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Federal Register

Friday
October 24, 1986

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

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: November 18 at 9:30 a.m.

WHERE: National Archives Theater, 8th and Pennsylvania Avenue NW., Washington, DC

RESERVATIONS: Laurice Clark, 202-523-3419.

NEW YORK, NY.

WHEN: December 5 at 10:00 a.m., Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212-264-4810.

PITTSBURGH, PA.

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-3456
Philadelphia: 215-597-1707, 1709

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Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5557 of October 22, 1986

A Time of Remembrance for Victims of Terrorism

By the President of the United States of America

A Proclamation

International terrorism has taken the lives of thousands of people around the world and continues to claim lives. It is most fitting that we set aside a time of remembrance for the victims of terrorism.

The United States has taken positive steps to stop the onslaught of terrorism against civilized society. We will continue to do so, because we keep in mind the value and dignity of every human being and the commission that Thomas Jefferson expressed so well when he wrote, "The care of human life and happiness, and not their destruction, is the first and only legitimate object of good government."

The United States has a clear policy of combatting terrorism and of refusing to make concessions to terrorists. We have sought cooperation with all nations, on both a bilateral and a multilateral basis, to fight terrorism. We have put those who would instigate acts of terrorism against U.S. citizens or property on notice that we will vigorously confront this criminal behavior in every way—diplomatically, economically, legally, and, when necessary, militarily. We have demonstrated our resolve.

At this time of remembrance, we also reiterate our determination to secure the release of all Americans being held hostage abroad and our sympathy and understanding for their families.

We observe our time of remembrance for victims of terrorism on October 23. That is the third anniversary of the terrorist bombing of the United States compound in Beirut, Lebanon, in which 241 American servicemen, defenders of freedom and peace, lost their lives. As we mourn these men and all other victims of terrorism, as we honor them, and as we offer our heartfelt condolences to the families of victims, let us remind the world that our reflection and remembrance fortify our determination to deter and defeat terrorism.

The Congress, by Public Law 99–403, has designated October 23, 1986, as "A Time of Remembrance" for all victims of terrorism throughout the world and authorized and requested 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 23, 1986, as a Time of Remembrance for all victims of terrorism throughout the world, and I urge all Americans to actively participate by flying the American flag at half staff on that day, as a symbol of patriotism, dignity, loyalty, and courage.

Accordingly, I call upon and authorize all departments and agencies of the United States and interested organizations, groups, and individuals to fly United States flags at half staff on October 23 in memory of the victims and in the hope that the desire for genuine peace and freedom will take firm root in every person and nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of October, 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. 86-24270
Filed 10-23-86; 10:09 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 51, No. 206
Friday, October 24, 1986

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 532, Lemon Regulation 531, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This notice establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 281,766 cartons during the period October 26 through November 1, 1986, and increases the quantity of lemons that may be shipped during the period October 19 through October 25, 1986, to 282,500 cartons. Such action is needed to balance the supply of fresh lemons with demand for such periods, due to the marketing situation confronting the lemon industry.

EFFECTIVE DATES: Regulation 532 (§ 910.832) is effective for the period October 26 through November 1, 1986, and the amendment (§ 910.831) is effective for the period October 19 through October 25, 1986.

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 final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum 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 will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of 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 statues have small entity orientation and compatibility.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon recommendations and information submitted by the Lemon Administrative Committee and upon their available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1986-87. The committee voted by telephone on October 20, 1986, and met publicly on October 21, 1986, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports that lemon demand is good and the market remains active. The increase in the current week's allotment was recommended due to improvement in the lemon market which resulted in inadequate allotment to meet lemon demand.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, or postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of lemons. Handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

PART 910—[AMENDED]

1. The authority citation for 7 CFR Part 910 continues to read as follows:

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

2. Section 910.832 is added to read as follows:

§ 910.832 Lemon Regulation 532.

The quantity of lemons grown in California and Arizona which may be handled during the period October 26, 1986, through November 1, 1986, is established at 281,766 cartons.

3. Section 910.831 is revised to read as follows:

§ 910.831 Lemon Regulation 531.

The quantity of lemons grown in California and Arizona which may be handled during the period October 19, 1986, through October 25, 1986, is established at 282,500 cartons.

Dated: October 22, 1986.

William J. Doyle,

Associate Deputy Director Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 86-24222 Filed 10-23-86; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1205

Revised Rules for Collecting Cotton Research and Promotion Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the Cotton Board Rules and Regulations governing collecting handlers and the collection of the supplemental assessment for the Cotton Research and Promotion Program. Under the revision, the Agricultural Stabilization and Conservation Service (ASCS) will deduct the supplemental assessment from loan deficiency payments made available with respect to cotton in

accordance with the Agricultural Act of 1949, as amended. This will assure that all cotton which is either placed under loan or which is the basis for a loan deficiency payment will be assessed on the same basis and prevent a decline in funding for the cotton research and promotion activities budgeted by the Cotton Board.

EFFECTIVE DATE: October 24, 1986.

FOR FURTHER INFORMATION CONTACT: Naomi Hacker, Chief, Research and Promotion, Cotton Division, AMS, USDA, Washington, DC 20250, (202) 447–2259.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order.

The Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) This action will assure that the research and promotion assessment will be levied equally on producers who (a) pledge cotton to the Commodity Credit Corporation (CCC) for a price support loan or (b) sell cotton on the open market and receive from CCC a loan deficiency payment; (2) contributions to the support of the cotton research and promotion program are voluntary since cotton producers are entitled to a complete refund of assessments collected; (3) the assessment does not affect the competitive position or market access of small entities in the cotton industry; and (4) the benefits of the cotton research and promotion program (stimulation of consumer demand for cotton, increased market share for cotton products) accrue to all U.S. cotton producers regardless of size or degrees of support for the program.

Background

The Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101 *et seq.*) and the implementing Order provide for the operation and funding of a producer financed cotton research and promotion program designed to maintain and expand markets for U.S. cotton. The program is administered by a 20-member Cotton Board, appointed by the Secretary of Agriculture, which represents cotton producers in each cotton-producing state. The Cotton Board reviews research, advertising, sales, promotion and development projects and related budgets developed by the contracting organization established to carry out such projects (7 CFR 1205.328). The Board makes recommendations concerning these projects and budgets to the Secretary of Agriculture who has final budget approval authority.

A per-bale assessement is collected from the producer by the first handler of the cotton and transmitted to the Cotton Board to be used to finance research and promotion projects. Cotton producers are entitled to a full refund of assessments collected from them (7 CFR 1205.520). Initially, the Cotton Research and Promotion Act of 1966 (Act) authorized a flat $1 per bale assessment. On July 14, 1976, the Act was amended (7 U.S.C. 2106(e)) to authorize a supplemental assessment to be collected in addition to the existing levy of $1 per bale that was not to exceed one percent of the value of the cotton.

The Cotton Board Rules and Regulations were amended to implement a supplemental assessment of six-tenths of one percent of the value of cotton effective July 24, 1985 (50 FR 30131).

Assessment of Loan Deficiency Payments

Under the Agricultural Act of 1949, as amended (The "1949 Act"), cotton producers of the 1986 through 1990 crop of Upland cotton have the option of either: (1) Pledging cotton to the Commodity Credit Corporation (CCC) as security for a price support loan with the opportunity to repay the loan at a lower rate; or (2) foregoing the loan to sell their cotton on the open market and, instead of a loan, receiving from CCC a payment that is based upon the difference between the loan rate and the loan repayment rate. The payment is referred to as a loan deficiency payment.

In the previous Cotton Board Rules and Regulations, ASCS was designated a collecting handler of assessments on cotton tendered to CCC for a Form A loan (7 CFR 1205.513). The revised Rules and Regulations amend 1205.513 to authorize ASCS to also collect assessments on the loan deficiency payment.

Since a producer who elects to receive a loan deficiency payment will receive a return on the producer's cotton approximately equivalent to the loan level established for the crop of cotton, the supplemental assessment of six-tenths of one percent of the value of the cotton represented by the loan deficiency payment will be collected from each producer choosing this method of marketing the crop.

The ASCS County Office or a cooperative marketing association will be the collecting handler of the supplemental assessment on the value of the cotton represented by the loan deficiency payment at the time such payment is made available to the producer or the cooperative.

If the supplemental assessment were not deducted from the loan deficiency payment there would be, in effect, a difference in the total assessment collected with respect to cotton entered into the Form A loan program and cotton with respect to which a loan deficiency payment was made. The revised Rules and Regulations will assure that the assessment is applied equally since all participating producers will utilize either the Form A loan program or receive a loan deficiency payment and therefore will pay approximately the same assessment under either option.

In addition, the Cotton Board estimates that failure to collect the assessment on cotton would reduce research and promotion program funding by nearly $1 million. This revision will prevent such a serious disruption of funding for cotton research and promotion activities.

Proposed Rule

The revisions in the Cotton Board Rules and Regulations were published as a proposed rule in the August 22, 1986 **Federal Register** 51 FR 30069.

Comments

Comments on the proposed rule were solicited from interested parties until September 11, 1986. No comments were received.

Final Rule

After reviewing available information, the Department has determined that the Cotton Board rules and regulations be revised to provide for the collection of supplemental cotton research and promotion assessments on any loan deficiency payment made by CCC in accordance with the 1949 Act. The revisions in this final rule do not differ from the provisions in the proposed rule.

Pursuant to the provisions of 5 U.S.C. 553, good cause is found for making this rule effective less than 30 days after publication.

This rule will become effective on publication because the cotton harvest season is already underway and assessment collections have begun. Delay in implementation of the rule would result in continued differences in the level of supplemental assessments on cotton which is placed under loan or which is the basis for a loan deficiency payment. In addition, failure to promptly

commence assessment collections on loan deficiency payments would result in loss of funds for cotton research and promotion activities.

A new definition of loan deficiency payments is added as paragraph (n) to the list of terms defined in § 1205.500. In addition, the definition of current value of cotton in § 1205.500 (d) is revised to reflect the inclusion of loan deficiency payments. Miscellaneous non-substantive changes are also made to the definition for clarity.

Section 1205.513, dealing with collecting handlers and the time of collection of the supplemental assessment, is amended by redesignating paragraphs (d) through (j) as paragraphs (e) through (k) respectively and inserting a new paragraph (d). The new paragraph (d) sets forth the methods of collecting the supplemental assessment on the value of the cotton represented by the loan deficiency payment and also identifies the collecting handler for such assessments.

As required by 1 CFR 18.20 (46 FR 1762) the following are the indexing terms for this regulation:

List of subjects in 7 CFR Part 1205

Cotton, Administrative practice and procedure, Research and promotion, Cotton Board, Producer assessments, Producers refunds.

PART 1205—[AMENDED]

Accordingly, Part 1205 of Chapter II, Title 7 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1205 continues to read as follows:

Authority: Sec. 15, 80 Stat. 285, 7 U.S.C. 2114; Sec. 7, 80 Stat. 281, 7 U.S.C. 2106.

2. Section 1205.500 is amended by revising paragraph (d) and adding a new paragraph (n) to read as follows:

§ 1205.500 Terms defined.

* * * * *

(d) "Current value of Cotton" means the gross price per pound of lint cotton received by the producer for cotton as shown on the producers' settlement document before deductions are made for weight penalties, buyer's commission or brokerage fees, marketing fees, the $1 per bale cotton research and promotion assessment, picking charges, ginning charges, warehouse receiving charges, warehouse storage charges, transportation charges or any other charges, plus any amount received by a producer in the form of a loan deficiency payment with respect to such cotton.

* * * * *

(n) "Loan deficiency payment" means any payment on Upland cotton made by the Commodity Credit Corporation to a producer in accordance with 7 CFR § 713.55.

3. Section 1205.513 is amended by redesignating paragraphs (d) through (j) as paragraphs (e) through (k) respectively, and by adding a new paragraph (d) to read as follows:

§ 1205.513 Collecting handlers and time of collection of the supplemental assessment.

* * * * *

(d) With respect to any Upland cotton on which the producer or a cooperative marketing association acting on behalf of a producer receives a loan deficiency payment, the ASCS County Office or the cooperative marketing association shall be the collecting handler of the supplemental assessment on the value of the cotton represented by the loan deficiency payment at the time such payment is made to the producer or the cooperative marketing association. A copy of a document reflecting this transaction issued by the ASCS County Office or cooperative marketing association shall show the amount collected as the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

* * * * *

Dated: October 21, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-24157 Filed 10-23-86; 8:45am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Parts 301, 312, 327 and 381

[Docket No. 85-001F]

Import Inspection; Requirements, Responsibilities and Procedures

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On May 20, 1986, the Food Safety and Inspection Service (FSIS) published a proposed rule to amend certain provisions regarding inspection of imported meat and poultry products in the Federal meat inspection regulations and the poultry products inspection regulations to clarify import inspection procedures and to accommodate the recent transfer of import inspection management authority from FSIS' Meat and Poultry Inspection Operations to its International Programs. All proposed changes were administrative in nature or clarified procedures and entailed no changes in import inspection policies or procedures. FSIS received no comments in response to the proposed rule. Therefore, FSIS intends to adopt the proposal as published.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule would only make various administrative changes to the Federal meat and poultry products inspection regulations to reflect the transfer of import inspection management authority within the Agency and to clarify the import inspection procedures.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 because the changes are only administrative in nature or to clarify procedures and entail no changes in import inspection policies or procedures.

Background

On May 20, 1986, FSIS published in the **Federal Register** (51 FR 18456), a proposed rule to amend the Federal meat and poultry products inspection regulations by making various administrative changes to reflect the transfer of import inspection management authority from FSIS' Meat and Poultry Inspection Operations to its International Programs. The proposal also provided for clarification of certain import inspection procedures, while making no substantive changes in

current import inspection policies or procedures.

Under the provisions of the Federal Meat Inspection Act (21 U.S.C. 620) and the Poultry Products Inspection Act (21 U.S.C. 466), the Food Safety and Inspection Service is responsible for assuring that imported meat and poultry products imported into this country meet standards at least equal to those that are applied to domestic products. FSIS carries out its responsibility by conducting two activities: (1) The review of foreign inspection systems to evaluate and determine the "at least equal to" eligibility of countries wishing to export to the United States, and (2) import inspection of meat and poultry products to ensure they meet United States standards.

Until recently, FSIS' Meat and Poultry Inspection Operations carried out both domestic and import inspection activities. However, on February 28, 1985, the Department approved the transfer of import inspection activities from Meat and Poultry Inspection Operations (MPIO) to International Programs (IP), effective April 28, 1985.

This transfer of authority also involved the transfer of some personnel from MPIO to IP and necessitated the establishment of a field management structure with geographic responsibilities that are different from those used by MPIO. A new Import Inspection Division under IP is now responsible for the overall management of its field inspection program. To reflect the transfer of import inspection authority, various administrative changes are needed in Parts 301, 312, and 327 of the Federal meat inspection regulations and Part 381 of the poultry products inspection regulations. These changes will improve management communication, delineate clear lines of import inspection responsibility, provide new streamlined provisions for appeals from inspector decisions, and will provide for more consistent and clear import inspection procedures.

The clarifying changes to the Federal meat inspection regulations and poultry products inspection regulations are as follows:

1. Providing new definitions to be included in §§ 301.2 and 381.1 for:

—Import field office, including areas of authority
—Import supervisor

2. Adding an "appeals" section to the Federal meat import inspection regulations, similar to the "appeals" section in 9 CFR 306.5, and a new paragraph to the poultry products import inspection regulations, similar to the "appeals" section in 9 CFR 381.35, to delineate a clear route for appeals from decisions made by import inspectors.

3. Replacing the term import "facility" with import "establishment" wherever it appears.

4. Replacing all references to inspector-in-charge, area supervisor, regional director, and regional office with the new organizational terms—import supervisor and import field office.

5. Transferring § 312.5(b)—Official Seals for Transportation of (Imported) Products—to Part 327. Delete current cross-reference.

6. Adding a new paragraph for "Official Seals" to Part 381. Delete cross-reference.

7. Transferring §§ 312.7 and 381.102—Official Import Inspection Marks and Devices—to Part 327 and § 381.204 respectively. Delete current cross-references. Add new paragraph (e) to new § 327.26 to refer to § 317.3(c) of the Federal meat inspection regulations.

8. Adding a "denaturing" section to Part 327, similar to 9 CFR 325.13. Delete cross-reference to Part 327. Adding a "denaturing" paragraph to § 381.202, similar to 9 CFR 381.95.

9. Deleting a reference in § 327.6(m) to a nonexistent paragraph (n).

Comments on the Proposed Rule

FSIS did not receive any comments in response to the proposed rule. Therefore, FSIS is adopting the proposal as published.

Accordingly, Parts 301, 312, and 327 of the Federal meat inspection regulations and Part 381 of the poultry products inspection regulations are amended as set forth below:

Final Rule

List of Subjects

9 CFR Part 301

Meat inspection, Definitions.

9 CFR Part 312

Official inspection marks and devices, Meat inspection.

9 CFR Part 327

Imported products, Imports, Meat inspection.

9 CFR Part 381

Poultry products inspection; Imported products, Poultry and poultry products.

PART 301—[AMENDED]

1. The authority citation for Part 301 (9 CFR Part 301) is added to the table of contents to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

2. Section 301.2 (9 CFR 301.2) is amended by adding paragraphs (yyy) and (zzz) to read as follows:

§ 301.2 Definitions.

* * * * *

(yyy) Import Field Office (IFO). The office of the supervisor or import inspection activities for a particular importing field area. The areas are as follows:

IFO #1. Boston, MA—Covering the States of Massachusetts, New York (excluding New York City), Connecticut, Rhode Island, Vermont, New Hampshire and Maine.

IFO #2. New York, NY—Covering the areas of New York City and northern New Jersey.

IFO #3. Philadelphia, PA—Covering the State of Pennsylvania and the area of southern New Jersey.

IFO #4. Baltimore, MD—Covering the States of Maryland, Delaware, West Virginia, Virginia and Kentucky.

IFO #5. Charleston, SC—Covering the States of Tennessee, North Carolina, South Carolina, Georgia and Florida (excluding south Florida).

IFO #6. Miami, FL—Covering the areas of southern Florida, Puerto Rico and the Virgin Islands.

IFO #7. New Orleans, LA—Covering the States of Louisiana, Mississippi, Alabama, Arkansas, Texas, Oklahoma, Kansas, New Mexico and Colorado.

IFO #8. San Pedro, CA—Covering the States of Hawaii, Arizona, Utah, Nevada, the area of southern California, American Samoa, Guam, and the Northern Marianas.

IFO #9. Tacoma, WA—Covering the States of Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Alaska, and Nebraska, and the area of northern California.

IFO #10. Detroit, MI—Covering the States of Michigan, Wisconsin, Minnesota, Iowa, Missouri, Illinois, Indiana and Ohio.

(zzz) Import Supervisor. The official in charge of import inspection activities within each of the import field offices.

PART 312—[AMENDED]

3. The authority citation for Part 312 is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

§ 312.7 [Removed]

4. Section 312.7 (9 CFR 312.7) is removed and reserved for future use, and the information is transferred to Part 327.

§ 312.5 [Amended]

5. Paragraph (b) of § 312.5 (9 CFR 312.5) is removed. The information is transferred to § 327.22 (9 CFR 327.22) and the remaining paragraph (a) designation is removed.

PART 327—[AMENDED]

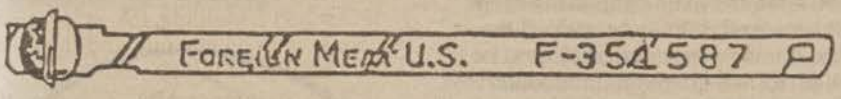
6. The authority citation for Part 327 (9 CFR Part 327) is revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

7. Section 327.22 (9 CFR 327.22) is revised to read as follows:

§ 327.22 Official seals for transportation of products.

The official mark for use in sealing cars, trucks, other means of conveyance, or containers in which any imported product is conveyed shall be the inscription and a serial number hereinafter shown below [1], and the import meat seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. Such device shall be attached to the means of conveyance only by a Program employee, or a Customs officer or his designee, and he/she shall also affix thereto a "Warning Tag" (Form MP–408–3).



