin with a thorough understanding of all potentially hazardous situations and the ability to recognize and correct all existing hazards as they arise. This requires:

(a) Analysis of all new processes, materials or equipment before use begins to determine potential hazards and plan for prevention or control.

(b) Comprehensive safety and health surveys at intervals appropriate for the nature of workplace operations, and regular reviews (by a person(s) qualified to recognize existing hazards and potentially significant risks) to ensure the employer's awareness and control of those risks.

(i) A baseline survey of health hazards accomplished through initial comprehensive industrial hygiene surveying or other comprehensive means of assessment such as complete industrial hygiene engineering studies, before equipment or process installation in general industry or in the pre-job planning for construction; and

(ii) The use of nationally recognized procedures for all sampling, testing, and analysis with written records of results;

(c) A system for conducting as appropriate, routine self-inspections which follow written procedures or guidance and which result in written reports of findings and tracking of hazard correction.

(i) In general industry, these inspections must occur no less frequently than monthly and cover the whole worksite at least guarterly;

(ii) In construction, this must include management inspections which cover the entire worksite at least weekly; and

(iii) Also in construction, inspections by members of the safety and health committee which cover the entire worksite as appropriate but no less frequently than once per month are required.

(d) Routine examination and analysis of hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This includes, e.g., job safety analysis and process hazard

review. In construction, the emphasis should be on special safety and health hazards of each craft and each phase of construction.

(e) A reliable system for employees, without fear of reprisal, to notify appropriate management personnel in writing about conditions that appear hazardous and to receive timely and appropriate responses. The system must include tracking of responses and hazard corrections;

(f) An accident/incident investigation system which includes written procedures or guidance, with written reports of findings and hazard correction tracking; and review of injury/illness experience identifying causes and providing for preventive or corrective actions;

(g) A medical program which includes the availability of physician services and first-aid.

(2) *Hazard Correction and Control.* Based on the results of hazard assessment, identified hazards and potential hazards must be addressed by the implementation of engineering controls; equipment maintenance; personal protective equipment; disciplinary action, when needed; and emergency preparedness. Safety rules and work procedures must be developed, thoroughly understood by supervisors and employees, and followed by everyone in the workplace to prevent and control potential hazards. These include the following provisions:

(a) Reasonable site access to Certified Industrial Hygienists and Certified Safety Professionals or Certified Safety Engineers must be available as needed based on the potentially significant risks of the site;

(b) Means for eliminating or controlling hazards, such as engineering controls, personal protective equipment, safety and health rules, including safe and healthful work procedures for specific operations, which are appropriate to the potential hazards of the site, must be written, implemented and updated by management as needed and used by employees;

(c) Procedures for disciplinary action or reorientation of employees and supervisors who break or disregard safety rules, safe work, materials handling or emergency procedures must be written, communicated to employees, and enforced.

(d) Procedures for response to emergencies listing requirements for personal protective equipment, first aid, medical care, or emergency egress must be written and communicated to all employees. Procedures should include provisions for emergency telephone numbers, exit routes, and training drills.

(e) Ongoing monitoring and maintenance of workplace equipment to prevent it from becoming hazardous;

(f) A system for initiating and tracking hazard correction in a timely manner.

(3) *Safety and Health Training.* Training is necessary to implement management's commitment to prevent exposure to hazards. Supervisors and employees must know and understand the policies, rules and procedures established to prevent exposure. Training for safety and health includes ensuring that:

(a) Supervisors understand the hazards associated with a job, their potential effects on employees, and the supervisor's role, through teaching and enforcement, in ensuring that employees follow the rules, procedures and work practices for controlling exposure to the hazards.

(b) Employees are made aware of hazards, and the safe work procedures to follow to protect themselves from the hazards, through training at the same time they are taught to do a job and through reinforcement.

(c) Supervisors and all employees understand what to do in emergency situations.

(d) Where personal protective equipment is required, employees understand that it is required, why it is required, its limitations, how to use it, how to maintain it, and employees use it properly.

(4) *Employee Participation.*

(a) For general industry, the requirement for employee participation may be set in any one of a variety of ways, as long as employees have an active and meaningful way to participate in safety and health problem identification and resolution beyond the individual right to notify appropriate managers of hazardous conditions and practices. Participation on safety committees, as safety observers, in ad hoc safety and health problem-solving groups, as a safety and health trainer of other employees, participating in the analysis of hazards of jobs and on committees which plan and conduct safety and health awareness programs are examples of acceptable means of employee participation.

(b) Construction sites must utilize the labor-management safety committee approach to involve employees in the identification and correction of hazardous activities and conditions. This is required because of the seriousness of the hazards, the changing worksite conditions, the expanding and contracting work force and the high turnover in the construction industry. The applicant must be able to demonstrate that the site has a joint labor-management committee for safety and health which has the following characteristics:

(i) Has a minimum of one year's experience providing safety and health advice and making periodic site inspections;

(ii) Has at least equal representation by bona fide worker representatives who work at the site and who are selected, elected, or approved by a duly authorized collective bargaining organization;

(iii) Meets regularly, keeps minutes of the meetings, and follows quorum requirements consisting of at least half of the members of the committee, with representatives of both employees and management; and,

(iv) Makes regular workplace inspections (with at least one worker representative) at least monthly and more frequently as needed, and has provided for at least quarterly coverage of the whole worksite.

(v) In addition, the joint committee must be allowed to:

- Observe or assist in the investigation and documentation of major accidents;
- Have access to all relevant safety and health information; and,
- Have adequate training so that the committee can recognize hazards, with continued training as needed.

(5) *Safety and Health Program Evaluation.* The applicant must have a system for annually evaluating the operation of the safety and health program to determine what changes are needed to improve worker safety and health protection. The system must provide for written narrative reports with recommendations for improvements and documentation of follow-up action. In particular, the effectiveness of the operation of the selfinspection system, the employee hazard notification system, accident investigations, safety committees (where used), safety and health training, the enforcement of safety and health rules, and the coverage of health aspects, including personal protective equipment and routine monitoring and sampling, should be determined and the findings should be used to improve the implementation of the company's written safety and health program. The evaluation may be conducted by corporate or site officials or by a private sector third-party. In construction, the evaluation should be conducted annually and immediately prior to completion of construction to determine what has been learned about safety and health activities that can be used to

improve the contractor's safety and health program at other sites.

F. The Try Program

1. *Purpose.* The Try Program is aimed at employers in any industry who do not yet meet the qualifications for the Star Program but who wish to work toward Star Program participation. If OSHA determines that the employer has demonstrated the commitment and the potential to achieve the Star requirements, Try is used to set goals that, when achieved, will permit Star participation.

2. *Term of Participation.* Try Programs will be approved for a period of time agreed upon in advance of approval. The term will be dependent upon how long it is expected to take the applicant to accomplish the goals for Star participation. Participation is cancelled at the end of the term.

3. *Qualifications for Try.*

a. *Safety and Health Program Requirements.* An eligible applicant to the Try Program must have a written safety and health program which covers the essential elements of a safety and health program as described in Section III.E.3 for Star.

(1) The basic elements (management commitment and planning; hazard assessment; hazard correction and control; safety and health training; employee participation and safety and health program evaluation) should all be operational or, at a minimum, in place and ready for implementation by the date of approval. For the construction industry, the joint labor management committee must have had a minimum of three months experience in providing safety and health inspections before approval.

(2) The elements are not expected to be at Star quality or completeness. The Try applicant is not expected to meet each of the specific Star requirements in each element. Participation in Try is an opportunity for employers to work with OSHA to improve the quality of their safety and health programs and reduce their injury rates to meet the requirements for Star.

b. *Injury Rates.*

(1) For the Try Program in construction, the applicant company must be able to demonstrate that the company's injury rates are at or below the most recently published BLS national average for the industry (at the three digit level). The injury incidence rate and the lost workday case rate must each be averaged over the last three complete calendar years. The rate must include *all* of the applicant's employees who are actually employed at construction sites in that SIC. The applicant may use nationwide employment or may designate appropriate geographical areas which include the site for which application is made.

(2) For general industry, if either the three-year average for all recordable injuries or for injury lost workday cases for the last three calendar years is above the national average for the specific industry average (at the three or four digit level) as published most recently by BLS, the applicant must indicate goals for the reduction of that rate and demonstrate that the methods planned to reduce them are feasible.

c. *Goals.* Any system required for Star participation that is not in place or is not yet of Star quality at the time of approval must be set as a goal along with any rate reduction goals.

4. *Assurances.* Applicants must provide assurance that any data not listed in D.2. but needed to evaluate achievement of individual goals will be made available to OSHA for evaluation purposes.

G. The Voluntary Protection Demonstration Program

1. *Purpose.* This program provides the opportunity for companies to demonstrate the effectiveness of alternative methods which, if proven successful (usually in more than one site), could be substituted as alternative qualifications for the Star Program for certain situations; to explore the use of VPP in industries other than construction and those classified as general industries, such as maritime or agriculture; and to test methods of overcoming problems which have kept certain employers, such as small business employers and many contractors in the construction industry, from taking part in the VPP.

2. *Qualifications.*

a. Like all VPP participants, those in the demonstration program must have a site safety and health program that addresses a minimum of the basic elements (management commitment and planning, hazard assessment, hazard correction and control, safety and health training, employee participation, and safety and health program evaluation) described for Star in Section III.E. above. How the applicant implements those elements may be the subject of demonstration so long as Star quality protection is afforded all employees. The applicant is not expected to meet each of the specifics in each element.

b. Applicants for this program must demonstrate to the Assistant Secretary's satisfaction that the alternative approach shows reasonable promise of being successful enough to serve as an alternative basis for inclusion in the Star Program. This includes having average injury incidence and lost workday case rates for the previous three years at or below the specific industry average.

3. *Assurance.* Applicants must provide the assurances that any data not listed in Section D.2. but needed to evaluate achievement of the goals of the demonstration project will be made available to OSHA for evaluation purposes.

4. *Term of Participation.* Demonstration programs will be approved, subject to annual evaluation, for a period of time agreed upon in advance of approval but not to exceed five years.

5. *Approval to Star.*

a. Approval to Star is contingent upon:

(1) Successful demonstration of the alternative aspects; and,

(2) A decision by the Assistant Secretary that changing the requirements of the Star Program to allow inclusion of these alternative aspects is desirable.

b. Once a decision has been made by the Assistant Secretary to change Star, those changes must be published in the **Federal Register** to provide public notice of the change.

c. When the published change has become effective, the demonstration site may be approved to Star without submitting a new application or undergoing further onsite review provided that the approval occurs no later than one year following the last evaluation under the Demonstration Program.

H. Application Requirements for All VPP

1. *The Application Guidelines.* OSHA will prepare, keep current and make available to all interested parties, application guidelines which explain the type of information to be submitted for OSHA review.

2. *Application Content.* Eligible applicants will be required to provide all relevant information described in the most current version of the *Application Guidelines* which apply to the program for which application is made.

Amendments to submitted applications will be requested when the application information is insufficient to determine eligibility for onsite review.

Materials needed to document the safety and health program which the applicant feels may involve invasion of privacy or a trade secret should not be included in the application. Instead, such materials should be described in the application and provided for viewing only at the site if an onsite Pre-Approval

Review is conducted as part of the application review.

3. *Application Submission.* Applications may be submitted to OSHA Regional Offices or, in the case of multi-regional applications, to OSHA's Directorate of Federal-State Operations in Washington.

4. *Application Withdrawal.* Any applicant may withdraw a submitted application at any time after formal submission and before approval or denial. When the applicant notifies OSHA of its withdrawal, the original application will be returned to the applicant.

OSHA may keep the assigned Program Officer's marked working copy of the application for a year before discarding it, in case the applicant should raise questions concerning the handling of the application. Once an application has been withdrawn, a new submission of a formal application is required to begin application review again.

5. *Public Access.* The following documents will be maintained in OSHA's National and applicable Regional Offices for public access beginning on the day the applicant is approved and for so long as VPP participation is active:

a. VPP application and amendments;

b. Pre-Approval report and subsequent evaluation reports;

c. Transmittal memoranda to Assistant Secretary;

d. Assistant Secretary's approval letter; and,

e. Notification memoranda to Regional Administrator.

I. Qualification Verification

1. *Initial Review.* The initial review of the application is made to ascertain whether those qualifications which can be documented by paper submission have been met. The applicant will be given the opportunity to amend the application with additional or substitute materials for the purpose of improving the application. Where resources allow, OSHA staff will assist with application preparation, particularly for the demonstration program.

2. *Pre-Approval Onsite Reviews*

a. *Purpose.* The Pre-Approval Review, which is conducted on the site for which participation has been requested by a team of non-enforcement OSHA staff, is a management review of the site safety and health program. It is conducted to:

(1) Verify the information supplied in the application concerning qualification for the VPP for which application is made;

(2) Identify the strengths and weaknesses of the site safety and health program;

(3) Determine the adequacy of the safety and health program to address the potential hazards of the site; and

(4) Obtain information to assist the Assistant Secretary in making the approval decision.

b. *Preparation.* The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader with a back-up and health and safety specialists as required by the size of the site and the complexity of the safety and health program.

c. *Duration of the Review.* The time required for the Pre-Approval Review will depend upon the size of the site and the program applied for. Reviews will usually average one-and-a-half to two days onsite unless the site has more than 1,000 workers or has other complicating factors.

d. *Content.* All Pre-Approval Reviews will include a review of injury records, recalculation of the rates submitted with the application, verification that the safety and health program described in the application has been implemented and a general assessment of safety and health conditions to determine if the safety and health program is adequate for the hazards of the site.

The review will also include interviews with relevant individuals (such as members of joint safety committees, management personnel and randomly selected non-supervisory personnel).

Onsite document review will include the following records (or samples of them) if they exist and are relevant to the application or the safety and health program:

(1) Management statement of commitment to safety and health;

(2) The OSHA 200 log;

(3) Safety and health manual(s);

(4) Employee notifications of safety and health problems;

(5) Safety rules, emergency procedures and examples of safe work procedures;

(6) The system for enforcing safety rules;

(7) Self-inspection procedures, reports and correction tracking;

(8) Accident investigations;

(9) Safety committee minutes;

(10) Employee orientation and safety training programs and attendance records;

(11) Industrial hygiene monitoring records; and,

(12) Other records which provide documentation of the qualifications for these programs.

J. Application Approval

1. *Deferred Approval.* If, at the conclusion of the Pre-Approval Review, the applicant needs to take actions to meet the qualifications for approval, reasonable time—up to 90 days—will be allowed for those actions to be taken before a recommendation is made to the Assistant Secretary. Where necessary, an onsite visit will be made to verify the actions taken after the Pre-Approval Review visit.

2. *Application Withdrawal.* If the applicant cannot meet the requirements for participation in one of the VPP or for any reason does not wish to continue the approval process, reasonable time shall be allowed for application withdrawal as provided for in IV.H.4., before recommendation is made to the Assistant Secretary.

3. *Application Approval.* If, in the opinion of the Pre-Approval Review team, the applicant has met the qualifications requirements of the VPP applied for or an alternative VPP acceptable to the applicant, the team's recommendation will be made to the Regional Administrator, who, on concurrence, will recommend approval to the Director of Federal-State Operations. The Director of Federal-State Operations shall review the report for consistent application of the qualification requirements and, on concurrence, will forward the recommendation to the Assistant Secretary to approve participation. Approval will occur on the day that the Assistant Secretary signs a letter informing the applicant of approval.

K. Application Denial

1. Should the Assistant Secretary for any reason reject the FSO and/or Regional recommendation to approve, a letter from the Assistant Secretary denying approval will be sent to the applicant. The denial will occur as of the date of the letter.

2. Should an applicant appeal to the Assistant Secretary a finding by the team that qualifications are not met, the Director of Federal-State Operations will forward the appeal to the Assistant Secretary, along with the team's recommendation of denial.

If the Assistant Secretary accepts the recommendation to deny approval, the denial will occur as of the date the Assistant Secretary signs a letter informing the applicant of his decision.

L. Inspection Requirements

1. *Programmed Inspections.* Participating work sites will be removed from OSHA's programmed inspection lists.

2. *Workplace Complaints.* Employee complaints to OSHA will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

3. *Chemical Leaks/Spills.* Any significant chemical leaks/ spills will be handled by enforcement personnel in accordance with normal OSHA enforcment procedures.

4. *Fatalities and Catastrophes.* All fatalities and catastrophes will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

M. Post-Approval Assistance

1. *OSHA Contact Person.* An OSHA official will be assigned to each VPP participating work site as Contact Person. This person will be available to assist the participant as needed to assure smooth interface with OSHA and to provide expertise as required.

2. *Problem Solving.* If a problem comes to the attention of the OSHA Contact Person, either through evaluation efforts, review of injury rates, records of OSHA complaint inspections, chemical leaks/spills or accident investigations, or by request of the VPP participant, the Contact Person will attempt to assist the participant in resolving the problem, including, if necessary, arranging with the participant for an onsite visit to assess the problem and its possible causes.

3. *Scheduled Onsite Assistance.* In some cases, such as in the demonstration program, in the construction program or when needed for the Try Program, a schedule of onsite assistance visits shall be agreed upon before approval.

4. *Significant Organizational or Ownership Changes.* Whenever significant changes are made in ownership or organizational structure at a VPP site, the Contact Person should make an onsite assistance visit to determine the impact of the changes on VPP participation.

N. Evaluation

1. *The Star Program.*

a. *Purpose.*

(1) To determine continued qualification for the Star Program.

(2) To document results of program participation in terms of the evaluation criteria and other striking aspects of the site program or its results.

(3) To identify any problems which have the potential of adversely affecting continued Star Program qualifications and to determine if those problems require additional evaluations.

b. *Frequency.* Star Programs shall be evaluated every three years (except when serious problems have been identified which require an earlier evaluation) with an annual review of injury incidence and lost workday injury case rates which shall include a recalculation of the latest three-year averages.

c. *Measures of Effectiveness.* The following factors will be used in the evaluation of Star Program participants:

(1) Continued compliance with the program requirements;

(2) Satisfaction of the participants;

(3) Nature and validity of any complaints received by OSHA;

(4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and,

(5) Where joint committees are utilized, the effectiveness of the committee.

d. *Description of Evaluation.* OSHA's evaluation of Star Program participants will consist mainly of an onsite visit of similar duration and scope of the Pre-Approval Program Review described in III.I.2.

2. *The Try Program.*

a. *Purpose.*

(1) To determine continued qualification for the Try Program, or to determine whether the applicant may be approved for the Star Program.

(2) To determine whether adequate progress has been made toward the agreed-upon goals.

(3) To identify any problems in the safety and health program or its implementation which need resolution in order to continue qualification or meet agreed-upon goals.

(4) To document program improvements and/or improved results.

(5) To provide advice and suggestions for improvements that might be made.

b. *Frequency.* All Try programs will be evaluated annually for the duration of the period of approval, except where the participant requests an evaluation before the annual evaluation for the purpose of determining whether the Star qualifications have been met.

c. *Measure of Effectiveness.* The following factors will be used in the evaluation of Try Programs:

(1) Continued adequacy of the safety and health program to address the potential hazards of the workplace;

(2) Comparison of rates to the industry average;

(3) Satisfaction of the participants;

(4) Nature and validity of any complaints received by OSHA;

(5) Nature and resolution of problems that have come to OSHA's attention; and,

(6) Progress made toward goals specified in the preapproval or previous evaluation report.

d. *Description of Evaluation.* OSHA's evaluation will consist mainly of an onsite visit of duration and content similar to the Pre-Approval Review described in III.I.2.

3. *The Voluntary Protection Demonstration Program.*

a. *Purpose.* To determine whether the approach being demonstrated and/or tested protects workers to the degree provided by the Star Program.

b. *Frequency.* All demonstration programs will be evaluated annually for the period of duration of the approval.

c. *Measure of Effectiveness.* The measures of effectiveness of the approach being demonstrated and/or tested will be determined on a case-by-case basis before approval. These will include injury rates.

d. *Description of Evaluation.* OSHA's evaluation will consist mainly of an onsite review of duration and scope of similar to the Pre-Approval Review described in III.I.2.

O. Termination or Post-Approval Withdrawal

1. *Reason for Termination.*

a. Completion of covered construction work at the site will terminate a construction industry approval.

b. Sale of the approved site to another company or any management change that eradicates or significantly weakens the safety and health program may terminate the approval.

c. The participating site management, or the duly authorized collective bargaining agent where applicable, may terminate participation for any reason.

d. OSHA may terminate participation for cause.

2. *Cause for OSHA Termination.*

a. *Star Program.* Termination by OSHA will occur when a significant failure to maintain the safety and health program in accordance with the program requirements has been identified.

b. *Try Program.* Termination by OSHA will occur when:

(1) A significant failure to maintain the safety and health program in accordance with the program requirements has been identified; or,

(2) No significant progress has been made toward the goals; or

(3) The term of approval has expired.

c. *The Voluntary Protection Demonstration Program.* Termination by OSHA will occur when:

(1) OSHA determines that continuation of the experiment will:

(a) Endanger workers at the covered site(s); and/or,

(b) Be unlikely to result in inclusion into the Star Program; or,

(2) The period of approval has expired.

3. *Notification.* OSHA will provide the participant and other relevant parties 30 days notice of intent to terminate participation unless:

(a) Other terms for termination were agreed-upon before approval; or

(b) A set period for approval is expiring or construction has been completed.

4. *Post-approval Withdrawal.* Upon receipt of notice of intent to terminate or for any other reason, a participant may withdraw from the VPP with written notification to the assigned Contact Person.

P. Reinstatement

Reinstatement requires reapplication.

Signed at Washington, DC, this 16th day of September, 1986.

John A. Pendergrass,

Assistant Secretary.

[FR Doc. 86-21306 Filed 9-19-86; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Individual Benefit Reporting and Recordkeeping of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., October 16, 1986, at the U.S. Department of Labor, 200 Constitution Avenue NW., Room N-4437C, Washington, DC 20210.

This four-member work group was informed by the Advisory Council to study issues relating to individual benefit reporting and recordkeeping for employee benefit pension plans covered by ERISA.

The purpose of the October 16th meeting is to discuss a first draft of a summary of recommendations of the work group.

Signed at Washington, DC, this 17th Day of September, 1986.

Dennis M. Kass,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 86-21435 Filed 9-19-86; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules

AGENCY: National Archives ane Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least monthly of all agency requests for records disposition authority (records schedules) which include records being proposed for disposal or which reduce the records retention period for records already authorized for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before November 21, 1986.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major subdivisions. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules.

This public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. Department of the Air Force, Directorate of Administration, Records Management Branch N1-AFU-86-65. Motor vehicle operation records.

2. Department of the Navy, Chief of Naval Operations, Naval Military Personnel Command (N1-NU-86-7). Bookkeeper's copies and kitchen copies of meal sales tickets from non-appropriated funds activities.

3. The Agency for International Development, Film Loan Library, N1-286-86-4. Motion picture technical training film, film from other agencies, or privately produced film not reflecting on AID programs or functions.

4. Central Intelligence Agency (NC1-263-84-13). The CIA schedule is classified in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 USC 403(d)(3), and the CIA Act of 1949, 50 USC 403g.

5. Environmental Protection Agency, Office of Intergovernmental Liaison (NC1-412-85-4). General correspondence and responses to FOIA inquiries.

6. Environmental Protection Agency, Office of Water (NC1-412-85-6). Comprehensive schedule covering records relating to the Administration of the Agency's drinking water, water quality, and ground-water protection programs.

7. Environmental Protection Agency, Office of Enforcement and Compliance Monitoring (NC1-412-85-13). Administrative and litigation records relating to enforcement of environmental pollutant control laws.

8. Environmental Protection Agency, Regional Administrator and Staff Offices (NC1-412-85-19). Records relating to regional operations and administrative support functions.

9. Environmental Protection Agency, Financial Management Division (NC1-412-85-27). Records relating to financial operations, payroll, and accounting matters.

10. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration (NC1-90-85-2). Correspondence, reports, and related records pertaining to investigations of health facilities which

have completed their 20 year period of assured free care delivery under the terms of the Hill-Burton Program of construction.

11. Organization of The Joint Chiefs of Staff (N1–218–86–1). Reference copies of reports, studies, speeches, directives, memorandums, correspondence, and delegations of authority. Routine personnel correspondence, security clearances and violations, general access listings. Budget and audit reports and logistics issues.

12. Tennessee Valley Authority, Office of Nuclear Power Investment Recovery Project (N1–142–86–12). Deferral disposition records, used in the design of nuclear power plants but made obsolete when plant is cancelled before completion.

13. The United States Information Agency, Television and Film Service (N1–306–86–7). Stock footage, outtakes, and trims created during the course of Agency sponsored film productions and not selected for transfer to the National Archives.

Dated: September 16, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86–21414 Filed 9–19–86; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following packages are being submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Annual Stock Subscription Statement, CLF (OMB No. 3133–0060).

Respondents: Central Liquidity Facility Members.

Abstract: CLF member credit unions annually determine the minimum stock requirement for continued Central Liquidity Facility membership.

Subject: Request for Funds from the Central Liquidity Facility (OMB No. 3133–0064).

Respondents: Central Liquidity Facility Members.

Abstract: Central Liquidity Facility members may apply for extensions of credit for short-term adjustments, seasonal and protracted adjustment credits to meet liquidity needs.

Subject: Letter of Understanding and Agreement for Special Assistance (OMB No. 3133–0016).

Respondents: Federally Insured Credit Unions.

Abstract: Sections 106 and 202 of the Federal Credit Union Act provide authority for the NCUA Board to require periodic reports and financial statements from federally insured credit unions.

OMB Desk Officer: Robert Neal.

Copies of the above information collection clearance packages may be obtained by calling the National Credit Union Administration Office on (202) 357–1055.

Written comments and recommendations for the listed information collection should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 16, 1986.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 85–21369 Filed 9–19–86; 8:45 am]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published August 19, 1986 (51 FR 29620). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 A.M. and Subcommittee meetings usually begin at 8:30 A.M. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the October 1986 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone: 202/634–3265, ATTN: Barbara Jo White) between 8:15 A.M. and 5:00 P.M., Eastern Time.

ACRS Subcommittee Meetings

Containment Requirements, September 23, 1986, Washington, DC. The Subcommittee will review a draft position paper on containment performance design objective as an addition to the Safety Goal Policy, and a draft of a proposed generic letter on containment requirements for severe accidents.

Joint Severe Accidents and Nuclear Plant Chemistry, September 24, 1986, Washington, DC. The Subcommittee will review the NRR Implementation Plan for Severe Accidents and the IDCOR Methodology for Individual Plant Evaluation.

Westinghouse Reactor Plants, September 25, 1986, Washington, DC. The NRC Staff will brief the subcommittee on NUREG–1206 regarding the French Paluel Plant.

Joint Occupational and Environmental Protection Systems/ Severe Accidents, September 26, 1986, Washington, DC. The Subcommittees will gather and exchange information with the NRC Staff and the Public Service Company of New Hampshire. The Subcommittees will review the results of the Seabrook Probabilistic Safety Assessment, the impact of the revised source term, and the strength and leak tightness of the Seabrook containment.

Standardization of Nuclear Facilities, October 8, 1986, Washington, DC. The Subcommittee will review draft NUREG–1225 on the implementation of NRC policy on nuclear power plant standardization.

Waste Management, October 30 and 31, 1986, Washington, DC. The Subcommittee will review selected radioactive waste management topics with the NMSS and RES Staffs.

I&E Programs, November 4, 1986, Washington, DC. The Subcommittee will continue its review of the activities of the Office of Inspection and Enforcement.

Safety Philosophy, Technology, and Criteria, November 5, 1986, Washington, DC. The Subcommittee will: (1) Continue its review of USI A–17, "Systems Interaction in Nuclear Power Plants," (2) review the status of the NRC work on steam generator overfill, (3) discuss the status of the NRC Staff's development of a Safety goal Policy Implementation Plan, and (4) discuss the implications of the Chernobyl Accident.

Extreme External Phenomena, November 20, 1986, Washington, DC. The Subcommittee will continue its review of the Diablo Canyon long-term seismic program and the NRC Staff's Seismic Safety Research Program.

Spent Fuel Storage, November 21, 1986, Washington, DC. The Subcommittee will continue its review of 10 CFR Part 72 and Monitored Retrievable Storage (MRS).

Regional Operations, December 2, 1986, Chicago, IL. The Subcommittee will begin its review of the activities of the NRC Regional Offices. This meeting will focus on the activities of the Region III Office.

Metal Components, December 4 and 5, 1986, Oak Ridge, TN—CANCELLED.

Decay Heat Removal Systems, December 16, 1986, Washington, DC. The Subcommittee will continue its review of the NRR Resolution Position for USI A–45.

Structural Engineering, January 21 and 22, 1987, Albuquerque, NM. The Subcommittee will review containment integrity and Category I structures, programs, and test facilities.

AC/DC Power Systems Reliability, Date to be determined (November), Washington, DC. The Subcommittee will review the proposed Station Blackout rule.

Instrumentation and Control Systems, Date to be determined (November/December), Washington, DC. The Subcommittee will discuss the effect of adverse conditions such as high temperature on solid-state components in nuclear power plants.

Metal Components, Date to be determined (January), Washington, DC. The Subcommittee will: (1) Hear a status report of the Whipjet program (application of broad scope GDC–4 criteria) as applied to a lead plant, Beaver Valley Unit 2; and (2) Review public comments on NUREG–0313, Revision 2 (long range fix for BWR–IGSCC problems).

Advanced non-LWR Designs, Date to be determined (January), Washington, DC. The Subcommittee will review DOE advanced non-LWR designs regarding the use of proven technology and standardization.

Seabrook Units 1 and 2, Date to be determined (fall/winter), Washington, DC. The Subcommittee will review the application for a full power operating license for Seabrook 1 and 2.

ACRS Full Committee Meeting

October 9–11, 1986: Items are *tentatively* scheduled.

*A. *NRC Long Range Planning (Open)*—Discuss proposed ACRS comments regarding the content and scope of a long range plan for regulatory activities.

*B. *Improved Light-Water Reactors (Open)*—Discuss proposed ACRS recommendations regarding the characteristics of improved light-water reactors.

*C. *NRC Standard Review Plant (Open)*—Review proposed revision of the NRC Staff Standard Review Plan regarding removal of radioactive iodine from the reactor containment atmosphere during the course of an accident.

*D. *Seabrook Nuclear Power Plant (Open)*—Consider reduced emergency planning zones in the vicinity of the Seabrook Nuclear Power Plant.

*E. *International Operating Experience (Open)*—Report of ACRS representative regarding the Chernobyl nuclear power station and discussion regarding ACRS consideration of the implications to U.S. reactors.

*F. *ACRS Subcommittee Activities (Open/Closed)*—Discuss activities of designated ACRS subcommittees regarding nuclear safety matters including proposed implementation of NRC policy regarding standardization of nuclear power plants; the Westinghouse advanced standardized nuclear plant design; added safety features in the Paluel nuclear power plant; scram system reliability; containment performance design objectives; some aspects of the proposed NRC implementation of the Commission's severe accident policy; resolution of USI A–45, Decay Heat Removal; introduction of realistic source term estimates into licensing. Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the WAPR nuclear plant design.

*G. *Nuclear Material Safety and Safeguards (Open/Closed)*—Briefing regarding activities of the NRC Office of NMSS. Portions of this session will be closed as required to discuss safeguards information applicable to specific nuclear plants.

*H. *Backfitting in Nuclear Power Plants (Open)*—Discussion with representatives of NRC/OGC regarding backfitting of specific issues such as systems interactions and ECCS evaluation models.

*I. *Clinton Nuclear Power Station (Open)*—Briefing by the NRC Staff and the licensee as appropriate regarding resolution of outstanding items in the Committee's report of March 9, 1982 regarding proposed operation of this nuclear power plant.

*J. *Nuclear Power Plant Operations (Open/Closed)*—Briefing and discussion regarding recent nuclear power operating accidents and incidents. Portions of this session will be closed as necessary to discuss Proprietary Information and Safeguards Information applicable to the facility being discussed.

*K *Future ACRS Activities*—Anticipated subcommittee meetings will be discussed as necessary and items proposed for consideration by the full Committee will be discussed.

*L *Activities of Members (Open/Closed)*—Assigned and non-ACRS activities of members will be discussed. Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personnel privacy.

November 6–8, 1986—Agenda to be announced.

December 11–13, 1986—Agenda to be announced.

Dated: September 17, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–21416 Filed 9–19–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–282 and 50–306]

Northern States Power Co., Prairie Island Nuclear Generating Plant; Issuance of Environmental Assessement and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR 42 and 60, issued to Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2 located in Goodhue County Minnesota.

Identification of Proposed Action

The amendment would consist of changes to the operating license authorizing an extension to expiration date for the Unit 1 Facility Operating License DPR–42 from June 25, 2008 to August 9, 2013 and for Unit 2 Facility Operating License DPR–60, from June 25, 2008 to October 29, 2014.

The amendment to the Technical Specification (TS) is responsive to the licensee's application dated February 21, 1986. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Change in Expiration Dates of Facility Operating License Nos. DPR–42 and DPR–60, Northern States Power Company, Prairie Island Nuclear Generating Plant Unit Nos. 1 and 2,

Docket Nos. 50–282 and 50–306, dated September 16, 1986.

Summary of Environmental Assessment

The NRC staff has reviewed the potential environmental impact of the proposed change in the expiration dates of the Operating Licenses for Prairie Island Unit Nos. 1 and 2. This evaluation considered the previous environmental studies, including the "Final Environmental Statement Relating to Operation of Prairie Island Nuclear Generating Plant Units 1 and 2" May 1973, and more recent NRC policy.

Radiological Impacts

Although the population in the vicinity of Prairie Island Unit Nos. 1 and 2 has increased slightly, the site requirements of 10 CFR Part 100 are still met with regard to Exclusion Area Boundary, Low Population Zone, and nearest population center distances. In addition, the proposed additional years of reactor operation do not increase the annual public risk from reactor operation.

With regard to normal plant operation, the licensee complies with NRC guidance and requirements for keeping radiation exposures "as low as is reasonably achieveable" (ALARA) for occupational exposures and for radioactivity in effluents. The licensee would continue to comply with these requirements during any additional years of facility operation and also apply advanced technology when available and appropriate.

Non-Radiological Impacts

The NRC review identified no additional degradation of the habitat surrounding Prairie Island with regard to indigenous plant and animal species for the additional years of facility operation. In addition, the National Pollutant Discharge Elimination System permit provides additional environmental protection.

Finding of No Significant Impact

The staff has reviewed the proposed change to the expiration dates of the Prairie Island Units 1 and 2 Facility Operating Licenses relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the Staff concluded that there are no significant radiological or nonradiological impacts associated with the proposed action and that the proposed license amendments will not have a significant effect on the quality of the human environement. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendments.

For further details with respect to this action, see (1) the application for amendments dated February 21, 1986, (2) the Final Environmental Statement Relating to Operation of Prairie Island Nuclear Generating Plant Units 1 and 2, issued may 1973, and (3) the Environmental Assessment dated September 16, 1986. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW Washington, DC, 20555 and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland, this 16th day of September 1986.

For the Nuclear Regulatory Commission.

Eileen M. McKenna,

Acting Director, Project Directorate No. 1, Division of PWR Licensing–A.

[FR Doc. 86–21417 Filed 9–19–86; 8:45 am]

BILLING CODE 7590–01–M

PEACE CORPS

Privacy Act of 1984; System of Records; Correction

AGENCY: Peace Corps.

ACTION: Privacy Act of 1984—correction to Notice of Systems of Records.

SUMMARY: On January 14, 1985 (50 FR 1950), Peace Corps published a Notice of Adoption of Systems of Records. These notices were adapted from systems that covered Peace Corps when it was part of the ACTION agency. Due to an administrative oversight, the system notice for Former Volunteer/Staff Resource Records was not included in the January 14, 1985 notice. The Agency is adopting the system of records as published herein. There have been no revisions to the system of records that would require compliance with the reporting requirements of 5 U.S.C. 552a(e)(4) and OMB Circular number A–130.

FOR FURTHER INFORMATION CONTACT: John von Reyn, Chief, Paperwork and Records Management Branch, Office of Administrative Services, 202–254–6020, or Robert L. Martin, Associate General Counsel, 202–254–7966.

This notice is issued in Washington, DC, on September 22, 1986.

Loret Miller Ruppe,

Director.

PC–18

SYSTEM NAME:

Former Volunteer/Staff Resource Record.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Peace Corps, Office of Volunteer Recruitment and Selection, 806 Connecticut Avenue NW., Washington, DC 20526

CATEGORIES OF INDIVIDUALS COVERED IN THE SYSTEM:

All former staff and volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual former staff and former volunteer files containing the following information about the particular individual: Name; current address; current phone number; social security number; date of birth; next of kin name and address; pre-service, service, and post-service education; employment and training experience; trade skills; language skills; educational level; teaching experience; current interest in voluntary service; type of volunteer/staff duty assignment; and location of assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Peace Corps Act, as amended (22 U.S.C. 2501, et seq.).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this file will be used by the Peace Corps agency to involve former staff and volunteers with policy formation, program evaluation, recruitment, foreign and domestic disaster relief, and to keep up-to-date addresses for mailing publications and public affairs releases.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are maintained on magnetic discs and tapes which are stored in a locked room when not in immediate use in a building with a 24-hour guard.

RETRIEVABILITY:

Records are indexed by categories such as skills, social security number, and alphabetical order.

SAFEGUARDS:

Records in the system are available only to appropriate officials of the Peace Corps with the need for access to such records for the performance of their duties.

RETENTION AND DISPOSAL:

Records are begun following the end of staff and/or volunteer services and

retained for the "life" of the volunteer/staffer. These records have no present destruction date and are now expected to be destroyed 50 years after establishment.

SYSTEM MANAGER AND ADDRESS:

Coordinator, Former Volunteer List Program, Peace Corps, 806 Connecticut Avenue, NW., Washington, DC 20526.

NOTIFICATION, ACCESS AND CONTEST PROCEDURES:

Individuals wishing to see information in their records, inquire if the system of records contains information about them, or contest/correct information, should provide their name, any former name, date of birth, social security number, dates of service, if known, location of service and type of service (whether volunteer or staff). Individuals should address their inquiries to the Director, Office of Administrative Services, Peace Corps, Washington, DC 20526. All inquiries should have "Privacy Act Request" noted on the envelope.

RECORD SOURCE CATEGORIES:

Information supplied by former staff and former volunteers.

[FR Doc. 86-21322 Filed 9-19-86; 8:45 am]
BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-15311; (812-6399)]

Dean Witter Reynolds Inc., et al.; Application for an Order to Permit Certain Affiliated Transactions

September 16, 1986.

Notice is hereby given that all series of the Sears Tax-Exempt Investment Trust ("Trust"), and Dean Witter Reynolds Inc., sponsor of the Trust ("Sponsor", collectively with Trust, "Applicants"), 101 Barclay Street, New York, NY 10020, filed an application on May 28, 1986, and amendments thereto on July 30 and August 27, 1986, for an order, pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of section 17(a)(2) of the Act, to the extent necessary, to permit the Trust to sell certain portfolio securities through independent broker-dealers to purchasers, which may include the Sponsor. 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 the relevant provisions thereof.

According to the application, the Trust is a registered unit investment trust under the Act that issues separate series ("Series"), each of which is separately registered under the Securities Act of 1933 ("Securities Act") with respect to the sale of units ("Units") representing fractional undivided interests in such Series. Applicants state that each Series of the Trust invests in securities consisting solely of debt obligations of states, municipalities, public authorities and other public subdivisions ("Municipal Bonds"). Applicants state that the Municipal Bonds are exempt from registration under the Securities Act and that the interest on each of the Municipal Bonds, in the opinion of bond counsel, is exempt from federal income taxation. Applicants also state that at the time of acquisition by the Trust, the Municipal Bonds are rated A or better by Standard & Poor's Corporation or Moody's Investors Service, Inc., or, in the Sponsor's opinion, have comparable credit characteristics.

According to the application, the trustee for the Trust ("Trustee") is not permitted to vary investments or to purchase portfolio securities except to purchase replacement portfolio securities for failed contracts. The Trustee is authorized to sell portfolio securities prior to maturity in order to meet redemption obligations to Unitholders, or as directed by the Sponsor, in the event of certain material adverse credit developments, such as defaults of amounts due or a default on amounts due on other securities of the same issuer, a decline in prices, or the occurrence of other market developments which, in the Sponsor's opinion, would make retention of certain Municipal Bonds detrimental to the interests of Unitholders.

Applicants state that municipal bonds are traded after initial issuance in a dealer market in which there is no single obtainable price. Applicants further state that, in order to obtain the best price, a seller of municipal bonds can either have an executing broker telephone directly different municipal bond dealers, or, can use the facilities of a wire service. According to the application, there are two principal operators of wire services in municipal bonds. The wire services announce offers over the wire, specifying the security, principal amount offered, and any price and timing limitation, but neither the ultimate seller nor the dealer acting on its behalf are revealed. Applicants represent that the Sponsor purchases approximately five percent of the volume transacted through both wire services. Applicants also represent that the Sponsor will select an independent broker-dealer to introduce the Trust's orders on the wire services. Applicants submit that the Sponsor is familiar with the execution capabilities, performance and financial strength of broker-dealers who specialize in executing transactions in municipal securities, and that the Sponsor's selection of the broker-dealer used to enter the wire service order will not reduce the independence of the bids secured through that system, but it will make more likely the efficient conduct of the other aspects of the transaction.

According to the application, where Municipal Bonds are sold because of adverse credit developments, the Trustee is instructed by the Sponsor which particular Municipal Bond is to be sold. In cases where Municipal Bonds are sold to meet redemption obligations, the secondary market trading desk of the Sponsor's Unit Trust Department will instruct the Trustee to put two or more Municipal Bonds out to bid in an attempt to obtain the most favorable price. After the highest bid has been communicated by the operator of the wire system to the Trustee, the secondary market trading desk will determine which Municipal Bond to sell.

Applicants represent that an officer of the secondary market trading desk of the Unit Trust Department is the only person giving instructions to the Trustee with respect to Municipal Bonds to be sold. Applicants state that although Municipal Bonds deposited in a Series may be acquired from the Sponsor's Municipal Bond Trading Department, a separate area of the Sponsor which is a major underwriter of and dealer in municipal securities, the personnel and operations of the Unit Trust Department and the Municipal Bond Trading Department are entirely separate and personnel of the Municipal Bond Trading Department will not have any involvement in administering or monitoring the Trust's portfolio and will not solicit any sales from the Trust's portfolio.

Applicants also represent that no other department is ever informed by the secondary market trading desk of any instructions given to the Trustee to put Municipal Bonds out to bid nor is there any consultation with any other area when a decision is made as to which of two or more Municipal Bonds should be sold to meet redemption obligations.

Applicants state that because section 17(a)(2) of the Act generally prohibits affiliated persons of a registered investment company from purchasing securities from such registered

investment company, the Trustee, when placing orders to sell Municipal Bonds, has always acted through an independent broker-dealer and instructed it not to accept any bid received from the Sponsor or its affiliates. Applicants submit that excluding the Trust from receiving bids from the Sponsor, notwithstanding that the Sponsor is among the major dealers in municipal securities and that the market reached by the wire services in both widely competitive and anonymous, may frequently cause the Trust to be denied the best available price.

Consequently, to eliminate the disadvantage to the Trust in not being able to accept an anonymous bid from one of the major dealers in municipal securities simply because it happens to be the Sponsor of an affiliate thereof, Applicants request an order, pursuant to sections 6(c) and 17(b) of the Act, granting exemption from the provisions of section 17(a)(2), to the extent necessary, to permit the Trust to sell Municipal Bonds through a wire service to the highest bidder, including the Sponsor.

Applicants agree that in order to minimize the possibilities of overreaching in the Municipal Bonds transactions, Applicants consent to the following conditions with respect to the requested order: (1) The Sponsor will not advise its Municipal Bond Trading Department or the municipal securities dealer department of any other broker-dealer when giving instructions to sell a Municipal Bond; (2) The Sponsor will select a broker-dealer to effect sales which it considers efficient and competent and which is independent of the Sponsor; (3) Offers will be made through a major wire service in municipal bonds and will be kept open for 3 hours after initial appearance on the wire, which time period will not be reduced to less than 2 hours in the discretion of the executing broker-dealer in a declining market; (4) No bids will be accepted unless three or more bids are received from persons other than the Sponsor or its affiliates; (5) The Trustee will be instructed not to inquire as to the identity of a bidder, and if it receives such information, will not transmit it to the Sponsor; (6) Broker-dealers effecting the sales will be instructed to obtain the best available price and execution and will instruct the wire services not to report any bid from the Sponsor or any agent thereof unless it is higher than the best price available from nonaffiliated broker-dealers; and (7) Where more than one Municipal Bond has been put out to bid by the Trustee, the decision as to which Municipal Bond will be sold will be made by the Sponsor's secondary market trading desk alone; no other department of the Sponsor will be consulted.

Applicants assert that sale of the Trust's Municipal Bond through the means of an independent wire service subject to the conditions described in the foregoing paragraph, including anonymity of the seller and bidders, should maintain a sufficient degree of independence to allow the Trust to obtain the highest available bid price without involving overreaching and will permit the Trust to receive the truly best price, without eliminating a significant segment of the possible buyers. Applicants further assert that the terms and conditions of the Trust's proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and consistent with the policy of the Trust as recited in its registration statement and reports filed under the Act, and are consistent with the general purposes of the Act. Applicants also contend that the current practice of precluding the Trust from receiving bids from the Sponsor frequently prevents it from receiving the best price and execution on sales of Municipal Bonds, and hence, that the requested exemption is necessary or 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 further given that any interested person wishing to request a hearing on the application may, not later than October 8, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of any 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-21434 Filed 9-19-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Inc.

September 17, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Atlantic Richfield Co.
$3.00 Convertible Preferred A (File No. 7-9210)
Baxter Travenol Laboratories, Inc.
Adjustable Rate Preferred (File No. 7-9211)
Baxter Travenol Laboratories, Inc.
Cumulative Convertible Preferred (File No. 7-9212)
Barclays, PLC ADR's
Comon Stock, $.01 Par Value (File No. 7-9213)
Computer Association International, Inc.
Common Stock, $.10 Par Value (File No. 7-9214)
Cannon Group, Inc.
Common Stock, $.01 Par Value (File No. 7-9215)
Comdata Network, Inc.
Common Stock, $.02 Par Value (File No. 7-9216)
Continental Information Systems Corp.
Common Stock, $.03 Par Value (File No. 7-9217)
Decision Industries Corporation
Common Stock, $.10 Par Value (File No. 7-9218)
FGIC Corp.
Common Stock, $1.00 Par Value (File No. 7-9219)
Gifford Hill & Co., Inc.
Common Stock, $2.00 Par Value (File No. 7-9220)
Gearhart Industries, Inc.
Common Stock, $.50 Par Value (File No. 7-9221)
Ryland Group, Inc.
Common Stock, $1.00 Par Value (File No. 7-9222)
Supermarkets General Corp.
Common Stock, $1.00 Par Value (File No. 7-9223)
Southwest Forrest Industries, Inc
Common Stock, $1.00 Par Value (File No. 7-9224)
United Illuminating Co.
Common Stock, No Par Value (File No. 7-9225)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 6, 1986, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three

copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-21430 Filed 9-19-86; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading, Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

September 17, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stock:

Beneficial Corporation
Common Stock, $1.00 Par Value (File No. 7-9209)

This security is listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 6, 1986 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Security and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Johathan G. Katz,

Secretary.

[FR Doc. 86-21431 Filed 9-19-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15308; File No. 812-6352]

Application and Opportunity for Hearing; Phoenix Mutual Life Insurance Co.; et al.

Setember 15, 1986.

Notice is hereby given that Phoenix Mutual Life Insurance Company ("Company"), Phoenix Mutual Variable Accumulation Account ("Account"), The Big Edge Series Fund ("Fund"), Phoenix Investment Counsel, Inc., and Phoenix Equity Planning Corporation ("Equity Planning") (collectively, "Applicants") at One American Row, Hartford, Connecticut 06115, filed an application on April 18, 1986, and amendments thereto on July 23, and September 2, 1986, for an order of the Commission (1) pursuant to section 17(b) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of section 17(a) of the Act to the extent necessary to permit the issuance of shares of the corresponding series of the Fund in exchange for the assets and related liabilities of the Account, and (2) pursuant to section 6(c) of the Act, exempting the Account and Equity Planning from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act, to the extent necessary to permit payment of certain charges to the Company from the assets of the Account. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below, and to the Act for the text of the relevant provisions.

Applicants represent that the Account, currently registered under the Act as an open-end management investment company, funds variable accumulation annuity contracts ("contracts") issued by the Company. Pursuant to a Plan of Reorganization ("Plan") approved by the Account's contractowners, the Company intends to convert the Account into a unit investment trust investing exclusively in the shares of the corresponding series of the Fund. The Fund is registered under the Act as a management investment company of the series type, and is established as a Massachusetts business trust. The Fund currently has six separate portfolios, each with a separate series of shares: four corresponding respectively to the MoneyMarket, the Stock, the Bond, and the Total-Vest sub-accounts of the Account; and two others, consisting of the Zero Bond Series I and the Zero Bond Series II. It is proposed that the Fund, which will succeed to the portfolio assets and related liabilities of the Account, will be the continuing funding vehicle for existing contracts. Applicants state that shares of the Fund may also be available to other separate accounts in the future.

Applicants represent that the Company will assume all costs incurred in effecting the reorganization, including the expenses of organizing the Fund, and that the reorganization will not have any adverse economic impact on the contractowner's interests under the existing contracts. Applicants further represent that the reorganization will not alter the total amount of fees and charges assessed, directly or indirectly, under each existing contract, although the advisory fee, brokerage commissions, and similar securities transaction expenses will be deducted from Fund assets after the reorganization, rather than from the Account assets, as they are currently. Applicants represent that the contractual rights of contractowners will not change. The Company, on behalf of the Account, will transfer the portfolio assets of the Account's various sub-accounts and related liabilities to the Fund in return for shares of the corresponding series of the Fund. Applicants further represent that voting rights of contractowners will be the same subsequent to the reorganization as they were prior thereto. The Company believes, based on its review of existing federal income tax laws and regulations, that the transfers of assets of the Account to the Fund will be a tax-free event. Neither the Account nor the Fund will realize any gain or loss on the transfers, and the Fund will succeed to the same adjusted basis as such assets had prior to the transfer.

Applicants assert the terms of the proposed transactions, including the consideration to be paid and received, are reasonable and fair, do not involve overreaching, and are consistent with the investment policies of the Account and the general purposes of the Act. Applicants represents that the transactions effecting transfer of the portfolio assets of the Account in return for shares of the Fund will be effected in accordance with Section 22(c) of the Act and Rule 22c-1 thereunder, "net asset value" of the Account will be determined as of the business day immediately preceding the effective date of the reorganization; and the number of shares of the applicable series to be issued to the Account will be determined by dividing the value of the net assets to be transferred, by the initial per share value of the Fund shares. Thus, Applicants argue that the consideration to be received and paid is

reasonable and fair. Applicants state the investment objectives of each of the Account's sub-accounts, immediately preceding the reorganization, will be identical to the investment objectives of the corresponding series of the Fund. Applicants further state that the reorganization will not require liquidation of any assets of either the Account or the Fund, and that the only sales of Account assets will be those arising in the ordinary course of business. Applicants represent that neither the Account nor the Fund will incur any extraordinary costs, such as unusual brokerage commissions, as a result of the reorganization.

Applicants assert that the proposed plan is consistent with the general purposes of the Act, and that the proposed transactions do not present any of the issues or abuses that the Act is designed to prevent. Moreover, Applicants argue that the proposed transactions will be effected in a manner consistent with the public interest and the protection of investors. Applicants represent that contractowners have been fully informed of the terms of the Plan through the proxy materials and have approved the Plan at a meeting of contractowners called for that purpose.

Applicants also request an exemption from the provisions of sections 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the payment of certain daily charges to the Company from the Account. These charges for currently existing contracts are at a rate equivalent to .40% on an annual basis for mortality risks and .60% for expense risks. Applicants state that contracts offered after the reorganization will provide for a daily charge from the Account equivalent to .40% on an annual basis for mortality risks and .85% on an annual basis for expense risks. Applicants further state that the mortality risk is that contractowners as a class may live longer than expected, thereby necessitating a greater number of annuity payments, and the expense risk is that expenses may be higher than deductions for such expenses.

Applicants state that beyond the deduction of any applicable premium taxes, no deductions are made from purchase payments. Rather, a deduction for sales charges is taken from proceeds of redemptions, and is imposed on a first in, first out basis. During the first year a contract is in existence, the deduction applies against the total amount redeemed. After the first anniversary of the contract, an amount up to 10% of the accumulated value under the contract as of the previous contract anniversary may be withdrawn each year without imposition of a sales charge. The deduction for sales charges is expressed as a percentage of the amount redeemed. Any amount withdrawn during the first policy year or in excess of the 10% allowable amount, is assessed a contingent deferred sales charge as follows:

Number of years since payment was made	Contingent deferred sales charge as percentage of amount withdrawn
0-1	6
2	5
3	4
4	3
5	2
6	1
7 and over	0

Applicant represent that the total deferred sales charge on a contract will not exceed 9% of the total purchase payments made to date.

Applicants state that for various administrative services, the Company charges each contract a guaranteed charge of $35 each year (or part thereto) prior to Date of Maturity. This fee is deducted from the sub-accounts on a pro-rata basis in relation to their values under the contract, or may be paid separately.

Applicants represent they have reviewed the level of the mortality and expense risk charges under comparable variable annuity contracts currently being offered, taking into consideration such factors as current charge levels, the manner in which charges are imposed, presense of charge level or annuity rate guarantees, and the markets in which such contracts are offered. Applicants represent the charges are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission upon request a memorandum outlining the methodology underlying this repesentation.

Applicants state that they do not believe that the surrender charge being imposed under the contracts will cover the expected costs of distributing the contracts, and that they believe this shortfall may be made up from the general account assets which include, *inter alia*, amounts derived from risk charges. The Company has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the contracts will benefit the Account and contractowners. The Company will keep and make available to the Commission upon request a memorandum setting forth the basis for this representation.

Applicants further represent that the Account will only invest in underlying fund(s) which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the fund, formulate and approve any plan under Rule 12b-1 under the Act to finance distribution expenses. Applicants assert that the requested exemption to deduct the mortality and expense charges in necessary and appropriate in the public interest and consistent with the protection of investors and the policies 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 October 10, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR. Doc. 86-21433 Filed 9-19-86; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8817]

Application To Withdraw From Listing and Registration, Fox Television Stations, Inc.

September 17, 1986.