§ 327.6 [Amended]

8. Paragraph (m) of § 327.6 (9 CFR 327.6) is amended by removing the words "paragraphs (l) and (n)" and replacing them with the words "paragraph (l)."

9. Paragraphs (c), (d) and (f) of § 327.6 (9 CFR 327.6) are amended by removing the words "facility" and "facilities" and inserting, in their place, the words "establishment" and "establishments, respectively," wherever they appear.

10. Paragraph (e) of § 327.6 (9 CFR 327.6) is revised to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

* * * * *

(e) Owners or operators of establishments at which import inspections of product are to be made shall furnish adequate sanitary facilities and equipment for examination of such product. The requirements of §§ 304.2(e), 307.1, 307.2 (b), (d), (f), (h), (k), and (l) and 308.3, 308.4, 308.5, 308.6, 308.7, 308.8, 308.9, 308.11, 308.13, 308.14, and 308.15 of this subchapter shall apply as conditions for approval of establishments as official import inspection establishments to the same extent and in the same manner as they apply with respect to official establishments.

* * * * *

[1] The term "F-351587" is given as an example only. The serial number of the specific seal will be shown in lieu thereof.

11. Paragraph (a) of § 327.5 (9 CFR 327.5) is revised to read as follows:

§ 327.5 Importer to make application for inspection of products for importation; information required.

(a) Each importer shall apply for inspection of any product for 54 importation by contacting the import field office covering the location where import inspection will take place. The import field office will provide specific application instructions. (See § 301.2 (yyy)).

* * * * *

§ 327.7 [Amended]

12. Paragraph (a)(1) of § 327.7 (9 CFR 327.7) is amended by removing the words "area supervisor" and inserting, in their place, the words "import supervisor."

13. Paragraph (a)(2) of § 327.7 (9 CFR 327.7) is amended by removing the term "§ 312.5(b)" and inserting, in its place, the term "§ 327.22"; and by removing the words "officer in charge" in inserting, in their place, the word "inspector."

§ 327.10 [Amended]

14. Paragraph (b) of § 327.10 (9 CFR 327.10) is amended by removing the term "§ 312.7" and inserting, in its place, the term "§ 327.26."

§ 327.11 [Amended]

15. Section 327.11 (9 CFR 327.11) is amended by removing the words "inspectors in charge" and inserting, in their place, the words "the inspectors."

§ 327.14 [Amended]

16. Paragraph (c) of § 327.14 (9 CFR 327.14) is amended by removing the phrase "Labels and Packaging Staff, Meat and Poultry Inspection" and inserting, in its place, the phrase "Standards and Labeling Division, Meat and Poultry Inspection Technical Services" and by removing the words "inspector in charge" in inserting, in their place, the word "inspector."

§ 327.15 [Amended]

17. Paragraph (c) of § 327.15 (9 CFR 327.15) is amended by removing the term "§ 312.7" and inserting, in its place, the term "§ 327.26."

§ 327.17 [Amended]

18. Section 327.17 (9 CFR 327.17) is amended by removing the words "Meat and Poultry Inspection Field Operations" and inserting, in their place, the words "International Programs."

§ 327.20 [Amended]

19. Section 327.20 (9 CFR 327.20) is amended by removing the phrase "§ 325.13 of this subchapter" and inserting, in its place, the phrase "§ 327.25 of this Part."

20. Part 327 (9 CFR Part 327) is amended by adding a new § 327.24 (9 CFR 327.24) to read as follows:

§ 327.24 Appeals; how made.

Any appeal from a decision of any program employee shall be made to his/her immediate supervisor having jurisdiction over the subject matter of the appeal, except as otherwise provided in the applicable rules of practice. Denial of a labeling application by the inspector shall not constitute a basis for an appeal under this section.

21. Part 327 (9 CFR Part 327) is amended by adding a new § 327.25 (9 CFR 327.25) to read as follows:

§ 327.25 Disposition procedures for product condemned or ordered destroyed under import inspection.

(a) Carcasses, parts thereof, meat and meat food products (other than rendered animal fats) that have been treated in accordance with the provisions of this section shall be considered denatured for the purposes of the regulations in this part, except as otherwise provided in Part 314 of this subchapter for articles condemned at official establishments or at official import inspection establishments.

(1) The following agents are prescribed for denaturing carcasses, parts thereof, meat or meat food

products which are affected with any condition that would result in their condemnation and disposal under Part 314 of this subchapter if they were at an official establishment or at an official import inspection establishment: Crude carbolic acid; cresylic disinfectant; a formula consisting of 1 part FD&C green No. 3 coloring, 40 parts water, 40 parts liquid detergent, and 40 parts oil of citronella, or other proprietary substance approved by the Administrator in specific cases.[1]

(2) Meat may be denatured by dipping it in a solution of 0.0625 percent tannic acid, followed by immersion in a water bath, then dipping it in a solution of 0.0625 percent ferric acid; and except as provided in paragraphs (3) and (5) of this section, the following agents are prescribed for denaturing other carcasses, parts thereof, meat and meat food products, for which denaturing is required by this part: FD&C green No. 3 coloring; FD&C blue No. 1 coloring; FD&C blue No. 2 coloring; finely powdered charcoal; or other proprietary substance approved by the Administrator in specific cases.[1] Carcasses (other than viscera), parts thereof, cuts of meat, and unground pieces of meat darkened by charcoal or other black dyes shall be deemed to be denatured pursuant to this section only if they contain at least that degree of darkness depicted by diagram 1 of the Meat Denaturing Guide (MP Form 91).[2]

(3) Tripe may be denatured by dipping it in a 6 percent solution of tannic acid for 1 minute followed by immersion in a water bath, then immersing it for 1 minute in a solution of 0.022 percent FD&C yellow No. 5 coloring.

(4) When meat, meat byproducts, or meat food products are in ground form, 4 percent by weight of coarsely ground hard done, which shall be in pieces no smaller than the opening size specified for No. 5 mesh in the standards issued by the U.S. Bureau of Standards or 6 percent by weight of coarsely ground hard bone, which shall be in pieces no smaller than the opening size specified for No. 8 mesh in said Standards, uniformly incorporated with the product, may be used in lieu of the agents prescribed in paragraph (a)(2) of this section.

(5) Before the denaturing agents are applied to articles in pieces more than 4 inches in diameter, the pieces shall be freely slashed or sectioned. (If the articles are in pieces not more than 4 inches in diameter, slashing or sectioning will not be necessary.) The application of any of the denaturing agents listed in paragraph (a) (1) or (2) of this section to the outer surface of molds or blocks or boneless meat, meat by-products, or meat food products shall not be adequate. The denaturing agent must be mixed intimately with all the material to be denatured, and must be applied in such quantity and manner that it cannot easily and readily be removed by washing or soaking. A sufficient amount of the appropriate agent shall be used to give the material a distinctive color, odor, or taste so that such material cannot be confused with an article of human food.

(b) Inedible rendered animal fats shall be denatured by thoroughly mixing therein denaturing oil, No. 2 fuel oil, brucine dissolved in a mixture of alcohol and pine oil or oil of rosemary, finely powdered charcoal, or any proprietary denaturing agent approved for the purpose by the Administrator in specific cases. The charcoal shall be used in no less quantity than 100 parts per million and shall be of such character that it will remain suspended indefinitely in the liquid fat. Sufficient of the chosen identifying agents shall be used to give the rendered fat so distinctive a color, odor, or taste that it cannot be confused with an article of human food.

21a. Section 327.26 is redesignated from § 312.7 and revised to read as follows:

§ 327.26 Official import inspection marks and devices.

(a) When import inspections are performed in official import inspection establishments, the official inspection legend to be applied to imported meat and meat food products shall be in the appropriate form [1] as herein specified.

For application to cattle, sheep, swine, and goat carcasses, primal parts, and cuts, not in containers.

For application to outside containers of meat and meat food products prepared from cattle, sheep, swine, and goats.

For application to horse carcasses, primal parts, and cuts, not in containers.

[1] Information as to approval of any proprietary denaturing substance may be obtained from the Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

[2] Copies of MP Form 91 may be obtained, without charge, by writing to the Administrative Operations Branch, Food Safety and Inspection Service, U.S. Department of Agriculture, 123 East Grant Street, Minneapolis, Minnesota 55403. Diagrams 2 and 3 of the Meat Denaturing Guide are for comparison purposes only. The Meat Denaturing Guide has been approved for incorporation by reference by the Director, Office of the Federal Register, and is on file at the Federal Register Library.

[1] The number "I-38" is given as an example only. The establishment number of the official import inspecton establishment where the imported product is inspected shall be used in lieu thereof.

For application to outside containers of horsemeat food products.

For application to mule and other (nonhorse) equine carcasses, primal parts, and cuts, not in containers.

For application to outside containers of equine meat food products.

(b) When import inspections are performed in official establishments, the official inspection legend to be applied to imported meat and meat food products shall be the appropriate form as specified in §§ 312.2 and 312.3 of this subchapter.

(c) When products are refused entry into the United States, the official mark to be applied to the products refused entry shall be in the following form:

UNITED STATES
REFUSED ENTRY

(d) Devices for applying "United States Refused Entry" marks shall be furnished to Program inspectors by the Department.

(e) The ordering and manufacture of brands containing official inspection legends shall be in accordance with the provisions contained in § 317.3(c) of the Federal meat inspection regulations.

PART 381—[AMENDED]

22. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, (21 U.S.C. 450 *et seq.*), 76 Stat. 663 (7 U.S.C. 451 *et seq.*), unless otherwise noted.

23. Section 381.1 (9 CFR 381.1) is amended by adding paragraphs (b) (61) and (62) to read as follows:

§ 381.1 Definitions.

* * * * *

(61) Import Field Office (IFO). The office of the supervisor of import inspection activities for a particular importing field area. The areas are as follows:

IFO #1. Boston, MA—Covering the States of Massachusetts, New York (excluding New York City), Connecticut, Rhode Island, Vermont, New Hampshire, and Maine.

IFO #2. New York, NY—Covering the areas of New York City and northern New Jersey.

IFO #3. Philadelphia, PA—Covering the State of Pennsylvania and the area of southern New Jersey.

IFO #4. Baltimore, MD—Covering the States of Maryland, Delaware, West Virginia, Virginia and Kentucky.

IFO #5. Charleston, SC—Covering the States of Tennessee, North Carolina, South Carolina, Georgia, and Florida (excluding south Florida).

IFO #6. Miami, FL—Covering the areas of southern Florida, Puerto Rico and the Virgin Islands.

IFO #7. New Orleans, LA—Covering the States of Louisiana, Mississippi, Alabama, Arkansas, Texas, Oklahoma, Kansas, New Mexico and Colorado.

IFO #8. San Pedro, CA—Covering the States of Hawaii, Arizona, Utah, Nevada, the area of southern California, American Samoa, Guam, and the Northern Marianas.

IFO #9. Tacoma, WA—Covering the States of Washington, Oregon, Idaho, Montana, Wyoming, North Dakota, South Dakota, Alaska, and Nebraska, and the area of northern California.

IFO #10. Detroit, MI—Covering the States of Michigan, Wisconsin, Minnesota, Iowa, Missouri, Illinois, Indiana and Ohio.

(62) Import Supervisor. The official in charge of import inspection activities within each of the import field offices.

24. Section 381.202 (9 CFR 381.202) is amended by revising the section heading and adding new paragraphs (d) and (e) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

* * * * *

(d) Any person receiving inspection service may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision: *Provided,* That such appeal is filed within 48 hours from the time the decision was made. Any such appeal from a decision of an inspector shall be made to his/her immediate supervisor having jurisdiction over the subject matter of the appeal, and such supervisor shall determine whether the inspector's decision was correct. Review of such appeal determination, when requested, shall be made by the immediate supervisor of the employee of the Department making the appeal determination. The cost of any such appeal shall be borne by the appellant if the Administrator determines that the appeal is frivolous. The charges for such frivolous appeal shall be at the rate of $9.28 per hour for the time required to make the appeal inspection. The poultry or poultry products involved in any appeal shall be identified by U.S. retained tags and segregated in a manner approved by the inspector pending completion of an appeal inspection: *Provided, further,* That denial of a labeling application by the inspector shall not constitute a basis for an appeal under this section. This is similar to the procedure outlined in 9 CFR 381.35.

(e) All condemned carcasses, or condemned parts of carcasses, or other condemned poultry products, except those condemned for biological residues, shall be disposed of by one of the following methods, under the

supervision of an inspector of the Inspection Service. (Facilities and materials for carrying out the requirements in this section shall be furnished by the official establishments.)

(1) Steam treatment (which shall be accomplished by processing the condemned product in a pressure tank under at least 40 pounds of steam pressure) or thorough cooking in a kettle or vat, a sufficient time to effectively destroy the product for human food purposes and preclude dissemination of disease through consumption by animals. (Tanks and equipment used for this purpose or for rendering or preparing inedible products shall be in rooms or compartments separate from those used for the preparation of edible products. There shall be no direct connection by means of pipes, or otherwise, between tanks containing inedible products and those containing edible products.)

(2) Incineration or complete destruction by burning.

(3) Chemical denaturing, which shall be accomplished by the liberal application to all carcasses and parts thereof, of:

(i) Crude carbolic acid,

(ii) Kerosene, fuel oil, or used crankcase oil, or

(iii) Any phenolic disinfectant conforming to commercial standards CS 70–41 or CS 71–41 which shall be used in at least 2 percent emulsion or solution.

(4) Any other substances or method that the Administrator approves in specific cases, which will denature the poultry product to the extent necessary to accomplish the purposes of this section.

(5) Carcasses and parts of carcasses condemned for biological residue shall be disposed of in accordance with paragraph (2) of this section or by burying under the supervision of an inspector.

§ 381.198 [Amended]

25. Section 381.198 (9 CFR 381.198) is amended by removing the words "inspector in charge" and inserting, in their place, the words "import supervisor;" and by removing the words "import inspection office" and inserting, in their place, the words "import field office."

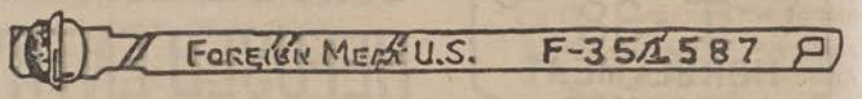
26. Paragraph (c) of § 381.200 (9 CFR 381.200) is amended by removing the term "§ 381.98" and inserting, in its place, the term "paragraph (h) of this section."

27. Section 381.200 (9 CFR 381.200) is amended by revising the section heading and adding a new paragraph (h) to read as follows:

§ 381.200 Imported poultry products, retention in customs custody; delivery under bond; movement prior to inspection; sealing; handling; facilities and assistance; official seal.

* * * * *

(h) The official mark for use in sealing means of conveyance used in transporting poultry products under any requirement in this part shall be the inscription and a serial number as shown below,[1] and any seals approved by the Administrator for applying such mark shall be an official device.



28. Section 381.204 (9 CFR 381.204) is revised to read as follows:

§ 381.204 Marking of poultry products offered for entry; official import inspection marks and devices.

(a) Poultry products which upon inspection are found to be acceptable for entry into the United States shall be marked with the official inspection legend shown in paragraph (b) of this section. Such inspection legend shall be placed upon such products only after completion of official import inspection and product acceptance.

(b) The official mark for marking poultry products offered for entry as "U.S. inspected and passed" shall be in the following form, and any device approved by the Administrator for applying such mark shall be an official device.[2]

FIGURE 1

(c) When products are refused entry into the United States, the official mark to be applied to the products refused entry shall be in the following form:

UNITED STATES
REFUSED ENTRY

FIGURE 2

(d) The import warning notice prescribed in § 381.200(c) is an official mark.

(e) The ordering and manufacture of brands shall be in accordance with the provisions contained in § 317.3(c) of the Federal meat inspection regulations.

§ 381.102 [Removed and Reserved]

29. Section 381.102 (9 CFR 381.102) is removed and reserved for future use.

Done at Washington, DC on: October 21, 1986.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 86–24060 Filed 10–23–86; 8:45 am]

BILLING CODE 3410-DM-M

[1] The term "F-351587" is given as an example only. The serial number of the specific seal will be shown in lieu thereof.

[2] The number "I-42" is given as an example only. The establishment number of the official establishment or official import inspection establishment where the product was inspected shall be shown on each stamp impression.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 027CE, Special Conditions No. 23-ACE-27]

Special Conditions; Piper PA-42 Series Airplanes With Electronic Flight Instrument Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are issued to become part of the type certification basis for the Piper PA-42 series airplanes to allow incorporation of Electronic Flight Instrument Systems. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes. These novel and unusual design features include the use of cathode-ray tube electronic flight instrument systems. These special conditions contain the additional airworthiness standards which the Administrator finds necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: David Warner, Aerospace Engineer, Aircraft Certification Division, 601 East 12th Street, Room 1656, Federal Office Building, Kansas City, Missouri 64106, telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 1986, Piper Aircraft Corporation, Vero Beach, Florida, notified the FAA of their intention to install dual Collins Electronic Flight Instrument Systems (EFIS) in the Piper Model PA-42-720. Notice of Proposed Special Conditions, Notice 23-ACE-27, Docket No. 027CE, was published in the **Federal Register** on September 9, 1986 (51 FR 171) and comment period closed October 3, 1986.

Type Certification Basis

The type certification basis for the Piper Model PA-42 is as follows: Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23-1 through 23-16; § 23.1385(c) as amended by Amendment 23-17; § 23.1145 as amended by Amendment 23-18; §§ 23.45, 23.49, 23.65, 23.67, 23.77, and 23.1581 as amended by Amendment 23-21; § 23.1145(a) as amended by Amendment 23-23; § 25.977 as amended by Amendment 25-26; Special Condition No. 23-90-SO-3, Amendment 1, Docket No. 19591; Section 55 of SFAR 23 effective January 20, 1970; fuel venting section of SFAR 27-1 effective January 1, 1975; FAA Southern Region, Engineering and Manufacturing Branch letter of August 7, 1980, showing the equivalent level of safety finding to § 23.201(e); and Part 36 including Amendments 1 through 6, effective January 25, 1977.

The type certification basis for the Piper Model PA-42-720 includes: § 23.1447 (c) and (d) as amended by Amendment 23-20, and the requirements cited for the Model PA-42.

The type certification basis for the Piper Model PA-42-1000 includes: Section 23.1111 as amended by Amendment 23-17; §§ 23.1327 and 23.1547 as amended by Amendment 23-20; FAA Atlanta Aircraft Certification Office letter of July 9, 1984, showing the equivalent level of safety findings to §§ 23.201, 23.203, 23.205, and 23.207; Part 36, including Amendments 1 through 12 effective August 1, 1981; and the requirements cited for the Model PA-42-720.

Discussion of Comments

The FAA received no comments in response to Notice No. 23-ACE-27 published in the **Federal Register** on September 4, 1986 with a closing date for comments of October 3, 1986. Therefore, these special conditions are adopted as proposed

Conclusion

This action affects only the Piper PA-42 Series airplanes. It is not a rule of general applicability and applies only to the series and model of airplane identified in these special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Sections 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Condition

In consideration of the foregoing, the following special condition is issued as a part of the type certification basis for Piper PA-42 series airplanes that incorporate an electronic flight instrument system (EFIS) into these series airplanes, as follows:

1. In lieu of § 23.1309(b) and applicable requirements of Part 23 of the Federal Aviation Regulations to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination upon which the airplane is dependent for continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and exained to comply with the following additional requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any anticipated operating condition which would prevent the continued safe flight and landing of the airplane or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no other single failure or probable combination of failures under any anticipated operating condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions, and to enable them to take appropriate corrective action. This warning information must not tend to initiate crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition must be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider:

(i) Modes of failure, including malfunctions and damage from foreseeable sources;

(ii) Consequences of a single failure or probable combination of failures (latent or undetected);

(iii) Appropriate levels of reliability as determined by the severity of consequences;

(iv) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and

(v) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Each item of equipment of each system, and each installation whose functioning is essential for safe operation and that requires a power supply, is an "essential load" on the power supply. The power sources and its distribution system must be able to supply

the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential equipment of each system (loads) after failure of:

(i) Any one engine on the airplane;

(ii) Any power converter, or energy storage device; or

(iii) Essential loads for which an alternate source of power is required by this special condition, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(c) In determining compliance with paragraph (b)(2) of this special condition, the power loads may be assumed to be reduced or shed under a monitoring procedure consistent with safety.

(d) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this special condition, the ability to provide continuous, safe service under foreseeable environmental and atmospheric conditions may be shown by tests, design analysis, or reference to previous comparable service experience on other airplanes.

(e) Electronic display units, including those incorporating more than one function, may be installed in lieu of mechanical or electro-mechanical instruments if:

(1) The display units:

(i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight;

(ii) In any normal mode of operation do not inhibit the primary display of attitude;

(iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units; and

(iv) Incorporate visual displays of instrument markings required by §§ 23.1541 through 23.1543, or visual displays that alert the pilot to abnormal operational values, or approaches, to unsafe values, of any parameter required to be displayed by Part 23 requirements.

(2) The display units, including their systems and installations, must be designed so that one display of information essential to continued safe flight and landing will remain available to the crew, without need for immediate action for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this special condition.

Issued in Kansas City, Missouri, on October 9, 1986.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 86-24021 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-126-AD; Amdt. 39-5450]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection for fracture of the H-11 Bolts that support the nacelle strut attach fittings on Boeing Model 747 series airplanes, replacement of all bolts found fractured, and replacement of the bolts in the outboard fittings within 24 months and in the inboard fittings within 48 months. This action is prompted by a recent report of fracture of both bolts on one fitting. This action is necessary since fracture of both bolts on one fitting, if not corrected, could result in separation of the engine from the airplane and cracking of the lower wing skin.

DATE: Effective December 1, 1986.

ADDRESSES: The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for fractured bolts and replacement of all H-11 bolts that support the nacelle strut attach fitting, was published in the **Federal Register** on June 18, 1986 (51 FR 22084). The comment period for the proposal closed on August 11, 1986.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Comments received from the Air Transport Association (ATA) of America, on behalf of its members, and from two other commenters, suggested that the FAA had grossly underestimated the time requirements and the total cost impact of the AD. The FAA does not fully concur with these comments. The economic analysis paragraph in the preamble to the proposal only addressed the initial inspection cost and did not address the cost of bolt replacement. The cost estimate in this document has been revised to reflect both the inspection and bolt replacement costs.

Several commenters recommended that the 10 flight compliance period be increased to 100 flights, and that repetitive intervals be increased from 6 months to 12 months for inspection of the outboard attach fitting. These commenters also recommended that the repetitive intervals be increased from 12 months to 18 months for inspection of the inboard attach fitting. The FAA has reconsidered the proposed compliance time of 10 flights and has determined that it may be unduly restrictive. The final rule has been revised to reflect a compliance time of 100 flights for the inspection of the outboard attach fitting bolts. The FAA has determined that this change will not have a significant impact on safety. However, because of the random type of failure, due to stress corrosion, the FAA has determined that the repetitive inspection intervals for the outboard attach fitting bolts can only be increased from 6 months, as proposed, to 7½ months; and for the inboard attach fitting bolts, from 12 months, as proposed, to 15 months; without compromising safety.

Two commenters recommend that the compliance period for inboard attach fitting bolt replacement be increased from the proposed 36 months to 48 months to match major maintenance checks. The FAA concurs with this recommendation and has determined that safety would not be compromised by this change, provided that other inspections required by this AD continue as required.

One of the commenters recommended that an ultrasonic means of inspection should be required to provide a more reliable means of detection of broken bolts. The FAA does not concur that it is necessary to utilize an ultrasonic procedure to inspect for broken bolts; however, operators may use ultrasonic procedures in addition to the visual inspection if they so desire.

The reference to Boeing Service Letter 747-SL-57-47, dated April 24, 1986, has been removed and replaced with Boeing Service Bulletin 747-57A2235, dated June 27, 1986, which was issued after the NPRM was issued. This is an editorial change and does not represent any

additional change in the scope of this AD.

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

It is estimated that 152 airplanes will be affected by this AD, that it will take approximately 1,008 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $6,128,640 for the initial inspection cycle and the required bolt replacement.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 747 series airplanes are operated by small entities. A final evaluation prepared for this action is contained in the regulatory docket.

PART 39—[AMENDED]

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

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

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

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, certificated in any category, line numbers 1 through 644.

To prevent separation of an engine due to failed H-11 bolts, accomplish the following, unless already accomplished:

A. Prior to accumulation of 10,000 flight hours, or within 100 landings after the effective date of this AD, whichever occurs later, perform a visual inspection of the outboard attach fitting H-11 bolt of all nacelle struts for structural integrity to determine if any H-11 bolts have failed, in accordance with Boeing Service Bulletin 747-57A2235, dated June 27, 1986, or later FAA-approved revision. Repeat the inspections thereafter at intervals not to exceed 7½ months.

B. Prior to accumulation of 10,000 flight hours, or within 600 landings after the effective date of this AD, whichever occurs later, perform a visual inspection of the inboard attach fitting joints of all nacelle struts for structural integrity to determine if any H-11 bolts have failed, in accordance with Boeing Service Bulletin 747-57A2235, dated June 27, 1986, or later FAA-approved revisions. Repeat the inspections thereafter at intervals not to exceed 15 months.

C. Failed bolts must be replaced prior to further flight.

D. Installation of the Inconel replacement bolts in accordance with Boeing Service Bulletin 747-57A2235, dated June 27, 1986, or later FAA-approved revisions constitutes terminating action for the repetitive inspections required by paragraphs A. and B., above.

E. Within 24 months after the effective date of this AD, replace all remaining H-11 bolts on the outboard attach fitting of all nacelle struts with Inconel bolts in accordance with Boeing Service Bulletin 747-57A2235, dated June 27, 1986, or later FAA-approved revisions.

F. Within 48 months after the effective date of this AD, replace all remaining H-11 bolts on the inboard fittings of a nacelle struts with Inconel bolts in accordance with Boeing Service Bulletins 747-57A2235, dated June 27, 1986, or later FAA-approved revisions.

G. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. 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 inspection and/or modifications required by this AD.

I. For the H-11 bolts that utilized the BACN10HR162 nuts, the accomplishment of the inspection requirements of AD 86-05-11 (Amendment 39-5255) is considered an acceptable alternate means of compliance for the initial inspection requirements of paragraph A. and B. of this AD.

Note.—Inspections performed in accordance with Boeing Service Letter Number 747-SL-57-47, dated April 24, 1986, are considered equivalent to those performed in accordance with Boeing Service Bulletin 747-57A2235, dated June 27, 1986.

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124-2207. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective December 1, 1986.

Issued in Seattle, Washington, on October 16, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-24022 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-ASO-15]

Alteration of VOR Federal Airways—Atlanta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters two Federal Airways in the state of Georgia so that both airways are aligned over a common fix used as a feeder fix for aircraft entering the Atlanta, GA, terminal area. This will improve traffic flow and reduce controller workload.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: William Davis, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On August 7, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airways V-463 and V-325 in the state of Georgia (51 FR 28389). 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 71.123 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 moves VOR Federal Airway V-463 approximately 9 miles to the east and moves VOR Federal Airway V-325

approximately two miles northward. Effectively, both of these airways are aligned over WOMAC Intersection creating a common feeder fix for aircraft entering the Atlanta, GA, terminal areas via these airways.

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 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

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:

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 71.123 is amended as follows:

V–325 [Revised]

From Columbia, SC, via Athens, GA, INT Athens 291° and Toccoa, GA, 222° radials; to INT Toccoa 222° and Harris, GA, 187° radials. From INT Gadsden, AL, 091° and Rome, GA 133° radials; Gadsden; to Muscle Shoals, AL.

V–463 [Revised]

From INT Harris, GA, 179° and Toccoa, GA, 222° radials; to Harris.

Issued in Washington, DC, on October 17, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–24029 Filed 10–23–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AGL–23]

Alteration of Transition Area—Goshen, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Goshen, Indiana, transition area to accommodate a new LOC BC Runway 9 Standard Instrument Approach Procedure (SIAP) to Goshen Municipal Airport, Goshen, Indiana.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 12, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Goshen, Indiana, transition area (51 FR 32481).

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 71.181 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 alters the Goshen, Indiana, transition area to accommodate a new LOC BC Runway 9 Standard Instrument Approach Procedure (SIAP) to Goshen Municipal Airport, Goshen, Indiana.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Goshen, IN [Amended]

That airspace extending upward from 700 feet above the surface within a 5 mile radius of Goshen Municipal Airport (lat. 41°31'30" N., long. 85°48'00" W.); and within 2 miles each side of the Goshen, Indiana, VORTAC 090 radial extending from the 5 mile radius area to 13 miles west of the airport.

Issued in Des Plaines, Illinois, on October 14, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86–24025 Filed 10–23–86; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 86–AGL–22]

Alteration of Transition Area—Kentland, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Kentland, Indiana, transition area to accommodate a new RNAV Runway 27 Standard Instrument Approach Procedure (SIAP) to Kentland Municipal Airport.

The intended effect of this action is to ensure segregation of the aircraft using

approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 12, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Kentland, Indiana, transition area (51 FR 32482).

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 71.181 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 alters the Kentland, Indiana, transition area to accommodate a new RNAV Runway 27 Standard Instrument Approach Procedure (SIAP) to Kentland Municipal Airport, Kentland, Indiana.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[Amended]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Kentland, IN [Amended]

That airspace extending upward from 700 feet above the surface within a 6 mile radius of Kentland Municipal Airport (lat. 40°45'27"N., long. 87°25'48"W.).

Issued in Des Plaines, Illinois, on October 14, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86–24026 Filed 10–23–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 86–AGL–21]

Alteration of Transition Area—Warroad, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the Warroad, Minnesota, transition area to accommodate a new RNAV Runway 31 Standard Instrument Approach Procedure (SIAP) to Warroad International-Swede Carlson Field Airport.

The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7360.

SUPPLEMENTARY INFORMATION:

History

On Friday, September 12, 1986, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Warroad, Minnesota, transition area (51 FR 32483).

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 71.181 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 alters the Warroad, Minnesota, transition area to accommodate a new RNAV Runway 31 Standard Instrument Approach Procedure (SIAP) to Warroad International-Swede Carlson Field Airport.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Warroad, MN [Amended]

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Warroad International-Swede Carlson Field Airport (lat. 48°56'15" N., long. 95°20'30" W.) excluding that area north of lat. 49°00'00" N. (Canadian-U.S. Boundary) and within 3 miles each side of the 108° bearing from Warroad International-Swede Carlson Field, extending from the 6.5-mile radius to 8.5 miles east southeast of the airport.

Issued in Des Plaines, Illinois, on October 14, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-24027 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 86-ANM-15]

Alteration of Federal Airways—Portland, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several Federal Airways located in the vicinity of Portland, OR, by revoking some segments and renumbering other segments. This action supports the FAA agreement with the International Civil Aviation Organization to eliminate all alternate route designations.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9254.

SUPPLEMENTARY INFORMATION:

History

On August 25, 1986, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of several VOR Federal Airways located in the vicinity of Portland, OR, by deleting all alternate route designations from the National Airspace System (51 FR 30227). In addition, some airway segments have been revoked and other segments have been renumbered. This action supports the FAA agreement with the International Civil Aviation Organization to eliminate all alternate airway designations from the National Airspace System. 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 71.123 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 alters the descriptions of several VOR Federal Airways located in the vicinity of Portland, OR, by deleting all alternate route designations from the National Airspace System. In addition, some airway segments are revoked and other segments renumbered. This action supports the FAA agreement with the International Civil Aviation Organization to eliminate all alternate airway designations from the National Airspace System.

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 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

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:

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

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

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-112 [Amended]

By removing the words "including a S alternate from Portland via the Portland 110° and The Dalles 255° radials to The Dalles;"

V-520 [Amended]

By removing the words "From Portland, OR, via The Dallas, OR;" and by substituting the words "From Portland, OR, via INT Portland 110° and The Dalles, OR, 255° radials; The Dalles;"

V-121 [Amended]

By removing the words "Redmond, OR; including a N alternate via Eugene 069° and Redmond 281° radials;" and by substituting the words "Redmond, OR;"

V-269 [Amended]

By removing the words "to Redmond, OR." and by substituting the words "Redmond, OR; INT Redmond 281° and Eugene, OR, 069° radials; to Eugene."

V-287 [Amended]

By removing the words "Newberg, OR, including a west alternate from North Bend to Newberg via Newport, OR, Portland, OR, including an east alternate via INT Newberg 069° and Portland 196° radials;" and by substituting the words "Newberg, OR; Portland, OR;"

V-182 [Amended]

By removing the words "Portland, OR;" and by substituting the words "North Bend, OR, via Newport, OR; Newberg, OR; INT Newberg 069° and Portland, OR, 196° radials; Portland;"

Issued in Washington, DC, on October 17, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-24028 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 85-AWA-12]

Alteration of Jet Routes—Plattsburgh, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Routes J-75 and J-567 so that they are aligned with the relocated Plattsburgh, NY, very high frequency omni-directional radio range and tactical air navigation aid (VORTAC).

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Robert G. Burns, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic

Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9253.

SUPPLEMENTARY INFORMATION:

History

On May 14, 1985, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign Jet Routes J–75 and J–567 with the planned relocation of the Plattsburgh VORTAC (50 FR 20106). 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 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations aligns Jet Routes J–75 and J–567 with the relocated Plattsburgh, NY, VORTAC. The VORTAC was moved to an on-airport site at the Plattsburgh/Clinton County, NY, Airport. Additionally, several VOR Federal airways and other jet routes are affected by the VORTAC relocation. These routes/airways are J–29, J–97, J–560, J–595, V–91, V–104, V–196, V–489. However, only the descriptions of J–75 and J–567 need changing.

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 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) is amended, as follows:

1. The authority citation for Part 75 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.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–75 [Amended]

By removing the words "Plattsburgh 334° radial" and by substituting the words "Plattsburgh 341° radial".

J–567 [Amended]

By removing the words "Plattsburgh 334° radial" and by substituting the words "Plattsburgh 341° radial".

Issued in Washington, DC, on October 17, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86–24023 Filed 10–23–86; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 75

[Airspace Docket No. 86–ASO–19]

Alteration of Jet Routes—Charleston, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Jet Routes J–79, J–121 and J–174 located in the vicinity of Charleston, SC. This action provides more direct routing thereby reducing excessive radar vectors and controller workload.

EFFECTIVE DATE: 0901 UTC, December 18, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Laser, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9248.

SUPPLEMENTARY INFORMATION:

History

On July 22, 1986, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to realign J–79, J–121 and J–174 between Charleston, SC, VORTAC and STARY Intersection, GA, to facilitate more direct routing, eliminate unnecessary radar vectors and reduce controller workload (51 FR 26265). 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 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations realigns Jet Routes J–79, J–121 and J–174 as direct routes between STARY Intersection, GA, and Charleston, SC, VORTAC.

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 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

PART 75—[AMENDED]

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as amended (51 FR 2683 and 7061) is further amended, as follows:

1. The authority citation for Part 75 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.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J–79 [Amended]

By removing the words "Ormond Beach, FL; INT Ormond Beach 360° and Jacksonville, FL, 020° radials thence Charleston, SC, 214° radials; Charleston;" and by substituting the words "Ormond Beach, FL; INT Ormond

Beach 360° and Charleston, SC, 210° radials; Charleston;"

J-121 [Amended]

By removing the words "From Jacksonville, FL, via INT Jacksonville 020° and Charleston, SC, 214° radials; Charleston;" and by substituting the words "From Jacksonville, FL, via INT Jacksonville 020° and Charleston, SC, 210° radials; Charleston;"

J-174 [Amended]

By removing the words "From Jacksonville, FL; via INT Jacksonville 020° and Charleston, SC, 214° radials; Charleston;" and by substituting the words "From Jacksonville, FL, via INT Jacksonville 020° and Charleston, SC, 210° radials; Charleston;"

Issued in Washington, DC, on October 17, 1986.

Daniel J. Peterson,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 86-24024 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-2929]

Interco Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The Federal Trade Commission has modified a 1978 consent order with respondents by setting aside the portions of the order pertaining to the exclusive dealing prohibitions. The Commission concluded that respondents do not have the market power to exclude competitors.

DATES: Consent Order issued Sept. 26, 1978. Modifying Order issued Oct. 3, 1986.

FOR FURTHER INFORMATION CONTACT: FTC/L-301, Daniel Ducore, Washington, DC 20580 (202) 634-4642.

SUPPLEMENTARY INFORMATION: In the Matter of Interco Incorporated, a corporation, Londontown Corporation, a corporation, and Queen Casuals, Inc., a Corporation. The prohibited trade practices and/or corrective actions, as set forth at 43 FR 48991, remain unchanged.

List of Subjects in 16 CFR Part 13

Footwear products, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Before Federal Trade Commission

[Docket No. C-2929]

Order Reopening and Setting Aside Portions of Order Issued September 26, 1978

Commissioners: Daniel Oliver, Chairman; Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr.

In the Matter of Interco Incorporated, a corporation, Londontown Corporation, a corporation, and Queen Casuals, Inc., a corporation.

On May 6, 1986, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented to Reopen And Set Aside Part Of Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice. Londontown and Queen Casuals are wholly owned subsidiaries of Interco. The Request asked the Commission to reopen the consent order issued on September 26, 1978, ("the order") and set aside paragraphs (1) and (2) of Part II of the order.

Paragraphs (1) and (2) of Part II of the order are applicable only to respondents' footwear products. Paragraph (1) of Part II forbids respondents from enforcing any agreement, understanding or arrangement which prevents resellers or prospective resellers from selling the footwear products of competitors or from independently determining the volume of footwear to be purchased from competitors. Paragraph (2) of Part II prohibits respondents from requiring or inducing resellers to cancel orders for or not purchase footwear products supplied by competitors.

After reviewing respondents' Request, the Commission has concluded that the public interest warrants reopening and setting aside the mentioned paragraphs of the order as requested by respondents. The action we take today is consistent with our previous determinations in *Brown Shoe Company, Inc.*, Docket No. 7606, July 16, 1984, and in *International Shoe Company*, Docket No. 6835, January 30, 1985. In both of those matters the Commission set aside perpetual exclusive dealing orders in the footwear industry. The same considerations which prompted our actions in these earlier matters are applicable to the present request. Respondents have demonstrated that they do not have market power in the domestic footwear industry either at the manufacturing or retailing levels. Given the present characteristics of the shoe industry and that respondents do not have market power by which they may exclude competitors, paragraphs (1) and (2) of Part II of the order now serve no procompetitive purpose and may impede respondents' efforts to achieve efficient distribution of their footwear products through lawful practices available to their competitors.

Accordingly, it is ordered that this matter be and it hereby is reopened and that paragraphs (1) and (2) of Part II of the Commission's Decision and Order issued on September 26, 1978, shall be of no further force and effect.

Issued: October 3, 1986.

By the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-24045 Filed 10-23-86; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. 9203]

Pittsburgh Penn Oil Co. et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order required, among other things, a Creighton, Pa. automotive fluids company to cease falsely representing that its automotive oils, transmission fluids and antifreeze meet standardized industry ratings and standards established by Ford and General Motors.

DATE: Complaint issued Jan. 16, 1986. Decision issued Sept. 29, 1986 [1].

FOR FURTHER INFORMATION CONTACT: James K. Leonard, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, Ill. 60603. (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Friday, July 18, 1986, there was published in the **Federal Register**, 51 Fk 26014, a proposed consent agreement with analysis. In the Matter of Pittsburgh Penn Oil Company, a corporation, and Fred Danovitz, individually and as an officer of the

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th St. & Pa. Ave., NW., Washington, DC 20580

corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely or Misleadingly: S 13.10 Advertising falsely or misleadingly 13.15 Business status, advantages, or connections; 13.15–150 Endorsement; S 13.170 Qualities or properties of product or service; S 13.175 Quality of product or service. Subpart—Claiming or Using Endorsements or Testimonials Falsely or Misleadingly: S 13.330 Claiming or using endorsements or testimonials falsely or misleadingly. Subpart—Corrective Actions and/or Requirements: S 13.533 Corrective actions and/or requirements; S 13.533–45 Maintain records. Subpart—Misrepresenting Oneself and Goods—Goods: S 13.1665 Endorsements; S 13.1710 Qualities or properties; S 13.1762 Tests, purported.