Issuer Delisting; Application to Withdraw from Listing and Registration; Fox Television Stations, Inc. (Serial Zero Coupon Senior Notes due December 1, 1988-1993 ("Serial Senior Notes")); Senior Exchangeable Variable Rate Debentures due December 1, 1996, ("Senior Variable Rate Debentures"); 15⅝% Senior Subordinated Debentures due December 1, 1999 ("Senior Subordinated Debentures); and Adjustable Rate Participating Subordinated Debentures due December 1, 2002 ("Participating Subordinated Debentures).

Fox Television Stations, Inc. ("Company") has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw its common stock from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons stated in the application for withdrawing this security from listing and registration include the following:

As of June 30, 1986, the number of record holders, amount outstanding and number of record holders of each such securities were as follows:

Class or series	Face amount outstanding	Number of record holders
Serial Senior Notes:		
Series 1	$466,000	8
Series 2	2,305,000	6
Series 3	114,000	6
Series 4	1,355,000	16
Series 5	72,000	3
Series 6	840,000	8
Senior Variable Rate Debentures	0	0
15¾% Senior Subordinated Debentures	26,597,000	10
Participating Subordinated Debentures	28,507,000	3

The Board of Directors of the Company has determined that, because the number of holders of each of such classes of securities is small and the trading market therein limited, the expense of maintaining the listing of the foregoing securities on the Amex is disproportionate to any benefit to the holders of such classes of securities.

Any interested person may, on or before October 6, 1986, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-21432 Filed 9-19-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1005]

Advisory Committee on South Africa; Closed Meeting

The Advisory Committee on South Africa will meet in a closed session on September 29, 1986. The meeting will commence at 9 a.m. and will be held in Room 7219, Department of State, Washington, DC. In addition, the meeting of the Committee formerly scheduled for September 11 was cancelled. Due to last-minute rescheduling, this notice is being given less than 15 days before the date of the meeting.

The session will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b (c)(1) and (c)(9)(B). The Committee will have access to and will discuss classified information. Disclosure of the Committee's deliberations could adversely affect the Committee's ability to function as a group in providing the Secretary of State with advice on matters of critical importance to the conduct of United States foreign policy. The purpose of the meeting will be to discuss the current situation in South Africa and to evaluate U.S. policy toward South Africa.

Requests for further information should be directed to: Ann Miller (202) 632-0190, 1730 K Street, NW., Washington, DC 20006.

Dated: September 15, 1986.

C. William Kontos,

Executive Director.

[FR Doc. 86-21336 Filed 9-19-86; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

American President Lines, Ltd.; Application to Midbody Abroad

American President Lines, Ltd. (APL) by application dated July 1, 1985, has requested any and all requisite approvals to permit it to midbody its three C9-M-132b class vessels in a foreign shipyard with retention of operating-differential subsidy rights. APL sought confirmation that the vessels as mofified will continue to be "built in the United States" within the meaning of sections 601(a) and 610 of the Merchant Marine Act, 1936, as amended. The application noted that certain defense features will be incorporated in the design.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington DC 20590. Comments must be received no later than 5:00 P.M. on October 7, 1986. The Martime Subsidy Board/Maritime Administrator as a matter of discretion will consider any comments submitted and take such actions with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)).

By Order of the Maritime Subsidy Board/ Maritime Administrator.

Date: September 17, 1986.

James E. Saari,

Secretary.

[FR Doc. 86-21432 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 16, 1986.

The Department of Treasury has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0140
Form Number: IRS Forms 2210 and 2210F
Type of Review: Revision
Title: Underpayment of Estimated Tax by Individuals (2210); and Underpayment of Estimated Tax by Farmers and Fishermen (2210F)

OMB Number: 1545-0531
Form Number: IRS Form 706NA
Type of Review: Extension
Title: United States Estate Tax Return—Estate of a Nonresident Not a Citizen of the United States

OMB Number: 1545-0786
Form Number: None

Type of Review: Extension
Title: Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form (INTEL-50-86/LR-151-83)
Clearance Officer: Garrick Shear, (202) 566-6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Robert Neal, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Douglas J. Colley,
Departmental Reports Management Office.

[FR Doc. 86-21413 Filed 9-19-86; 8:45 am]
BILLING CODE 4810-25-M

Internal Revenue Service

Internal Revenue Service Inventory of Commercial Activities and Schedule of A-76 Reviews

As required by OMB Circular A-76, Performance of Commercial Activities, IRS publishes its inventory of commercial activities and approximate schedule for A-76 reviews. Some of the activities in the list may be combined into larger units for purposes of review.

Listed below is an explanation of the titles and codes use in the inventory.

Titles:

Activity—The function or office being reviewed.
Location—The city and state where the activity is located
FY—The fiscal year of the actual or estimated completion date of review
FTE's—The total number of full time equivalents in the review or in each member activity; one FTE = 2087 paid work hours. Note: the "—" indicates that the activity is a member of the consolidated or multi-office review printed above it.
State—This code shows the current status (stage of work) of the review. (see below)
Outcome—The code shows the results of the completed A-76 review. (see below)

Stage Codes:

N—Not started
C—Consultant being sought
P—Preliminary planning
M—Management study in progress
S—Performance work statement in progress
G—Government cost estimate in progress
I—Independent review of government cost estimate
A—Acquisition
X—Cost comparison
Y—Appeal
F—Review Finished
U—Review Unnecessary

Outcome Codes:

A—Contracted without an A-76 review.
B—Government Cost Estimated accepted as the winning bid...activity kept in-house.
C—Contracted with the private sector as a result of a cost comparison.
D—Exempted from review because of handicapped employees.
E—Exempted from review because contracting out would cause unacceptable delay or disruption.
F—Exempted from review because activity is inherently governmental.
G—Exempted from review because of USC 3310 veteran-eligibles.
H—No commercial source available.
I—Waiver from Treasury.
J—Procured from a preferential source without an A-76 review.
K—Activity no longer exists.
L—Exempted from review because of conflict with law or regulation.

Edwin Murphy,
A-76 Coordinator.

IRS A-76 INVENTORY

Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
ADP services	Washington, DC	1986	21.0	P	
Health unit	New York City, NY	1985	3.0	F	A
Support and distribution SVCS	do	1985	4.0	U	K
—Bulk storage	do	1985	1.0	U	K
—Stock room	do	1985	1.0	U	K
—Labor services	do	1985	1.0	U	K
—Repair	do	1985	1.0	U	K
ADP services	do	1989	2.0	N	
Space layout and drafting	do	1986	1.0	U	L
Files	Washington, DC	1988	5.0	N	
Support and distribution SVCS	Albany, NY	1986	4.0	G	
—OTC forms distribution	do	1986	1.0	G	
—Labor services	do	1986	1.0	G	
—Mail room	do	1986	2.0	G	
ADP services	do	1988	3.0	N	
Space layout and drafting	do	1986	0.3	U	L
Office services	do	1986	1.0	U	K
—Teller unit	do	1986	0.5	U	K
—Centralized files	do	1986	0.5	U	K
Support and distribution SVCS	Augusta, ME	1988	3.2	N	
—Inventory and supply	do	1988	1.0	N	
—OTC forms distribution	do	1988	1.0	N	
—Teller unit	do	1988	0.5	N	
—Mail room	do	1988	0.7	N	
ADP services	do	1988	1.4	N	
Support and distribution SVCS	Boston, MA	1986	12.0	I	
—Mail room	do	1986	2.0	I	
—Bulk storage	do	1986	2.0	I	
—Labor services	do	1986	2.0	I	
—Motor vehicle operation	do	1986	2.0	I	
—Inventory and supply	do	1986	2.0	J	
—OTC forms distribution	do	1986	2.2	I	
Space layout and drafting	do	1986	1.5	U	L
Centralized files	do	1986	11.0	U	K
ADP services	do	1987	12.5	N	
Teller unit	do	1988	8.0	N	
Word processing	do	1986	11.0	U	K
Appraisers	do	1988	5.0	N	
Centralized files	Brooklyn, NY	1985	10.0	U	K
Teller unit	do	1988	4.0	N	
—Bulk storage	do	1988	1.5	N	
Support and distribution SVCS	do	1988	6.5	N	
—Inventory and supply	do	1988	1.5	N	
—OTC forms distribution	do	1988	2.0	N	

IRS A-76 INVENTORY—Continued

Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
—Labor services	do	1986	0.5	F	A
—Motor vehicle operation	do	1988	1.5	N	
ADP services	do	1988	9.0	N	
Space layout and drafting	do	1986	1.0	U	L
Mail room	do	1989	4.0	N	
Word processing/central files	Buffalo, NY	1985	13.0	U	K
ADP services	do	1987	14.0	N	
Support and distribution SVCS	do	1988	5.0	N	
—Bulk storage	do	1988	1.0	N	
—Inventory and supply	do	1988	1.0	N	
—Labor services	do	1988	1.0	N	
—Mail room	do	1988	1.0	N	
—Library	do	1988	1.0	N	
Space layout and drafting	do	1986	0.2	U	L
Records search	do	1988	5.0	N	
Support and distribution SVCS	Burlington, VT	1988	1.2	N	
—Inventory and supply	do	1988	0.4	N	
—OTC forms distribution	do	1988	0.4	N	
—Mail room	do	1988	0.4	N	
ADP services	do	1988	1.0	N	
Support and distribution SVCS	Hartford, CT	1986	10.0	I	
—Bulk storage	do	1986	2.0	I	
—Inventory and supply	do	1986	2.0	I	
—OTC forms distribution	do	1986	2.0	I	Labor services
—Labor services	do	1986	1.0	I	
—Motor vehicle operation	do	1986	1.0	I	
—Mail room	do	1986	2.0	I	
Office services	do	1986	2.0	U	K
—Centralized files	do	1986	1.0	U	K
—Library	do	1986	1.0	U	K
Space layout and drafting	do	1986	1.5	U	L
ADP services	do	1988	4.0	N	
Word processing	do	1988	3.0	N	
Support and distribution SVCS	Manhattan, NY	1986	13.0	M	
—Bulk storage	do	1986	3.0	M	
—Inventory and supply	do	1986	3.0	M	
—OTC forms distribution	do	1986	3.0	M	
—Labor sevices	do	1986	4.0	M	
Office services	do	1986	18.0	U	K
—Centralized files	do	1986	16.0	U	K
—Typing unit	do	1986	2.0	U	K
Teller unit	do	1988	5.0	N	
Office services	do	1986	18.0	U	K
—Copying center	do	1986	0.4	U	K
Mail room	do	1988	5.0	N	
Word processing	do	1986	15.0	U	K
Space layout and drafting	do	1986	1.8	U	L
ADP services	do	1987	18.0	N	
Appraisers	do		8.0	N	
Support and distribution SVCS	Portsmouth, NH	1988	1.1	N	
—Inventory and supply	do	1988	0.4	N	
—Mail room	do	1988	0.4	N	
—OTC forms distribution	do	1988	0.3	N	
ADP services	do	1988	3.0	N	
Support and distribution SVCS	Providence, RI	1988	1.3	N	
—Inventory and supply	do	1988	0.7	N	
—Mail room	do	1988	0.6	N	
Support and distribution SVCS	Andover, MA	1986	23.0	G	
—Bulk storage	do	1986	4.0	G	
—Labor services	do	1986	3.0	G	
—Inventory and supply	do	1986	3.0	G	
—OTC forms distribution	do	1986	4.0	G	
—Document destruction	do	1986	1.0	G	
—Motor vehicle operation	do	1986	4.0	G	
—Mail room	do	1986	4.0	G	
Machines SVCS unit and repair	do	1986	14.0	G	
ADP services	do	1988	3.4	N	
Centralized files	do	1987	175.0	N	
Health unit	do	1988	3.0	N	
Space layout and drafting	do	1986	1.0	U	L
Word processing	do	1988	15.0	N	
1040 ES receipt and control	do	1987	24.5	N	
Warehouse operation	Brookhaven, NY	1986	24.5	I	
Health unit	do	1986	3.5	I	
Mail room	do	1988	8.0	N	
ADP services	do	1987	6.9	N	
Machine services	do	1988	9.1	N	
Central and return files	do	1987	115.0	N	
Space layout and drafting	do	1986	0.5	U	L
1040 ES receipt and control	do	1987	15.8	N	
Mail room	Philadelphia, PA	1985	2.0	F	B
Support and distribution SVCS	do	1988	4.0	N	
—Bulk storage	do	1988	2.0	N	
—Inventory and supply	do	1988	2.0	N	
ADP services	do	1989	9.6	N	
Space layout and drafting	do	1986	2.5	U	L
Art, graphics, audio-visual	do	1989	1.0	N	
ADP services	do	1989	7.0	N	
Do	Baltimore, MD	1989	7.0	N	
OTC forms distribution	do	1986	2.6	A	
Motor vehicle operation	do	1986	0.3	F	B
Mail room	do	1986	3.5	A	

IRS A-76 INVENTORY—Continued

Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
Support and distribution SVCS	do	1987	2.0	N	
—Bulk storage	do	1987	1.0	N	
—Inventory and supply	do	1987	1.0	N	
Space layout and drafting	do	1986	1.5	U	L
Teller unit	do	1989	3.0	N	
Centralized files	do	1989	6.0	N	
—Records search	do	1989	3.0	N	
Support and distribution SVCS	Washington, DC	1987	5.0	A	
—Mail room	do	1987	2.0	A	
—Warehouse and supply	do	1987	2.0	A	
—Motor vehicle operation	do	1987	1.0	A	
Centralized files	do	1988	2.0	N	
ADP services	do	1988	6.0	N	
Space layout and drafting	do	1989	0.6	U	L
Translation	do	1989	1.0	N	
OTC forms distributuion	Newark, NJ	1986	0.7	A	
Copying and duplication	do	1986	0.6	I	
Support and distribution SVCS	do	1989	5.5	N	
—Bulk storage	do	1989	3.0	N	
—Inventory and supply	do	1989	2.5	N	
Courier/motor vehicle oper	do	1986	0.4	U	G
ACS sys admin support	do	1989	9.0	N	
Word Processing	do	1989	4.0	N	
Centralized files	do	1989	2.5	N	
—Records search	do	1987	40.0	N	
Space layout and drafting	do	1986	1.0	U	L
Appraisers	do	1988	2.0	N	
Support and distribution SVCS	Philadelphia, PA	1988	9.3	N	
—Motor vehicle operation	do	1988	0.5	N	
—Bulk storage	do	1988	0.5	N	
—Inventory and supply	do	1988	0.5	N	
—Labor	do	1988	0.5	N	
—Mail room	do	1987	7.0	N	
—OTC forms distribution	do	1988	0.3	N	
ADP services	do	1987	5.0	N	
Appraisers	do	1988	4.0	N	
Space layout and drafting	Pittsburgh, PA	1986	0.5	F	B
Mail room	do	1987	1.0	M	
ADP services	do	1989	2.0	N	
Support and distribution SVCS	do	1989	3.5	N	
—Labor services	do	1989	1.5	N	
—Bulk storage	do	1989	1.0	N	
—Inventory and supply	do	1989	1.0	N	
Appraisers	do	1988	1.0	N	
Space layout and drafting	Richmond, VA	1986	0.5	U	L
OTC forms distribution	do	1986	1.0	S	
Office services	do	1986	3.4	S	
—Mail room	do	1986	2.0	S	
—Copying and duplication	do	1986	1.4	S	
Warehousing	do	1988	3.0	S	
ADP services	do	1987	6.0	N	
Health unit	Philadelphia, PA	1986	3.0	F	B
Motor vehicle operation	do	1986	8.0	S	
Support and distribution SVCS	do	1986	11.0	S	
—Bulk storage	do	1986	6.0	S	
—Inventory and supply	do	1986	5.0	S	
Centralized files	do	1987	160.0	N	
Machine services	do	1988	14.0	N	
Space layout and drafting	do	1986	0.3	U	L
1040 ES receipt and control	do	1987	15.3	N	
ADP services	Atlanta, GA	1988	7.0	N	
Art and graphics	do	1989	1.0	N	
Prior years tax forms program	do	1984	1.0	F	A
Sup and dis, Inv and supy	do	1988	2.0	N	
ADP services	do	1988	7.0	N	
Mail room, motor vehicle	do	1986	7.0	S	
Microfilm	do	1986	5.3	G	A
Space layout and drafting	do	1986	2.0	U	L
Bulk storage and supply	do	1988	8.0	N	
OTC forms distribution	do	1989	1.0	N	
Teller unit	do	1987	3.0	N	
Health unit	do	1985	1.0	A	
Records search	do	1988	18.7	N	
Appraisers	do		6.0	N	
ADP services	Birmingham, AL	1988	5.0	N	
Mail room	do	1986	2.0	S	
Space layout and drafting	do	1986	1.0	U	L
Inventory and supply	do	1988	2.0	N	
Teller unit	do	1987	2.0	N	
Records search	do	1988	9.7	N	
ADP services	Columbia, SC	1988	5.7	N	
Mail room	do	1986	1.0	S	
Space layout and drafting	do	1986	0.2	U	L
Bulk storage and supply	do	1988	1.8	N	
OTC forms distribution	do	1989	1.3	N	
Teller unit	do	1987	2.0	N	
Records search	do	1988	11.7	N	
ADP services	Greensboro, NC	1988	19.0	N	
Word processing	do	1988	4.5	N	
Mail room	do	1986	4.0	S	
Space layout and drafting	do	1986	0.5	U	L
Inventory and supply	do	1988	2.0	N	

IRS A-76 INVENTORY—Continued

Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
OTC forms distribution	do	1989	2.0	N	
Teller unit	do	1987	3.0	N	
Health unit	do	1986	1.0	I	
Records search	do	1988	26.0	N	
ADP services	Jackson, MS	1988	6.5	N	
Mail room	do	1986	2.0	S	
Bulk storage and supply	do	1988	1.0	N	
OTC forms distribution	do	1989	0.2	N	
Teller unit	do	1987	1.0	N	
Records search	do	1988	8.0	N	
ADP services	Jacksonville, FL	1988	10.0	N	
Mail room	do	1986	11.5	S	
Space layout and drafting	do	1986	1.5	U	L
Bulk storage and supply	do	1988	3.5	N	
Teller unit	do	1987	9.0	N	
Records search	do	1988	50.0	N	
Appraisers	Ft Launderdale, FL	1988	6.0	N	
ADP services	Little Rock, AR	1988	5.0	N	
Mail room	do	1986	1.0	S	
Space layout and drafting	do	1986	0.8	U	L
Inventory and supply	do	1988	1.3	N	
OTC forms distribution	do	1989	1.5	N	
Teller unit	do	1987	2.0	N	
Records search	do	1988	13.4	N	
ADP services	Nashville, TN	1988	23.1	N	
Space layout and drafting	do	1986	1.0	U	L
Mail room	do	1986	1.0	M	
Bulk storage and inventory	do	1988	3.0	N	
Teller unit	do	1987	3.0	N	
Records search	do	1988	26.1	N	
ADP services	New Orleans, LA	1988	6.0	N	
Word processing	do	1988	8.0	N	
Mail room	do	1986	3.0	S	
Space layout and drafting	do	1986	1.0	U	L
Inventory and supply	do	1988	2.5	N	
OTC forms distribution	do	1989	1.0	N	
Teller unit	do	1987	3.0	N	
Records search	do	1988	19.7	N	
ADP services	Chamblee, GA	1988	18.0	N	
Word processing	do	1988	35.0	N	
Media services (editor/illus	do	1989	1.7	N	
Document destruction	do	1984	0.5	F	A
Repair	do	1989	4.0	M	
Mail room	do	1986	10.0	S	
Omni-sort repair	do	1984	1.0	F	A
Machine services	do	1987	19.5	M	
Centralized and return files	do	1988	115.3	N	
Space layout and drafting	do	1986	1.0	U	L
Bulk storage inventory/supply	do	1989	8.8	N	
1040 ES receipt and control	Memphis, TN	1986	17.5	N	
Health unit	Chamblee, GA	1985	4.5	A	
1040 ES receipt and control	do	1987	23.1	N	
ADP services	Memphis, TN	1988	20.0	N	
Word processing, typing	do	1988	40.0	N	
Illustration	do	1989	1.0	N	
Document destruction	do	1984	0.5	F	A
Repair	do	1989	5.0	M	
Mail room	do	1986	9.0	S	
Machine services	do	1987	11.5	M	
Centralized and return files	do	1988	154.0	N	
Bulk storage/inventory/supply	do	1985	12.0	A	
Health unit	do	1986	1.8	A	
Space layout and drafting	Cincinnati, OH	1986	6.0	A	
ADP service (IV phase)	do	1987	8.5	N	
—Key entry and filing	do	1987	2.5	N	
—ADP services	do	1987	6.0	N	
Teller units	do	1987	26.0	A	
Support and distribution SVCS	do	1986	13.0	A	
—Bulk storage	do	1986	6.0	A	
—OTC forms distribution	do	1986	5.0	A	
—Mail room and messengers	do	1986	2.0	A	
ADP services	do	1989	8.0	N	
—Data entry	do	1989	2.0	N	
OA/ACS services	do	1989	6.0	N	
ADP services	Cleveland, OH	1987	36.0	M	
Data entry	do	1987	11.0	M	
OA/ACS services	do	1987	25.0	M	
Support and distribution SVCS	do	1986	13.0	S	
—Bulk storage	do	1986	2.0	S	
—OTC forms distribution	do	1986	4.0	S	
—Labor services	do	1986	2.0	S	
—Library services	do	1986	0.5	S	
—Mail room	do	1986	3.0	S	
—Centralized files	do	1986	1.0	S	
—Document destruction	do	1987	0.5	S	
Records search	do	1989	9.0	N	
Key entry (CSB)	Detroit, MI	1986	12.5	A	
ADP services (OA and ACS)	do	1986	17.0	A	
Support and distribution SVCS	do	1986	13.0	G	
—Bulk storage	do	1986	6.0	G	
—OTC forms distribution	do	1986	2.0	G	
—Library services	do	1986	0.5	G	

IRS A-76 INVENTORY—Continued

Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
—Mail room	do	1986	3.5	G	
Appraisers	do	1988	1.0	N	
OA/ACS services	Indianapolis, IN	1987	18.0	A	
Support and distribution SVCS	do	1989	6.0	N	
—Bulk storage	do	1987	2.0	N	
—Labor services	do	1987	1.0	N	
—Mail room	do	1987	1.5	N	
—Centralized files	do	1987	0.5	N	
Data entry services	do	1987	9.0	A	
Support and distribution SVCS	Louisville, KY	1986	5.0	U	D
—Bulk storage	do	1986	2.0	U	D
—OTC forms distribution	do	1986	1.0	U	D
—Labor services	do	1986	1.0	U	D
—Mail room	do	1986	1.0	U	D
ADP services	do	1987	15.0	N	
OA services	do	1987	10.0	N	
Data entry services	do	1987	5.0	N	
Support and distribution SVCS	Parkersburg, WV	1989	2.0	N	
—Mail room	do	1989	0.5	N	
—Supplies, storage, labor	do	1986	1.5	N	
ADP services	do	1989	5.0	N	
OA services	do	1989	3.0	N	
Data entry	do	1989	2.0	N	
Document destruct, labor SVCS	Covington, KY	1986	1.6	F	J
ADP services (OA)	do	1986	10.0	A	
Health unit	do	1986	4.0	A	
Motor vehicle	do	1985	5.0	F	B
Repair and maintenance	do	1985	6.0	F	B
Word processing, typing	do	1986	11.0	A	
Machine services	do	1986	10.6	A	
Support and distribution SVCS	do	1989	6.0	N	
—Bulk storage	do	1987	1.0	N	
—Inventory and supply	do	1987	1.0	N	
—Mail room	do	1987	3.0	N	
—Library services	do	1987	0.5	N	
—Graphics	do	1987	0.5	N	
Centralized files	do	1987	120.0	N	
1040 ES receipt and control	do	1987	18.7	N	
White-collar support services	Chicago, IL	1987	13.2	N	
—Photocopy	do	1987	1.5	N	
—Inventory and supply	do	1987	0.8	N	
—OTC distribution	do	1987	4.9	N	
—Facsimile	do	1987	0.7	N	
—Mail room	do	1987	4.8	N	
—Document destruction	do	1987	0.5	N	
RO/DO ADP services	do	1988	8.0	N	
Blue collar services	do	1989	3.8	N	
—Motor vehicles	do	1989	0.4	N	
—Labor Services	do	1989	1.7	N	
—Warehouse	do	1989	1.5	N	
—Name plates	do	1989	0.2	N	
ADP services (ACS support)	do	1987	10.0	N	
Training center	do	1986	8.0	F	H
Teller unit	Aberdeen, SD	1989	0.7	N	
Support and distribution SVCS	do	1988	0.6	N	
—Bulk storage	do	1988	0.1	N	
—Inventory and supply	do	1988	0.1	N	
—OTC distribution	do	1988	0.2	N	
—Mail room	do	1988	0.2	N	
Space layout and drafting	Chicago, IL	1986	0.5	U	L
Exam office services	do	1987	11.5	N	
EP/EO office services	do	1987	2.0	N	
Teller unit	do	1989	8.0	N	
Files/records search	do	1989	3.0	N	
Appraisers	do	1988	4.0	N	
Support and distribution SVCS	Des Moines, IA	1988	3.0	N	
—Bulk storage	do	1988	0.5	N	
—Mail room	do	1988	0.7	N	
—Inventory and supply	do	1988	1.5	N	
—Labor services	do	1988	0.2	N	
—OTC distribution	do	1988	0.1	N	
Space layout and drafting	do	1986	0.3	U	L
ADP services	do	1989	4.0	N	
Support and distribution SVCS	Fargo, ND	1988	0.8	N	
—Bulk storage	do	1988	0.1	N	
—Inventory and supply	do	1988	0.1	N	
—OTC forms distribution	do	1988	0.4	N	
—Mail room	do	1988	0.2	N	
Teller unit	do	1988	0.9	N	
Support and distribution SVCS	Helena, MT	1989	1.9	N	
—Bulk storage	do	1989	0.3	N	
—Inventory and supply	do	1989	0.5	N	
—OTC forms distribution	do	1989	1.0	N	
—Mail room	do	1989	0.1	N	
ADP services	do	1989	2.0	N	
Space layout and drafting	Milwaukee, WI	1986	0.3	U	L
ADP services	do	1989	4.0	N	
Support and distribution svs	do	1986	2.0	U	D
—Mail room	do	1986	1.0	U	D
—Inventory and supply	do	1986	1.0	U	D
ADP services	Omaha, NE	1989	3.8	N	
Support and distribution svcs	do	1988	1.9	N	