List of Subjects in 16 CFR Part 13

Automotive fluids, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Emily H. Rock,

Secretary.

[FR Doc. 86–24046 Filed 10–23–86; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Reg. No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Withdrawal of an Application

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these regulations, we are revising our rules on withdrawal of applications. As a result of the recodification of 20 CFR Part 404, Subpart G in 1979, one of the prerequisites for withdrawal of an application after a determination has been made was inadvertently changed. Prior to the recodification, consent was needed from beneficiaries already entitled if their "entitlement would be rendered erroneous." The recodification altered the regulation to state that an application may be withdrawn after a determination has been made on it if "any other person who would lose benefits because of the withdrawal consents in writing to it."

These revisions of the rules will alter the current regulation to restore the intended meaning to CFR 404.640(b)(2).

EFFECTIVE DATE: October 24, 1986.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–7459.

SUPPLEMENTARY INFORMATION:

Background

As a result of the recodification of 20 CFR Part 404, Subpart G, one of the prerequisites for withdrawal of an application after a determination has been made was inadvertently changed. Prior to recodification, consent was needed from other beneficiaries already entitled if their "entitlement would be rendered erroneous". The recodified regulation states that an application may be withdrawn after a determination has been made on it if "any other person who would lose benefits because of the withdrawal consents in writing to it." The change in the scope of the consent required was not intented.

There are situations where simultaneously entitled children, (entitled on more than one Social Security earnings record) wish to withdraw their application on the record with the higher primary insurance amount after a determination has been made on it. By withdrawing their application, they may become entitled to a higher benefit amount on the earnings record with a lower primary insurance amount. However, the entitlement of the simultaneously entitled children causes the family maximum, applying to all the individuals entitled on the first earnings record to be higher than it would be if the simultaneously entitled children were not entitled on that record. Thus, in these circumstances, the withdrawal of the simultaneously entitled children's application would cause the family maximum to be reduced which results in a decrease in monthly benefits of the other individuals receiving benefits on that record. However, the decreased monthly benefits are the amounts the other individuals would have been entitled to receive without regard to the entitlement of these children.

As a result of the present recodified regulations, these children must obtain the consent of the other individuals entitled on the same earnings record before the withdrawal can be approved. Often these situations involve more than one household, and the simultaneously entitled children desiring to withdraw their application are not able to obtain the other beneficiaries' consents.

We are revising § 404.640(b)(2) to restore the intended meaning of the subsection; that is, change the section to state that an application may be withdrawn after a determination has been made on it if "any other person whose entitlement would be rendered erroneous because of the withdrawal consents in writing to it." We are eliminating the inadvertently added additional requirement that persons whose benefits are decreased, but whose entitlement is not rendered erroneous, also must consent to withdrawal.

Comments

These rules were published as a Notice of Proposed Rulemaking at 50 FR 51550 on December 18, 1985. We received no comments. We are, therefore, adopting these rules as proposed.

Regulatory Procedures

Executive Order 12291—The Secretary has determined that this is not a major rule under Executive Order 12291. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These regulations impose no new reporting/recordkeeping requirements subject to OMB clearance.

Regulatory Flexibility Act—We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.803, Social Security—Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death Benefits, Disability Benefits, Old-Age, Survivors, and Disability Insurance.

Dated: September 8, 1986.

Dorcas R. Hardy

Commissioner of Social Security.

Approved: October 2, 1986.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations are amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart G continues to read as follows:

Authority: Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368, and 49 Stat. 647; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405 and 1302 and 5 U.S.C. Appendix.

2. In § 404.640, paragraph (b)(2) is revised to read as follows:

§ 404.640 Withdrawal of an application.

* * * * *

(b) * * *

(2) Any other person whose entitlement would be rendered erroneous because of the withdrawal consents in writing to it. Written consent for the person may be given by someone who could sign an application for him or her under § 404.612; and

* * * * *

[FR Doc. 86-24067 Filed 10-23-86; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Parts 436 and 452

[Docket No. 86N-0349]

Antibiotic Drugs; Erythromycin Particles in Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of erythromycin, erythromycin particles in tablets. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective October 24, 1986; comments, notice of participation, and request for hearing by November 24, 1986; data, information, and analyses to justify a hearing by December 23, 1986.

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

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

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of erythromycin, erythromycin particles in tablets. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in Parts 436 and 452 (21 CFR Parts 436 and 452) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective October 24, 1986. However, interested persons may, on or before November 24, 1986, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before November 24, 1986, a written notice of participation and request for hearing, and (2) on or before December 23, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

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

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

List of Subjects in 21 CFR Parts 436 and 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436 and 452 are amended as follows:

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

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

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

2. Section 436.215 is amended by alphabetically inserting a new item into the table in paragraph (b) and by adding new paragraph (c)(8) to read as follows:

§ 436.215 Dissolution test.

* * * * *

(b) * * *

Dosage form	Dissolution medium	Rotation rate[1]	Sampling time(s)	Apparatus
*	* *	*	* *	
Erythromycin particles in tablets.	900 mL 0.05*M* potassium phosphate buffer, pH 6.8.	75	45 min	2
*	* *	*	* *	

[1] Rotation rate of basket or paddle stirring element (revolutions per minute).

(c) * * *

(8) *Erythromycin*—(i) *Preparation of working standard solution.* Accurately weigh approximately 140 milligrams of erythromycin working standard into a 250-milliliter volumetric flask and dissolve in 10 milliliters of methyl alcohol. Add water nearly to volume, mix, and allow the solution to cool. Dilute to volume with water and mix. On the day of use, dilute an accurately measured aliquot with water to obtain a known concentration of 0.28 milligram of erythromycin per milliliter (before adjusting for standard potency).

(ii) *Preparation of sample solution.* Dilute an accurately measured portion of the filtered sample with sufficient 0.05*M* potassium phosphate buffer, pH 6.8, to obtain a concentration of about 0.28 milligram of erythromycin per milliliter (estimated).

(iii) *Procedure.* Transfer 5.0-milliliter aliquots of the working standard solution and sample solution to 25-milliliter volumetric flasks and treat as follows: Add 2.0 milliliters of water, allow to stand for 5 minutes with intermittent swirling. Add 15.0 milliliters of 0.25*N* sodium hydroxide, dilute to volume with sufficient 0.05*M* potassium phosphate buffer, pH 6.8, and mix. Heat to 60 °C for 5 minutes and allow to cool. Using a suitable spectrophotometer and a blank (prepared as per the procedure above except that 2.0 milliliters of 0.5N sulfuric acid is substituted for the 2.0 milliliters of water) for each solution, determine the absorbance of each working standard and sample solution at the absorbance peak at approximately 236 nanometers. Determine the exact position of the absorption peak for the particular instrument used.

(iv) *Calculation.* Proceed as directed in paragraph (c)(1)(iv) of this section.

* * * * *

3. By adding new § 436.545 to read as follows:

§ 436.545 Acid resistance test for erythromycin particles in tablets.

(a) *Equipment.* Use Apparatus 2 as described in the United States Pharmacopeia XXI dissolution test.

(b) *Acid resistance medium.* Use 0.1*N* hydrochloric acid, 500 milliliters.

(c) *Procedure.* Warm the immersion fluid to a temperature of 37±0.5 °C. Place one tablet into a vessel containing 500 milliliters of acid resistance medium. Rotate the paddle at the speed of 50 revolutions per minute for an accurately timed period of 1 hour. Withdraw a 50-milliliter sample of the dissolution medium from a point midway between the stirring shaft and the wall of the vessel and approximately midway in depth. Filter the sample through a Whatman No. 1 filter paper or equivalent, discarding the first 5.0 milliliters. Assay for dissolved erythromycin as directed in paragraph (d) of this section using the filtrate as the sample solution. Repeat the test on five additional tablets.

(d) *Arsenomolybdate colorimetric assay for dissolved erythromycin*—(1) *Apparatus.* Automatic analyzer consisting of (i) a liquid sampler, (ii) a proportioning pump, (iii) suitable spectrophotometers equipped with matched flow cells and analysis capability at 660 nanometers, (iv) a means of recording spectrophotometric readings, and (v) a manifold consisting of the components illustrated in the diagram in paragraph (d)(4) of this section.

(2) *Reagents*—(i) *Arsenomolybdate solutions.*—(*a*) *Stock solution.* Dissolve 100 grams of ammonium molybdate in approximately 1,700 milliliters of water contained in a 2-liter volumetric flask. Insert an inert plastic coated stirring bar into the flask, and begin mixing. While mixing, slowly add 84 milliliters of sulfuric acid (temperature of solution should not exceed 50 °C). Dissolve 12 grams of sodium arsenate in 100 milliliters of water, and add to the solution in the flask. Remove the stirring bar, dilute with water to volume, and mix. Store in an amber bottle for 24 hours before using. (This solution should not be allowed to come into contact with rubber.)

(*b*) *Working solution.* Dilute 1 part of stock solution with 2 parts of water, and mix. This solution is freshly prepared on the day of use.

(ii) *Acetate buffer, pH 4.8.* Dissolve 133 grams of ACS grade sodium acetate crystals in about 3.5 liters of water. Adjust the pH to 4.8±0.1 with glacial acetic acid. Dilute with water to 4,000 milliliters, and mix.

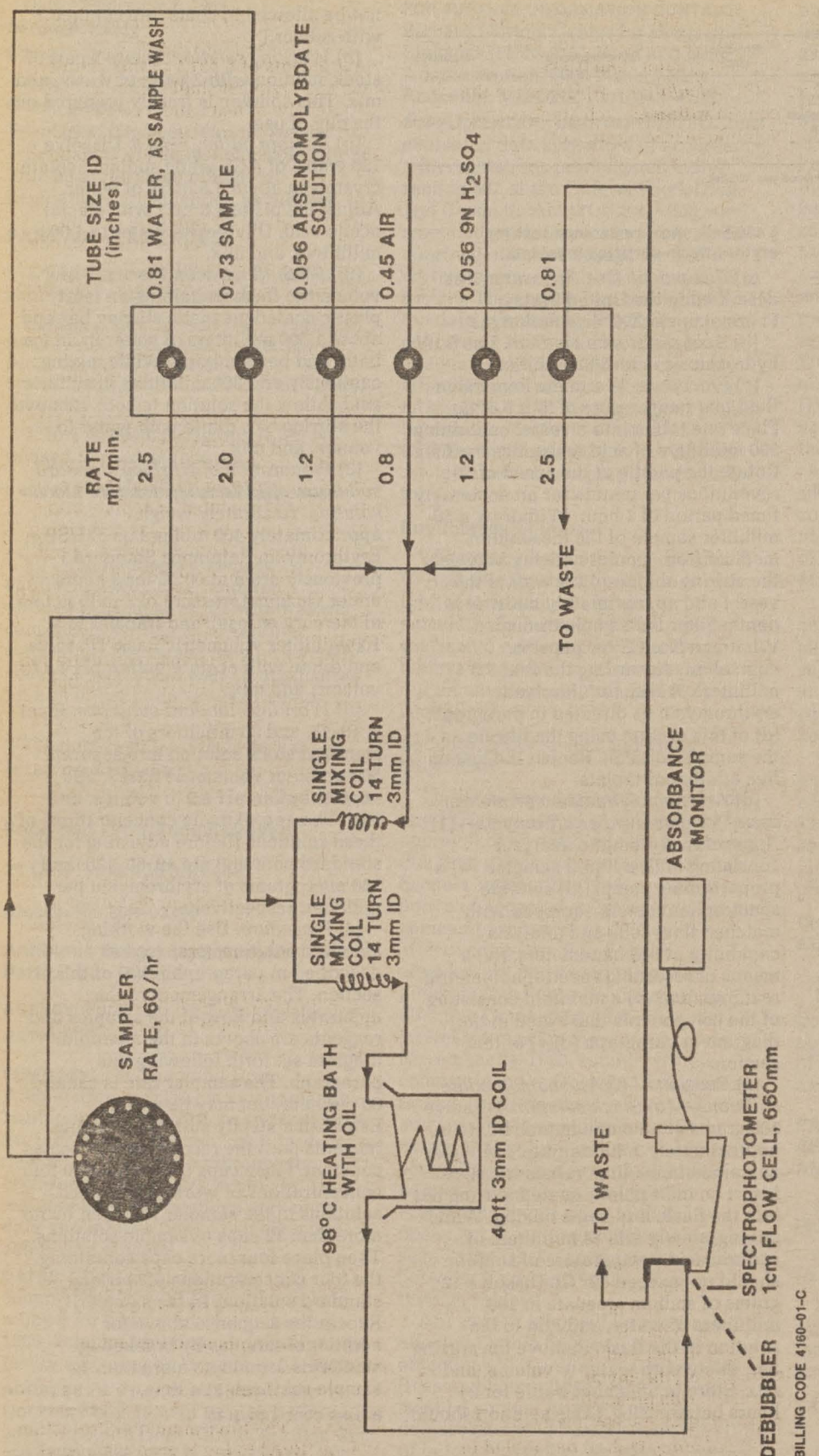
(iii) *9N Sulfuric acid.* Place a 2-liter volumetric flask containing an inert plastic coated magnetic stirring bar and about 1,500 milliliters of water in an ice bath, and begin mixing. While mixing, cautiously add 300 milliliters of sulfuric acid. Allow the solution to cool. Remove the stirring bar, dilute with water to volume, and mix.

(3) *Preparation of working standard solutions—(i) Working standard stock solution.* Accurately weigh approximately 400 milligrams of USP Erythromycin Reference Standard, previously dried at 60 °C for 3 hours under vacuum (pressure of 5 millimeters of mercury or less), and transfer to a 100-milliliter volumetric flask. Dissolve and dilute with acetate buffer, pH 4.8 to volume, and mix.

(ii) *Working standard solutions.* Pipet 5, 10, 15, and 20 milliliters of the standard stock solution into separate 500-milliliter volumetric flasks, add acetate buffer, pH 4.8 to volume, and mix. The approximate concentrations of these solutions (before adjusting for the standard potency) are 40, 80, 120, and 160 micrograms of erythromycin per milliliter, respectively.

(4) *Procedure.* Use the working standard solutions prepared as described in paragraph (d)(3) of this section. The arrangement of the apparatus and flow of the samples and reagents are shown in the manifold diagram set forth following this paragraph. The sampler rate is usually 60 per hour, but may be varied. Establish a steady state by pumping reagents until the record trace becomes constant. Place cups containing the four concentrations of working standard solutions in the sampler followed by no more than 12 cups of sample solutions. Then place four more cups containing the four concentrations of working standard solutions in the sampler. Repeat the sequence above for additional samples by bracketing standards around no more than 12 sample solutions at a time.

BILLING CODE 4160-01-M



BILLING CODE 4160-01-C

(5) *System suitability test.* Perform a linear regression analysis of absorbance versus concentration in micrograms per milliliter of the standards. The system is suitable for calculation if the beginning baseline and the ending baseline after assaying a series of standard and sample solutions does not vary by more than 2 percent transmittance, and the correlation coefficient for each standard curve is greater than 0.995.

(6) *Calculations.* (i) Calculate the concentration of each standard curve solution in micrograms of erythromycin per milliliter as follows:

$$\text{Concentration of each standard curve solution (micrograms of erythromycin per milliliter)} = \left(\frac{\text{Milligrams of working standard} \times \text{Potency of working standard (micrograms per milligram)}}{100}\right) \times \left(\frac{\text{Milliliters of standard stock solution}}{500}\right)$$

(ii) Calculate the percent of labeled amount of erythromycin released in 60 minutes as follows:

$$\text{Percent of labeled amount of erythromycin released in 60 minutes} = \left(\frac{500}{1{,}000}\right) \times \left(\frac{100}{\text{erythromycin content of tablet}}\right) \times \text{Micrograms of erythromycin per milliliter}$$

PART 452—MACROLIDE ANTIBIOTIC DRUGS

4. The authority citation for 21 CFR Part 452 continues to read as follows:

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

5. By adding new § 452.110d to read as follows:

§ 452.110d Erythromycin particles in tablets.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Erythromycin particles in tablets are tablets containing erythromycin acid-resistant coated particles, suitable and harmless diluents, binders, lubricants, and colorings. Each tablet contains 333 milligrams of erythromycin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of erythromycin that it is represented to contain. The loss on drying is not more than 5.0 percent. It passes the dissolution test and the acid resistance test. The erythromycin used conforms to the standards prescribed by § 452.10(a)(1), except heavy metals.

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

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

(i) Results of tests and assays on:

(*a*) The erythromycin used in making the batch for potency, safety, moisture, pH, residue on ignition, identity, and crystallinity.

(*b*) The batch for potency, loss on drying, dissolution, and acid resistance.

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

(*a*) The erythromycin used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 100 tablets.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing 200 milliliters of methyl alcohol. Blend for 2 to 3 minutes. Add 300 milliliters of 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), and blend again for 2 to 3 minutes. Further dilute an aliquot with solution 3 to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(b) of this chapter.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. The quantity *Q* (the amount of erythromycin dissolved) is 75 percent at 45 minutes.

(4) *Acid resistance.* Proceed as directed in § 436.545 of this chapter. The quantity of erythromycin dissolved is not more than 25 percent at 60 minutes.

Dated: October 14, 1986.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc 86-24049 Filed 10-23-86; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3099-7]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste; Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a final exclusion for the solid wastes generated at one particular generating facility from

the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition received by the Agency under 40 CFR 260.20 and 260.22 to exclude wastes on a "generator-specific" basis from the hazardous waste lists. The effect of this action is to exclude certain wastes generated at this facility from listing as hazardous wastes under 40 CFR Part 261.

EFFECTIVE DATE: October 24, 1986.

ADDRESSES: The public docket for this final rule is located in the Sub-basement, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460, and is available for public 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 at (202) 382–4675 for appointments. The reference number for this docket is "F–86–GCEF–FFFFF". The public may copy a maximum of 50 pages of materials from any one regulatory docket at no cost. Additional copies cost $.20/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, toll-free at (800) 424–9346, or (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: On September 10, 1986, EPA proposed to exclude specific wastes generated by the General Cable Company, located in Muncie, Indiana (see 51 FR 32217). This action was taken in response to a petition submitted by this company (pursuant to 40 CFR 260.20 and 260.22) to exclude its wastes from hazardous waste control. In their petition, this company has argued that certain of their wastes were non-hazardous based upon the critieria for which the waste was listed. The petitioner has also provided information which has enabled the Agency to determine whether any other toxicants are present in the waste at levels of regulatory concern. The purpose of today's actions is to make final the proposal and to make our decision effective immediately. More specifically, today's rule allows this facility to manage its petitioned waste as non-hazardous. The exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[1] In addition, the generator still is obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.

The Agency notes that the petitioner granted a final exclusion in today's **Federal Register** has been reviewed for both the listed and non-listed criteria. As required by the Hazardous and Solid Waste Amendments of 1984, the Agency evaluated the waste for the listed constituents of concern as well as for all other factors (including additional constituents) for which there was a reasonable basis to believe that they could cause the waste to be hazardous. The petitioner has demonstrated through submission of raw materials data, EP toxicity test data for all EP toxic metals, and test data on the four hazardous waste characteristics that their wastes do not exhibit any of the hazardous waste characteristics, and do not contain any other toxicants of levels of regulatory concern.

Limited Effect of Federal Exclusion

States are allowed to impose requirements that are more stringent than EPA's pursuant to section 3009 of RCRA. State programs thus need not include those Federal provisions which exempt persons from certain regulatory requirements. For example, States are not required to provide a delisting mechanism to obtain final authorization. If the State program does include a delisting mechanism, however, that mechanism must be no less stringent than that of the Federal program for the State to obtain and keep final authorization.

As a result of enactment of the Hazardous and Solid Waste Amendments of 1984, any States which had delisting programs prior to the Amendments must become reauthorized under the new provisions.[2] To date only one State (Georgia) has received approved for their delisting program. The final exclusion granted today, therefore, is issued under the Federal program. States, however, can still decide whether to exclude these wastes under their State (non-RCRA) program. Since a petitioner's waste may be regulated by a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), this petitioner is urged to contact its State regulatory authority to determine the current status of its wastes under State law.

The exclusion made final here involves the following petitioner: General Cable Company, Muncie, Indiana.

I. General Cable Company

A. Proposed Exclusion

General Cable Company, Indiana Steel and Wire Division (General Cable) has petitioned the Agency to exclude its wastewater treatment sludges (clarifier sludges) from EPA Hazardous Waste Nos. F006 and K062, based on the low concentration and immobilization of the listed constituents in the wastes. Data submitted by General Cable substantiate their claim that the listed constituents of concern, although present, are essentially present in an immobile form. Furthermore, additional data provided by General Cable indicated that no other hazardous constituents are present in the wastes at levels of regulatory concern, and that the wastes do not exhibit any of the characteristics of hazardous waste. (See 51 FR 32219–32221, September 10, 1986, for a more detailed explanation of why EPA proposed to grant General Cable's petition.)

B. Agency Response to Public Comments

The Agency did not receive any public comments regarding its decision to grant an exclusion to General Cable for the waste identified in its petition.

C. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the clarifier sludge is non-hazardous and as such should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to General Cable Company for its wastewater treatment sludge (EPA Hazardous Waste Nos. F006 and K062) generated at General Cable's Muncie, Indiana facility.[3] (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition (*i.e.*, the waste is altered as a result of changes in the manufacturing or treatment process).[4] In

[1] The current exclusion applies only to the processes covered by the original demonstration. A facility may file a new petition if it alters its process. The facility must treat its waste as hazardous, however, until a new exclusion is granted.

[2] RCRA Reauthorization Statutory Interpretation #4: Effect of Hazardous and Solid Waste Amendments of 1984 on State Delisting Decisions, May 16, 1985, Jack W. McGraw, Acting Assistant Administrator for the Office of Solid Waste and Emergency Response.

[3] General Cable originally petitioned the Agency to exclude their wastewater treatment sludge on May 21, 1981 and received a temporary exclusion for this sludge on December 16, 1981. On January 27, 1985, General Cable petitioned the Agency to also exclude their clarifier supernatant. The Agency has not yet completed its evaluation of the petition for the supernatant, therefore, this final exclusion applies only to the wastewater treatment sludges and not to the clarifier supernatant.

[4] See footnote 1.

addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of harzardous waste.)

II. Effective Date

This rule is effective immediately. Although Subtitle C regulations normally take effect six months after promulgation (RCRA section 3010(b)), the Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioners by an effective date six months after promulgation, and in fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This grant of an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effects will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous wastes, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 17, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Appendix IX, add the following wastestreams in alphabetical order to Table 1 as indicated:

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
General Cable Co.	Muncie, IN..	Dewatered wastewater treatment sludges (EPA Hazardous Waste Nos. F006 and K062) generated from electroplating operations and steel finishing operations after [insert date of final rule's publication]. This exclusion does not apply to sludges in any on-site impoundments as of this date.

[FR Doc. 86–24057 Filed 10–23–86; 8:45am]

BILLING CODE 6560-50-M

40 CFR Parts 261 and 271

[SW-FRL-3096-3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is amending the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous four wastes generated during the production and formulation of ethylenebisdithiocarbamic acid (EBDC) and its salts. The effect of this regulation is that all of these wastes will be subject to regulation under 40 CFR Parts 262 through 266, and Parts 270, 271, and 124.

DATE: Effective date: This regulation becomes effective on April 24, 1987.

ADDRESS: The OSW docket is located in the sub-basement at the following address, and is open from 9:30 to 3:30, Monday through Friday, excluding Federal holidays: EPA RCRA Docket (S–212) (WH–562), 401 M Street, SW., Washington, DC 20460.

The public must make an appointment (by calling Mia Zmud at (202) 475–9327, or Kate Blow at (202) 382–4675) to review docket materials. Refer to "Docket number F–86–EBDC–FFFFF" when making appointments to review any background documentation for this rulemaking. The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost; additional copies cost $0.20 per page. Copies of the non-CBI version of the listing background document, the Health and Environmental Effects Profile for Ethylene Thiourea, and not readily available references are available for *viewing and copying only* in the OSW docket.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline at (800) 424–9346 or at (202) 382–3000. For technical information contact Wanda LeBleu-Biswas, Office of Solid Waste (WH–562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–7392.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 1984, EPA proposed to amend the regulations for hazardous waste management under RCRA by listing as hazardous four wastes generated during the production and formulation of ethylene-bisdithiocarbamic acid (EBDC) and its salts.[1] See 49 FR 49562–49565. The hazardous constituent in these wastes is ethylene thiourea (ETU), which is carcinogenic, teratogenic, and shows evidence of mutagenicity. ETU is typically present in each waste at significant levels; its concentration ranges from 0.005 percent in waste K123 to one percent in waste K125. ETU is also moderately persistent in ground water, as indicated by hydrolysis experiments, and is mobile in the environment, due to its high solubility in water and polar organic solvents. Thus, ETU can reach environmental receptors

[1] The Hazardous and Solid Waste Amendments of 1984 require the Agency to make a determination as to whether wastes from carbamate manufacturing should be listed as hazardous.

in harmful concentrations if these wastes are mismanaged. Furthermore, waste K124 is corrosive. (See the preamble to the proposed rule at 49 FR 49562–49565 (December 20, 1984) for a more detailed explanation of our basis for listing these wastes.) After evaluating these wastes against the criteria for listing hazardous wastes (40 CFR 261.11(a)(3)), EPA had determined that these wastes are hazardous because they are capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

The Agency received several comments on these proposed waste listings.[2] We have evaluated these comments carefully, and have responded to them accordingly. This notice makes final the regulation proposed on December 20, 1984, and outlines EPA's response to the comments received on that proposal.

II. Response to Comments

This section presents the comments received on the proposed rule, as well as the Agency's response.

A. Overlap with Other Statutes

The commenter felt that, in light of the Office of Pesticides Program, RPAR Data Call-In, the issuance of the rule should be delayed until the Data Call-In is completed. Specifically, since new data are being developed for the Call-In, in the view of the commenter, these data may shed new light on the tendency of EBDC to degrade to ETU, and on whether there is any potential for absorption of ETU into mammals.

The additional information may shed light on issues related to FIFRA regulation of EBDCs as pesticides. Sufficient evidence currently exists, however, indicating that ETU has toxicological properties of concern (carcinogenicity, teratogenicity, thyroid effects, and mutagenicity), and on its fate and transport in the environment (from means other than use as a pesticide) to determine, for purposes of RCRA, that these wastes are hazardous. We, therefore, have decided not to delay this ruling. If, however, at any time new data are submitted that may change our basis for listing, we will evaluate the impact on these listed wastes.

[2] One person requested a 30-day extension of the public comment period on this proposal. Although no official extension was given, the Agency usually accepts late comments if they are submitted within a reasonable time after the close of the comment period; however, the Agency is not required to do so. This person never submitted any comments.

B. Concentrations of ETU

The commenter felt that the concentrations of ETU outlined in the preamble to the proposed rule (see 49 FR 49563) are vague and must be clearly documented, as these concentrations form the basis for the proposed rule. In addition, the commenter believes that the ETU concentrations are open-ended with no limit having been established.

The concentrations of ETU outlined in the table are not vague, but actually are specified for each waste. The concentrations are presented as ranges to depict the boundaries reported by all generators of the waste. The Agency believes that aggregating this information provides a clear and concise description of the range of possible concentrations of ETU in each waste, while protecting the confidentiality of the specific data submitted by the generators.

In response to the comment that no limit has been established for ETU concentrations in the waste, the commenter is correct that no lower bound has been established. The Agency notes, however, that typically and frequently the listed wastes will contain ETU at levels of concern. Any person, however, may petition the Agency, pursuant to 40 CFR §§ 260.20 and 260.22, to exclude from regulation wastes generated at a particular facility. See 50 FR 28727, 28742–43, July 15, 1985. If particular wastes did not contain hazardous levels of ETU (and were not hazardous for any other reason), the Agency could exclude them from regulation.

C. The Risk of EBDC Wastes to Human Health and the Environment

The commenter stated that, to date, large amounts of EBDCs have been beneficially used in agriculture with no evidence that any harm to humans or the environment has occurred.

Although pesticide uses of EBDC have not been cancelled, the Agency still has concerns (as evidenced by the RPAR Data Call-In and its scheduled 1986 reassessment of its 1982 decision on EBDCs) about possible health effects that would not be readily observable by, or evident to, the user. Chronic health effects, such as cancer, may not manifest themselves for years after exposure. Some effects (*e.g.*, mutagenic or teratogenic effects) will only manifest themselves in a future generation. Similarly, environmental contamination, such as pesticide residues in ground water, may not be immediately evident to users. We do not agree with the commenter that EBDC use has been shown not to pose health or environmental problems. Nor would evidence of safe use necessarily prove that uncontrolled disposal would not result in environmental harm.

Further, it should be noted that, under FIFRA, a pesticide is registered for use if it will not cause any "unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs, and benefits of use." (See FIFRA Section 2(bb).) Thus, a pesticide that poses some risk may be approved if the benefits outweigh the risks. (In such cases, the Agency typically imposes regulatory restrictions to reduce exposure, thereby reducing the risks.) Under RCRA, however, a waste is considered hazardous if it poses a risk to human health or the environment. This statutory standard does not call for balancing the economic benefits of an activity against its risks. Some controlled uses of a pesticide may be allowed even though some risk may be incurred, due to the economic and substantial social benefits of the pesticide's use. In contrast, under RCRA, a substantial potential hazard to human health or the environment is sufficient to support a decision to list a waste.

III. Test Methods for New Appendix VII Compounds

The Agency is suggesting Method Numbers 8250 and 8330 to test for ETU. Persons wishing to submit delisting petitions are to use the methods listed in Appendix III to demonstrate the concentration of ETU in the waste.[3] As part of their petitions, petitioners should submit quality control data demonstrating that the methods they have used yield acceptable recovery (*i.e.*, >50% recovery at concentrations above 1 μg/g) on spiked aliquots of their waste.

The above methods are in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 2nd ed., July 1982, as amended; available from: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3238, Document Number: 055–002–81001–2.

IV. CERCLA Impacts

All hazardous wastes designated by today's rule will, upon the effective date, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

[3] Petitioners may use other test methods to analyze for ETU if, among other things, they demonstrate the equivalency of these methods by submitting their quality control and assurance information along with their analysis data. See 40 CFR 260.21.

(CERCLA). (See CERCLA section 101(14).) CERCLA requires that persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than the reportable quantities (RQs) immediately notify the National Response Center at (800) 424–8802 or (202) 426–2675) of the release. (See CERCLA section 103 and 50 FR 13456–13522, April 4, 1985.)

Pursuant to section 102, all hazardous wastes newly designated under RCRA will have a statutorily-imposed RQ of one pound unless and until adjusted by regulation. If, however, a newly listed hazardous waste contains hazardous substances for which final RQs have already been assigned in Table 302.4, 40 CFR Part 302, the lowest RQ assigned to any of the constituents present in the waste represents the RQ for the waste stream. Thus, if the waste contains only one constituent of concern, the waste will have the same RQ as that of the constituent.

In the case of all four waste streams listed pursuant to this rule, ETU is identified as the only hazardous constituent. ETU has a final RQ of one pound (see 50 FR 13487, April 4, 1985). The Agency proposed in the December 20, 1984 proposal for this rule that RQs of one pound would be designated as the final RQs for the listed wastes (K123, K124, K125, and K126). Since the Agency received no public comments on these proposed RQs, the Agency also is making final in this rule the one-pound RQ proposed for EPA Hazardous Waste Nos. K123, K124, K125, and K126. Since ETU is currently undergoing carcinogenicity assessment for CERCLA RQ adjustment (ranking) purposes, however, both its RQ and the RQ of these four wastes are subject to change when the assessment is completed, as will be noted in their listing in Table 302.4

The RQs promulgated in this rule are effective upon the effective date of today's action. These listed wastes and their RQs will be added to Table 302.4 of § 302.4 at the time of its next Federal Register publication.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by the HSWA. It is, therefore, being added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the HSWA, and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorizations

As noted above, EPA will implement today's rule in authorized States until they modify their programs to adopt these rules, and the modification is approved by EPA. Since the rule is promulgated pursuant to the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of regulations that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs by July 1, 1989 if only regulatory changes are necessary, or July 1, 1990 if statutory changes are necessary. These deadlines can be extended in exceptional cases (40 CFR 271.21(e)(3)).

States with authorized RCRA programs already may have regulations similar to those in today's rule. These State regulations have not been assessed against the Federal regulations being promulgated today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these regulations in lieu of EPA until the State program modification is approved. Of course, States with existing regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the Federal program, EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of EPA's regulations may be approved without including regulations equivalent to those promulgated. Once authorized, however, a State must modify its program to include regulations substantially equivalent or equivalent to EPA's within the time periods discussed above.

VI. Compliance Dates

A. Notification

The Agency has decided not to require persons who generate, transport, treat, store, or dispose of these hazardous wastes to notify the Agency within 90 days of promulgation that they are managing these wastes. The Agency views the notification requirement to be unnecessary in this case since we believe that most, if not all, persons who manage these wastes have already notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes of these wastes has not previously notified and received an identification number, that person must get an identification number pursuant to 40 CFR 262.12 before he can generate, transport, treat, store, or dispose of these wastes.

B. Interim Status

All existing hazardous waste management facilities (as defined in 40

CFR 270.2) that treat, store, or dispose of hazardous wastes covered by today's rule, and that are currently operating pursuant to interim status under section 3005(e) of RCRA, must file with EPA an amended Part A permit application by April 24, 1987. In addition, facilities which currently treat, store, or dispose of the wastes subject to this rule, but which have not received a permit pursuant to section 3005 and are not operating pursuant to interim status may also be eligible for interim status under the Hazardous and Solid Waste Amendments of 1984. See section 3005(e)(1)(A)(ii) of RCRA, as amended. In order to operate pursuant to interim status, such facilities must get an identification number pursuant to 40 CFR 262.12 and submit a Part A permit application by April 24, 1987. Land disposal facilities which qualify for interim status under section 3005(e)(1)(A)(ii) must also apply for a final determination regarding the issuance of a permit and certify that the facility is in compliance with all applicable ground water monitoring and financial responsibility requirements within twelve months of becoming subject to such permit requirements. See RCRA section 3005(e)(3). If not, interim status will terminate on that date.

A hazardous waste management facility which has received a permit pursuant to section 3005, however, may not treat, store, or dispose of the wastes covered by today's rule until it submits an amended permit application pursuant to 40 CFR 124.5, and the permit has been modified pursuant to 40 CFR 270.41 to allow it to treat, store, or dispose of these wastes.

VII. Regulation of EBDC Compounds under FIFRA

The Agency issued a notice on August 10, 1977 (42 FR 40618), informing the public that evidence of hazards from the use of EBDCs (and ETU) warranted an in-depth evaluation of risks and benefits. On October 14, 1982, the Office of Pesticides and Toxic Substances concluded that, while there was valid and significant evidence of hazard, additional data were necessary to decide whether or not to cancel EBDCs, and that registrations could continue with mandatory restrictions on use practices. Additional data on EBDCs and ETU have been requested from registrants. On December 31, 1986, the Agency is scheduled to complete a reassessment of its regulatory position under FIFRA on EBDCs. In conducting the reassessment, the Agency will review the available health and safety data, assess the applicable health and environmental risks, and reach a decision on the registration of pesticide products containing EBDCs.

VIII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determine whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. In the proposed listing, EPA addressed this issue by citing the results of an economic analysis that was conducted based on a worst case scenario; the total additional incurred cost for the industry to dispose of the wastes as hazardous was approximately $33,100. The Agency received no comments on this figure.

Since EPA does not expect that the amendments promulgated here will have an annual effect on the economy of $100 million or more, will result in a measurable increase in costs or prices, or have an adverse impact on the ability of U.S.-based enterprises to compete in either domestic or foreign markets, these amendments are not considered to constitute a major action. As such, a Regulatory Impact Analysis is not required.

IX. 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 that describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the head of the agency certifies that the rule will not have a significant impact on a substantial number of small entities.

The hazardous wastes listed here are not generated by small entities (as defined by the Regulatory Flexibility Act), and the Agency has no information indicating that small entities will dispose of them in significant quantities. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

X. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 261

Hazardous waste, Recycling.

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: October 7, 1986.

Lee M. Thomas,

Administrator.

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

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.32, add the following waste streams to the subgroup "Pesticides":

§ 261.32 Hazardous wastes from specific sources.

* * * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * * * *	*
Pesticides:		
*	* * * * * *	*
K123	Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salt.	(T)
K124	Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts	(C, T)
K125	Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	(T)
K126	Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylenebisdithiocarbamic acid and its salts.	(T)
*	* * * * * *	*

3. Add the following compound and analysis methods in alphabetical order to Table 1 of Appendix III of Part 261:

Appendix III—Chemical Analysis Test Methods

* * * * *

Compound	Method No.
* * * * *	
Ethylene thiourea	8250, 8330.
* * * * *	

4. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

* * * * *

EPA hazardous waste No.	Hazardous constituents for which listed
* * * * *	
K123	Ethylene thiourea.
K124	Ethylene thiourea.
K125	Ethylene thiourea.
K126	Ethylene thiourea.
* * * *	

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

5. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

§ 271.1 [Amended]

6. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
*	* * * * *		
October 24, 1986	Listing Wastes from the Production and Formulation of Ethylenebisdithiocarbamic Acid (EBDC) and its Salts.	51 FR 37725	April 24, 1987.
*	* * * * *		

[FR Doc 86-23996 Filed 10-23-86; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 271

[SW-8-FRL-3099-8]

Colorado; Final Authorization of Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Final rule on application of Colorado for a program revision to regulate hazardous components of radioactive mixed wastes.

SUMMARY: Colorado has applied for final authorization of a revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Colorado's application and has reached a decision that Colorado's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to Colorado to operate its expanded program, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final authorization for Colorado shall be effective at 1:00 p.m. on November 7, 1986.

FOR FURTHER INFORMATION CONTACT: Charles L. Brinkman, One Denver Place, Suite 1300, 999 18th Street, Denver, Colorado 80202-2413. Phone: 303/293-1794.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

On July 3, 1986, the Agency published a **Federal Register** notice requiring States to have authority to regulate radioactive mixed wastes (51 FR 24504). That notice required States to demonstrate to the appropriate EPA Regional Administrator that their hazardous waste management program applies to all hazardous waste even if mixed with radioactive waste. This demonstration must be made pursuant to the schedule set forth in 40 CFR 271.21(e)(2) for State program revisions.

B. Colorado

Colorado received final authorization for its hazardous waste program on November 2, 1984. On July 17, 1986, Colorado submitted a program revision application for additional program approval to regulate the hazardous components of radioactive mixed waste. EPA made a tentative determination on August 8, 1986, that Colorado's program revision would satisfy all requirements if Colorado would include additional information in its Program Description on State staffing and funding for regulation of the hazardous components of radioactive mixed wastes and a numerical estimate of radioactive mixed waste handlers within the State. Colorado submitted additional information on August 11, 1986, which demonstrated Colorado's capability to address the hazardous components of radioactive mixed waste and listed all known handlers of radioactive mixed waste in Colorado. Thus, adequate documentation of Colorado's ability to

conduct a program to regulate the hazardous components of radioactive mixed wastes equivalent to the EPA program has been received.

EPA has reviewed Colorado's application and has made a final decision that Colorado's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA is granting final authorization for Colorado to operate the hazardous waste management program with respect to the hazardous components of radioactive mixed wastes.