IRS A-76 INVENTORY—Continued

Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
—Bulk storage	do	1988	0.7	N	
—Inventory and supply	do	1988	0.3	N	
—OTC forms distribution	do	1988	0.2	N	
—Mail room	do	1988	0.4	N	
—Library services	do	1988	0.3	N	
Space layout and drafting	do	1986	0.4	U	L
Do	St Louis, MO	1986	1.0	U	L
ADP services	do	1988	6.5	N	
Health unit	do	1988	1.0	N	
Support and distribution svcs	do	1989	5.8	N	
—Bulk storage	do	1989	0.5	N	
—Inventory and supply	do	1989	0.5	N	
—OTC forms distribution	do	1989	2.0	N	
—Labor services	do	1989	0.8	N	
—Mail room	do	1989	2.0	N	
Teller unit	do	1989	3.0	N	
ADP services (ACS support)	do	1989	9.5	N	
Support and distribution svcs	St Paul, MN	1988	6.5	N	
—Bulk storage	do	1988	1.0	N	
—Inventory and supply	do	1988	2.5	N	
—OTC forms distribution	do	1988	1.0	N	
—Mail room	do	1988	2.0	N	
ADP services	do	1989	4.0	N	
Space layout and drafting	do	1986	1.0	U	L
Teller unit	do	1988	2.0	N	
Library services	do	1989	1.0	N	
Support and distribution svcs	Springfield, IL	1988	4.3	N	
—Bulk storage	do	1988	1.0	N	
—Inventory and supply	do	1988	1.2	N	
—OTC forms distribution	do	1988	0.2	N	
—Labor services	do	1988	0.1	N	
—Mail room	do	1988	1.8	N	
ADP services	do	1989	4.0	N	
Space layout and drafting	do	1986	0.6	U	L
Teller unit	do	1989	1.5	N	
Health unit	Kansas City, MO	1989	1.5	N	
Support and distribution svcs	do	1986	17.0	P	
—Inventory and supply	do	1986	4.0	P	
—Labor services	do	1986	3.0	P	
—Motor vehicle operation	do	1986	4.0	P	
—Machine repair	do	1986	5.0	P	
—Document destruction	do	1986	1.0	P	
—Mail room	do	1986	1.0	P	
Bulk storage	do	1989	5.0	P	
Space Layout and drafting	do	1986	2.5	U	L
ADP services	do	1989	8.0	N	
Word processing	do	1989	5.0	N	
Centralized files	do	1987	68.0	N	
Machine services	do	1988	9.0	N	
1040 ES receipt and control	do	1986	20.5	N	
Space layout and drafting	Dallas, TX	1986	0.5	U	L
Support and distribution SVCS	do	1989	2.0	N	
—Bulk storage	do	1989	0.5	N	
—Inventory and supply	do	1989	0.5	N	
—Mail room	do	1989	1.0	N	
ADP services	do	1987	11.0	N	
Library services	do	1984	0.5	U	A
Courier services	do	1984	0.5	U	A
OTC forms distribution	Austin, TX	1986	2.2	G	
ADP service	do	1987	12.2	S	
Support and distribution SVCS	do	1988	7.0	N	
—Bulk storage	do	1988	2.0	N	
—Inventory and supply	do	1988	2.0	N	
—Mail room	do	1988	3.0	N	
Teller Unit	do	1987	3.5	N	
Telecommunications sys design	Dallas, TX	1987	4.0	G	
ID media control	do	1986	0.5	U	K
Microfilming	do	1986	7.5	G	
Space layout and drafting	do	1986	5.0	U	L
ADP services	do	1987	26.0	M	
Warehousing	do	1987	5.0	M	
—Bulk storage	do	1987	2.0	M	
—Inventory and supply	do	1987	3.0	M	
OTC forms distribution	do	1988	3.7	N	
Centralized files	do	1988	7.0	N	
Records search	do	1988	0.3	N	
Motor vehicle operation	do	1989	0.2	N	
Teller unit	do	1989	10.0	N	
Mail room	do	1989	4.0	N	
Document destruction	do	1984	0.5	U	A
Appraisers	do	1988	1.0	N	
Bulk storage, inventory, supply	Denver, CO	1987	2.5	G	
OTC forms distribution	do	1987	3.0	M	
Mail room	do	1988	3.0	N	
Library services	do	1987	1.0	M	
ADP services	do	1987	18.0	N	
Space layout and drafting	do	1986	1.0	U	L
Teller unit	do	1989	5.0	N	
Records search	do	1989	0.1	N	
Library services	do	1987	1.0	G	
Inventory and supply	Houston, TX	1987	4.2	G	
OTC forms distribution	do	1986	3.3	M	

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Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
Teller unit	do	1988	7.0	N	
Mail room	do	1988	4.0	N	
Centralized files	do	1986	1.0	U	K
ADP services	do	1987	14.5	N	
Space layout and drafting	do	1986	1.0	U	L
Bulk storage	do	1989	2.5	N	
ADP services	Oklahoma City, OK	1989	8.0	N	
Space layout and drafting	do	1986	0.3	U	L
Support and distribution SVCS	do	1986	7.7	U	G
—Inventory and supply	do	1986	3.3	U	G
—OTC forms distribution	do	1986	1.6	U	G
—Mail room	do	1986	2.2	U	G
—Physical distribution	do	1986	0.6	U	G
Teller unit	do	1989	2.0	N	
Appraisers	Houston, TX	1988	3.0	N	
Records search	Phoenix, AZ	1987	2.7	G	
Teller unit	do	1985	2.5	N	
Mail room	do	1987	2.0	M	
Word processing	do	1989	7.0	N	
ADP services	do	1988	7.0	N	
Space layout and drafting	do	1986	0.2	U	L
Inventory	do	1989	2.0	N	
Teller unit	Salt Lake City, UT	1986	2.0	N	
Mail room	do	1987	1.0	N	
Bulk storage, inventory, supply	Wichita, KS	1988	4.2	N	
ADP services	do	1989	6.0	N	
Space layout and drafting	do	1986	0.7	U	L
Teller unit	do	1989	1.3	N	
Document destruction	Austin, TX	1986	1.5	G	
Machine services unit	do	1986	53.5	G	
Health unit	do	1986	2.0	G	
Audio-visual, art, graphics	do	1986	1.1	G	
Space layout and drafting	do	1986	2.0	U	L
Bulk storage	do	1988	9.0	N	
Labor services	do	1988	2.0	N	
Motor vehicle operation	do	1989	1.0	N	
Repair	do	1989	7.0	N	
Mail room	do	1989	1.0	N	
Central files, record search	do	1987	95.0	N	
Microfilming	do	1988	1.0	N	
Inventory and supply	do	1988	8.0	N	
ADP services	do	1987	25.0	N	
Library services	do	1988	1.0	N	
Word processing	do	1987	30.0	N	
1040 ES receipt and control	do	1987	19.7	N	
Custodians	do	1987	35.0	N	
Office services	Ogden, UT	1987	70.0	G	
—Centralized files	do	1987	65.7	G	
—Records serarch	do	1967	4.0	G	
—Document destruction	do	1987	0.3	G	
Repair	do	1987	3.0	G	
ADP services	do	1987	9.0	S	
Art and graphics	do	1988	1.5	N	
Health unit	do	1988	3.0	N	
Labor services	do	1987	5.7	N	
Bulk Storage	do	1987	6.2	N	
Inventory and supply	do	1989	1.0	N	
Mortor vehicle operation	do	1987	4.1	N	
Microfilming	do	1987	2.5	N	
Machine services unit	do	1987	18.5	M	
Mail room	do	1989	5.5	N	
Space layout and drafting	do	1986	1.0	U	L
Library services	do	1988	1.5	N	
1040 ES receipt and control	do	1987	23.9	N	
Visual	San Francisco, CA	1989	1.0	N	
ADP services	do	1987	129.6	N	
Mail room	do	1988	1.6	N	
Key entry	do	1988	4.0	N	
Bulk storage and forms mgt	do	1989	1.8	N	
Space design	do	1986	1.0	U	L
ADP services	Anchorage, AK	1986	2.0	N	
Administrative support	do	1989	1.0	N	
—Labor services	do	1989	0.5	N	
—Mail room	do	1989	0.5	N	
Teller unit	do	1988	2.0	N	
ADP services	Boise, ID	1989	2.5	N	
Key entry	do	1989	1.0	N	
Bulk storage and forms mgt	do	1989	1.0	N	
Records search	do	1989	0.0	N	
Teller unit	do	1988	1.0	N	
ADP services	Honolulu, HI	1989	0.8	N	
Key entry	do	1989	1.6	N	
Teller unit	do	1986	1.0	N	
Records search	do	1989	1.0	N	
ADP services	Laguna Niguel, CA	1987	21.0	N	
Key entry	do	1986	21.0	M	
Mail room	do	1989	2.0	N	
Wordprocessing	do	1986	16.5	G	
Teller unit	do	1988	7.0	N	
OTC forms distribution	do	1989	1.7	N	
Bulk storage	do	1988	2.2	N	
Records search	do	1988	7.0	N	

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Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
Space design	do	1986	0.5	U	L
Centralized files	do	1989	1.4	N	
Appraisers	do	1988	5.0	N	
Records search	Los Angeles, CA	1989	2.0	N	
Administrative support	do	1986	9.2	S	
—Labor services	do	1986	1.5	S	
—Mail room	do	1986	5.7	S	
—Microfilming	do	1986	1.5	S	
—Motor vehicle operation	do	1986	0.5	S	
ADP services	do	1987	13.0	N	
Key entry	do	1986	20.0	M	
Teller unit	do	1988	9.0	N	
Word processing	do	1986	19.5	M	
OTC forms distribution	do	1986	2.6	U	A
Bulk storage	do	1988	8.0	N	
Centralized files	do	1986	5.0	S	
Space design	do	1986	0.5	U	L
Library services	do	1986	1.0	U	L
Appraisers	do	1988	7.0	N	
Records search	Portland	1986	0.4	U	A
ADP services	do	1989	8.5	N	
Mail room	do	1988	1.8	N	
Word processing	do	1988	7.0	N	
Teller unit	do	1988	3.2	N	
OTC forms distribution	do	1989	1.2	N	
Space design	do	1986	0.5	U	L
Bulk storage and forms mgt	do	1988	1.9	N	
ADP services	Las Vegas, NV	1989	2.7	N	
Key entry	do	1988	5.4	N	
Mail room	do	1989	1.6	N	
Teller unit	do	1988	1.0	N	
OTC forms distribution	do	1989	1.0	N	
Space design	do	1986	0.8	U	L
Do	Sacramento, CA	1986	2.0	U	L
ADP services	do	1989	6.5	N	
Mail room	do	1988	3.2	N	
Word processing	do	1988	9.4	N	
Bulk storage and forms mgt	do	1989	1.8	N	
Centralized files	do	1989	4.0	N	
Teller unit	do	1988	5.5	N	
OTC forms distribution	do	1989	1.0	N	
Records search	do	1989	5.6	N	
OTC forms distribution	San Francisco, CA	1989	2.7	N	
Bulk storage and form mgt	do	1988	9.7	N	
Teller unit	do	1988	9.9	N	
ADP services	do	1987	27.5	N	
Word processing	do	1986	9.0	P	
Key entry	do	1988	7.1	N	
Administrative support	do	1988	7.6	N	
—Labor services	do	1988	0.5	N	
Mail	do	1988	6.3	N	
Motor vehicle operation	do	1988	0.3	N	
—Library services	do	1988	0.5	N	
Centralized files	do	1987	31.4	N	
Records search	do	1989	4.3	N	
Space design	do	1986	2.2	U	L
Appraisers	do	1988	5.0	N	
ADP services	San Jose, CA	1987	10.1	N	
Key entry	do	1988	8.9	N	
Mail room	do	1989	2.0	N	
Bulk storage and forms mgt	do	1989	2.0	N	
Centralized files	do	1988	2.4	N	
Word processing	do	1989	2.0	N	
Teller unit	do	1988	7.0	N	
Records search	do	1989	3.0	N	
Space design	do	1986	1.0	U	L
OTC forms distribution	do	1988	2.7	N	
Key entry	Seattle, WA	1986	6.6	G	
Teller unit	do	1988	5.0	N	
Word processing	do	1986	11.0	M	
ADP services	do	1987	16.0	N	
Administrative support	do	1989	2.0	N	
—Mail room	do	1989	1.0	N	
—Microfilming	do	1989	1.0	N	
Centralized files	do	1988	8.0	N	
Records search	do	1989	1.0	N	
Space design	do	1986	1.5	U	L
OTC forms distribution	do	1988	2.5	N	
Bulk storage	do	1989	2.5	N	
Appraisers	do	1988	1.0	N	
Courier service	Fresno, CA	1985	2.1	U	K
Telephone operator	do	1985	1.0	U	K
Health unit	do	1986	3.3	G	
Machine services	do	1986	14.4	S	
Repair	do	1986	5.0	G	
ADP services	do	1988	10.0	N	
Word processing	do	1987	27.0	N	
Key entry	do	1988	9.0	N	
Administrative support	do	1986	14.0	M	
—Document destruction	do	1986	1.0	M	
—Labor services	do	1986	6.0	M	
—Mail room	do	1986	5.0	M	

IRS A-76 INVENTORY—Continued

Activity	Location	Fiscal Year	FTE'S	Stage	Outcome
—Motor vehicle operation	do	1986	2.0	M	
Centralized files/microfilming	do	1987	178.0	N	
Space design	do	1986	1.0	U	L
Bulk storage and forms mgt	do	1987	54.0	N	
1040 ES receipt and control	do	1987	19.4	N	
Mail room, centralized files	Washington, DC	1987	15.0	N	
Library services	do	1988	1.0	N	
Docket room	do	1987	26.0	N	
Engineers/appraisers	do	1987	20.0	N	
Centralized files	do	1988	8.0	N	
Statistics of income	do	1988	400.0	M	
Art and graphics	Arlington, VA	1989	1.0	N	
Payroll/personnel	Detroit, MI	1988	524.3	N	
ADP services (software)	Washington, DC	1987	79.0	N	
Mail room	do	1989	1.0	N	
Do	do	1989	4.0	N	
ENG valuation, appraisal	do	1986	301.0	U	F
Inventory, supply	do	1986	1.0	U	K
Microfilming	do	1986	4.0	U	J
ADP services	do	1988	2.0	N	
Do	do	1989	1.0	N	
Mail room, motor vehicle	do	1986	14.0	G	
Financial audit	do	1987	180.0	N	
Space layout and drafting	do	1986	6.2	U	L
FOI reading room	do	1987	6.0	N	
Inventory and dist. (CIDS)	do	1987	597.0	N	
ADP service (operations)	do	1987	49.0	N	
ADP services	do	1989	5.0	N	
Centralized files	do	1986	8.0	G	
Building management	do	1988	29.0	N	
Norm computer room	do	1987	12.0	N	
Records search	do	1987	22.4	N	
Health Unit	Detroit, MI	1987	0.8	U	A
Currency transaction rpts	do	1988	280.0	N	
Storage, supply, lbr, mtr veh	do	1989	7.7	N	
Illustrating, drafting	do	1989	1.0	N	
Taxpayer compliance meas. prg	do	1989	49.0	N	
MIR transcription	do	1984	3.0	F	B
Foreign area study	do	1985	2.0	F	B
Management information rptg	do	1989	156.0	N	
Administrative support	Martinsburg, WV	1989	5.5	N	
—Bulk storage	do	1989	0.5	N	
—Inventory, supply	do	1989	1.5	N	
—Motor vehicle operation	do	1989	2.5	N	
—Mail room	do	1989	0.5	N	
—Library	do	1989	0.5	N	
Mail and file	Washington, DC	1989	4.0	N	
Word processing	Arlington, VA	1989	2.5	N	
Audio-visual	do	1985	4.0	U	A
ADP services	Newark, NJ	1989	8.9	N	
—OTC forms distribution	Indianapolis, IN	1987	1.0	N	

Edwin Murphy,

A-76 Program Manager.

[FR Doc. 86-21441 Filed 9-19-86; 8:45 am]

BILLING CODE 4830-01-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 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that such a submission has been made. USIA is requesting approval of information collection activities associated with its "University Affiliation Program".

DATE: Comments must be received by October 15, 1986.

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 Officer, John E. Davenport, United States Information Agency, M/ASP, 301 Fourth Street, SW., Washington, DC 20547, telephone (202) 485-7505. 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: "University Affiliation Program".

Abstract

Under the University Affiliation Program, USIA offers grant-in aid to support the development or enhancement of institutional partnerships between U.S. and non-U.S. institutions of higher education. The program promotes mutual understanding, strengthens research and teaching abilities and improves or expands the academic offerings of the institutions involved.

Dated: September 15, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-21323 Filed 9-19-86; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Adninistration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains a revision and lists the following information: (1) the department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Jill Cottine, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joe Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 16, 1986.

By direction of the Administrator.

David A. Cox,

Associate Deputy Administrator for Management.

Revision

1. Department of Veterans Benefits
2. Claim Under Loan Guaranty
3. VA Form 26–1874
4. On occasion
5. Businesses or other for-profit; Small businesses or organizations
6. 38,152 responses
7. 38,152 hours
8. Not applicable

[FR Doc. 86–21335 Filed 9–19–86; 8:45 am]
BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 183
Monday, September 22, 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

DATE AND TIME: 9:30 am (eastern time) Tuesday, September 30, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Recommended Title VII and ADEA Contracts for 81 Federal Employment Practice (FEP) Agencies in FY 1987,
4. Recommended Tribal Employment Rights Organization (TERO) Contracts and Training for 44 TEROs in FY 1987
5. Recommended Federal Employment Practice (FEP) Agency Training in FY 1987

Closed

Litigation Authorization; General Counsel Recommendations

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: September 18, 1986.

Johnnie L. Johnson,

Attorney-Advisor, Executive Secretariat.

This Notice Issued September 18, 1986.

[FR Doc. 86–21497 Filed 9–18–86; 2:03 pm]

BILLING CODE 6750–06–M

2

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 18, 1986, 51 FR 33174.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: September 24, 1986, 10:00 a.m.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

1. Petition of National Customs Brokers and Forwarders Association of America, Inc. for Rulemaking—Licensing of Independent Ocean Freight Forwarders (46 CFR Part 510).

Joseph C. Polking,

Secretary.

[FR Doc. 86–21471 Filed 9–18–86; 11:18 am]

BILLING CODE 6730–01–M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Thursday, September 25, 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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: September 17, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–21445 Filed 9–17–86; 5:04 pm]

BILLING CODE 6210–01–M

4

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 2:00 p.m., Monday, September 22, 1986.

PLACE: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Joseph E. Moore, Acting Executive Secretary, Washington, DC 20570, Telephone: (202) 254–9430.

Dated, Washington, DC, September 17, 1986.

By direction of the Board.

Joseph E. Moore,

Acting Executive Secretary, National Labor Relations Board.

[FR Doc. 86–21501 Filed 9–18–86; 2:52 pm]

BILLING CODE 7545–01–M

5

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 22, 1986:

An open meeting will be held on Tuesday, September 23, 1986, at 10:30 a.m. in Room 1C30, followed by a closed meeting.

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. 552b(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 Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, September 23, 1986, at 10:30 a.m., will be:

1. Consideration of whether to issue an interpretive release defining how United States branches or agencies of foreign banks

are to be treated for purposes of the exemption from the registration requirements provided by section 3(a)(2) the Securities Act of 1933. For further information, please contact William H. Carter or William E. Morley at (202) 272–2573.

2. Consideration of proposed revisions to uniform Form BDW intended to simplify and clarify the form used by registered broker-dealers in withdrawing from registration with the SEC and state securities regulators. For further information, please contact Lynne Masters at (202) 272–2848.

The subject matter of the closed meeting scheduled for Tuesday, September 23, 1986, following the 10:30 a.m. open meeting, will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive actions.

Settlement of injunctive action.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matter have been added, deleted or postponed, please contact: David Mahaffey at (202) 272–2091.

Jonathan G. Katz,

Secretary.

September 16, 1986.

[FR Doc. 86–21429 Filed 9–17–86; 4:18 pm]

BILLING CODE 8010-01-M

federal register

Monday
September 22, 1986

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 23

Airworthiness Standards; Small Airplane Fatigue Requirements; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 25086; Notice No. 86-14]

Airworthiness Standards; Small Airplane Fatigue Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend Part 23 of the Federal Aviation Regulations (FAR) to include empennage, canard, and tandem wing configuration fatigue requirements for small airplanes. Service history has shown that such requirements need to be considered in small airplane designs and that fatigue characteristics should be evaluated during type certification. Fatigue requirements for airplane designs incorporating canard-type configurations are also included. The amended rule is intended to prevent catastrohic or near catastrophic accidents due to fatigue failure of critical elements of such structures.

DATE: Comments must be received on or before January 21, 1987.

ADDRESS: Comments on this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25086, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 25086. Comments may be examined in Room 915-G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of Regional Counsel, ACE-7, FAA Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be examined in the Office of Regional Counsel, ACE-7, weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. David Warner, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. Commercial telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates. Commenters should identify the regulatory docket or notice number and submit comments, in duplicate, to the Rules Docket address above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking action will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a pre-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 25086." The postcard will be date stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Information Office (APA-430), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the procedures.

Background

Service history, airworthiness directives, and documented field reports (e.g., malfunction or defect reports and maintenance difficulty records) related to unsafe or potentially unsafe fatigue/vibration conditions of empennage components on small airplanes have shown the need for empennage fatigue type certification requirements. Small airplanes typically operate in relatively severe fatigue environments; i.e., short time/distance flights, low altitude flights, and during recent years, at increasingly higher utilization (e.g., commuter and air taxi operations).

Although wing fatigue regulations for small airplanes have been in effect since Amendment 23-7 (34 FR 13078) published on August 13, 1969, similar regulations for critical empennage structure of small airplanes do not exist in Part 23 of the Federal Aviation Regulations—Airworthiness Standards: Normal, Utility, and Acrobatic Category Airplanes.

Empennage fatigue requirements have been in effect since 1979 for those propeller-driven, multiengine small airplanes that have been type certificated in accordance with Special Federal Aviation Regulations (SFAR) 41. This NPRM proposes similar requirements for all small airplanes.

Discussion

The scope of this NPRM is limited to proposals that affect the fatigue characteristics of empennage, canard, and tandem wing structures of small airplanes.

During recent years, the size, weight, power, and airspeed ranges of small airplanes have increased significantly. Each of these factors generally has a negative effect on the fatigue characteristics of the airplane structure. As previously mentioned, these negative effects on wing structure fatigue life were accounted for by the amended type certification standards contained in Amendment 23-7 (34 FR 13078; August 13, 1969).

Failure of empennage components has caused fatal airplane accidents, near-fatal accidents, severe operational problems for pilots and distrubing experiences for passengers. Similar failure of canard and forward wing structures would likely occur if such structures were not properly evaluated.

As a result of in-service empennage fatigue/vibration structural failures which have occurred in the past few years, over three dozen airworthiness directives have been issued. Additionally, several hundred service reports from field personnel (pilots, mechanics, inspectors) have been received which relate to empennage fatigue problems.

The FAA proposes to amend Part 23—Airworthiness Standards: Normal, Utility, and Acrobatic Category Airplanes to extend the current airworthiness fatigue requirements that are applicable to the wing to the empennage, canard, and tandem wing structures.

The terms "canard," "canard configuration," "tandem wing configuration," and "winglet," as used in this notice mean:

Canard—the forward wing of a canard configuration which may be a fixed or variable geometry surface, with or without control surfaces.

Canard configuration—an airplane configuration in which the span of the forward wing is substantially less than that of the aft wing.

Tandem wing configuration—an airplane configuration having two wings of similar span, mounted in tandem.

Winglet—an out-of-plane surface extending from a lifting surface. This surface may or may not have control surfaces.

Economic Impact

A regulatory evaluation and regulatory flexibility determination has been conducted, and copies are available in the docket. A copy may be obtained by contacting the person identified above under "For Further Information Contact." The proposal involves benefits and costs. The benefits are not readily quantifiable, since they are increased safety, and materialize only in the form of fewer injuries and deaths. Neither are the costs readily quantifiable. The cost of compliance with the proposal would result primarily from designing and certifying new Part 23 airplane empennages, including any testing that may be required. Some manufacturing parts costs as well as operating costs may also be involved.

A probability analysis has been used to estimate the potential benefits of the proposed regulations. This approach combines informed judgments about both the nature of fatigue hazards and the expected effectiveness of the proposed counter measures with statistical techniques that systematically treat the uncertainties inherent in such judgments. The analysis generates a range of benefit values and probability distribution of achieving these benefits, which can then be compared with the estimated costs of the proposal. The benefit estimates were calculated for a hypothetical period, 1984.

Accident reports for a ten year period, 1972–82, were examined in order to determine the number of fatalities, injuries, and property damage attributable to empennage failures due to fatigue.

Fourteen empennage fatigue-related accidents resulted in 21 fatalities, 2 serious and 4 minor injuries. In addition, 10 of the airplanes involved in these accidents were completely destroyed and the remaining 4 were severely damaged.

The basic conclusion of this evaluation is that benefits expected to result from the proposed rule will exceed the estimated costs of implementing the rule. For the hypothetical 1984 fleet analysis, the annual costs are estimated to be $201,297. Expected annual benefits are estimated conservatively to be $537,000, resulting in an average benefit-to-cost ratio of 2.7.

Costs and benefits broken down by airplane types also compare favorably. For single-engined airplanes, estimated average annual benefits per airplane of $152.70 compared with estimated average annual costs per airplane ranging from $8.37 (with load specifications provided) to $9.36 (without load specifications provided) resulting in benefit-to-cost ratios of 18.2 and 16.3, respectively. For twin-engined airplanes, average annual benefits per airplane are estimated at $231.20 compared with estimated average costs per airplane ranging from $180.02 (with load specifications provided) to $182.57 (without load specifications provided) resulting in benefit-to-cost ratios of 1.3 in both cases.

The FAA invites comments on the economic impact of the proposals. Commenters are requested to address any benefits or costs that may be associated with the proposals.

Conclusion

The FAA has determined that this document involves a proposed regulation that is not major under the provisions of Executive Order 12291, and is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to ensure, among other things, that small entities are not disproportionately affected by government regulations. The RFA requires agencies to review rules which may have a "significant economic impact on a substantial number of small entities." The FAA defines a small aircraft manufacturer as one with less than 75 employees. It defines a substantial number as one that is not less than 11 and that is more than one-third of the small entities subject to the proposed rules. A significant economic impact is defined as $14,258 per year in added costs to each of these small manufacturers. A review of the aircraft manufacturers indicates that less than 11 "small" manufacturers would be subject to the proposed regulations. Therefore, the FAA certifies that this proposal will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This proposal, if adopted, would have little or no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S. All new type certificated U.S. manufactured aircraft would have to meet the standards. The cost of compliance is minimal, ranging from perhaps a maximum of four percent of the cost of a new airplane to less than one percent of the cost. This added cost also creates a discernible benefit, making the aircraft which meets the standards a more attractive product, in both U.S. and foreign markets.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Safety, Air transportation, Tires.

The Proposed Amendment

PART 23—[AMENDED]

Accordingly, the FAA proposes to amend Part 23 of the Federal Aviation Regulations (14 CFR Part 23) as follows:

1. The authority citation for Part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 23.572 is amended by revising the title; by revising paragraph (a) introductory text; and by adding a new paragraph (b) to read as follows:

§ 23.572 Wing, empennage, and associated structures.

(a) The strength, detail design, and fabrication of those parts of the wings (including canards, tandem wings, and winglets), empennage, their carry-through, and attaching structure whose failure would be catastrophic must be evaluated under either of the following unless it is shown that the structure, operating stress level, materials, and expected use are comparable, from a fatigue standpoint, to a similar design that has had extensive satisfactory service experience.

(1) * * *

(2) * * *

(b) Each evaluation required by this section must include typical loading spectra (e.g., taxi, ground-air-ground cycles, maneuver, gust), effects of propeller slipstream impingement and the effects of lifting surface wakes.

Issued in Kansas City, Missouri, on September 11, 1986.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 86–21326 Filed 9–19–86; 8:45 am]

BILLING CODE 4910–13–M

federal register

Monday
September 22, 1986

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 29

Airworthiness Standards; Rotorcraft Structural Fatigue and Damage Tolerance; Notice of Proposed Rulemaking and Announcement of Public Meeting

DEPARTMENT OF TRANSPORTATION

14 CFR Part 29

[Docket No. 23485; Notice No. 86-13]

Airworthiness Standards; Rotorcraft Structural Fatigue and Damage Tolerance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), invitation for interested persons to submit comments, and announcement of public meeting.