Commenters questioned the ability of Colorado Hazardous Waste staff to safely control the hazardous components of radioactive mixed wastes and to assure that the radioactive component of mixed waste would be adequately handled and disposed. Questions concerning the adequacy of State agency staffing in both number and abilities had also been raised by EPA as addressed in its Tentative Decision published in the **Federal Register** on August 8, 1986. In response to these concerns, Colorado submitted additional information demonstrating a sufficient number of knowledgeable and trained staff to adequately and safely control the hazardous components of radioactive mixed wastes. Thus, EPA believes that the staff will be able to safely conduct an adequate program with regard to these wastes.

Commenters also questioned Colorado's statement that any determination of inconsistency between the technical requirements of the Atomic Energy Act (AEA) and the Resource Conservation and Recovery Act (RCRA) would be made by the State after consultation with the Secretary of Energy and the Administrator of EPA. Section 1006 of RCRA precludes any solid or hazardous waste regulation which is inconsistent with the requirements of the AEA. Thus, in issuing permits or otherwise implementing its hazardous waste program, Colorado must avoid inconsistencies with the AEA. EPA encourages the State to consult with DOE and EPA in making such determinations.

Because no Colorado facilities which handle the hazardous component of radioactive mixed waste have received a RCRA permit, EPA will not need to transfer to the State of Colorado the authority to implement the hazardous component of radioactive mixed waste for EPA permitted facilities.

Colorado has not requested hazardous waste program authority on Indian lands. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to Indian lands in Colorado.

C. Decision

I conclude that Colorado's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Colorado is granted final authorization to operate its hazardous waste program for the hazardous components of radioactive mixed waste. The Agency is approving the State to operate this portion of the RCRA program pursuant to the State's statutory and regulatory authority in sections 25–15–101(9) and 25–15–302, C.R.S. (1982 and 1985 Supp.) and 6 CCR 1007–3, Parts 260 and 261. Colorado now has responsibility for permitting radioactive mixed waste treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program for these wastes, subject to the authority retained by EPA in accordance with the Hazardous and Solid Waste Amendments of 1984 (see 50 FR 28702, July 15, 1985). Colorado also has primary enforcement responsibility with respect to radioactive mixed wastes, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Colorado's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administration practice and procedures, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 30, 1986.

John C. Welles,

Regional Administrator.

[FR Doc. 86–24058 Filed 10–23–86; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 301, 302, 303, 304, 305, 306, and 307

Child Support Enforcement Program; OMB Control Numbers for Approved Information Collection Requirements Contained in OCSE Regulations

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Final rule; technical amendment.

SUMMARY: Section 3512 of the Paperwork Reduction Act of 1980 and the Office of Management and Budget (OMB) implementing regulations at 5 CFR 1320.5(b) require all information collection requirements contained in regulations and approved by OMB to display the valid OMB control number. This document satisfies this requirement for OCSE regulations contained in 45 CFR Parts 301–307.

EFFECTIVE DATE: October 24, 1986.

FOR FURTHER INFORMATION CONTACT: Joyce Linder, Policy Branch, OCSE, (301) 443–5350.

Accordingly, the sections listed below in 45 CFR Parts 301 through 307 are amended by adding the OMB control number at the end of each section as follows:

PART 301—[AMENDED]

1. The authority citation for Part 301 is revised to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396k.

2. OMB control numbers are added to the end of each section as follows:

§ 301.11 State plan; format.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0253)

§ 301.12 Submittal of State plan for Governor's review.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0253)

§ 301.13 Approval of State plans and amendments.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0253)

§ 301.15 Grants.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0960–0239 and 0960–0235)

PART 302—[AMENDED]

3. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396k.

4. OMB control numbers are added to the end of each section as follows:

§ 302.12 Single and separate organizational unit.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0253)

§ 302.13 Plan amendments.

(Approved by the Office of Management and Budget under control number 0960–0253)

§ 302.15 Reports and maintenance of records.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0960–0154, 0960–0226 and 0960–0238)

§ 302.17 Inclusion of State statutes.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0960–0253 and 0960–0385)

§ 302.30 Publicizing the availability of support enforcement services.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.31 Establishing paternity and securing support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.32 Support payments to the IV–D agency.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.33 Individuals not otherwise eligible for paternity and support services.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0253, 0960–0385, and 0960–0402)

§ 302.50 Support obligations.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.51 Distribution of support collections.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.52 Distribution of support collected in title IV–E foster care maintenance cases.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.54 Notice of collection of assigned support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.55 Incentive payments to States and political subdivisions.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.56 Guidelines for setting child support awards.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.57 Procedures for the payment of support through the IV–D agency or other entity.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.70 Required State laws.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.75 Procedures for the imposition of late payment fees on absent parents who owe overdue support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 302.80 Medical support enforcement.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0420)

§ 302.85 Computerized support enforcement systems eligible for 90 percent FFP.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0960–0344 and 0960–0253)

PART 303—[AMENDED]

5. The authority citation for Part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396k.

6. OMB control numbers are added to the end of each section as follows:

§ 303.10 Procedures for case assessment and prioritization.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0394)

§ 303.52 Incentive payments to States and political subdivisions.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 303.69 Requests by agents or attorneys of the United States for information from the Federal Parent Locator Service (PLS).

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0258)

§ 303.70 Requests by the State parent locator service for information from the Federal Parent Locator Service (PLS).

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0165)

§ 303.71 Requests for full collection services by the Secretary of the Treasury.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0281)

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 303.100 Procedures for wage or income withholding.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 303.101 Expedited processes.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 303.102 Collection of overdue support by State income tax refund offset.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 303.103 Procedures for the imposition of liens against real and personal property.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 303.104 Procedures for posting security, bond or guarantee to secure payment of overdue support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 303.105 Procedures for making information available to consumer reporting agencies.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

PART 304—[AMENDED]

7. The authority citation for Part 304 is revised to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396k.

8. OMB control numbers are added to the end of each section as follows:

§ 304.95 State Commissions of Child Support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

PART 305—[AMENDED]

9. The authority citation for Part 305 is revised to read as follows:

Authority: 42 U.S.C. 603(h), 604(d), 652(a)(1) and (4), and 1302.

10. OMB control numbers are added to the end of each section as follows:

§ 305.20 Effective support enforcement program.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.24 Establishing paternity.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.34 Cooperative arrangements.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.37 Bonding of employees.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.38 Separation of cash handling and accounting functions.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.39 Withholding of unemployment compensation.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.40 Federal tax refund offset.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.41 Recovery of direct payments.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.42 Spousal support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.44 Publicizing the availability of support enforcement services.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.45 Notice of collection of assigned support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.46 Incentive payments to States and political subdivisions.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.47 Guidelines for setting child support awards.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.48 Payment of support through the IV–D agency or other entity.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.49 Wage or income withholding.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.50 Expedited processes.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.51 Collection of overdue support by State income tax refund offset.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.52 Imposition of liens against real and personal property.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.53 Posting security, bond or guarantee to secure payment of overdue support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.54 Making information available to consumer reporting agencies.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.55 Imposition of late payment fees on absent parents who owe overdue support.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

§ 305.56 Medical support enforcement.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0420)

§ 305.99 Notice and corrective action period.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0385)

PART 306—[AMENDED]

11. The authority citation for Part 306 continues to read as follows:

Authority: 42 U.S.C. 652, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396k.

12. OMB control numbers are added to the end of each section as follows:

§ 306.50 Securing medical support information.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0420)

§ 306.51 Securing and enforcing medical support obligations.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0420)

PART 307—[AMENDMED]

13. The authority citation for Part 307 is revised to read as follows:

Authority: 42 U.S.C. 652 through 658, 664, 666, 667 and 1302.

14. OMB control numbers are added to the end of each section as follows:

§ 307.10 Computerized support enforcement systems.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0344)

§ 307.15 Approval of advance planning documents for computerized support enforcement systems eligible for 90 percent FFP.

* * * * *

(Approved by the Office of Management and Budget under control number 0960–0343)

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

Approved.

S. Anthony McCann,

Assistant Secretary for Management and Budget.

[FR Doc. 86–23953 Filed 10–23–86; 8:45 am]

BILLING CODE 4190–11–M

Proposed Rules

Federal Register
Vol. 51, No. 206
Friday, October 24, 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

Agriculture Marketing Service

7 CFR Part 1097

Milk in the Memphis, TN Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend the pool supply plant definition of the Memphis, Tennessee, Federal milk order for the months of October through December 1986. The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has been requested to make supplemental shipments of milk to meet the increasing fluid milk needs of distributing plants that are regulated under the Memphis order. The milk supply that Mid-Am has available to meet an increasing need for milk in fluid uses at Memphis is milk received at supply balancing plants which handle reserve milk supplies associated with distributing plants regulated under the Southwest Plains order, but shipments from such plants would subject them to regulation under the individual-handler pool Memphis order. Mid-Am contends that this would result in a reduction of returns to producers and disrupt their normal association with the Southwest Plains order. The suspension would allow reserve milk supplies and supplemental shipments for fluid milk needs to continue to be regulated under the Southwest Plains order.

DATE: Comments are due on or before October 31, 1986.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, Dairy Division, Agriculture Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–2089.

SUPPLEMENTARY INFORMATION: 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 proposed action would not have a significant economic impact on a substantial number of small entities. Such action would tend to ensure that dairy farmers would continue to have their milk priced under the order for the market which is the primary outlet for their milk and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Memphis, Tennessee marketing area is being considered for the months of October through December 1986:

Paragraph (b) of § 1097.7.

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the Federal Register. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include October in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during business hours (7 CFR 1.27(b)).

STATEMENT OF CONSIDERATION

The proposed suspension would make inoperative a portion of the fluid milk plant definition that pertains to a supply plant for the months of October-December 1986. The order currently regulates a plant that ships in excess of 70,000 pounds of milk per month to a fluid milk distributing plant regulated under the order.

The suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has been requested to make supplemental shipments of milk to meet the fluid milk needs of plants regulated under the Memphis order. Mid-Am indicates that the shipments to meet fluid milk needs are necessary because of changes in the sales patterns of bottling plants that were precipitated by the recent closing of bottling plants located at Springfield, Missouri, and Paragould, Arkansas. Mid-Am also contends that additional supplemental shipments are necessary because of the normal seasonal decrease in production and further reductions brought about by the whole-herd buyout program.

Mid-Am contends that the shipment of milk to meet the fluid milk needs of Memphis handlers is most feasible from its Southwest Plains order pool reserve supply balancing plants in southwest Missouri. However, this would likely result in their regulation under the Memphis order. Mid-Am contends that if this were to occur, the Memphis order price to producers would be significantly below the Southwest Plains order price, thereby causing a disparity in pricing among producers. Mid-Am further contends that if producers lose their association with the Southwest Plains order, that order would preclude producers status during the forthcoming months of February-July 1987.

Mid-Am indicates that two plants that are pooled as balancing plants under the Southwest Plains order almost became regulated under the Memphis order during September. Mid-Am anticipates that, if it continues to supply Memphis handlers with increased supplemental shipments to meet fluid milk needs, these plants would likely become regulated under the Memphis order during October-December 1986. Consequently, Mid-Am contends that the suspension is necessary to allow southwest Missouri plants and milk supplies to continue to be associated with the Southwest Plains order. Mid-Am contends that the suspension is necessary to facilitate making supplemental milk supplies available to fluid milk plants in Memphis.

List of Subject in 7 CFR Part 1097

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1097 continues to read as follows:

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

Signed at Washington, DC on: October 21, 1986.

William T. Manley

Deputy Administrator Marketing Programs.

[FR Doc. 86–24107 Filed 10–23–86; 8:45 am]

BILLING CODE 3410-2-M

FEDERAL RESERVE SYSTEM

12 CFR Part 227

[Reg. AA; Docket No. R–0581]

Unfair or Deceptive Acts or Practices; Exemption Application From the State of New York

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent to make an exemption determination.

SUMMARY: The Board has received from the state of New York an application for an exemption from § 226.14 of the Board's Credit Practices Rule, Regulation AA (Unfair or Deceptive Acts or Practices). The rule prohibits banks from entering into consumer credit obligations that contain certain prohibited provisions, from using a certain late charge practice, and from obligating a cosigner prior to providing a required notice explaining the cosigner's obligations. The Board is publishing notice of the New York application, with an opportunity for public comment, in accordance with § 227.16(b) of Regulation AA. That section provides that the exemption procedures detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) are to be followed in applying for an exemption from the Credit Practices Rule.

DATE: Comments must be received on or before November 28, 1986.

ADDRESSES: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to the 20th Street courtyard entrance, 20th Street, between C Street and Constitution Avenue NW, Washington, DC between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to Docket No. R–0581. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Adrienne D. Hurt or Heather L. Hansche, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3867, or Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

In April 1985 the Board adopted its Credit Practices Rule, 12 CFR 227 (50 FR 16695), thereby amending its Regulation AA (Unfair or Deceptive Acts or Practices). The Board's rule, which became effective on January 1, 1986, followed the adoption by the Federal Trade Commission (FTC) of its Credit Practices Rule in March 1984 (49 FR 7740), effective March 1, 1985.[1] The Board's rule applies to all banks and their subsidiaries. Staff guidelines (in question and answer format) designed to aid banks in complying with the Credit Practices Rule were issued in November 1985.

The Credit Practices Rule prohibits banks from entering into any consumer credit obligation that contains a confession of judgment clause, a waiver of exemption, an assignment of wages, or a nonpossessory, nonpurchase money security interest in certain types of household goods. The rule prohibits the enforcement of these provisions in a consumer credit obligation purchased by a bank.

The rule also prohibits a practice known as "pyramiding" of late charges. Under the late charges provision, a bank is prevented from assessing multiple late charges based on a single delinquent payment that is subsequently paid. In addition, the rule prohibits a bank from misrepresenting a cosigner's liability and requires the bank to give a cosigner, prior to becoming obligated in a consumer credit transaction, a disclosure notice which explains the nature of the cosigner's obligations and liabilities under the contract.

Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including the issuance of cease and desist orders and the imposition of penalties of up to $1,000 per day for violation of an order.

[1] Under section 18(a)(1)(B) and section 5(a)(1) of the Federal Trade Commission Act (FTC Act), the FTC is authorized to promulgate rules that define and prevent "unfair or deceptive acts or practices" in or affecting commerce with respect to extensions of credit to consumers. Section 18(f) of the FTC Act provides that whenever the FTC promulgates a rule prohibiting practices which it has deemed to be unfair or deceptive, the Board, with certain limited exceptions, must adopt a substantially similar rule prohibiting such practices by banks. The Federal Home Loan Bank (FHLBB) is also required under section 18(f) to adopt a rule substantially similar to that of the FTC for institutions that are members of the Federal Home Loan Bank System; the FHLBB did so in May 1985 (50 FR 19325), with its rule also taking effect on January 1, 1986.

(2) New York's Exemption Application

The state of New York, through its Superintendent of Banks, has applied to the Board for an exemption from § 227.14 of the Board's Credit Practices Rule.[2] The application contains copies of certain provisions under New York's General Obligations Law (G.O.L.) and General Business Law and a comparison of the provisions of the Board's Credit Practices Rule and the New York statutory provisions. The application also contains information about the enforcement activities of the state's Banking Department.[3]

The Board's rule (§ 227.16) states that, in applying for an exemption from its Credit Practices Rule, the procedures to be followed are the same as those detailed in Appendix B to Regulation Z (Truth in Lending, 12 CFR Part 226) for applying for an exemption from that regulation. In accordance with those procedures, the Board is publishing for comment notice of this application for an exemption determination on the New York application. The notice summarizes the New York exemption application, and includes a comparison of the relevant provisions of New York law and the Board's Credit Practices Rule. In order to expedite final action on the New York exemption request, the notice is being published for a 30 day comment period. Subject to the Board's Rules Regarding Availability of Information (12 CFR Part 261), copies of the New York application are available from the Board in Washington or from the Federal Reserve Bank of New York.

Section 227.16 of the Credit Practices Rule provides that if a state applies for an exemption from a provision of the rule, such an exemption may be granted if the Board determines that: (i) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of the Credit Practices Rule applies; and (ii) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by the rule's provision. If the Board makes such

[2] The state of New York in its application requested an exemption from § 227.14(b) of Regulation AA. Section 227.14(b) sets forth the cosigner disclosure requirements under the rule. After a review of the exemption application in its entirety and discussions with a representative of the New York State Banking Department, it is apparent that the state of New York is requesting an exemption from all of § 227.14 of Regulation AA.

[3] The state of New York submitted an application to the FTC for an exemption from the cosigner provisions of the FTC's Credit Practices Rule, § 444.3. The FTC granted New York's exemption request for transactions of $25,000 or less on August 7, 1986. 51 FR 28328 (1986).

a determination, the prohibition or requirement in the Board's rule will not be in effect in that state to the extent specified by the Board in its determination, for so long as the state effectively administers and enforces the state requirement for prohibition. The effect of an exemption is that banks and their subsidiaries (other than federally chartered institutions) that are subject to the Board's rule will be subject solely to state law and enforcement.

Applicable state law provisions need not be the same as the comparable federal requirement in order to meet the rule's substantially equivalent standard. Variations, however, should not deprive consumers of the protections provided by federal law. An analysis of a state's enforcement activities focuses on the ways in which the state demonstrates a commitment to enforcement and administration of the state's law; factors such as staffing, training activities, examination and administrative procedures, and other indicators of enforcement efforts may be considered, as well as the existence under state law of any private right of action by aggrieved consumers.

(3) A Comparison of New York Law and the Board's Credit Practices Rule

The state of New York asserts that the provisions of New York's General Obligations Law Section 15–702 and those of General Business Law Section 349 offer protection if not greater than, then at least substantially equivalent to the Board's Credit Practices Rule and, therefore, an exemption should be granted by the Board under Regulation AA for as long as the New York provisions remain in effect. A comparison of the relevant provisions of New York law (as described by the New York exemption application) and the cosigner provision of the Board's rule is set forth below. In particular, the Board solicits comment on the following:

- The degree to which differences in coverage between the New York law and the Board's rule affect the level of protection afforded by New York law;
- The degree to which differences in the cosigner provision of the New York law and the Board's rule affect the level of protection afforded by New York law;
- Whether the remedy for violation of the cosigner provision of the New York law affords a level of protection substantially equivalent to, or greater than, that afforded by the Board's rule; and
- Whether New York administers and enforces its law effectively.

A. Coverage

New York's General Obligations Law Section 15–702(2) (a) and (b) provides that before a cosigner becomes obligated on a consumer credit transaction or account, the creditor must notify the cosigner in writing of the nature of his or her obligation. Under the New York law a consumer credit transaction includes a loan or sale where credit is extended to a consumer primarily for personal, family or household use. A consumer credit account includes an account established pursuant to an agreement where the consumer makes purchases or obtains loans for personal, family or household purposes, from time to time, either directly from the creditor, or indirectly by use of a credit card, check or other device as the agreement may provide. The New York law does not apply to consumer credit transactions in excess of $25,000 or consumer credit accounts with a credit limit in excess of $25,000.

The Credit Practices Rule requires a bank to provide a cosigner with a written notice of his or her obligation before the cosigner becomes obligated for an extension of credit to a consumer. Consumer credit transactions (which include credit accounts as separately defined under New York law) made primarily for personal, family or household use are covered by the rule. The Credit Practices Rule does not exclude consumer credit transactions or accounts over $25,000 from the rule's coverage; the dollar amount is, however, one of the factors that can be considered in determining whether a transaction is for a business purpose (and therefore, not covered by the rule) rather than a consumer purpose. (Staff Guidelines, 012(a)–2.)

B. Cosigner Provisions

Under the Credit Practice Rule, it is a deceptive act or practice for a bank to misrepresent the nature or extent of a cosigner's liability (§ 227.14(a)(1)). New York General Business Law Section 349 prohibits deceptive acts or practices generally. Section 349 has been interpreted by New York case law to prohibit any act or practice declared deceptive under the rules and regulations of the FTC or under any federal case law construing the rules and regulations of the FTC.[4] A consumer may bring a private cause of action or violation of the New York deceptive acts and practices law to enjoin an unlawful act or practice and to recover actual damages or $50, whichever is greater. For willful violations, a court may award treble damages, up to $1,000, in an action brought by a consumer. In addition, the Attorney General of the State of New York may bring an action to enjoin a deceptive practice and may seek restitution of money or property obtained as a result of the unlawful act or practice.

Under the Credit Practices Rule, it is an unfair act or practice for a bank to obligate a cosigner in connection with an extension of credit to a consumer unless cosigner is informed prior to becoming obligated of the nature of his or her liability as a cosigner (§ 227.14(a)(2)). The rule contains a prescribed disclosure statement that must be provided to a cosigner. A bank must provide a statement which is substantially similar to that in the rule (§ 227.14(b)). Under the rule the cosigner notice must be clear and conspicuous, and may be contained in a separate document or in the documents evidencing the credit obligation. The rule does not require that the cosigner be given copies of the documents evidencing the obligation.

New York law requires a creditor to provide a cosigner with: (1) A written notice that informs the cosigner of the nature of his or her liability, and (2) a complete copy of each document evidencing the credit obligation. The notice given must be substantially similar to that provided in G.O.L. section 15–702(3) and must be printed in at least 10-point type. The notice may be on a separate document or included in the documents evidencing the consumer credit obligation.

If a creditor fails to comply with the cosigner provisions of the New York law, the cosigner cannot be obligated as a payment guarantor as described in the Uniform Commercial Code, section 3–416(1). The creditor may not proceed directly against the cosigner, but rather must first exhaust all remedies (including judgment and execution) against the primary obligor. Once all remedies against the primary obligor are exhausted, the creditor may sue the cosigner as a collection guarantor.

Noncompliance with the provisions of the Credit Practices Rule is dealt with through administrative enforcement. Failure to comply with the cosigner provisions of the rule does not alter the obligation between the bank and the cosigner. Administrative enforcement of the rule for banks may involve actions under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), including the issuance of cease and desist orders

[4] *State v. Colorado State Christian College of the Church of the Inner Power, Inc.*, 76 Misc. 2d 50, 346 N.Y.S. 2d 482 (Sup. Ct. 1973).

and the imposition of penalties of up to $1,000 per day for violation of an order.

The cosigner notice required by the Credit Practices Rule states that: (1) The cosigner may have to pay the full amount of the debt and late fees or collection costs; (2) the creditor can collect from the cosigner without first trying to collect from the borrower; (3) the same collection remedies may be used against the cosigner as against the borrower; (4) the notice is not the contract that makes the cosigner liable; (5) if the debt goes into default that fact could become a part of the cosigner's credit history; and (6) the cosigner should think carefully before becoming obligated. A bank may include additional information in the notice (such as the date of transaction, the loan amount, information identifying the debt, names and addresses, and an acknowledgment of receipt) and still meet the substantially similiar requirement of § 227.14(b)(2). (Staff Guidelines, Q14(b)–9.) Minor editorial changes may also be made to the notice, such as changing the word "borrower" to "accountholder" or changing the word "debt" to "account" as appropriate. (Staff Guidelines, Q14(b)–7.)

Two model cosigner notices are contained in New York's General Obligations Law, section 15–702(3); one is to be used in a consumer credit transaction and the other is for use in connection with a consumer account. The notices state that: (1) The cosigner is obligated to pay the debt identified even though the cosigner may not personally receive any property, services or money; (2) the cosigner may be sued even though the primary obligor may be able to pay; and (3) the notice is not the contract that makes the cosigner liable. The notice also requires the identification of the debt or account (the names of the debtor and creditor, the date, the kind of debt or account, and the total of payments or limit of liability). A separately signed written acknowledgment of receipt in a form substantially similar to the model form contained in G.O.L. section 15–702(3) is prima facie proof of receipt of the notice by the cosigner in any action by or against the cosigner.

C. Administrative Enforcement

The New York State Banking Department is empowered by Banking Law section 10 to supervise and regulate New York state-chartered banks. According to the Banking Department, this includes responsibility for 116 commrical banks and 71 savings banks, as well as 17 savings and loan associations and 77 credit unions.

The department maintains a staff of over 300 examiners to conduct field examinations of financial institutions chartered in New York. Annual safety and soundness examinations are conducted on a divided, concurrent, or separate basis by agreement with the Federal Reserve Bank of New York and the Federal Deposit Insurance Corporation (FDIC). The Consumer Service Compliance Examination, which covers compliance with G.O.L. section 15–702 and other federal and state laws and regulations, is part of and scheduled with the annual examination of financial institutions. In 1985, the department completed 137 consumer compliance examinations. The department has been certified by the Conference of State Bank Supervisors and cooperates with the Federal Reserve Bank of New York in alternate year examination programs.

Examiners assigned to the Consumer Services Division are expected to attend the Consumer Protection School sponsored by the FDIC and other compliance schools or seminars as necessary. The Banking Department's Legal Division periodically holds conferences for examiners on changes to federal and state laws that affect the compliance examination and complaint areas. The Banking Department states that most of compliance examiners have been employed by banks prior to their service with the department and have numerous years of experience in various divisions within the department.

Compliance with G.O.L. section 15–702 is verified by a review of credit files and the completion of an examiner's questionnaire. The field examiner has the discretion to determine the number of credit files to be reviewed in connection with G.O.L. section 15–702 and all other federal and state laws and regulations. Factors considered in the selection process are the number of violations discovered during previous state and federal examinations, the rating from previous state and federal examinations, the number of violations being discovered in the current examination, the type of examination (compacted or regular), the size of the institution, and the number of credit transactions entered into by a financial institution between examinations. The Banking Department asserts that it found no violations of G.O.L. section 15–702 in the 137 consumer compliance examinations conducted in 1985.

The state of New York indicates that if a financial institution is unwilling to comply with G.O.L. section 15–702 the matter would be referred to the Attorney General for enforcement. Such action could involve (1) the issuance of a cease and desist order and/or (2) after notice and hearing, the fining of the institution for its unwillingness to comply with the law.

(4) Comments Requested

Interested persons are invited to submit written comments on the state of New York's application for an exemption from § 226.14 of the Board's Credit Practices Rule. After the close of the comment period, based upon its own analysis and analysis of the comments received, the Board will publish, in the **Federal Register**, notice of the final action on the exemption request.

List of Subjects in 12 CFR Part 227

Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance.

Board of Governors of the Federal Reserve System, October 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–24052 Filed 10–23–86; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR–86–18]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and for dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number

involved and be received on or before, December 23, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No._____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on October 17, 1986.

Donald P. Byrne,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
25083	Air Line Pilots Association	Petitioner, on behalf of over 39,000 pilots at 46 airlines, petitions to change § 121.437, Pilot qualification: Certificates required, by deleting existing paragraph (c) and inserting new paragraph (c) and (d), and changing existing paragraph (b). Proposed amendments would increase the basic flight time and experience requirements for persons acting as pilots in command on air carrier aircraft having a passenger seating capacity, excluding any pilot seat, of more than 30 seats or a payload capacity of more than 7,500 pounds. It would also increase the basic flight time and experience requirements for persons acting as second in command of large aircraft or turbo-jet powered multiengine aircraft type certificated for more than one required flight crewmember. Regulations Affected: 14 CFR 121.437 Petitioner's Reason for Rule: Petitioner requests amending § 121.437 to ensure the highest standards of professional qualifications for pilots operating aircraft under Part 121.

[FR Doc. 86-24032 Filed 10-23-86; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-NM-197-AD]

Airworthiness Directives; McDonnell Douglas Model DC-9-30 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 series airplanes, that would require structural inspections and repair or replacement, as necessary, to assure continued airworthiness. Some McDonnell Douglas DC-9 series airplanes are approaching or have exceeded the manufacturer's original fatigue design life. This AD is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufactuer's original design life goal. Fatigue cracks in these areas, if not detected and corrected, could result in a compromise of the structural integrity of these airplanes.

DATES: Comments must be received no later than December 15, 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-197-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-L65 (54-60). 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. Michael N. Asahara, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6321.

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 the 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 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-197-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

A significant number of transport category airplanes are approaching their design life goal. It is expected that these airplanes will continue to be operated beyond this point. The incidence of fatigue cracking on these airplanes is expected to increase as airplanes reach and exceed this goal. In order to evaluate the impact of increased fatigue cracking with respect to maintaining the fail-safe design and damage tolerance of the McDonnell Douglas DC-9 airplane structure, the manufacturer has conducted a structural reassessment of the airplane using damage tolerance evaluation techniques. The criteria for this reassessment were contained in FAA Advisory Circular (AC) 91-56, "Supplemental Structural Inspection Program for Large Transport Category Airplanes," and Federal Aviation

Regulations (FAR) section 25.571 (Amendment 25–45).

In response to AC–91–56, McDonnell Douglas initiated the development of a Supplemental Inspection Document (SID) for the DC–9 aircraft. McDonnell Douglas and the operators established an Industry Steering Committee (ISC) for McDonnell Douglas airplanes. At the onset, it was decided to make maximum use of service experience and existing maintenance programs. DC–9 operators, FAA Engineering personnel, and FAA Flight Standards Inspectors, together with the manufacturer, have participated in generating the DC–9 SID. Advisory Circular 91–56 promotes the preparation and approval of a criteria document for such a program. McDonnell Douglas developed criteria and guidelines for: (a) Selecting the major areas of the structure, identified as Principal Structural Elements (PSE), which are candidates for supplemental inspection by using the latest durability and damage tolerance analysis techniques; and (b) generating a sampling inspection program. This supplemental inspection program evaluates the adequacy of current normal maintenance inspection programs to detect fatigue damage, and provides detailed non-destructive inspection procedures to supplement the operators' existing programs, as necessary. The program was established on the basis of damage tolerance evaluation of each PSE selected. A PSE is defined as "that structure whose failure, if it remained undetected, could lead to the loss of the aircraft." Selection of a PSE is influenced by the susceptibility of a structural area, part or element to fatigue, corrosion, stress corrosion or accidental damage.

The DC–9 Supplemental Inspection Document, Report No. L26–008, addresses five basic issues: (a) Identification of the selected PSE's, (b) when to accomplish inspection (including the fatigue life threshold), (c) frequency of inspection, (d) number of inspections required, and (e) non-destructive inspection (NDI) procedures for detecting cracks.

The SID inspection program is based on DC–9 current usage; durability-fatigue and damage tolerance assessment of the structure using current analysis techniques and tests; and selection of the current non-destructive inspection methods. In order to implement the SID inspection program, each operator must compare its current structural maintenance program to the SID requirements for each PSE. If the current inspections equal or exceed the SID requirements for a given PSE, no supplemental inspections would be required for that PSE under the SID program. However, if the opposite is true, supplemental inspections in the form of more frequent inspections or more sensitive NDI methods, or both, would be necessary to supplement the operator's normal maintenance program. Since the emphasis of the SID program is on aging aircraft, the inspection program is a sampling program with emphasis on the high time aircraft of each PSE population.

The population for a given PSE (and aircraft type) consists of all those airplanes in which the PSE has the same or similar material, fatigue life, loading, damage tolerance, and inspection characteristics. Thus, a PSE population may consist of all aircraft in the fleet or it may be divided into several populations because of sufficient differences in structural configuration, material, damage tolerance, or non-destructive inspection characteristics.

Under the sampling program, each PSE would be inspected independently of other PSE's. Symmetrical structure results in two samples per airplane, left and right. For sampling purposes, one or both sides of the aircraft may be inspected. It is important to note that each PSE always stands by itself; that is, inspection thresholds, inspection intervals, etc., are generally different for each PSE.

All configurations of each PSE are included in the SID program, e.g., material changes, structural modifications and replacement, etc. Since McDonnell Douglas Corporation service bulletins (SB) are not mandatory, supplemental inspection procedures are provided in the SID for both pre-SB and post-SB configurations of each applicable PSE. Airworthiness directives (AD) are mandatory. Therefore, a PSE currently under and AD is placed in a separate section in the SID. When the closing action to a structural modification AD has been performed, the PSE is moved into the population which reflects the modified structural configuration. The date and flight hours (or landings) at which modification or replacement of a PSE is made, would be required to be reported by the operator to McDonnell Douglas for each applicable airplane by fuselage number and/or factory serial number and PSE number. That particular configuration is then evaluated by McDonnell Douglas. The inspection threshold and interval will be established and published in the next revision of the SID.

Sampling Program

Airplanes with the highest number of flight cycles are the most likely to experience initial fatigue damage in the fleet. Therefore, this program is based on the supplemental inspection of a "sample" of the high time PSE's in the fleet. Supplemental inspection of a statistically significant number of samples of a PSE, coupled with reporting of the results of these inspections, and, where necessary, follow-up activity, will maintain the continued airworthiness of the entire fleet. If no fatigue cracks are found in the sample population and the size of the sampling population is such that it gives statistically meaningful data, the fatigue life threshold may be advanced in accordance with the SID for that PSE. The expected fatigue life of each PSE is determined by a demonstrated life, either by test or service experience, or by analysis. The time when the supplemental inspections are to begin or be completed is determined from the expected fatigue life and crack propagation characteristics of each PSE. All sample inspections are to be accomplished before the high time sample exceeds the fatigue life threshold. Irrespective of the sample size required, the 10 high time samples in the population for each PSE must be inspected. However, if the number of samples in a PSE population is 10 or less, each PSE must be inspected once before the fatigue life threshold is reached and repeatedly inspected when the threshold is exceeded. The inspection interval is determined by the damage tolerance characteristics of the PSE.

The results of the supplemental inspections are to be reported to the manufacturer on a form provided in Volume III of the SID. This information will be presented in the periodic revision of Volume III.

Effect on Existing Maintenance Programs

In developing the SID, the working group reviewed the operation and maintenance practices of existing maintenance programs with respect to the basic requirements of the SID program. As a result, the McDonnell Douglas DC–9 SID allows affected operators to take credit for maintenance already being performed and gives the operators flexibility in revising their maintenance programs to incorporate this supplemental program for their affected airplanes.

Information collection requirements contained in this regulation have been

approved by the Office of Management and Budget under the provision of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

Economic Impact

Approximately 369 airplanes of U.S. registry and 12 U.S. operators would be affected by the proposed AD. It is estimated that incorporation of the Supplemental Inspection program for a typical operator will take approximately 1,000 manhours. The average labor charge would be $40 per manhour. Based on these figures, the cost to U.S. operators to incorporate the SID program is estimated to be $480,800.

The recurring inspection cost to the affected operators is estimated to be 341 manhours per airplane per year, as an average labor charge of $40 per manhour. Based on these figures, the annual recurring cost of this AD is estimated to be $5,033,160.

Based on the above figures, the total cost impact of this AD is estimated to be $5,513,160 for the first year, and $5,033,160 for each year thereafter.

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 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, Incorporation by reference.

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-9-30 series airplanes, certificated in any category. Compliance required as indicated in the body of the AD.

To ensure the continuing structural integrity of these airplanes, accomplish the following, unless already accomplished:

A. Within one year after the effective date of this AD, incorporate a revision into the FAA-approved maintenance inspection program which provides for inspection of the Principal Structural Elements (PSE) defined in section 2 of Volume I of McDonnell Douglas Report No. L26-008, DC-9 Supplemental Inspection Document (SID), dated May 1986, or later FAA-approved revisions, in accordance with section 2 of Volume III of that document. The non-destructive inspection techniques set forth in Volume II of the SID provide acceptable methods for accomplishing the inspections required by this AD. All inspection results (negative or positive) must be reported to McDonnell Douglas, in accordance with the instructions of section 2 of Volume III of the SID.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired before further flight in accordance with an FAA-approved method.

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.

D. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Pursuant to 5 U.S.C. 552(a)(1), the FAA will request **Federal Register** approval to incorporate the manufacturer's Supplemental Inspection Document identified and described in this directive.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). 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 October 16, 1986.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 86-24030 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 86-CE-48-AD]

Airworthiness Directives; Taylorcraft Models BC, BCS, BC-65, BCS-65, BC12-65 (Army L-2H), BCS12-65, BC12-D, 19, F19, F21, and F21A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Taylorcraft Models BC, BCS, BC-65, BCS-65, BC12-65 (Army L-2H), BCS12-65, BC12-D, 19, F19, F21, and F21A airplanes which would require inspection for and replacement of defective oil pressure gauge hose assemblies. It has been found that some of these hose assemblies have been incorrectly manufactured and thus are prone to failure. The proposed actions will prevent the occurrence of oil pressure hose failure and consequent loss of engine lubricating oil which could result in engine failure.

DATES: Comments must be received on or before December 1, 1986.

ADDRESSES: Technical and replacement parts information may be obtained from the Taylorcraft Aviation Corporation, Post Office Box 947, Lock Haven, Pennsylvania 17745; Telephone (717) 748-6712. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8:00 a.m. and 4:00 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Ray O'Neill, FAA, ANE-174, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; Telephone (516) 791-7421.

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 or notice 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 Director before taking action on the proposed rule. The proposals 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 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 NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 86–CE–48–AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

The post-flight inspection of a Taylorcraft Model F21B airplane revealed engine lubricating oil leaking profusely from the oil pressure gauge line hose assembly. Although four quarts of the six quart capacity were lost in about one hour flying time, the loss was not yet sufficient to damage the engine.

Taylorcraft factory stock of these hose assemblies was subsequently inspected, and many units were found defective because of improper assembly procedures when inserting P/N 441–2–4B Stratoflex fitting into P/N 203–4 Stratoflex hose. This resulted in hose internal reinforcement braid damage that decreased the capability of the hose assembly to withstand normal operating pressures without failing. Further investigation revealed that at least three rupture type failures had occurred during production pressure checks of this type of hose assembly at the factory.

Taylorcraft has determined that the defective hose assemblies all originated at their former Alliance, Ohio facility and were either installed during production or shipped as replacement parts to the field for older airplane types. Because Taylorcraft has no method of determining distribution of the defective hose assemblies from their Alliance facility, regulatory action is necessary. Since the condition described is likely to exist or develop in other Taylorcraft Model BC, BCS, BC–65, BCS–65, BC12–65 (Army L–2H), BCS12–65, BC12–D, 19, F19, F21, and F21A airplanes of the same design, the proposed AD would require inspection for suspect hose assemblies and installation of new hose assemblies on those airplanes that are found to have suspect hose assemblies installed.

The FAA has determined there are approximately 2047 airplanes affected by the proposed AD. The cost of compliance with the proposed AD is estimated to be $45 per airplane or $92,115 for the total number of aircraft affected by the AD and will not have a significant economic impact on a substantial number of small entities.

Therefore, I certify that this action (1) is not a major rule under the provisions of 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 regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

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 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 11.89.

2. By adding the following new AD:

Taylorcraft: Applies to the following Models and Serial Number airplanes certificated in any category:

Models	Serial No.
BC, BCS, BC–65, BCS–65, BC12–65 (Army L–2H), BCS12–65, BC12–D.	All serial numbers.
19, F19	All serial numbers.
F21	F–1000 through F–1499, except F–1022.
F21A	F–1500 through F–1506.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished. To prevent loss of engine oil and possible failure of the engine, accomplish the following:

(a) Visually inspect the oil pressure guage hose assembly at the engine to determine whether the type of hose assembly installed is P/N B7071. (See Fig. 1)

(1) If the oil pressure hose assembly is not of the type illustrated in Figure 1, no further action in accordance with this AD is required.

(2) If the oil pressure hose assembly is of the type illustrated in Figure 1, piror to the next flight, replace with a new P/N B7071 hose assembly identified by Taylorcraft with a "T" stamped on one of the wrenching flats one of the hose assembly brass fitting.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, ANE–170, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

All persons affected by this AD may obtain copies of the documents referred to herein upon request to the Taylorcraft Aviation Corporation, Post Office Box 947, Lock Haven, Pennsylvania 17745, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on October 15, 1986.

Edwin S. Harris,

Director, Central Region.