SUMMARY: This notice proposes to add damage tolerance requirements to the fatigue evaluation of rotorcraft structure. Damage tolerance is the capability of rotorcraft structure to continue functioning without catastrophic failure after being subjected to fatigue damage, corrosion, or accidental damage expected during fabrication and operation of the rotorcraft. Also included in the notice are proposals to extend fatigue evaluations from flight structure to all critical structures, including landing gear, and to explicitly require consideration of operations having a high number of ground-air-ground or power cycles per hour. The intended effect of these proposals is to prevent or reduce catastrophic fatigue failures in transport category helicopters. The severe loading environment in which rotorcraft operate results in damage from fatigue cracks, corrosion, and other sources. More damage tolerant structure is needed to prevent or control the spread of this damage.

DATES: A public meeting will be held at 10 a.m. on February 24, 1987.

Comments must identify the docket number and must be received on or before March 27, 1987.

ADDRESSES: Comments on the notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 23485; 800 Independence Avenue, SW., Washington, DC 20591, or delivered in duplicate to: Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked: Docket No. 23485.

Comments may be inspected in Room 916, between 8:30 a.m. and 5 p.m., weekdays, except Federal holidays.

The public meeting will be held in the Training Room, Building 3B, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, beginning at 10 a.m. on February 24, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. R.T. Weaver, Regulations Program Management (ASW-111), Rotorcraft Standards Staff, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, commercial telephone (817) 624-5122, or FTS 734-5122.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket. Submit comments in duplicate to the Rules Docket address. All comments received on or before the closing date for comments will be considered by the Administrator before taking action of the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 23485." The postcard will be date/time stamped and returned to the commenter.

Availability of This Notice

Any person may obtain a copy of this NPRM (Notice No. 86-13) by submitting a request to the FAA, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future rulemaking documents should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Copies of proposed Advisory Circular (AC) 29.571-X, Fatigue Evaluation of Transport Category Rotorcraft Structure (including damage tolerance), and AC 20-107, Composite Aircraft Structure, are contained in the docket file. Copies of these AC's may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."** A separate request for comments for AC 29.571-X will be published.

Background

The proposal to add damage tolerance requirements to the rotorcraft regulations results from an assessment of the potential for preventing crashes and saving lives by the use of redundant structure and other damage tolerant design features and from an assessment of the current rotorcraft design "state of the art." The proposals to add landing gear and increased frequency of ground-air-ground cycles to the fatigue substantiation result from the ongoing Rotorcraft Regulatory Review Program. They are based on two proposals submitted for consideration at the Rotorcraft Regulatory Review Conference, which was held in New Orleans, Louisiana, in December 1979.

On January 6, 1983, the FAA issued an advance notice of proposed rulemaking (ANPRM) and invited all interested persons to submit comments concerning the addition of damage tolerance requirements to the fatigue requirements of the U.S. transport category rotorcraft rules. A public meeting was held on February 8, 1983, to afford interested persons an opportunity to establish dialogue with the FAA and other interested parties in connection with the proposal of the ANPRM to add damage tolerance to the rotorcraft regulations. Over 50 persons attended the conference held on February 8, 1983, in Fort Worth, Texas. A transcript of the discussions of the meeting is in the docket.

As a result of the comments and data presented during the comment period for the ANPRM and during the public meeting, the FAA determined that the proposed addition of damage tolerance requirements to transport category rotorcraft rules is sufficiently warranted to issue an NPRM and associated AC.

Regulatory Structure

Both Parts 27 and 29 of the FAR deal with type certification of civil rotorcraft. Part 27 currently deals with rotorcraft under 6,000 pounds, and Part 29 deals with rotorcraft over 6,000 pounds. The addition of damage tolerance requirements to the type certification of civil rotorcraft is proposed by this NPRM only to Part 29. The state of the art makes damage tolerant design more practical for larger, more complex rotorcraft than for rotorcraft under 6,000 pounds.

The Proposal

This proposal presents damage tolerance requirements for the transport category rotorcraft rules as contained in § 29.571.

Economic Summary

A preliminary economic evaluation has been prepared for this proposal to add damage tolerance requirements to the fatigue evaluation of rotor structures. The primary objective of the proposed amendment to § 29.571, "Fatigue Evaluation of Flight Structure," is to prevent or reduce catastrophic fatigue failures in transport category rotorcraft.

The estimates of economic impacts for the proposed amendment to § 29.571 are based on the best information currently available to the FAA. The estimates of the cost of compliance with the proposed additional requirements of § 29.571 rely to a considerable extent on a report prepared for the FAA by Logical Technical Services Corporation entitled "Estimates of the Cost Difference Resulting from the Introduction of Damage Tolerance to Rotorcraft Structural Fatigue Requirements" (herein referred to as the LTS study). A report on the LTS study is available in the docket of this rulemaking. Information for analysis of benefits was obtained from the safety records of the NTSB and the FAA. The conclusions regarding economic consequences, however, reflect the judgment of FAA personnel. The estimates of impacts may be revised after the close of the public comment period if better information becomes available.

The changes in regulations governing rotorcraft certification affect only newly certificated equipment. Hence, the proposal to amend § 29.571 would only have an economic impact on transport category rotorcraft type certificated after the effective date of this amendment.

The proposal also has provisions to extend fatigue evaluation from flight structure to all critical structures, including landing gear, and to explicitly require consideration of operations having a high number of ground-air-ground or power cycles per hour. These provisions incorporate into the FAR current industry practices and will not impose additional costs.

The potential benefit resulting from the addition of damage tolerance requirements to the fatigue evaluation of rotorcraft structures has two components. The first is the potential savings for the general public in lower exposure to accidents and death attributed to fatigue failure. The second is the cost savings resulting from the changes in life cycle costs stemming from the introduction of damage tolerance criteria. The evaluation indicates that the use of damage tolerance criteria will increase acquisition costs but will have the potential for decreasing the requirements for replacement components through extended service life.

The FAA has not determined the extent to which damage tolerant components will also incorporate extended lifetime. To allow for the uncertainty inherent in predicting future damage tolerant component service life, the potential increase or decrease in life cycle cost resulting from replacing safe-life components with damage tolerant components for a fleet of 600 typical transport category rotorcraft is presented as a range of life cycle ratios. At any service life ratio, the economic benefit of the proposal is the sum of the safety benefit (i.e., the net present value of the preventable loss, consisting of the costs of mortality, morbidity, hull damage, and investigation) and the life cycle cost impact. Table 1 illustrates the relationship between life cycle costs and various accident prevention scenarios for a fleet of typical transport category rotorcraft. As shown in this figure, if the damage tolerant components have the same life as the safe-life components that they replace, and one accident per year is avoided by the use of these components, the present value of the cost resulting from the introduction of damage tolerance criteria will exceed benefits by approximately $22 million. In the same context, if the damage tolerant components can be made to have a lifetime that is twice the life of safe-life components and four accidents per year are averted, the total net present value of the benefit resulting from the change will be approximately $22 million. In the extreme, if damage tolerant components can be made with indefinite life and if 10 accidents per year can be avoided by the use of these damage tolerant parts, the present value of the net benefit is estimated to be about $75 million.

TABLE 1.—THE RELATIONSHIP BETWEEN LIFE CYCLE COST AND SAFETY BENEFIT FOR A FLEET OF 600 TYPICAL TRANSPORT ROTORCRAFT

[1984 Values]

Service life scenario	Present value of life cycle cost	Net present value, life cycle costs savings [1]	Annual No. of accidents avoided	Net present value of expected value of preventable loss	Net present value benefits or (costs)
Same as safe life	$154,261,000	($24,625,000)	1	$2,935,408	($21,689,592)
	154,261,000	(24,625,000)	4	11,741,630	(12,833,370)
	154,261,000	(24,625,000)	10	29,354,076	4,729,076
Twice safe-life life	119,474,000	10,162,000	1	2,935,408	13,097,408
	119,474,000	10,162,000	4	11,741,630	21,903,630
	119,474,000	10,162,000	10	29,354,076	39,516,076
Indefinite life	84,381,000	45,255,000	1	2,935,408	48,190,408
	84,381,000	45,255,000	4	11,741,630	56,996,630
	84,381,000	45,255,000	10	29,354,076	74,609,076

[1] Compared to safe life present value of life cycle cost of $129,636,000.

The FAA concludes that in most cases the service life of damage tolerant components may well be a factor of two or three times greater than current safe-life components as a result of advances in the use of new high strength-to-weight materials and improved damage tolerance design data. Similarly, the number of accidents that will be avoided annually will exceed the average of four accidents per year experienced in the period between 1971 and 1982 because of the increasing size of the transport category rotorcraft fleet. On the basis of the above, the FAA concludes that the midrange of benefits associated with the introduction of damage tolerance criteria will exceed costs by approximately $13 to $39.5 million over the 10-year period following enactment of this regulation.

Regulatory Flexibility

The FAA has determined that under the criteria of the Regulatory Flexibility Act (RFA) the proposed rule, at promulgation, will not have a significant economic impact on a substantial number of small entities. The Small

Business Association (SBA) defines a small helicopter manufacturer as one having fewer than 1,500 employees. The regulation directly affects the costs of manufacturers of large civil helicopters only. Currently, only three firms, Boeing-Vertol, Sikorsky, and Bell Helicopter Textron, Inc., manufacture large civil helicopters, and all exceed the employment limits set for small entities. Thus, the proposed amendment to Part 29 does not directly affect any small entities.

This notice proposes regulations which will substantially reduce the number of rotorcraft accidents caused by catastrophic structural fatigue failures. The FAA's preliminary evaluation of the effect of the damage tolerance proposals indicates that the benefits will exceed the costs, primarily because of the reduction of injury and equipment losses due to accidents. The preamble contains a discussion of the benefit/cost relationship. Therefore, the FAA has determined that this notice involves a rulemaking action which is not a "major rule" under Executive Order 12291; but is considered a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A full regulatory evaluation will be prepared with the assistance of comments received as a result of this notice. In addition, for the reasons stated above, it is certified that the proposals, if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the U.S. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

The Proposed Amendment

PART 29—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 29 of the FAR (14 CFR Part 29) as follows:

1. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising § 29.571 to read as follows:

§ 29.571 Fatigue and damage tolerance evaluation of structure.

(a) *General.* An evaluation of the strength of principal elements, detail design points, and fabrication techniques must show that catastrophic failure due to fatigue, environmental effects, intrinsic/discrete damage, or accidental damage will be avoided. Parts to be evaluated include, but are not limited to, rotors, rotor drive systems between the engines and rotor hubs, controls, fuselage, fixed and movable control surfaces, engine and transmission mounting, landing gear, and their related primary attachments. In addition, the following apply:

(1) Each evaluation required by this section must include—

(i) The identification of principal structural elements and detail design points, the failure of which could result in catastrophic failure of the rotorcraft;

(ii) In-flight measurement in determining the loads or stresses for items in paragraph (a)(1)(i) of this section in all critical conditions throughout the range of limitations in § 29.309 (including altitude effects), except that maneuvering load factors need not exceed the maximum values expected in operations; and

(iii) Loading spectra as severe as those expected in operation based on loads or stresses determined under paragraph (a)(1)(ii) of this section, including external load operations, if applicable, and other high frequency power cycle operations.

(2) Based on the evaluations required by this section, inspections, replacement times, or other procedures must be established as necessary to prevent catastrophic failure. These inspections or other procedures must be included in the airworthiness limitations section of the Instructions for Continued Airworthiness required by § 29.1529 and section A29.4 of Appendix A.

(b) *Fatigue tolerance evaluation (safe life supplemented by damage tolerance).* The structure must be shown by analysis supported by test evidence and, if available, service experience—

(1) To be able to withstand repeated loads of variable magnitude without detectable cracks for the following time intervals—

(i) Life of the rotorcraft; or

(ii) Within a replacement time furnished under section A29.4 of Appendix A to this Part.

(2) To be of damage tolerant design.

(i) The damage tolerance evaluation must include a determination of the probable locations and modes of damage caused by fatigue, environmental effects, or accidental damage.

(ii) The extent of damage for residual strength evaluation at any time within the operational life must be consistent with the initial detectability and subsequent growth under repeated loads.

(iii) The residual strength evaluation must show that the remaining structure is able to withstand design limit loads without failure.

(iv) If significant changes in structural stiffness or geometry, or both, follow from a structural failure or partial failure, the effect on damage tolerance must be further investigated.

(v) Compliance with the damage tolerance requirements of this subparagraph is required unless the applicant establishes that damage tolerant design for a particular structure is impractical.

Explanation

Safe-life criteria have been used for years in transport category rotorcraft design. Even after the option of fail-safe design was added to the rules in 1968, safe-life criteria continued to be used for most structural components. In recent years, advances have been made in the state of the art of rotorcraft design which make damage tolerant design more practical. These advances include increased use of composite construction (with favorable crack retardation characteristics), redundant structural design techniques, and other crack retardation techniques. Accordingly, proposed § 29.571(b) adds damage tolerance requirements to the structural substantiation requirements of transport category rotorcraft.

As a result of the 10 comments received in response to the ANPRM, proposed § 29.571 has been extensively revised from the proposal in the ANPRM. All 10 commenters agree with the addition of damage tolerance concepts to rotorcraft design; but one commenter reserves final opinion "until additional information is acquired," and one commenter takes "strong issue with the ANPRM granting preeminent right to the damage tolerance procedures" in the determination of structural safety.

The commenter taking issue with granting preeminence to damage tolerance over safe life as a method of achieving the required fatigue strength also makes the following additional points:

1. "Forcing the preeminent use of the damage tolerant concepts may in some circumstances degradate [sic] safety."

2. "The differences between the airplane environnent and the helicopter environment do not justify transfer of the fixed-wing airplane experience (in damage tolerant design)."

3. "The applicant should have the uninhibited option to select the procedures that . . . will produce the best overall results."

The FAA agrees, in part, with the initial and first two additional points but not with the third additional point that "the applicant should have the uninhibited option to select . . . procedures . . . ."

The ANPRM proposed to add damage tolerance to the fatigue evaluation of rotorcraft structure but not to establish preeminence of damage tolerance procedures over safe-life procedures. The goal of adding damage tolerance requirements is to increase the structural dependability of transport rotorcraft with a resulting savings in equipment costs and lives. As discussed in the public meeting of February 8, 1983, damage tolerance and safe life are considered "as complementary approaches." A "filter approach" was discussed during the public meeting which illustrates the complementary nature of damage tolerance relative to safe life. A design was described as being "filtered" first through one evaluation (damage tolerance or safe life) and then through the other. To accentuate that damage tolerance is proposed as a complementary approach to safe life (and not to preempt safe life), § 29.571 (b), (c), and (d) as proposed in the ANPRM have been combined into one paragraph (b) by this proposal. The newly proposed § 29.571(b) for fatigue tolerance evaluation requires a safe-life substantiation for each part of the structure which could contribute to a catastrophic failure. In addition, the current proposal will require a complementary design of damage tolerant features where practical. This complementary approach will provide an improvement in the structural dependability of transport category rotorcraft with a resulting savings in equipment costs and lives, while allowing continued use of well established safe-life substantiation programs by the industry. It will recognize that "industry experience has been to provide a safe-life structure, whether it be single load path or redundant" and that "the combined safe-life/damage tolerance approach is more adaptable to rotorcraft structure than a pure damage tolerance approach." To insure that damage tolerant design is incorporated into the rotorcraft structure if the state of the art permits, § 29.571(b)(2)(v) provides that the applicant must comply with damage tolerance requirements unless the applicant establishes that to do so for a particular structure would be impractical. Stated otherwise, if the state of the art permits, a particular rotorcraft structure must incorporate damage tolerant design features.

One commenter states that "the rule as proposed (in the ANPRM) primarily addresses damage tolerance aspects of slow crack growth, single load path structures." The commenter further states, "It should be indicated that there are also other methods of achieving damage tolerance such as multiple/alternative load paths." The FAA is aware of multiple load path techniques of achieving damage tolerance as shown in the ANPRM background material which contained the statement "recent advances have been made in civil helicopter use of composite construction . . . redundant structural design techniques . . .," and the ANPRM was not intended to primarily address damage tolerance aspects of slow crack growth, single load path structures. In fact, because of the high cycle load spectrum of helicopter operations and because of the lack of extensive fracture mechanics (da/dn) data for low stress/high cycle operations, it is considered that a multiple load path structure or a composite structure (a special kind of multiple load path structure) shows greater promise than metallic, single load path structure in achieving damage tolerance in future transport category rotorcraft. The proposed AC 29.571–X expands even further upon the use of multiple element load paths as a means of providing damage tolerance.

No objections were raised to including all critical structure (not just flight structure) in the fatigue evaluation, so the title of § 29.571 is proposed as "Fatigue and damage tolerance evaluation of structure." rather than ". . . evaluation of flight structure." Also, a special reference to landing gear is proposed for § 29.571(a).

One commenter proposes that definitions be added to 14 CFR Part 1 for "damage tolerance," "fail-safe," and "safe life." Although these definitions, as well as others, are in proposed AC 29.571–X, the FAA considers it inappropriate to add them to 14 CFR Part 1 until agreement can be attained on definitions applicable to fixed-wing aircraft, rotorcraft, engines, and propellers.

Another commenter recommends that the proposed wording of § 29.571(a) be changed from ". . . an evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, or accidental damage will be prevented throughout the operational life of the rotorcraft . . ." to ". . . an evaluation of the strength, detail design, and fabrication must show that catastrophic failure due to fatigue, corrosion, or accidental damage will be avoided throughout the replacement time, if any, established for each part of the structure." The use of "avoid" rather than "prevent" is proposed as being more goal-related rather than an absolute guarantee (which is impractical) and is consistent with § 25.571. The FAA agrees, and the proposal has been reworded accordingly.

One commenter states that the phrase "operational life," while appropriate for fixed-wing aircraft, is not considered practical or warranted for rotorcraft. The FAA agrees, and the proposal has been changed accordingly.

The commenter further recommends that the proposed § 29.571(a) wording ". . . for each part of the structure which could contribute to a catastrophic failure . . ." be changed to ". . . which could cause a catastrophic failure." The commenter states "use of words 'could contribute' suggests consideration of any potential event no matter how illogical." The FAA disagrees. The wording "could contribute" has the connotation of consideration of "life remaining" after a single element failure even if the failure did not immediately "cause" catastrophic failure. Also, the wording is similar to that of § 25.571(a) which has been applied with no interpretation problems in this area.

Another commenter recommends consideration of significant numbers of flights ". . . at V_{NO} and with the commencement of the flight at maximum allowable gross weight." The FAA agrees, and proposed § 29.571(a)(iii) specifies ". . . loading spectra as severe as those expected in operation." "External load operations" are specified as well as "high frequency per hour power cycle operations." Also, the proposed AC 29.571–X includes guidance for consideration of three types of operations: long flights (with high cruise speeds); typical, general types of operations; and short flights (with large numbers of power cycles per hour).

One commenter recommends that consideration of loads with worn components be considered. This recommendation is beyond the scope of the current program. Rotorcraft contain literally scores of mechanical components subject to wear. Although

consideration of wear effects is accomplished in general by ground endurance testing, ground component testing, and by prototype flight testing, specific wear requirements would be impractical to define because of the interrelationship between the wear of one part on the loads of one or more other parts. A program to consider literally hundreds of wear versus load relationships is considered beyond the scope of this program. Since efficient, recognized analytical techniques are not available, testing of every wear combination state is impractical from a time and cost standpoint.

One commenter states a belief "that no critical component should have a fatigue life limit less than 10,000 hours." A 10,000-hour life is an admirable goal, but the current state of the art of fatigue design of rotorcraft structure does not allow attainment of that goal for all critical components. This, in fact, is the primary technical reason for proposing that critical structure be "damage tolerant."

One commenter recommends changing "corrosion" to "environmental effects" in § 29.571 to more broadly consider the effects of moisture and to consider other environmental factors such as fuel, hydraulic oil, etc., on structural strength, and another commenter recommends adding "intrinsic/discrete damage" to more explicitly cover damage common to structure such as composite construction. The FAA agrees, and the recommended changes are included with this proposal.

The commenter further recommends that damage tolerance to mechanical components (gears, bearings, etc.) be added to § 29.571 or § 29.917. This proposal is beyond the scope of this program as well as beyond the state of the art of current gear and bearing design.

The commenter also recommends that drafts of proposed AC 29.571–X and AC 20–107 be available for review with this proposed amendment. The FAA agrees, and copies of proposed AC 29.571–X and AC 20–107, Revision A, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

In addition, the commenter recommends that "helicopter" be changed to read "rotorcraft" in proposed § 29.571(a)(1)(i) and that the phrase "for items identified above in (a)(1)(i)" be added to proposed § 29.571(a)(1)(ii)(A) after "loads or stress" for clarity. The FAA agrees, and the appropriate changes have been made.

The commenter also stresses the importance of providing guidance in AC 29.571–X for the loading spectra requirements of § 29.571(a)(1)(iii). The commenter also recommends that research is needed into operational spectra and that operators need to record and feed back operational data to the manufacturers. The FAA agrees with the need for guidance on loading spectra, and it will be provided in AC 29.571–X. Research into operational spectra and operators' feedback to manufacturers, while desirable, is beyond the scope of this program.

An additional commenter recommends that the words "and material" be added to proposal § 29.571(a)(2) after the phrase "of similar design." The previously proposed § 29.571(a)(2) has been deleted, and the wording of the currently proposed § 29.571(b) accomplishes the intent of the recommendation.

One commenter recommends that the words "replacement time" be inserted into proposed § 29.571(a)(3) after "inspections" and before "or other procedures" for clarity. The FAA agrees, and the change has been made.

Another commenter recommends that "fail-safe" be deleted from the parenthetical term following damage tolerance to avoid confusion. The FAA agrees, and the term "fail-safe" is removed from proposed § 29.571.

The commenter also recommends that proposed § 29.571(b)(1) be changed to read "probable types, locations, and modes of damage due to fatigue, corrosion, intrinsic/discrete damage, or severe accidental damage." The FAA agrees with adding the term "intrinsic/discrete" to clarify a type of damage common to composite structures but considers adding the words "types" before "locations, and modes" and "severe" before "accidental damage" unnecessary.

The commenter further recommends that proposed § 29.571(b)(2) be changed to state "flight-by-flight load application is recommended." The FAA disagrees with adding such wording to § 29.571(b)(2). This type of wording is considered unnecessarily detailed for a regulation and more appropriate for advisory material. AC 29.571–X proposes to include detailed technical considerations of this type.

Two commenters object to the inclusion of an explicit 0.125-inch-radius flaw size for single load path structure in proposed § 29.571(b)(3). Both commenters recommend a more general requirement which considers initial detectability and subsequent growth under repeated loads (similar to the § 25.571 requirement). The FAA agrees, and the explicit 0.125-inch-radius flaw requirement has been removed.

One commenter recommends that proposed § 29.571(b)(4) be changed to add the phrase "consistent with inspection techniques" after the phrase "will become readily detectable." The FAA agrees, and the intent of this recommendation is included in the newly proposed § 29.571(b)(2)(ii).

Another commenter proposes that strength after failure in proposed § 29.571(b) be allowed to be reduced below limit strength, in some cases, to a level which would allow flight with loads "which are reasonably expected to occur on the (one) flight." The FAA disagrees since such loads would be impractical to calculate with accuracy, and the resulting strength would be difficult to demonstrate in cases where factors such as stiffness are also greatly reduced. Also, limit loads are considered the minimum strength acceptable to provide the necessary degree of damage tolerance.

One commenter requests that proposed § 29.571(c) be changed by adding the phrase "and having used appropriate scatter factors" after the phrase "test evidence." The FAA disagrees with adding a specific reference to "appropriate scatter factors" in the regulatory material since the concept of applying scatter factors and material reduction factors has not been a problem. Since the specific factors to be applied have resulted in some questions, AC 29.571–X is proposed to provide guidance on the application of scatter factors and material reduction factors.

Another commenter proposes a correction in proposed § 29.571(c)(2) to the reference to Section A29.5 (which should have referenced Section A29.4). The FAA agrees, and in proposed § 29.571(b)(1)(ii), the reference to Section A29.5 has been corrected to read "Section A29.4."

One commenter asks for clarification of the "combination of replacemant time and damage tolerance evaluations" proposed in § 29.571(d) of the ANPRM, and requests an example. Although § 29.571(d) has been removed from the current proposal, the "combination of replacement time and damage tolerance" is still allowed by the proposed § 29.571(b)(1)(ii) and (b)(2). This requirement is not wholly new; it is a continuation of existing § 29.571(e) except that the fail-safe requirement is changed to a damage tolerance requirement. An example of the current "combination of replacement time and fail-safe evaluations" is a structural link (or other part), basically designed to be fail-safe but containing an area inaccessible for inspection (this area

may be evaluated by safe-life techniques). The link may then have a replacement life, but most areas will be fail-safe. The current proposal will still allow combinations of evaluations, as in the past, except for two changes. (1) All critical parts must be evaluated using safe-life techniques (including parts replacement, if required), and (2) damage tolerant design features must be provided (and evaluated) where practical (when damage tolerant design for specific rotorcraft structure is within the state of the art).

Issued in Fort Worth, Texas, on September 12, 1986.

Roger G. Knight,

Acting Director, Southwest Region.

[FR Doc. 86-21325 Filed 9-19-86; 8:45 am]

BILLING CODE 4910-13-M

federal register

Monday
September 22, 1986

Part IV

Environmental Protection Agency

40 CFR Part 271

State Hazardous Waste Program Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 3042-7]

State Hazardous Waste Program Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today promulgating amendments to the requirements for State hazardous waste programs. The final rule specifies deadlines for State program modifications and makes other changes to the existing regulations to implement the State authorization provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). This is the first of a set of companion rules to EPA's final codification rule, published July 15, 1985 (50 FR 28702), which codified in regulations those requirements specified by HSWA which took effect immediately or shortly after enactment.

DATE: These regulations become effective September 22, 1986.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free (800) 424-9346 or in Washington, DC at (202) 382-3000, or Marty Madison, State Programs Branch, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Telephone: (202) 382-2210.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority

These regulations are issued under authority of sections 1006, 2002(a), and 3006, of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6905, 6912(a), and 6926.

II. Background

On November 8, 1984, the President signed into law the hazardous and Solid Waste Amendments of 1984 (HSWA). This statute makes many changes to EPA's existing hazardous waste management program. The statute further provides that State programs may receive interim or final authorization to carry out the HSWA provisions in lieu of EPA. Interim authorization is a temporary authorization which is granted if EPA determines that the State program is "substantially equivalent" to the Federal program. On the other hand, final authorization is granted permanently to a State by EPA if the Agency finds that the State program: (1) Is "equivalent" to the Federal program, (2) is consistent with the Federal program and other State programs, and (3) provides for adequate enforcement.

On July 15, 1985, EPA published a final rule that amended EPA's hazardous waste regulations to reflect those statutory provisions that have immediate or short-term effects on the regulated community and States (50 FR 28702-28755). That rule is referred to hereafter as the "final codification rule". The preamble to the final codification rule provides in detail the background and purpose of EPA's efforts to incorporate into the existing Subtitle C regulations a set of requirements from the HSWA. Briefly, the final rule simply adds the statutory language to the existing Subtitle C regulations, with a preamble that provides our legal interpretations of that language. The rule also makes changes to provide for HSWA interim and final authorization. The preamble to the final codification rule discusses the impact of HSWA on State authorization (see 50 FR 28728 to 28733).

On January 6, 1986, EPA proposed changes to the Subtitle C regulations that were more than mere transpositions of the statutory provisions which take effect immediately or shortly after enactment (see 51 FR 496-504). The proposal dealt with State authorization issues that were logical outgrowths of the new Amendments, rather than matters mandated for immediate implementation by the statute. In particular, the notice proposed changes to the Part 271 State authorization regulations in four areas: (1) The requirements States must meet to obtain and retain final authorization, (2) the deadlines by which States must revise their programs to reflect changes in the Federal program, (3) the expiration date for interim authorization under section 3006(g) of RCRA, as amended by HSWA, and (4) application procedures for section 3006(g) interim authorization. The proposed rule was the first of a few companion rules to the final codification rule (see also 51 FR 10706-10723, March 28, 1986, regarding liners and corrective action).

The Agency received a number of comments on these proposed changes to Part 271. We have evaluated these comments carefully, and, where appropriate, have modified the regulations accordingly. This notice

promulgates in final form the regulation that was proposed on January 6, 1986, and provides EPA's response to the comments received on that proposal. This preamble also provides a detailed discussion of the provisions of the final rule.

III. Discussion

This section of the preamble discusses the provisions of the final rule being promulgated today. Any differences from the January 6, 1986 proposal are described in detail. This section also responds to many of the comments received on the proposal. EPA's response to the remaining comments can be found in Section IV, Response to Comments.

A. General Requirements for Final Authorization

1. Table of HSWA Regulations and Self-Implementing Provisions

In the July 15 final codification rule, the Agency added new § 271.1(j) to identify the Federal program requirements and prohibitions that are promulgated or take effect pursuant to HSWA. These requirements included the regulations implementing HSWA as specified in the table accompanying § 271.1(j) and any self-implementing HSWA provisions. In the January 6 proposal, the Agency proposed to add a statement to § 271.1(j)(2) specifying that the table in § 271.1(j) indicates the promulgation date of the regulation which may differ from the effective date. Several commentors suggested that the table include the effective date as well as the promulgation date. We agree with this suggestion, and have modified Table 1 accordingly. In today's rulemaking we are reprinting the current table in its entirety for ease of the user. Future HSWA rules will be added to the table in chronological order of promulgation date.

In the preamble to the proposal we also discussed the possibility of adding a second table to § 271.1(j) that would identify the HSWA self-implementing statutory provisions that take effect independent of any rulemaking action. A commenter supported this idea and the Agency believes that such a table would provide useful information regarding the self-implementing statutory provisions. Accordingly, today we are adding a new table to the regulations. Table 2 lists each HSWA self-implementing provision, indicates the effective date of the provision, and provides the appropriate statutory citation. Since some of the self-implementing provisions have been incorporated into the EPA regulations, the last column in the table references the appropriate regulation where applicable. Statutory requirements that are not yet effective are included in this table for future reference.

2. Termination of Interim Status

The Agency proposed to amend § 271.13(a) to provide that States may authorize owners and operators of facilities with interim status to remain in operation until interim status terminates pursuant to 40 CFR § 270.73(c)–(f). Commenters did not object to the proposed amendment. The amendment to § 271.13(a) is necessary to assure that State programs conform to the HSWA requirements concerning automatic termination of interim status if Part B permit applications and certifications of compliance are not submitted within specific time frames. Therefore, the Agency is promulgating the amendment to § 271.13(a) as proposed. Under this new requirement, States must provide for termination of the State analogue to Federal interim status for those facilities that would lose interim status pursuant to § 270.73(c)–(f).

Delisting

In the final codification rule, the Agency amended § 260.22 to include the specific criteria and procedures for delisting as set forth in HSWA. In the January 6 proposal, the Agency proposed to amend § 271.9 by providing that a State is not required to have a delisting mechanism; however, States with delisting mechanisms must act consistently with the Federal delisting procedures set forth in § 260.22. The purpose of this proposed amendment was to clearly define the State authorization requirements under HSWA for States adopting delisting provisions.

After considering the proposed language, the Agency has decided to make additional modifications to § 271.9. Today's rule still provides that States are not required to have a delisting mechanism in order to receive or maintain authorization. If a State does have a delisting mechanism and wishes to be authorized for delisting in lieu of EPA, then the State must have regulations equivalent to §§ 260.20(b) and 260.22. The Agency slightly modified the proposed language by referring to § 260.20(b) in addition to § 260.22 and requiring States provide for public notice and opportunity for comment before granting or denying delisting requests.

The modified language in today's rule is intended to avoid any confusion that may have been created under the proposal. As discussed previously, the proposal specified that State programs must be equivalent to § 260.22. Section 260.22 provides that any person seeking to exclude a waste may use the procedures in § 260.20. The Agency intended that only § 260.20(b) should be necessary for State authorization, not § 260.20(c)–(e). The State must be equivalent to § 260.20(b) since this provision specifies information that must be submitted by the petitioner. Sections 260.20 (c), (d), and (e) define EPA's procedures for processing delisting requests. The State does not have to use the same procedures as does EPA as long as the State provides for notice and opportunity for comment when granting or denying delisting requests. Therefore, the Agency changed the language in today's rulemaking to specifically indicate that the delisting authorization requirements include provisions equivalent to §§ 260.22 and 260.20(b), as well as provisions for public notice and opportunity for comment.

One commentor suggested that § 271.9 specify that a State may delist wastes that are controlled under the State program but are not considered hazardous wastes by the Federal program. Section 271.9 does not prohibit a State from delisting such wastes. Since these State-controlled wastes are beyond the scope of the Federal program, any activities associated with those wastes are not a part of the "authorized" State program and are therefore not addressed by § 271.9.

Another commentor requested that § 271.9 specify that EPA may grant a delisting even if the State does not have a delisting mechanism. Although EPA could take such an action, the EPA delisting would relieve the petitioner only from the applicable Federal requirements. If the State regulates a waste that has been delisted by EPA, then obviously the waste is still subject to State control while managed within the State. While this is a factual representation of the potential interrelationship of the Federal and State delisting mechanisms, it is not an issue appropriate for a State authorization regulation.

4. Initial Applications

The Agency proposed an amendment to § 271.3(f) providing that State applications for final authorization *may* be reviewed on the basis of Federal self-implementing statutory provisions or regulations in effect 12 months prior to the State's submission of its official application. The Agency used the term "may" in the proposed amendments to indicate that States are not precluded

from seeking authorization for requirements taking effect less than 12 months prior to the State's submittal of its final authorization application. In order to clarify § 271.3(f), the Agency is today amending the provision by providing that States may be authorized for requirements taking effect less than 12 months before a State submits its official application. However, the basic requirement of this section remains unchanged in today's rule—State applications must, at a minimum, reflect the Federal requirements in effect 12 months prior to application submittal. Initial applications that do not address all such requirements will not be sufficient.

B. Clusters

Under § 271.21(e)(2) as currently promulgated, States with final authorization are required to modify their programs to adopt new Federal requirements within a one- or two-year time frame from the promulgation date of a regulation or the effective date of a self-implementing statutory amendment (one year if only regulatory changes are needed and two years if statutory changes are necessary).

In the January 6 proposal EPA proposed to amend the existing deadlines in § 271.21 by which States must revise their programs to reflect changes to the Federal program. Under the proposal the Agency chose an annual deadline for groups ("clusters") of Federal program changes occurring after June 1984. The cluster deadlines varied for HSWA and non-HSWA requirements. Non-HSWA changes were grouped in annual clusters and the State modifications for all such provisions contained in a cluster would be due one year after the cluster end date (or two years if State statutory changes are needed). For HSWA provisions, the proposal contained a one-time multi-year cluster to encompass the HSWA changes that occur on or before June 30, 1987, with the exception of the availability of information provision in § 3006(f) of HSWA. States would be required to adopt these HSWA provisions by July 1, 1988 (or July 1, 1989 for the provisions that necessitate State statutory changes). The Agency required States to pick up § 3006(f) by July 1, 1986 (or July 1, 1987 if a statutory change is required).

In general, commentors voiced strong support for the clustering approach but in several instances suggested modifications. The following sections describe the final cluster rule, including any modifications to the rule, and respond to the comments received on the cluster proposal.

1. Cluster Period

As discussed above, the Agency proposed to amend § 271.21(e)(2) to cluster Federal program changes occurring after June 1984. The cluster dates varied somewhat depending on whether the program revisions concerned HSWA or non-HSWA requirements. However, the common factor for all program revisions was that the Agency proposed June 30 as the end date tor all clusters. Commenters supported the June 30 date. As discussed in the preamble to the proposal, the Agency chose this date to facilitate submission of statutory amendments to State legislatures. The Agency is today promulgating amendments to § 271.21(e)(2) which establish June 30 as the end date for all clusters.

2. Non-HSWA Clusters

Under the proposal, the Agency created an annual cluster for Federal non-HSWA program changes occurring after June 1984. The non-HSWA annual cluster encompasses all Federal requirements promulgated in a twelve-month period running from July 1 of one year to June 30 of the next year. The one year/two year clock in § 271.21(e)(2) starts simultaneously for all requirements on July 1 immediately following the annual cluster end-date. For example, a regulation published by EPA in October 1984 would be in the first cluster covering the time period from July 1, 1984 to June 30, 1985. The program modification clock would start on July 1, 1985, and no State would have to complete program modifications for the regulation until July 1, 1986 (or July 1, 1987, where the State has to change its statute).

Almost every commentor expressed strong support for a cluster approach for the non-HSWA regulations. Indeed, many States remarked that without such an approach they would find it nearly impossible to adopt the required changes within the current deadlines. Several States commented that at a minimum, they needed the flexibility offered by the proposed § 271.21(e)(2)(ii) deadlines because they were required to submit their regulations for legislative review. In some of these States, the legislature only meets once a year and the regulations must be submitted several months prior to the legislative session. In addition to these legislative constraints, States noted that they have detailed and prolonged administrative procedures to follow prior to regulatory adoption. However, one commentor opposed the clustering approach for non-HSWA requirements, noting that by giving States more time to adopt program changes, such an approach would delay implementation of non-HSWA requirements.

While the clustering approach may entail some implementation delay, the Agency believes that the flexibility in the proposed § 271.21(e)(2)(ii) deadlines is, as suggested by the commentors, necessary to facilitate submission of proposed legislative or regulatory amendments to State legislatures. Furthermore, the Agency believes that any delay in regulatory implementation would be mitigated for those Federal regulations which had an effective date six months subsequent to the promulgation date. As discussed elsewhere in this preamble, the time clocks for program revision run from the promulgation date as opposed to the effective date of a regulatory amendment. Therefore, any delay in the State's implementation of regulatory amendments as a result of the cluster rule would be less severe for those Federal rules with a delayed effective date. Accordingly, the Agency is adopting the proposed amendment to § 271.21(e)(2)(ii) as a final rule.

3. HSWA Clusters

The proposal contained a one-time multi-year cluster to encompass the HSWA provisions that occur between the date of enactment (November 8, 1984) and June 30, 1987. States would be required to adopt these HSWA provisions by July 1, 1988 if only State regulatory changes are needed, or July 1, 1989 for any specific HSWA provisions that necessitate State statutory changes. In the preamble to the proposal we explained that the June 1987 date was chosen because we expect the bulk of the HSWA changes to the Federal program to occur prior to that date. Under the proposal, any HSWA changes occurring after June 30, 1987 would be included in annual clusters. In the preamble to the proposal we solicited comments from State agencies regarding these deadlines for HSWA revisions.

Nine States commented that they are extremely concerned about being able to modify their program for HSWA by July 1988 (or July 1989 if statutory amendments are required). The primary reasons for their concern stemmed from the volume and complexity of HSWA changes. In addition, the commentors cited lengthy legislative and administrative procedures as an impediment to adopting regulations within the proposed time frames. A few States noted that their timeframes for regulatory development exceeded six months without taking into account any redrafting necessitated by EPA

comments. Many commentors requested a delay of the HSWA cluster date, noting the difficulty in obtaining piecemeal statutory amendments from a legislature. Given these factors, the States are doubtful that the requisite amendments could be made in a timely fashion.

The States also opposed adopting the Federal program before it is fully developed, saying that it would be preferable to require States to pick up the HSWA program only after all the components of the Federal program were in place. The States remarked that it would be better to use their resources to assist EPA in the implementation of HSWA rather than making extensive changes to their program and preparing authorization applications. These commentors suggested that the revision deadline for the HSWA cluster be extended until 1990 or later.

In response to these comments, the Agency reevaluated the HSWA cluster deadlines. As a result of this reevaluation, the Agency is modifying the proposed rule in two aspects. First, we are leaving the special HSWA cluster period as proposed (November 8, 1984 to June 30, 1987), but the deadline for these revisions has been changed from July 1, 1988 to July 1, 1989. In addition, we are creating a second multi-year HSWA cluster for HSWA provisions that are promulgated during the period of July 1, 1987 to June 30, 1990. States must modify their programs for changes in the second cluster by July 1, 1991 (or 1992 if a statutory change is needed). Any HSWA changes occurring after June 30, 1990 will be included in the annual clusters.

The Agency believes that these two changes taken together provide the States with needed additional time to pick up the HSWA changes while still encouraging State assumption of the hazardous waste program. The first HSWA cluster should include the majority of the anticipated facility standards. (See the schedule of HSWA program changes in the preamble to the January 6 proposal, page 498.) Since this cluster contains the major components of the HSWA program the Agency believes that it is appropriate to extend the deadline for adopting these components by one year in order to allow States more time to make the requisite legislative and regulatory amendments. Since the HSWA provisions are automatically in effect in these States, we do not believe that extending the deadline by one year will have adverse environmental effects.

Although the concept of developing a second HSWA cluster was not specifically proposed, it was one of the alternatives discussed in the preamble. One commentor specifically recommended the second HSWA cluster in addition to the proposed HSWA cluster. The Agency is today promulgating a second HSWA cluster for HSWA provisions that are promulgated between July 1, 1987 and June 30, 1990 in order to ease the State's administrative and legislative burdens in making program modifications. Since many of the HSWA self-implementing land disposal bans occur during this period, the Agency believes that as an administrative matter, it makes sense to cluster those requirements together. Under the proposal the HSWA provisions effective after July 1987 were part of the annual clusters. Accordingly, the Federal land disposal bans would have spanned three different annual clusters and authorized States would have been required to undertake three separate rulemaking actions. Under today's rulemaking the States will be able to wait until all of the land disposal bans take effect during this cluster period before they modify their program. The Agency believes that this approach is much more manageable for the States.

Several commentors had questions about how the application of the HSWA clusters would affect the availability of authorization. Sections 271.21(e)(2) (iii) and (iv) set forth cluster deadlines by which authorized States must modify their programs to pick up particular HSWA provisions. However, a State may apply for authorization for one or more of the available HSWA provisions prior to the cluster deadlines, and EPA encourages States to apply for authorization as soon as they can qualify. (HSWA provisions that are available for State authorization include self-implementing statutory provisions that have taken effect or regulations that have been promulgated.) Further, a State may satisfy the deadlines by seeking either interim or final authorization for such HSWA provisions. However, as discussed elsewhere in this notice, interim authorization will expire on January 1, 1993. Therefore, States are urged to seek final authorization instead of interim authorization whenever possible.

4. State Availability of Information

As discussed in detail in the final codification rule, § 271.17 was amended to require State programs to provide for public availability of information. This provision requires that information obtained by authorized States regarding hazardous waste facilities and sites must be made available to the public in substantially the same manner and to the same degree as would be the case if EPA were carrying out the RCRA program in the State. Although this requirement stems from HSWA (section 3006(f)), unlike other HSWA requirements it does not take immediate effect in authorized States. Therefore, authorized State programs need to be revised before this requirement will be effective. On January 6 we proposed that this provision be picked up by States by July 1, 1986 (or July 1987 if a statutory change is required). State program revisions for the public availability of information provision would thus be accomplished in accordance with the first cluster of non-HSWA requirements.

One commentor stated that the proposed cluster deadline was inappropriate because it delayed implementation of the provision. This commentor suggested that the deadline be November 8, 1985 (or November 1986 for statutory changes). In contrast, three commentors argued that the proposed cluster deadline did not provide States with enough time to develop equivalent requirements. One of these commentors specifically requested that the availability of information requirement be placed in the HSWA cluster absent specific language in HSWA to treat it differently from other HSWA requirements.

As described above, the operation of this provision is different from the other HSWA provisions since it does not take effect until the State revises its program. Consequently, the Agency believes that section 3006(f) should be treated differently than the self-implementing HSWA provisions. Accordingly, the Agency believes that it is inappropriate to include this provision in the HSWA cluster deadline. On the other hand, there is no compelling reason to treat this requirement any differently than the non-HSWA requirements which also require State revisions before becoming effective. Given the legislative and administrative constraints that States experience when making program modifications, the Agency believes that it is reasonable to require States to pick up this requirement pursuant to the timetable for the non-HSWA cluster. Therefore, today's final rule promulgating § 271.17(c) is unchanged from the proposal.

The Agency recognizes that this rule establishes a deadline for section 3006(f) changes that has already passed (July 1, 1986). However, States may qualify for an extension of time to meet the modification deadline. Moreover, as discussed below, where appropriate the Agency may chose to place some States on a schedule of compliance to adopt

the program revision in an expedited manner.

5. State Schedules of Compliance

As indicated earlier, the majority of commentors indicated that they would have difficulty meeting the proposed § 271.21(e) cluster dates for changes to the HSWA, non-HSWA and section 3006(f) requirements. The above sections describe how today's final rule attempts to accommodate the concerns expressed by commentors regarding the proposed cluster deadlines. As discussed previously, today's rule extends the cluster deadlines for HSWA requirements and creates a new HSWA cluster in order to provide States with additional time to make programmatic changes. Also, the rule has a provision allowing a six-month extension where the State is unable to meet the deadline for HSWA, non-HSWA and section 3006(f) revisions. However, even with these provisions the Agency recognizes that States may still be unable to comply with some of the deadlines in § 271.21(e). Under the current regulations, failure to meet the deadlines would be grounds for the Administrator to initiate program withdrawal procedures. Such a result is somewhat draconian, given the inability of States to adopt the requisite statutory and regulatory amendments due to legislative and administrative constraints. On the other hand, the Agency does not want to extend the cluster deadlines in all circumstances because it wishes to encourage States to expeditiously adopt program revisions. In order to provide maximum flexibility for the States and EPA while ensuring that program revisions are expeditiously adopted, the Agency is today promulgating an amendment to § 271.21 allowing the Administrator to place States which fail to meet the revision deadlines on schedules of compliance on a case-by-case basis. (See the new § 271.21(g).) The use of schedules of compliance would be limited by the specific factors described below.

First, as a prerequisite to being placed on a schedule of compliance the State must have made a good faith effort to meet the deadlines, have been granted an extension pursuant to § 271.21(e)(3) and made diligent efforts to revise its program during the § 271.21(e)(3) extension. Section 271.21(e)(3) currently allows the Regional Administrator to grant up to six months extension for the program modification deadlines if the State adequately demonstrates that in spite of its good faith efforts, it is unable to meet these deadlines due to legislative or rulemaking impediments. States which are not granted this extension are precluded from being placed on a schedule of compliance because they have not made a good faith effort to meet the deadlines. States must also demonstrate that they have made a diligent effort to revise their programs during the period of time for which they are granted an extension under § 271.21(e)(3). A diligent effort would, at a minimum, include the initiation of rulemaking and/or statutory amendments by the State.

Second, the State must demonstrate that it is making sufficient progress in adopting these changes. State progress will be evaluated by the Regional Administrator on a case-by-case basis. This evaluation will be based on such factors as the State's historical performance in adopting program changes and the impediments encountered for this particular modification. By definition, to demonstrate progress in making the requisite revisions, the State must indicate that it has gone beyond the initial good faith effort to qualify for an extension under § 271.21(e)(3).

Third, the State must submit a proposed timetable of statutory and/or regulatory modifications by the § 271.21(e)(3) extended deadline. This timetable must set forth interim milestones for achieving the modification within one year.

Fourth, schedules of compliance are limited to a duration of one year from the § 271.21(e)(3) extended deadline. This is to prevent States from unduly delaying implementation of the regulatory and statutory revisions. The Agency chose a year as the duration period because many State commentors requested an additional year to implement the HSWA changes due to the complexity and number of changes required. The Agency believes that this time period is also appropriate for the non-HSWA and section 3006(f) revisions since the cluster scheme will aggregate numerous and often unrelated rulemakings and require simultaneous State modifications for these requirements.

Fifth, any schedule of compliance must be published in the **Federal Register.** Ideally, the schedule would be included in a **Federal Register** notice indicating the Administrator's tentative or final decision concerning approval of other parts of the State's program. For example, if a State successfully modifies its program for all but one rule in a cluster, then the **Federal Register** announcing the approval of the State revision could also contain the State schedule of compliance for the one remaining rule to be picked up. If, however, the Agency needs to place a State on a schedule of compliance independent of the approval process, the Agency would publish a separate **Federal Register** notice apprising the public of that fact.

Sixth, if a State fails to comply with its schedule of compliance, the Administrator may initiate program withdrawal pursuant to §§ 271.22 and 271.23. This is to prevent any further delay of implementation of the necessary regulatory and/or statutory provisions.

Given the above limitations, the Agency believes that a schedule of compliance is an appropriate vehicle to ensure implementation of the necessary regulatory/statutory amendments while addressing commentors' concerns about the need for additional time to implement program revisions. We recognize that the use of schedules of compliance may delay implementation of non-HSWA and section 3006(f) requirements in some States. However, any such delay will be offset by maintaining State authorization continuity for States that have made reasonable progress toward adopting revisions. The goals of the RCRA program would not be furthered if the Agency withdrew the program authorization from such States. Although we expect to use schedules of compliance infrequently, we believe that it is an important mechanism to allow State flexibility in adopting program changes and to prevent premature program withdrawals.

An example of when schedules of compliance could be appropriate is for the RCRA section 3006(f) availability of information requirement. This provision is included in the non-HSWA cluster for which modifications are due by July 1, 1986 (see the previous discussion in the preamble.) Due to the complexity of this provision, EPA informed the States that it was developing detailed guidance to define the State provisions that are needed in order to meet the section 3006(f) requirement. The EPA guidance was not available until August 1986, which obviously did not allow enough time for States to make program changes by the cluster due date. Even if the Regional Administrator extends the deadline to January 1, 1987 pursuant to § 271.21(e)(3), the Agency expects that some States will not have their program modifications in place by then despite their best efforts. Therefore, if a State meets all the criteria in § 271.21(g)(1), it should be able to qualify for a schedule of compliance for picking up the section 3006(f) provisions.

However, State schedules of compliance should not be used to postpone State program revisions if the State is reluctant to make program changes in a timely manner or if it does not make diligent efforts to make these changes. In such a case, EPA will not provide the State with a schedule of compliance, but will instead initiate program withdrawal procedures pursuant to §§ 271.22 and 271.23.

6. Use of Promulgation Dates to Define Clusters

Under the proposal, the deadlines in § 271.21(e) run from the date that Federal regulations are *promulgated.* (See § 271.21(e)(2).) Ten States requested that the clusters be determined by Federal regulations that *take effect* during the cluster period instead of merely being promulgated. The reasons provided for this suggested approach were: (1) States should not be required to make changes pursuant to Federal rules that haven't yet taken effect; (2) EPA sometimes issues "interim final" rules that subsequently change; (3) the States would have more time to complete their regulatory development process by the cluster deadlines if "effective dates" defined the cluster deadline; and (4) since "effective dates" are used to determine which Federal requirements must be addressed in initial authorization applications, there would be less confusion if "effective dates" were also used for program revisions. Although these State comments have some merit, the Agency believes that the modifications to the clustering scheme contained in today's rule would significantly ease these problems. As discussed previously, today's rulemaking extends the HSWA cluster deadline, creates a second HSWA cluster, and allows schedules of compliance. These changes provide for greater flexibility in the final rule than was contained in the proposal which should mitigate many of the "timing" concerns expressed by the commentors regarding the use of the "promulgation date".

Furthermore, we believe that using effective dates in defining clusters as suggested by the commentors could result in an unwarranted delay in adopting program revisions. As an example, the definition of solid waste was promulgated on January 4, 1985, and became effective on July 5, 1985. Absent any extensions, the cluster schedule being promulgated today requires a State modification by July 1986. However, if the effective date was used to determine the cluster, then the State modification would be due July 1987. There would be a two and one-half year delay between the Federal program change and the State modification, and if a statutory change were needed there could be up to a three and one-half year delay. Except where a State has made diligent, good faith efforts to revise its program, we feel that such a delay is unreasonable.

As noted above, the States objected to making changes to their programs before the Federal rules take effect and further pointed out that an EPA interim final rule may change before coming effective. Since the cluster scheme requires a State to change its program less frequently (i.e., annually at most), in practice most of the Federal regulations will be effective before the State has formally initiated its changes. Finally, the Agency now rarely promulgates interim final RCRA rules. Since January 1983, of the 30 final RCRA rules, only one was an "interim final" rule. Therefore, we believe this concern is unwarranted.

The final objection regarding the use of "promulgation" dates for clusters was that it would create confusion since the "effective date" is used to determine what rules must be included in a State's initial application for final authorization. As discussed in section A.4 above, the requirement for using the effective date for initial applications is specified in the RCRA statute. (See RCRA section 3006(b).) Section 271.3(f) merely incorporates the statutory language. Since there is no such statutory requirement with regard to authorization of program modifications, the agency has devised a system for State revisions that makes the most sense for purposes of implementing the RCRA program in a timely fashion. Moreover, the Agency believes using effective dates to define clusters would lead to far greater confusion since some rules have numerous effective dates. For example, the used oil rule promulgated on November 29, 1985 has effective dates of December 9, 1985, March 31, 1986 and May 29, 1986 for its various provisions. State revision deadlines could become very confusing if a rule like the used oil rule happened to fall into separate clusters.

For these reasons we have maintained the use of the promulgation date to determine the composition of clusters. The Agency believes that the modifications to § 271.21(e)(2) being promulgated today will minimize commentors' concerns about the use of the promulgation date to define cluster periods.

7. Self-Implementing Statutory Provisions

The Agency proposed an amendment to § 271.21(e) providing that States have to modify their programs pursuant to either a self-implementing HSWA requirement or an implementing regulation that has been previously promulgated. The purpose of the amendment was to alleviate any confusion which may have arisen as to whether the cluster deadlines in § 271.21(e) were determined by the rules codifying the self-implementing amendments into the RCRA regulations or the self-implementing provisions themselves. As discussed in the proposal, the revision "clock" starts on the earlier of these dates. That is, if a HSWA requirement takes effect before EPA has published any implementing regulations, then that date determines the appropriate cluster for the requirement. If, however, EPA promulgates a revision incorporating a statutory provision before the provision takes effect, then the date of the regulation determines the appropriate cluster, not the effective date of the statutory provisions.

A few commentors criticized the amendment to § 271.21(e) stating that a HSWA provision should not be included in a cluster pursuant to the effective statutory date if the Agency plans to issue subsequent regulations implementing the statutory provision. The commentors were concerned that States would be in the midst of rulemaking proceedings when the Agency would issue more extensive regulations which the State would be required to adopt. The commentors requested that the § 271.21(e) deadlines be established by the issuance of the implementing regulations instead.

The Agency appreciates the commentors' concerns but feels that these concerns have been mitigated by the Agency's decision to adopt two HSWA cluster periods spanning a period of several years. By adopting this approach, the Agency believes that it is likely that the self-implementing statutory provisions and the regulations implementing these provisions will be in the same cluster, minimizing the likelihood that States will be required to adopt more than one regulatory amendment for a specific area.

If an instance occurs where the regulations codifying the self-implementing provisions and the self-implementing statutory provisions are not in the same HSWA cluster, the Agency believes that it is appropriate that States adopt the provision first

taking effect. The States will have *at least* 12 months' notice before they would be required to adopt any new Federal requirement. The Agency believes that amount of time is sufficient notice. Furthermore, if States are unable to meet the § 271.21(e) deadline and they have demonstrated a good faith effort to make the program changes, they would qualify for a six-month extension and, if necessary, they may subsequently be placed on a schedule of compliance which would allow additional time for regulatory adoption. Given these factors, the Agency is today promulgating the amendment to § 271.21(e) as proposed.

8. State Equivalence for Revisions

In the preamble to the proposal, the Agency stated that it planned to add language to Part 271 clarifying that States must adopt analogues to all requirements in Parts 260–268 and all self-implementing statutory provisions unless otherwise provided in Part 271. The purpose of the preamble language was to ensure that there was a continuing obligation for a State program to remain equivalent to EPA's program by requiring States to adopt the appropriate revisions to the Federal program. Today's rulemaking contains such language in several different regulatory amendments.

The Agency has amended §§ 271.10 and 271.11 to require that unless otherwise provided in Part 271, State programs shall have standards for generators and transporters which are at least as stringent as any revisions EPA promulgates after July 1, 1984 to the generator and transporter standards at 40 CFR Parts 262 and 263. The Agency chose the July 1, 1984 date because it was the first annual cluster date set forth in § 271.21 and all revisions to the generator and transporter standards promulgated prior to that date have already been incorporated in the Part 271 regulations. As a result of today's amendments to §§ 271.10 and 271.11, States have a continuing obligation to remain equivalent to EPA's generator and transporter requirements under Parts 262 and 263 unless otherwise specifically provided in Part 271.

Under the existing Part 271 regulations, States already have an obligation to remain equivalent to the Parts 261, 264, 265 and 266 regulations. (See 271.9, 271.12(j), and 271.13(a).) Accordingly, the Agency is not promulgating Part 271 amendments in today's rulemaking with respect to these EPA requirements.

The Agency considered whether or not it would need to promulgate amendments requiring States to adopt facility standards equivalent to all revisions to the Part 124 and Part 270 standards. Section 271.14 requires States to be equivalent to some specific provisions in Part 124 and Part 270. Since States are not required to adopt all of the Part 124 and Part 270 regulations (for example, appeal procedures, stays of permits, R&D permits and permits by rule are not required to be adopted by States), it would be inappropriate to promulgate language requiring States to adopt all revisions to Parts 124 and 270. Therefore, the Agency is not promulgating amendments to § 271.14 in today's rulemaking. If the Agency in the future proposes to amend Part 124 and Part 270 and such proposed amendments are not appropriately reflected in § 271.14, the Agency will initiate rulemaking proceedings for § 271.14.

In some cases the self-implementing HSWA requirements have not been codified in the Federal regulations. Therefore, since Part 271 is currently structured to require States to adopt analogues to specific *regulatory* provisions, it does not address the HSWA requirements that are imposed only by statute. Therefore, in today's rulemaking the Agency is adding a new § 271.25 to clarify that authorized States are required to adopt standards at least as stringent as the self-implementing HSWA requirements and prohibitions. Section 271.21(e)(2) already provides dates by which a State program must adopt the HSWA self-implementing provisions.

9. State Submission of Program Modifications

One aspect of the revision process that received significant attention from the commentors was the timeframe for submission of authorization documents subsequent to the completion of a State program modification. The current requirements provide that within 30 days of a State modification the State must submit the appropriate authorization documents (§ 271.21(e)(4)). We did not propose to change this requirement. However, a number of commentors requested that this provision be amended to reflect the cluster changes being made in the rule.

Several States remarked that 30 days is not enough to prepare a modified program description, Attorney General's Statement, Memorandum of Agreement, and other documentation as required by § 271.21(b)(1). Some States suggested that 90 days or more should be allowed for submittal of those documents. The States also pointed out that by clustering the Federal changes there will be many more changes contained in the State revision packages than was envisioned when § 271.21(e)(4) was initially promulgated, and that therefore, additional time for submittal of the documents is appropriate. A number of States also suggested that they may in some cases have a couple of separate rulemaking actions over a year, and that they would prefer to prepare a single authorization application to cover all the changes.

The Agency agrees with the suggestions that the current regulations do not provide adequate time to submit the necessary documentation, and is therefore amending § 271.21(e)(4) to bring it into conformance with the cluster scheme. Under today's rule, after any State modification is completed the State must notify EPA of the change within 30 days. The State notification would typically include a copy of the program change (i.e., amended statute or regulation), and a letter indicating when the change takes effect and a proposed schedule for State submission of its authorization documents. This notification will allow the Agency to remain informed of State program changes and to know how they affect the authorized program. If EPA determines that the program modification is not in conformance with State authorization requirements, then the Agency may initiate program withdrawal proceedings.

Under today's rulemaking the State authorization documents would be due 60 days after the State modification cluster deadline, including any appropriate extensions. For example, if a State makes a non-HSWA change in March of 1987 for a cluster provision that is due on July 1, 1987, then the authorization application must be submitted by September 1, 1987 (60 days after the July 1 deadline). As another example, if a provision from the first HSWA cluster is adopted by a State, then the authorization documents must be submitted no later than September 1, 1989 (60 days after the July 1, 1989 HSWA cluster deadline). Of course, States may apply for authorization in advance of these dates if they prefer.

We feel that the 60-day period is a sufficient amount of time to submit the necessary documentation for States that complete their modifications near the deadline. Futhermore, we expect that many of the States will complete the cluster modifications prior to the deadlines, and will therefore have more than 60 days to develop the appropriate authorization documents. This approach will also allow States to submit a consolidated authorization application for EPA approval of all revisions within

a cluster rather than piecemeal applications. This approach will not only be a more efficient way to approve State revisions, it will also give EPA a more comprehensive view of the State's ability to modify its program to remain equivalent to the Federal program changes.

Although today's changes to § 271.21(e)(4) were not presented in the proposal, numerous commentors suggested that this provision be amended to reflect the clustering scheme. EPA believes that today's amendments are necessary to provide the flexibility and administrative simplicity that was intended by the clustering scheme.

10. Revisions for Program Changes Occurring During the Authorization Process

As discussed earlier in this preamble, initial State authorization applications must, at a minimum, reflect the Federal requirements in effect 12 months prior to application submittal. (See § 271.3(f).) However, States are not precluded from seeking authorization for requirements taking effect less than 12 months prior to the State's submittal of its application. The Federal program changes that occur during this period that are not addressed in the State's initial application must subsequently be picked up in a State program revision along with any additional Federal requirements which occur during the final authorization approval progress. These State modifications must be completed by the cluster deadlines in § 271.21(e) or by the date of final authorization, whichever is later. (See § 271.21(f).) Note that the six-month extension in § 271.21(e)(3) and the § 271.21(g) schedule of compliance may be applied to these deadlines when appropriate.

The proposal reorganized this requirement by moving it from § 271.21(e)(1)(iii) to § 271.21(f). The wording was also modified to conform to the cluster scheme. One commentor stated that some confusion might arise when comparing the operation of § 271.21(f) to § 271.3(f). In today's rule we have slightly modified § 271.21(f) by specifically exempting changes that a State has received authorization for under § 271.31(f) from the requirement to seek program modification.

11. Effect of Cluster Rule on Recently Promulgated Tank Standards

Some questions have arisen regarding the operation of the cluster deadlines on the recently promulgated amendments to the RCRA standards for the storage and treatment of hazardous waste in tank systems (see 51 FR 25422–25486; July 14, 1986). As discussed in the preamble to that rule, some of the provisions of the rule stem from HSWA, while other provisions are considered non-HSWA (see 51 FR 25463). This places the tank rule under two different clusters. Under today's cluster scheme, States will need to modify their programs to pick up the non-HSWA tank standards by July 1, 1988, and the HSWA tank standards by July 1, 1989 (if only State regulatory changes are needed). However, from a programatic and administrative standpoint it would be much more practical for States to adopt both the HSWA and non-HSWA tank standards simultaneously. Therefore, EPA encourages State programs to adopt all program modifications with regard to these tank standards by the non-HSWA revision deadline (July 1, 1988), or sooner if possible.

C. Interim Authorization

1. Expiration of HSWA Interim Authorization

Section 3006(c)(2) requires EPA to establish a deadline for the expiration of HSWA interim authorization. A State will need to obtain final authorization by that date for those requirements for which it holds HSWA interim authorization. Otherwise, the interim authorization portions of the State program will revert to EPA for implementation. Furthermore, the State's final authorization for the base RCRA program may be withdrawn by EPA if the State fails to revise its program to obtain final authorization by the deadlines in § 271.21. See § 271.22. The proposed rule provided that HSWA interim authorization expire July 1, 1991. This date was selected since it is the due date for State program modifications for the last scheduled HSWA self-implementing provision. (See the cluster discussion above.)

Four commentors suggested that the date be changed to July 1992 or beyond to allow sufficient time for States to make the necessary program changes. In consideration of the comments received and the changes to the HSWA cluster deadlines being promulgated today, the Agency has decided to change the proposed expiration date from July 1991 to January 1993. The Agency believes that the July 1991 date is inappropriate because it does not fully take into account the time allowed for State modifications for the second HSWA cluster. The deadline for State program modifications for the second HSWA cluster is July 1992 for the provisions requiring State staturory amendments, plus the Regional Administrator may extend this deadline for an additional six months (January 1993) pursuant to § 271.21(e)(3). This could result in State modifications occurring as late as January 1993 without violating the revision deadlines for the second HSWA cluster. Therefore, the Agency has decided that HSWA interim authorization should expire on January 1, 1993, one and a half years later than the proposed date. To set a date earlier than January 1993 would needlessly risk authorization reversion and program disruption in those States that have interim authorization.

2. Application Procedures for HSWA Interim Authorization

Section 271.24(b) of the proposal specified that the § 271.21(b) program revision procedures be used for approving State applications for HSWA interim authorization. The § 271.21(b) procedures are more abbreviated than those for initial submission of an authorization application, requiring submission of whatever documentation EPA determines to be necessary. State public hearings are not required prior to submission of the State's application. No comments were received on this provision. Section 271.24(b) is being promulgated in final form today without change from the proposal.

D. Administrative Compliance Order and Penalty Authorities

In the January 6 proposal, EPA requested comments on the concept of requiring States to have administrative compliance order and/or penalty authorities (see 51 FR 502). Several options were outlined and a series of questions were presented in order to assist in the careful analysis of the issue. The Agency received numerous responses on these authorization options. The Agency will take these comments into account as it considers proposing changes to the State authorization requirements. If such changes are proposed, a detailed analysis of the comments will be presented. If interested parties wish to submit additional comments or information, please see the January 6, 1986 Federal Register for a more detailed discussion of the issues and send comments to: David Levenstein, Office of Waste Programs Enforcement, 401 M Street, SW (WH–527), Washington, DC 20460.

IV. Response to Comments

The discussion section in today's rule gives EPA's reasons for accepting or rejecting many of the comments on the

proposed rule. The following are responses to the remaining comments.

Section 271.21(e)(2)(v) provides an additional year for States to modify their programs for any provision that necessitates a State statutory amendment. One commentor requested that EPA clarify whether the deadline for statutory amendments applies to every element in the cluster or only to the element that must be supported by statutory amendments. This provision only establishes a later deadline for the specific portion of the cluster that requires the statutory change, not for the entire cluster. For example, if a particular cluster is comprised of five EPA rulemakings and the State needs to amend its statute in order to be authorized for one of those rules, then the additional year is allowed for that one rule only; the remaining four rules must be picked up according to the normal cluster deadlines.

A few commentors asked for clarification as to whether States can be authorized for HSWA statutory provisions. These commentors expressed concern that it they waited for regulations to be adopted which incorporated the HSWA amendments, it would delay authorization. A State need not wait for implementing regulations to be promulgated by EPA, but may be authorized for any effective HSWA requirement, including those imposed by statute. Indeed, as discussed earlier, § 271.25 being promulgated today provides that authorized State programs be required to develop standards at least as stringent as the HSWA self-implementing requirements.

V. Effective Date

This rule will become effective immediately. Section 3010(b) of RCRA provides that requirements applicable to the generation, transportation, treatment, storage or disposal of hazardous waste become effective in six months. Since today's regulation is procedural, the requirements of section 3010(b) does not apply. There is good cause for making this rule effective immediately under the Administrative Procedures Act because this rule only affects the deadlines and procedures for States to revise their program.

VI. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291 (46 FR 12193, February 19, 1981), EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Today's regulation is not major because it will not result in an annual effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely modifies the procedures and deadlines for approving State RCRA program authorization applications and revisions. This rulemaking has been submitted to the Office of Management and Budget for Executive Order 12291 review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory flexibility analysis. No regulatory flexibility analysis is required where the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments adopted here merely modify the procedures and deadlines for approving State hazardous waste program authorization applications and revisions and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must estimate the paperwork burden created by any information collection request contained in a proposed or final rule. Because there are no information collection activities created by this rulemaking, the requirements of the Paperwork Reduction Act do not apply.

Information collection requirements contained elsewhere in 40 CFR Part 271 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act and have been assigned OMB control number 2050–0041.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 8, 1986.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, 40 CFR Part 271 is revised as follows:

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: Secs. 1006, 2002(a), and 3006, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), and 6926).

2. Section 271.1 is amended by revising paragraph (j) to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) Requirements and prohibitions which are applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which are imposed pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) include any requirement or prohibition which has taken effect under HSWA, such as:

(1) All regulations specified in Table 1, and

(2) The self-implementing statutory provisions specified in Table 2 that have taken effect.

Note.—See §§ 264.1(f)(3), 265.1(c)(4)(ii), 271.3(b), 271.21(e)(2) and 271.121(c)(3) for applicability.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
Jan. 14, 1985	Dioxin-containing wastes	50 FR 1978-2006	July 15, 1985.
April 30, 1985	Paint filter liquids test	50 FR 18370-5	June 14, 1985.
July 15, 1985	Codification rule [as corrected in 51 FR 2702, 1/21/86]	50 FR 28702-55	July 15, 1985.
Oct. 23, 1985	Listing wastes from the production of dinitrotoluene, toluenediamine, and toluene diisocyanate	50 FR 42936-43	Oct. 23, 1985.
Nov. 29, 1985	Standards for the management of the burning of specific wastes in specific types of facilities	50 FR 49164-212	Dec. 9, 1985. March 31, 1986. May 29, 1986.
Dec. 31, 1985	Amendment of spent solvent listings to include solvent mixtures [as corrected in 51 FR 19176, 5/28/86]	50 FR 53315-20	Jan. 30, 1986.

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
Feb. 13, 1986	Listing wastes from the production of ethylene dibromide (EDB)	51FR 5327-31	Aug. 13, 1986.
Feb. 25, 1986	Listing of four spent solvents and the still bottoms from their recovery	51 FR 6537-42	Aug. 25, 1986.
March 24, 1986	Regulations for generators of 100-1000 kg/mo of hazardous waste	51 FR 10146-76	Sept. 22, 1986.
July 14, 1986	Hazardous Waste Tank Regulations:[1] 260.10; 262.34(a)(1); 264.110; 264.140; 264.190-264.199; 265.110; 265.140; 265.190-265.200; 270.14(b); 270.16; and 270.72 (e).	51 FR 25422-86	Jan. 12, 1987. March 24, 1987.
Aug. 8, 1986	Exports of hazardous waste	51 FR 28664-86	Nov. 8, 1986.

[1] These regulations implement HSWA only to the extent that they apply to tank systems owned or operated by small quantity generators, establish leak detection requirements for all new underground tank systems, and establish permitting standards for underground tank systems that cannot be entered for inspection.

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
Nov. 8, 1984	Delisting procedures	3001(f)	July 15, 1985, 50 FR 28702-55.
Do	Waste disposal for small quantity generators prior to March 31, 1986	3001(d)(5)	Do.
Do	Prohibition of disposal in salt domes, salt beds and underground mines and caves	3004(b)	Do.
Do	Land disposal prohibition not applicable to contaminated soil or debris from a CERCLA response action or a RCRA corrective action prior to November 8, 1988.	3004(d)(3)	Do.
Do	Loss of interim status	3005(c)(2)(C) & (e)(2)-(3)	Do.
Do	Storage of wastes prohibited from land disposal	3004(j) & 3005(j)(11)	Do.
Do	Prohibition of waste and used oil as dust suppressant	3004(l)	Do.
Do	Minimum technological requirements for new and expanding surface impoundments, landfills and incinerators	3004(o)	Do.
Do	Ground water monitoring	3004(p)	Do.
Do	Prohibition for burning fuels containing hazardous waste in any cement kilns	3004(q)(2)(C)	Do.
Do	Financial responsibility for liability of guarantor when owner/operator is in bankruptcy	3004(t)(2)-(3)	Do.
Do	Corrective action	3004(u)	Do.
Do	Review of land disposal permits every 5 years	3005(c)(3)	Do.
Do	Permit terms and conditions necessary to protect human health and the environment	3005(c)(3)	Do.
Do	Research, development, and demonstration permits	3005(g)	Do.
Do	Interim status facilities receiving waste after July 26, 1982	3005(i)	Do.
Do	Deadline for surface impoundment retrofit exemption application	3005(j)(5)	Do.
Feb. 7, 1985	Fuel labeling requirements	3004(r)	Do.
May 8, 1985	Prohibition of liquids in landfills	3004(c)(1)	Do.
Do	Expansions during interim status for waste piles	3015(a)	Do.
Do	Expansions during interim status for landfills and surface impoundments	3015(b)	Do.
Do	Interim control of hazardous waste disposed of by underground injection	7010(a)	Do.
Aug. 5, 1985	Small quantity generator manifest requirements	3001(d)(3)	Do.
Aug. 8, 1985	Exposure assessments to accompany landfill and surface impoundment permit applications	3019(a)	Do.
Sept. 1, 1985	Waste minimization certification on manifest	3002(b)	Do.
Do	Waste minimization permit condition	3005(h)	Do.
Nov. 8, 1985	Prohibition of non-hazardous liquids in landfills	3004(c)(3)	Do.
Do	Notification of hazardous waste export	3017(c)	Do.
Feb. 8, 1986 [1]	Notification requirements for producers, burners, blenders, distributors and marketers of waste derived fuel	3010(a)	Nov. 29, 1985, 50 FR 49164-211.
Mar. 31, 1986 [2]	Small quantity generator requirements	3001(d)(8)	Mar. 24, 1986, 51 FR 10146-78.
Nov. 8, 1986	Land disposal prohibitions on dioxins and F001-F005 solvents	3004(e)	Do.
Do	Temporary granting of exclusion petitions ceases	3001(f)(2)(B)	Do.
Do	Export of hazardous waste	3017(a)	Aug. 8, 1986, 51 FR 28664-86.
July 8, 1987	Land disposal ban on "California" waste	3004(d)	Do.
Aug. 8, 1988	Prohibition on California wastes, dioxins, and solvents in deep injection wells	3004(f)(3)	Do.
Do	Land disposal prohibition of ⅓ of listed wastes	3004(g)(6)(A)	Do.
Nov. 8, 1988	Prohibition on wastes in existing surface impoundments unless double lined	3005(j)	Do.
June 8, 1989	Prohibition on land disposal of ⅔ of listed wastes	3004(g)(6)(B)	Do.
May 8, 1990	Prohibition on land disposal of all listed wastes	3004(g)(6)(C)	Do.

[1] Note that the effective date was changed to Jan. 29, 1986 by the Nov. 29, 1985 rule.
[2] Note that the effective date was changed to Sept. 22, 1986 by the Mar. 24, 1986 rule.

3. Section 271.3 is amended by redesignating paragraphs (a) through (d) as (b) through (e) and by adding new paragraphs (a) and (f) as follows. Newly redesignated paragraph (d) is amended by changing the reference now reading "paragraph (b) of this section" to read "paragraph (c) of this section".

§ 271.3 Availability of final authorization.

(a) Where a State program meets the requirements of section 3006 of RCRA and this subpart it may receive authorization for any provision of its program corresponding to a Federal provision in effect on the date of the State's authorization.

* * * * *

(f) Official State applications for final authorization may be reviewed on the basis of Federal self-implementing statutory provisions that were in effect 12 months prior to the State's submission of its official application (if no implementing regulations have previously been promulgated) and the regulations in 40 CFR Parts 124, 260–266, 268, 270 and 271 that were in effect 12 months prior to the State's submission of its official application. To meet this requirement the State may demonstrate that its program qualifies for final authorization pursuant to this subpart or interim authorization under § 271.24. States are not precluded from seeking authorization for requirements taking effect less than 12 months prior to the State's submittal of its final application.

4. Section 271.9 is revised to read as follows:

§ 271.9 Requirements for identification and listing of hazardous wastes.

(a) The State program must control all the hazardous wastes controlled under 40 CFR Part 261 and must adopt a list of hazardous wastes and set of characteristics for identifying hazardous wastes equivalent to those under 40 CFR Part 261.

(b) The State is not required to have a delisting mechanism. A State may receive authorization for delisting if the State regulations for delisting decisions

are equivalent to § 260.20(b) and § 260.22, and the State provides public notice and opportunity for comment before granting or denying delisting requests.

5. Section 271.10 is amended by adding new paragraph (i) as follows:

§ 271.10 Requirements for generators of hazardous waste.

* * * * *

(i) Unless otherwise provided in Part 271, the State program shall have standards for generators which are at least as stringent as any amendment to 40 CFR Part 262 which is promulgated after July 1, 1984.

6. Section 271.11 is amended by adding new paragraph (e) as follows:

§ 271.11 Requirements for transporters of hazardous wastes.

* * * * *

(e) Unless otherwise provided in Part 271, the State program shall have standards for transporters which are at least as stringent as any amendment to 40 CFR Part 263 which is promulgated after July 1, 1984.

7. Section 271.13 is amended by revising paragraph (a) to read as follows:

§ 271.13 Requirements with respect to permits and permit applications.

(a) State law must require permits for owners and operators of all hazardous waste management facilities required to obtain a permit under 40 CFR Part 270 and prohibit the operation of any hazardous waste management facility without such a permit, except that States may, if adequate legal authority exists, authorize owners and operators of any facility which would qualify for interim status under the Federal program to remain in operation until a final decision is made on the permit application, or until interim status terminates pursuant to 40 CFR 270.73(b) through (f). When State law authorizes such continued operation it shall require compliance by owners and operators of such facilities with standards at least as stringent as EPA's interim status standards at 40 CFR Part 265.

* * * * *

8. Section 271.17(c) is revised to read as follows:

§ 271.17 Sharing of information.

* * * * *

(c) (1) The State program must provide for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste. Such information must be made available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of Subtitle C of RCRA in the State.

(2) A State must revise its program to comply with this section in accordance with § 271.21(e)(2)(ii). Interim authorization under § 271.24 is not available to demonstrate compliance with this section.

9. Section 271.21 is amended by revising paragraph (e) and adding paragraphs (f) and (g) to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(e) (1) As the Federal program changes, authorized State programs must be revised to remain in compliance with this subpart.

(2) Federal program changes are defined for purposes of this section as promulgated amendments to 40 CFR Parts 124, 270, 260–266, or 268 and any self-implementing statutory provisions (i.e., those taking effect without prior implementing regulations) which are listed as State program requirements in this subpart. States must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

(i) For Federal program changes occurring before July 1, 1984, the State program must be modified within one year of the date of the Federal program change.

(ii) Except as provided in paragraph (e) (iii) and (iv) of this section, for Federal program changes occurring on or after July 1, 1984, the State program must be modified by July 1 of each year to reflect all changes to the Federal program occurring during the 12 months preceding the previous July 1. (For example, States must modify their programs by July 1, 1986 to reflect all changes from July 1, 1984 to June 30, 1985.)

(iii) For Federal program changes identified in § 271.1(j) that occur between November 8, 1984 and June 30, 1987 (inclusive), the State program must be modified by July 1, 1989.

(iv) For Federal program changes identified in § 271.1(j) that occur between July 1, 1987 and June 30, 1990 (inclusive), the State program must be modified by July 1, 1991.

(v) States may have an additional year to modify their programs for those changes to the Federal program identified in paragraphs (e) (i), (ii), (iii), and (iv) of this section which necessitate a State statutory amendment.

(3) The deadlines in paragraphs (e)(2)(i) through (v) may be extended by the Regional Administrator upon an adequate demonstration by a State that it has made a good faith effort to meet these deadlines and that its legislative or rulemaking procedures render the State unable to do so. No such extension shall exceed six months.

(4) (i) Within 30 days of the completion of the State program modification the State must submit to EPA a copy of the program change and a schedule indicating when the State intends to seek approval of the change. Such schedule shall not exceed the dates provided for in paragraph (e)(4)(ii).

(ii) Within 60 days of the appropriate deadline in paragraphs (e), (f), and (g) of this section, the State must submit to EPA the documentation described in paragraph (b) of this section to revise its program.

(f) A State must modify its program to comply with any Federal program changes which occur prior to the day that final authorization is received, except for those changes that the State has already received authorization for pursuant to § 271.3(f). Such State program modifications must be completed and submitted by the deadlines specified in paragraph (e) of this section or by the date of final authorization, whichever is later.

(g) (1) States that are unable to modify their programs by the deadlines in paragraph (e) may be placed on a schedule of compliance to adopt the program revision(s) provided that:

(i) The State has received an extension of the program modification deadline under paragraph (e)(3) and has made diligent efforts to revise its program during that period of time,

(ii) The State has made progress in adopting the program modifications,

(iii) The State submits a proposed timetable for the requisite regulatory and/or statutory revisions by the deadline granted under paragraph (e)(3),

(iv) The schedule of compliance for program revisions does not exceed one year from the extended program modification deadline under paragraph (e)(3), and

(v) The schedule of compliance is published in the **Federal Register.**

(2) If a State fails to comply with the schedule of compliance, the Administrator may initiate program withdrawal procedures pursuant to §§ 271.22 and 271.23.

10. Section 271.24 is revised to read as follows:

§ 271.24 Interim authorization under section 3006(g) of RCRA.

(a) Any State which is applying for or has been granted final authorization pursuant to section 3006(b) of RCRA

may submit to the Administrator evidence that its program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement identified in § 271.1(j) of this chapter. Such a State may request interim authorization under section 3006(g) of RCRA to carry out the State requirement in lieu of the Administrator carrying out the Federal requirement.

(b) The applications shall be governed by the procedures for program revisions in § 271.21(b) of this chapter.

(c) Interim authorization pursuant to this section expires on January 1, 1993.

11. Part 271 is amended by adding a new § 271.25 to Subpart A to read as follows:

§ 271.25 HSWA requirements.

Unless otherwise provided in Part 271, the State program shall have standards at least as stringent as the requirements and prohibitions that have taken effect under the Hazardous and Solid Waste Amendments of 1984 (HSWA).

§ 271.121 [Amended]

12. In § 271.121 paragraph (1) is redesignated as paragraph (i).

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federal register

Monday
September 22, 1986

Part V

Department of Education

34 CFR Part 674

National Direct Student Loan Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 674

National Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the regulations for the National Direct Student Loan (NDSL) Program. These regulations are being amended to encourage institutions to improve the management of their NDSL Programs and to provide institutions with additional tools by which to stimulate borrower repayments. Institutions which improve their loan management and reduce their default rates through increasing repayments will better preserve the NDSL fund as a revolving fund and will increase the funds available for loans to future borrowers.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Margaret O. Henry, Chief, Policy Section, Campus and State Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, 400 Maryland Avenue SW. (Room 4018, ROB–3), Washington, DC 20202. Telephone (202) 245–9720.

SUPPLEMENTARY INFORMATION: Under the National Direct Student Loan (NDSL) Program, authorized by Title IV–E of the Higher Education Act of 1965, as amended, institutions of higher education may receive Federal funds to make loans to students. Current regulations provide that a borrower who fails to make an installment payment when due, or to comply with other terms of the promissory note, is regarded as in default on a loan unless the institution reasonably concludes, from written statement(s) from the borrower, that he or she intends to repay the loan. Under these current regulations, a borrower who reaffirms that intention in this way is therafter once again eligible to receive further Title IV assistance, and when computing its default rate, the institution can exclude that borrower's loan from the principal amount of its loans in default.

The Secretary believes that the "intent to repay" provision is not fully accomplishing its purpose, i.e., bringing about a reduction in past due amounts. Therefore, these final regulations change current rules to make default status, for purposes other than eigibility for student assistance, turn solely on the debtor's compliance with the repayment agreement. Under these final regulations, an institution may regard borrowers who have only recently missed a payment required under the repayment agreement then in effect as still eligible for Title IV assistance; but borrowers who fail to make a required payment for 120 or more days on loans repayable monthly, or 180 or more days on loans repayable less frequently, forfeit eligibility for further Title IV assistance. These final regulations do not modify the formula used to calculate an institution's default rate.

The Secretary believes these regulations will stimulate negotiation efforts with defaulted borrowers which will result in increased collections.

Revisions to the Notice of Proposed Rulemaking

On February 13, 1986, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register**, at 51 FR 5484–5488. That NPRM would have changed the impact of an institution's default rate on its receipt of Federal Capital Contribution (FCC), amended the appeal process as part of the application review process and amended the definition of "default or in default." Regulations governing the impact of default rates and the appeal process are being published separately. This final regulation changes the definition of "default or in default" and also changes the defined term to simply "default." The following is a discussion of those changes, including a summary of the public comments received on the proposed definition and the Secretary's response to those comments:

Section 674.2—Definition of "default"

The definition in the Notice of Proposed Rulemaking (NPRM) provided that an institution could exclude from the category of loans "in default" only those past-due loans for which the borrowers professed their intention to repay, and evidenced that intention by making payments sufficient to reduce continually the amount in arrears on the account.

Summary of Public Comments

While most commenters agreed that a borrower should evidence a promise to repay by making efforts to cure past defaults, they were generally dissatisfied with the proposed definition of "default or in default."

The commenters claimed that the proposed definition was confusing, burdensome, costly, unrealistic, and unresponsive to individual circumstances of unemployment and underemployment. Commenters also stated that the NPRM definition unfairly penalized borrowers who were making regular payments but were unable to reduce their past due balances within a six-month period.

Many commenters emphasized that the proposed rule would require the institution to monitor each individual payment by a borrower, because the amount of the individual payment determined whether a borrower with an amount in arrears was in "default" or not in that month. Borrowers could frequently alternate between being "in default" and out of "default," in their view; those institutions currently reporting borrowers' repayment histories to credit bureaus claimed that the proposed rule would require constant monitoring to assure accurate credit bureau reporting. Many commenters believed that the proposal would increase their costs, paperwork, and legal expenses. They claimed that continuously revising repayment schedules would reduce institutional default rates initially but would neither return money to the loan fund nor guarantee against future defaults. They also claimed that multiple repayment agreements for the same borrower would appear to jeopardize the credibility of the loan obligation and could have a negative impact on judicial decisions. In their opinion, if an institution presented multiple repayment agreements during litigation, a judge might reason that a repeated willingness to renegotiate the terms of the loan by entering into new repayment agreements evidenced a lack of responsibility on the part of the institution, and therefore rule in favor of the borrower.

Many commenters suggested that the Secretary retain the definition of "default or in default" in the current regulations, but consider a borrower who is making consistent repayments not to be in "default." These commenters asserted that in making this determination, the institution should be allowed to determine the amount the debtor is financially able to pay in light of the borrower's income and repayment history, the remaining outstanding balance on the loan, and the length of time required to repay the loan. Many of these commenters stated that the proposed definition would eliminate the best collection tool available to institutions—the flexibility to negotiate alternative repayment arrangements.

Discussion

Cures of past defaults by execution of new repayment agreement

After reviewing the substantial number and variety of comments, the Secretary concurs with the commenters who argued that the proposed definition was too complex.

The complexity of the proposed regulation was not in the description of the events constituting default, but in the limitations placed on actions which would cure a previous default. For several reasons, the Secretary continues to conclude that those provisions of current rules which permit a borrower to cure a default merely by making representations to the institution of an intention to repay should be changed. This final rule makes these changes in a manner that is expected to meet the concerns of the commenters for simplicity, ease of administration, and institutional flexibility.

First, the current rule requires too little commitment from the borrower to create a reasonable expectation that the borrower will follow through with the professed intent, bring the account current, and keep the account current. If the borrower falls into default again, the representations on which the institution relied in deeming the prior default to have been cured may not be considered adequate by a court to constitute a reafffirmation sufficient to extend the period of limitations on that debt. It is also reasonable to demand more than an inference of an intent to repay from unspecified written contacts with the defaulter in order to make a previously-ineligible defaulter once again eligible for additional Title IV aid.

Second, current rules permit the institution to use a great deal of discretion in judging the adequacy of the debtor's representations of an intent to repay. This latitude can result in considerable disparity of treatment for similarly-situated debtors who attended the same institution. Because the amount of loans in default directly affects the amount of new Federal funds the institution receives, this latitude for discretion in accepting curative promises permits the decision regarding the adequacy of the cure to be unduly influenced by the institution's need for new FCC.

Third, because the rule, with its wide latitude for discretion, permits an institution to regard a default as cured with an minimal expenditure of collection effort, the rule requires little commitment from an institution compared to the benefit it may gain in additional FCC by excluding the "cured" defaulted account from the total of loans in default.

Moreover, because limited FCC appropriations are allocated among institutions on a competitive basis, the current rule, with this room for considerable discretion, can tend to penalize those institutions which comply more diligently with the spirit and intent of the rule by holding the debtor to realistic cure proposals.

To reduce or eliminate these shortcomings in the current rule without imposing the recordkeeping and monitoring burden described by the commenters on the proposed rule, the Secretary is adopting in this final rule a compromise position on the minimum requirements for a cure of a previous default. The final rule requires the institution to secure at least a new repayment agreement from those defaulters not eligible for cancellation or deferment whom it wishes to regard as not in default for purposes of determining the eligibility of the defaulter for additional Title IV aid, and of the institution for additional FCC. This change preserves much of the institutional discretion permitted by the current rule, because the institution is free to set the terms of any new repayment agreement it accepts, and in that agreement can require the debtor to repay, in a specified period, any past-due amount. However, by requiring the institution to secure from the debtor a formal written profession of intent to repay and cure any past default, the rule reduces some of the subjectivity now permitted by establishing a clear minimum standard for documentation of cures.

Moreover, the final rule can reasonably be expected to improve collections because it requires the defaulter to consider, and to state unequivocally in writing, the specific terms of the new promise to pay. Execution of a new agreement should impress on the debtor the seriousness of the promise more effectively than informal notes to the institution, and should impose no additional burden on debtors who have a bona fide intent to repay a past-due account. Not only will the new agreement reinforce the debtor's current commitment to repay, but the document itself, unlike less formal writings, should remove any question that may arise in the future, should collection litigation later prove necessary, regarding reaffirmation of the debt.

Not only can the use of a new repayment agreement for cures be expected to reinforce the defaulter's commitment to repay, thus increasing recoveries on such loans for the institution, but the requirement that the account be considered in default unless such a minimum is met will ensure that the institution pursues in a timely and effective manner those defaulters unwilling to meet this minimum. By requiring the institution to pursue debtors who fail to make and keep new formal promises to repay past-due accounts, the final rule should enhance the credibility of the institution's image as a serious steward of loan funds, without requiring the institution to adopt burdensome monitoring mechanisms or procrustean cure standards.

Determination of default for purposes of eligibility for Title IV aid

A variation of this position, that the borrower who misses a payment due under the repayment agreement then in effect is in default, is adopted for eligibility determinations.

Some institutions, when determining a borrower's eligibility for Title IV assistance, consider a borrower with a past-due account not to be in default until the default has persisted for (a) 120 days in the case of a loan which is repayable in monthly installments or (b) 180 days in the case of a loan which is repayable in less frequent installments. Institutions adopted this practice to accommodate the period of time required to process payments and correspondence received from borrowers. The Secretary believes that this practice is reasonable, and therefore adopts this option in this final regulation to permit all institutions this latitude in their determination of default status for purposes of student eligibility. However, the Secretary provides this as an option; institutions may deny Title IV assistance to a student whose default has lasted less than the 120 or 180 day limits set here.

Executive Order 12291

These final regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Paperwork Reduction Act of 1980

These final regulations do not contain any information collection requirements and are therefore not subject to the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) which govern such requirements.

Assessment of Educational Impact

In the Notice of Proposed Rulemaking, the Secretary requested comments on whether the proposed regulations would

require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 674

Education, Loan programs—education, Student aid.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

(Catalog of Federal Domestic Assistance Number 84.038 National Direct Student Loan Program)

Dated: September 16, 1986.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 674 of Title 34 of the Code of Federal Regulations as follows:

PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM

1. The authority citation for Part 674 is revised to read as follows:

Authority: 20 U.S.C. 1087aa–1087ii, 20 U.S.C. 421–429, unless otherwise noted.

2. Section 674.2 is amended by deleting the definition of "Default or in default" and adding a definition of "default" in alphabetical order to read as follows:

§ 674.2 Definitions.

* * * * *

Default: (a) The failure of a borrower to—

(1) Make an installment payment when due; or

(2) Comply with other terms of the promissory note.

(b) Notwithstanding §§ 674.9(a)(7), 675.9(a)(7), 676.9(a)(7), 682.201(a)(4), 683.11(f), and 690.75(a)(3), if a borrower is in default on a Direct or Defense loan, and the default has persisted for less than 120 days in the case of a loan payable in monthly installments, or 180 days in the case of a loan payable less frequently, an institution may, for that borrower—

(1) Disburse funds under any student financial assistance program authorized by TItle IV of the Higher Education Act of 1965, as amended;

(2) Certify the institutional portion of the application under the Guaranteed Student Loan or PLUS Programs; or

(3) Certify the institutional portion of the Pell Grant Request for Payment (ED Form 304).

(c) A borrower who failed to make a timely repayment is no longer in default on a Direct or Defense loan after—

(1) All past-due amounts have been repaid, cancelled, or deferred;

(2) The borrower's loan has been discharged in bankruptcy; or

(3) The borrower has entered into a new repayment agreement for the loan.

* * * * *

[FR Doc. 86–21426 Filed 9–19–86; 8:45 am]

BILLING CODE 4000–01–M

federal register

Monday
September 22, 1986

Part VI

Environmental Protection Agency

40 CFR Part 80

Regulation of Fuels and Fuel Additives; Applicability of Motorcycles and Alternative Labeling Language for All Motor Vehicles; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL 3060-4]

Regulation of Fuels and Fuel Additives; Applicability to Motorcycles and Alternative Labeling Language for All Motor Vehicles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action on the August 20, 1985 proposal to exclude motorcycles from the requirement at 40 CFR 80.24(a)(1) concerning the location of "Unleaded Gasoline Only" labels on the instrument panels of vehicles required to use only unleaded gasoline. The EPA is also taking final action on the proposal to exclude motorcycles permanently from the requirement at 40 CFR 80.24(b)(1) concerning the design of the fuel tank filler inlet for vehicles required to use only unleaded gasoline. These changes are necessary because of requirements in the regulations that were probably never intended to apply to motorcycles. The EPA is also taking final action to allow the labels on all motor vehicles to read "Unleaded Gasoline Only" or "Unleaded Fuel Only". Only the former version is explicitly included in the existing regulations at 40 CFR 80.24(a), although the latter was also allowed as indicated in an EPA advisory circular.

EFFECTIVE DATE: The final actions taken in this notice are effective October 22, 1986.

ADDRESS: Comments and other information relevant to this rulemaking (Docket No. EN-85-04) may be viewed at the Central Docket Section (LE-131A), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and may be inspected between 8:00 a.m. and 4:00 p.m. on week-days. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying .

FOR FURTHER INFORMATION CONTACT: Sylvia I. Correa, Attorney/Advisor, Fuels Section, Field Operations and Support Division, (EN-397F), EPA, 401 M Street, SW., Washington, DC 20460, (202) 382-2635.

SUPPLEMENTARY INFORMATION:

I. Background

On August 20, 1985 (50 FR 33577), EPA proposed several revisions to the regulations set forth at 40 CFR Part 80. These revisions were proposed under the Agency's authority to regulate fuels and fuel additives under section 211(c) of the Clean Air Act to protect the public health and welfare and to safeguard the performance of emission control devices in general use.

Federal rules at 40 CFR 80.24 place certain requirements on the manufacturer of any motor vehicle equipped with an emission control device (primarily the catalytic converter) which will be impaired by the use of leaded gasoline. As defined in the Clean Air Act, "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway. This definition includes motorcycles.

However, 40 CFR 80.24(a) placed some labeling requirements on motor vehicles that were probably not intended to apply to motorcycles. It required that two or more "Unleaded Gasoline Only" labels be affixed to any motor vehicle equipped with an emission control device which the Administrator has determined will be significantly impaired by the use of leaded gasoline. One label is to be located on the instrument panel [40 CFR 80.24(a)(1)] and the other is to be located immediately adjacent to each gasoline tank filler inlet [40 CFR 80.24(a)(2)]. On a motorcycle, these two label locations are generally about a foot apart. Requiring labels to be affixed so closely together appears unnecessary. Accordingly, EPA proposed that a motorcycle label should be required only adjacent to the filler inlet, provided it was readily visible when approached from each side of the motorcycle.

In addition, 40 CFR 80.24(b)(1) placed a design requirement on the fuel tank filler inlet of motor vehicles that was never intended to apply to motorcycles. It required that when a leaded gasoline nozzle was inserted into the inlet, and readily activated to a full-flow condition, no more than 700 cubic centimeters of gasoline pass into the tank before the nozzle shut off. In order to meet this requirement, the nozzle vacuum port has to be plugged by fuel backing up in the inlet, thus shutting off fuel delivery. Due to the inherent design of a motorcycle's fuel tank, which generally has a portion of the frame running closely under the filler inlet, it would be impractical to design an inlet with sufficient depth that it not only contains a restriction to prevent the insertion of a leaded gasoline nozzle, but also allows fuel to back up to a height that would plug the leaded gasoline nozzle vacuum port and shut off fuel delivery. EPA temporarily exempted motorcycles from this requirement by emergency rule in 1983. 48 FR 2969 (June 28, 1983). In the August 1985 notice, EPA proposed to exempt motorcycles from this requirement permanently.

Finally, EPA also proposed to allow the label(s) for all motor vehicles to read "Unleaded Gasoline Only" or "Unleaded Fuel Only." Existing 40 CFR 80.24(a) only referred explicitly to the former language. The latter version is also in use but has never been formally incorporated into the regulations, although it has been allowed under guidance provided in an EPA advisory circular.

Because the other requirements of 40 CFR 80.24 remain in effect to deter the introduction of leaded gasoline into motorcycles requiring unleaded gasoline only (i.e., the inlet restrictor and adjacent "Unleaded Gasoline Only" label), EPA did not anticipate any significant risk from excluding motorcycles from the requirements at 40 CFR 80.24 (a)(1) and (b)(1).

No requests for a public hearing were received by the Agency. However, three written comments were received. The commenters generally agreed with the Agency that the requirements of 40 CFR 80.24 (a)(1) and (b)(1) were never intended to apply to motorcycles. Responses to comments are discussed in Parts II and III of this Notice.

II. Today's Action

EPA is today promulgating revisions in 40 CFR 80.24 as proposed in August 1985, with one minor change. The Agency had proposed to amend 40 CFR 80.24(r) so that a motorcycle label should be required only adjacent to the filler inlet, provided it was readily visible when approached from each side of the motorcycle.

However, American Honda Motor Co., Inc. (Honda) commented that the requirement that the label be visible from either side of the motorcycle was excessively restrictive. Honda argued that, in case of motorcycles on which the fuel tank and its filler are located under the seat or on which the fuel filler is covered by a lockable lid or door it will be difficult to meet both the location and visibility requirements. The Agency has been persuaded by this argument from Honda, and today's final rule requires that the label be immediately adjacent to the fuel filler, and be readily visible to any person when introducing gasoline to the filler inlet from the left side and the right side of the motorcycle.

III. Response to Comments

(1) *Comment:* One car manufacturer, Mercedes-Benz, while supporting EPA's proposed rule, requested that the final rule also include as an approved label one which reads "Premium Unleaded

Fuel Only", stating that EPA had already approved this type of label. Mercedes-Benz said that they had requested permission for use of such label and had received it.

Response: EPA has not approved a "Premium Unleaded Fuel Only" label. On February 7, 1985 Mercedes-Benz wrote to EPA stating its intention to introduce in model year 1986 several new engine families designed to run on high octane unleaded gasoline. Mercedes-Benz proposed to add to its emission control warranty statement the requirement that only unleaded premium would be satisfactory in order for the warranty to be valid.

After a thorough review of the information submitted, EPA decided not to oppose the inclusion of this language in the 1986 warranty statement for these vehicles, provided that Mercedes-Benz assumed the burden of proving, in case of a malfunction of the emission control device or system, that a low octane fuel caused the malfunction.

Thus, EPA did not approve use of a "Premium Unleaded Fuel Only" label. Moreover, the Agency has not promulgated a definition of "premium" unleaded fuel. Therefore, there is no basis for the enforcement of such a requirement. Establishing such a definition is not within the scope of this rulemaking.

(2) *Comment.* A motorcycle manufacturer (Honda) requested that the Agency allow the required "Unleaded Gasoline Only" or "Unleaded Fuel Only" label to be stamped on the fuel filler cap in case there is insufficient space upon which to place a label adjacent to the filler.

Response: The Agency is retaining the restriction that the required "Unleaded Gasoline Only" or "Unleaded Fuel Only" label be adjacent to the filler inlet.

The Agency believes that allowing the required label to be stamped in the fuel filler cap would pose a significant risk that the label could be removed completely. The fuel filler cap can be easily removed or even inadvertently discarded by a motorist who forgets to replace the cap after refueling. EPA sees no compelling reason for allowing the label to be located on the fuel filler cap.

IV. Additional Information

The final actions described in this notice are made under the authority of sections 211 and 301 of the Clean Air Act and are nationally applicable. Under section 307(b)(1) of the Clean Air Act, judicial review may be sought only in the U.S. Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed on or before November 21, 1986. These actions may not be challenged in any later enforcement proceedings brought by EPA.

The Regulatory Flexibility Act, 5 U.S.C. 801 et seq., requires the preparation of a regulatory flexibility analysis for any final rule unless the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities. Since this final rule essentially lessens the burden previously placed on manufacturers, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Under Executive Order 12291, EPA must judge whether an action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it is not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The effects of this action are to prevent motorcycles from being subject to requirements that were not intended for motorcycles, and to allow additional flexibility in labeling language. If anything, these changes would reduce costs to manufacturers.

Finally, this action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any EPA responses to such comments have been placed in the docket.

List of Subjects in 40 CFR Part 80

Motorcycles, Gasoline.

Dated: September 15, 1986.

Lee M. Thomas,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

For the reasons set forth in the preamble, 40 CFR Part 80 is amended as follows:

1. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 211 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7545 and 7601, unless otherwise noted.

2. In § 80.24, paragraphs (a) introductory text, (a)(1), (a)(2) and (b)(2) are revised to read as follows:

§ 80.24 Controls applicable to motor vehicle manufacturers.

* * * * *

(a) Affix two or more permanent legible labels reading "Unleaded Gasoline Only" or "Unleaded Fuel Only" to such vehicle at the time of its manufacture, as follows:

(1) One label shall be located on the instrument panel so as to be readily visible to the operator of the vehicle: *Provided, however,* that the required statement may be incorporated into the design of the instrument panel rather than provided on a separate label, and that this paragraph (a)(1) shall not apply to motorcycles as defined at 40 CFR 86.402–78; and

(2) One label shall be located immediately adjacent to each gasoline filler tank inlet, outside of any filler inlet compartment, and shall be located so as to be readily visible to any person introducing gasoline to such filler inlet, and for motorcycles, such label shall be readily visible to any person introducing gasoline to such filler inlet from the left side and the right side of the vehicle: *Provided, however,* that the Administrator may, upon application from a motor vehicle manufacturer, approve other label locations that achieve the purpose of this paragraph.

* * * * *

(b) * * *

(2) Paragraph (b)(1) of this section shall not apply to motorcycles.

* * * * *

[FR Doc. 86–21386 Filed 9–19–86; 8:45 am]

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46-51	16.00	Jan. 1, 1986
52	18.00	Jan. 1, 1986
53-209	14.00	Jan. 1, 1986
210-299	21.00	Jan. 1, 1986
300-399	11.00	Jan. 1, 1986
400-699	19.00	Jan. 1, 1986
700-899	17.00	Jan. 1, 1986
900-999	20.00	Jan. 1, 1986
1000-1059	12.00	Jan. 1, 1986
1060-1119	9.50	Jan. 1, 1986
1120-1199	8.50	Jan. 1, 1986
1200-1499	13.00	Jan. 1, 1986
1500-1899	7.00	Jan. 1, 1986
1900-1944	23.00	Jan. 1, 1986
1945-End	23.00	Jan. 1, 1986
8	7.00	Jan. 1, 1986
9 Parts:		
1-199	14.00	Jan. 1, 1986
200-End	14.00	Jan. 1, 1986
10 Parts:		
0-199	22.00	Jan. 1, 1986
200-399	13.00	Jan. 1, 1986
400-499	14.00	Jan. 1, 1986
500-End	23.00	Jan. 1, 1986
11	7.00	Jan. 1, 1986
12 Parts:		
1-199	8.50	Jan. 1, 1986
200-299	22.00	Jan. 1, 1986
300-499	13.00	Jan. 1, 1986
500-End	26.00	Jan. 1, 1986
13	19.00	Jan. 1, 1986
14 Parts:		
1-59	20.00	Jan. 1, 1986
60-139	19.00	Jan. 1, 1986
140-199	7.50	Jan. 1, 1986
200-1199	14.00	Jan. 1, 1986
1200-End	8.00	Jan. 1, 1986
15 Parts:		
0-299	7.00	Jan. 1, 1986
300-399	20.00	Jan. 1, 1986
400-End	15.00	Jan. 1, 1986
16 Parts:		
0-149	9.00	Jan. 1, 1986
150-999	10.00	Jan. 1, 1986
1000-End	18.00	Jan. 1, 1986
17 Parts:		
1-239	26.00	Apr. 1, 1986
240-End	19.00	Apr. 1, 1986
18 Parts:		
1-149	15.00	Apr. 1, 1986
150-399	25.00	Apr. 1, 1986
400-End	6.50	Apr. 1, 1986
19	29.00	Apr. 1, 1986
20 Parts:		
1-399	10.00	Apr. 1, 1986
400-499	22.00	Apr. 1, 1986
500-End	23.00	Apr. 1, 1986
21 Parts:		
1-99	12.00	Apr. 1, 1986
100-169	14.00	Apr. 1, 1986
170-199	16.00	Apr. 1, 1986
200-299	6.00	Apr. 1, 1986
300-499	25.00	Apr. 1, 1986
500-599	21.00	Apr. 1, 1986
600-799	7.50	Apr. 1, 1986
800-1299	13.00	Apr. 1, 1986
1300-End	6.50	Apr. 1, 1986
22	28.00	Apr. 1, 1986
23	17.00	Apr. 1, 1986
24 Parts:		
0-199	15.00	Apr. 1, 1986
200-499	24.00	Apr. 1, 1986
500-699	8.50	Apr. 1, 1986
700-1699	17.00	Apr. 1, 1986
1700-End	12.00	Apr. 1, 1986
25	24.00	Apr. 1, 1986
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§§ 1.0-1.169	29.00	Apr. 1, 1986
§§ 1.170-1.300	16.00	Apr. 1, 1986
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600-End	4.75	Apr. 1, 1986
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

[3] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[4] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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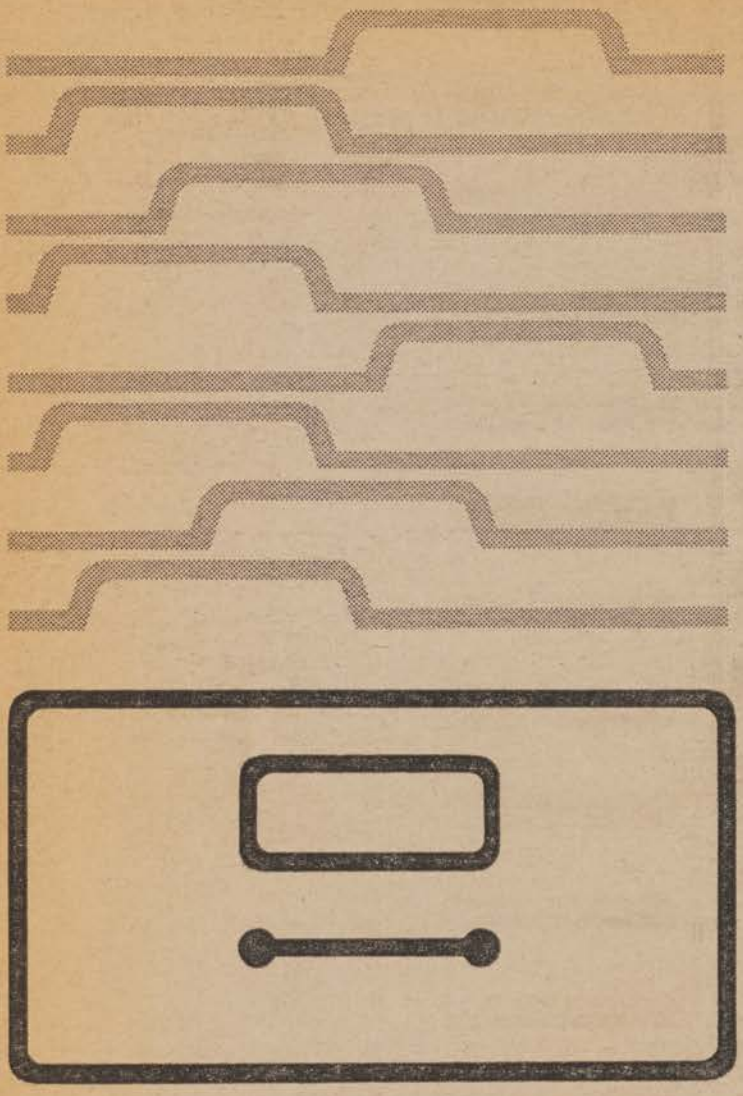

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