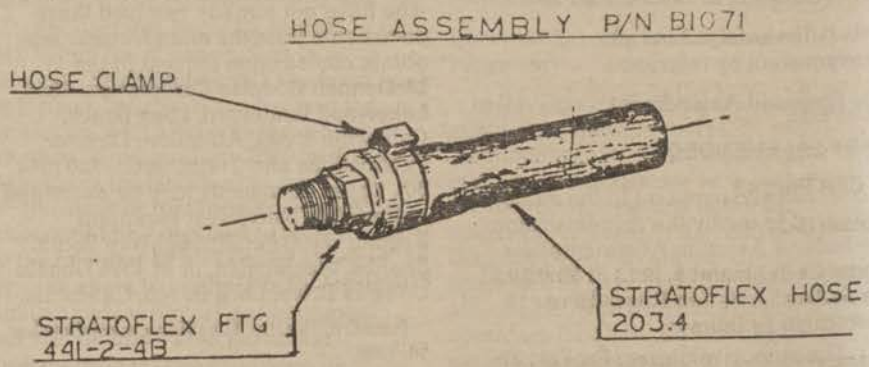


FIGURE 1

[FR Doc. 86–24031 Filed 10–23–86; 8:45 am]

BILLING CODE 4910–13–M

Federal Trade Commission

16 CFR Part 13

[Docket 8824]

Glendinning Cos, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Notice of 30 day period for public comments on petition by Glendinning Associates, Inc., successor under the order issued against Glendinning Companies, Inc., to reopen and modify the order in Docket No. 8824.

SUMMARY: Glendinning Associates, Inc., successor to Glendinning Companies, Inc., in the order in Docket No. 8824, filed a petition on September 15, 1986, requesting that the Commission reopen and modify the order.

DATE: The deadline for filing comments in this matter is November 10, 1986.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Jerry R. McDonald, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 376–2800.

SUPPLEMENTARY INFORMATION: The petitioner, Glendinning Associates, Inc., develops and conducts promotional games and contests for businesses purchasing its services. The order modifications requested by the petitioner would relax restrictions on games of skill. The petition was placed on the public record on October 9, 1986.

List of Subjects in 16 CFR Part 13

Promotional games and contests, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 86–24047 Filed 10–23–86; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 13

[Docket C–2774]

Lindal Cedar Homes, Inc.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Notice of 30 day public comment period on Petition by Lindal Cedar Homes, Inc. to reopen and terminate the order issued in Docket No. C–2774.

SUMMARY: Lindal Cedar Homes, Inc. has petitioned the Federal Trade Commission to vacate a 1976 consent order issued in Docket No. C–2774 with the company concerning sales of pre-cut home kits and distributorships.

DATE: The deadline for filing comments in this matter is November 10, 1986.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Sarah L. FitzGerald, Attorney, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 376–2891.

SUPPLEMENTARY INFORMATION: The order settled FTC charges that Lindal misrepresented the east of assembling the kits; used unfair contract terms; failed to make timely and complete deliveries; misled potential franchisees; violated credit terms and misled purchasers as to their warranty rights. The order requires Lindal to have a reasonable basis for ad claims, modify its sales agreements; offer a warranty; establish a complaint-handling system; provide complete information to potential franchisees and comply with the credit law. The petition to vacate was filed on September 26, 1986.

List of Subjects in 16 CFR Part 13

Pre-cut home kits, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 86–24048 Filed 10–23–86; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 615

Federal-State Unemployment Compensation Program; Extended Benefits; Revision of Regulations; Proposed Rulemaking

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Extended Benefit Program is a part of the Federal-State Unemployment Compensation Program, and takes effect during periods of high unemployment to furnish up to 13 weeks of additional benefits to individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. The Employment and Training Administration of the Department of Labor is proposing to revise the regulations for the Extended Benefit Program to reflect recent changes in the law regarding eligibility for Extended Benefits and reimbursement of the Federal share of Extended Benefits. These revisions clarify some of those requirements and the timing of them, and correct obsolete language in several places. Last, the revisions extend the present "freeze" on the indicator rates for insured unemployment to cover all determinations of insured unemployment rates, and specify a time period for correcting errors in the determination of "on," "off," or "no change" indicator rates of insured unemployment.

DATE: Written comments must be received by the close of business on November 24, 1986.

ADDRESS: Submit comments to Carolyn M. Golding, Director, Unemployment Insurance Service, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

FOR FURTHER INFORMATION CONTACT: Lorenzo Roberts, Group Chief, Division of Program Development and Implementation, Unemployment Insurance Service, U.S. Department of Labor, Room 7430 Patrick Henry Building, 601 D Street, NW., Washington, DC 20213, Telephone: (202) 376–7366 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Part 615, Chapter V, Title 20 of the Code of Federal Regulations implements the Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91–373) (the "EUCA"), 26 U.S.C. 3304 note. That Act prescribes provisions required to be included in State unemployment compensation laws. It is made a requirement for State laws by section 3304(a)(11) of the Internal Revenue Code of 1954. The Act was amended in 1980, 1981, 1982, and 1983 to change the requirements for State laws in a number of ways.

1980 Amendments to EUCA

Section 416 of Pub. L. 96–364 added section 202(c) to the EUCA, and bars more than 2 weeks of Extended Benefit payments to individuals under the

Interstate Benefit Payment Plan if they file claims in a State where an Extended Benefit Period is not in effect. This amendment was effective on June 1, 1981, in most States.

Section 1022 of Pub. L. 96–499 amended section 204(a)(2) of the EUCA to add a provision limiting Federal reimbursement of benefits to a State which does not require a waiting period for regular benefits. Sections 615.14(a)(4), (5) and (6) establish the effective dates under varying State circumstances. This amendment affects a State's entitlement to Federal sharing in the costs of regular and Extended Benefits, but is not a requirement for State laws.

Section 1024 of Pub. L. 96–499 added sections 202(a)(3), (4) and (5) of the EUCA. Paragraph (3) requires amendment of State laws to include specific provisions defining suitable work as any work which is within an individual's capabilities, except that if the individual's prospects of obtaining work in his customary occupation in a reasonably short period are determined to be good, then suitable work is determined under the provisions in State law applicable to claimants for regular benefits; and includes a specific disqualification for failure to accept suitable work, or to apply for suitable work when referred by a State employment office, or to actively search for work. Paragraph (4) requires that disqualifications for voluntarily leaving of employment, discharge for misconduct and refusal of suitable work shall not be considered terminated for the purpose of qualifying for Extended Benefits except by employment subsequent to the disqualifications. Paragraph (5) (redesignated as (6) in the 1981 amendments, which added a new paragraph (5)) prohibits Federal sharing in regular benefit costs if the State does not apply the rules of paragraphs (3) and (4) in paying such benefits. Paragraphs (3) and (4) are requirements for State laws; paragraph (5), like section 204(a)(2), is not a requirement for State laws. These new requirements took effect in all States on April 1, 1981.

1981 Amendments to EUCA

Sections 2401 through 2404 and sections 2505 and 2506 of Pub. L. 97–35 made several changes in the conditions under which Extended Benefits trigger on or off by eliminating the National trigger, changing the standard State trigger from 4.0 percent to 5.0 percent, the optional State trigger from 5.0 percent to 6.0 percent, and changing the definition of the "rate of insured unemployment" by eliminating claims for Extended Benefits and additional compensation. Other amendments prohibit paying benefits to individuals with little qualifying employment, and make changes to tie into the amendments to the Trade Act of 1974. Changes in §§ 615.4, 615.7, 615.12 and 615.13 reflect those amendments.

1982 Amendment to EUCA

Section 191 of Pub. L 97–248 amended section 204(a)(2) to add a new subparagraph (D), which provides that States which do not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount shall not be entitled to or be reimbursed for the Federal 50 percent share on the amount by which sharable regular and sharable extended compensation paid exceed the lower dollar amount. This amendment became effective for benefits paid for eligibility periods beginning on or after October 1, 1983, with a grace period for States that require legislation to provide for rounding down.

1983 Amendment to EUCA

Section 522 of Pub. L. 98–21 amended section 202(a)(3)(A)(ii) to provide exemptions to the requirement that claimants actively engage in seeking work: (1) If the individual is serving on jury duty under specified circumstances, and (2) if the individual is hospitalized for an emergency or life-threatening condition. A State may apply these exemptions to claimants for Extended Benefits only if the exemptions also apply to claimants for regular benefits. Section 615.2(o) (11) and (12) define the terms "jury duty" and "hospitalized for treatment of an emergency or life-threatening condition." The amendment to section 202(a)(3)(A)(ii) became effective on enactment, April 20, 1983.

Other Changes

Other technical and clarifying changes are made throughout the regulations.

Note.—Some provisions in this document, relating to the requirements of section 202(a)(3), EUCA, differ from guidance previously furnished to the States in other issuances.

Section by Section Explanation

Section 615.2 Definitions

New section 202(a)(3)(A) of the EUCA relates to "weeks of unemployment" in which a claimant does or does not make an active search for work. A precondition for eligibility for unemployment compensation is that the individual has made a claim for benefits with respect to such week. In other words, for purposes of unemployment compensation, unemployment is not countable as a week of unemployment unless an individual files a claim and payment of compensation for the week is *claimed*. The Employment and Training Administration's (ETA) reporting instructions for the UI/EB programs for payment and claims activities requires the States to report "weeks claimed", not weeks of unemployment. In other parts of the EUCA and this regulation, the fact that a week must be claimed is tacit and the term "week of unemployment" relates to a *week claimed* by an individual in which a claimant earned no wages or has low earnings. This contrasts with the phrase a "week of unemployment" which in common parlance is unrelated to the claimant's actions to claim benefits. For example, an individual who is not in UI claims or benefit status experiences weeks of unemployment during an illness which obviously is a period in which the individual cannot actively search for work (and for which no benefits are payable). Yet, under a literal reading of section 202(a)(3), the failure to search for work in a "week of unemployment" results in a disqualification until the individual finds work for at least 4 weeks. Under this reading, a disqualification would apply even if the failure to search for work occurred when the individual's claim was inactive because he/she had not filed a claim. Congress must not have intended that result for an individual who was not even claiming benefits at the time. Section 615.2(n) (2) prevents that result by specially defining the term solely for this one purpose, so it means a week for which the individual claims benefits.

Section 202(a)(4) also requires an individual to be employed in some weeks to terminate certain disqualifications. To prevent uncertainty about what "employed" means, § 615.2(o)(1) so defines it as to exclude self-employment, volunteer services and such neighborly exchanges as baby-sitting.

Since the Extended Benefit Program began in 1970, the term "average weekly benefit amount" has described an amount figure when regular benefits are exhausted. It still is needed for that purpose. But the EUCA now uses that same term (in connection with disqualifications) to be used before regular benefits are exhausted, when the data for making the computation may not be known. Section 202(a)(3)(B)(ii) prescribes the disqualification for certain actions while claiming sharable regular benefits as well as while claiming extended benefits. Some definition of the term which can apply

during regular benefits is needed; § 615.2(o)(2) specially defines the term to fit either regular or Extended Benefits by using the weekly benefit amount for the week in question.

The 1980 amendments introduced the term "individual's capabilities" for the first time. Section 615.2(o)(3) draws on section 202(a)(3)(D)(iii) and the Senate Finance Committee's report to define the term so it will include any job the individual has the physical and mental capacity to perform.

A "reasonably short period" is another new term in section 202(a)(3)(C). Judgments on how many weeks that may include are left up to the States in § 615.2(o)(4). Under section 202(a)(3)(D)(i), the "gross average weekly remuneration" a job will yield is to be considered to determine whether it is suitable work. Since weekly pay on many jobs depends on hours worked, piece rates, incentive pay, etc., § 615.2(o)(5) uses the experience of individuals performing work for the employer similar to the offered work to determine the gross average weekly remuneration.

The House of Representatives Report No. 96–1479, page 164, shows the conference agreement to a Senate amendment with the following language: "(b)(1) Deny extended benefits to any individual who fails to accept any work that is offered in writing or is listed with the State employment service. . . ." Through a drafting error, the word "and" was used where the Senate Finance Committee meant to use the word "or" in section 202(a)(3)(D)(ii). The error would nullify the Committee intent to reduce costs and tighten administration since it is unrealistic to expect an employer both to list a job with the State Employment Service and also offer it in writing to an applicant. Section 615.2(o)(6) makes the conditions alternative as was intended rather than conjunctive, in that very limited application.

The Senate Finance Committee Report explains elements the Committee felt should be considered to determine whether a job is suitable. These elements include minimum standards of acceptability such as basic health and safety standards, compliance with the Federal minimum wage, and other existing Federal standards. Section 615.2(o)(7) assembles those sources of guidance to the States.

Section 202(a)(3)(E) describes a proper search for work by the terms "systematic and sustained effort" and requires the claimant to provide "tangible evidence" of those efforts. To narrow the range of individual State interpretations, §§ 615.2(o) (8) and (9) set more detailed standards.

Section 202(a)(4) of the Act requires employment subsequent to the "date" of the disqualification before it may be ended. Section 615.2(o)(10) sets the date the disqualification began as determined under the applicable State law.

Interstate benefit claimants must be denied benefits as required by section 202(c) of the EUCA if they filed interstate claims in a State which is not in an Extended Benefit Period. Various special interstate arrangements exist for handling claimants who are outside the liable State. Section 615.2(p)(1) describes those systems to which section 202(c) would or would not apply.

Section 615.4 Eligibility Requirements for Extended Benefits

The qualifying requirement for Extended Benefits in new section 202(a)(5) of the EUCA requires either 20 full-time weeks of work or one of two equivalent alternatives, at the State's option. State interpretations as to full-time work weeks are authorized.

Section 615.5 Definition of Exhaustee

Section 615.5(a)(1)(v) is corrected merely to remove an obsolete reference to the Virgin Islands.

Section 615.7 Extended Benefits; Maximum Amount

Section 204(a)(2) of the EUCA now requires that Extended Benefits be limited in special circumstances to take into account any Trade Readjustment Allowances previously paid to a claimant. How to reduce the maximum extended benefit rights is prescribed in § 615.7(d).

Section 615.8 Provisions of State Law Applicable to Claimants

Individuals who quit, are discharged for misconduct connected with their work, or fail to accept suitable work are disqualified by all State laws, but States vary as to how long the disqualification lasts and how the individual may requalify for benefits. The EUCA does not require States to follow any one pattern, but if a State does not require some employment to requalify for regular benefits (1) new section 202(a)(4) of the EUCA does not permit the disqualification to end for the purpose of qualifying for Extended Benefits and (2) it bars reimbursement of Extended Benefits or sharable regular benefits. Section 615.8(c) is added to set out that distinction.

Section 202(a)(3)(F) of the Act requires that State laws must provide for referring extended benefit claimants to any "suitable work." Section 615.8(e) is added for several purposes related to referral to work. This section assures that extended benefit claimants are registered for work and will be considered when job orders are to be filled. It gives a further guide to the State agencies as to what type of jobs to consider for extended benefit claimants. The EUCA now provides two alternative sets of standards to determine if a job is "suitable," depending on the individual's job prospects. Section 615.8(d) provides for classification of individuals with regard to their prospects of obtaining work in their customary occupation in a reasonably short period, and sets forth the effects of the individual's job prospects classification. The EUCA newly prescribes the penalty for failing to accept work offered or apply for work when referred by the State Employment Service, and for failing to actively search for work. Section 615.8(f) provides for adjudication of failure to accept work or to apply for suitable work.

The new EUCA requirement of an "active search for work" and the penalty for failure to actively seek work is more fully set out in § 615.8(g).

Section 615.9 Restrictions on Entitlement

The new restriction on interstate claims in section 202(c) of the EUCA is set out in 615.9(c).

Section 615.12 Determination of "on" and "off" Indicators

Several changes are made in § 615.12. (1) With removal of the Federal trigger, §§ 615.12 (a) and (d) and 615.13(a) are obsolete and are removed while the remaining paragraphs are redesignated accordingly. (2) The new trigger rates are substituted in what were §§ 615.12 (b) and (c). (3) Extended benefit claims are removed from the weeks counted in the rate of insured unemployment in § 615.12(c)(2). (4) The period for correcting errors in the determinations of "on," "off," or "no change" indicators for Extended Benefit Periods is limited to no more than 3 weeks after the end of the week to which the determination applies. This finality of administrative action is necessary to avoid the impracticability of making retroactive determinations for failures to actively search for work or failure to meet other extended benefit eligibility requirements. Accordingly, § 615.12(d) provides finality for State indicator rates for insured unemployment, limits hearings regarding "on," "off," or "no change" indicators to the issue of the accuracy of the determinations of the rate of insured unemployment, and

limits the effect of findings of error in such hearings. Section 615.12(d) provides for such hearings.

Section 615.13 Announcement of the Beginning and Ending of Extended Benefit Periods

The regulations have required notices to individuals who may be eligible for Extended Benefits. Because many provisions of the EUCA now also apply to individuals who claim sharable regular benefits, the provisions in § 615.13(c) have been modified to reflect the information they will need.

Section 615.14 Payments to States

New requirements in the EUCA as to reimbursement of sharable regular and Extended Benefits are described in § 615.14(b).

The EUCA, in section 204(a), provides that any State that does not require an unpaid waiting period prior to the first payment of regular benefits in any benefit year shall not be reimbursed for the 50 percent Federal share for the first week of Extended Benefits or sharable regular paid to any individual by the State.

Section 615.14(c)(3) specifies the effective dates that States shall not be reimbursed for the 50 percent Federal share for the first week of Extended Benefits or sharable regular paid to any individual under varying State circumstances. Other provisions of the Act limiting reimbursements to the States are specified in § 615.14 (b) and (c). This section is clarified by adding a provision that a State shall not be entitled to reimbursement for any payment made with respect to which the claimant was either ineligible for or not entitled to the payment.

The EUCA, in section 204(a)(2)(D), provides that if a State's law does not provide for a benefit structure under which compensation is rounded down to the nearest lower dollar amount, then the State shall not be entitled to the 50 percent Federal share on the amount by which the sharable regular or Extended Benefits paid for any week of unemployment exceeds the lower dollar amount. This limitation on reimbursement to the States whose benefit structures do not provide for rounding down is set forth in § 615.14(c)(8). The elements of the benefit structure to which rounding down applies are specified in § 615.2(q).

Section 1023 of Pub. L. 96–499 added section 8509 to Title 5 of the United States Code. It changed the methods of charging benefits to Federal employing departments under the Unemployment Compensation for Federal Employees program. Section 8509 was amended by section 202 of Pub. L. 97–362 to apply the same method of charging to benefits paid under the Unemployment Compensation for Ex-Servicemembers program. The new method is reflected in a change in § 615.14(e).

In addition, the combined-wage reimbursement instructions in § 615.14(f) are updated to correspond to the provisions previously adopted in part 616 so the "transferring State," not the "paying State," will be reimbursed for sharable regular and Extended Benefits based on transferred wages. Finally, the procedures for making reimbursements to the States and recovering excessive reimbursements are set out in § 615.14(a) and (d).

Drafting Information

This document was prepared under the direction and control of the Director of the Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213, telephone: (202) 376–6636 (this is not a toll free number).

Classification—Executive Order 12291

The proposed rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act

Information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Number 1205–0028 which applies to § 615.15.

Regulatory Flexibility Act

The Department believes that this proposed rule will have no "significant economic impact on a substantial number of small entities" within the meaning of 5 U.S.C. 605(b). This rule implements amendments to an individual entitlement program and has no economic impact on any small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

List of Subjaects in 20 CFR Part 615

Labor, Employment and Training Administration, Unemployment Compensation.

Words of Issuance

For the reasons set out in the preamble, Part 615 of Title 20 of the Code of Federal Regulations is proposed to be revised as set forth below.

Signed at Washington, DC, on October 16, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

PART 615—EXTENDED BENEFITS IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

Sec.

Authority: Title II, Pub. L. 91–373 (84 Stat. 695, 708; 26 U.S.C. 3304 note); 26 U.S.C. 3304(a)(11); 42 U.S.C. 1102; Secretary's Order No. 4–75 (40 FR 18515).

§ 615.1 Purpose.

The regulations in this Part are issued to implement the "Federal-State Extended Unemployment Compensation Act of 1970" as it has been amended, which requires, as a condition of tax offset under the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*), that a State unemployment compensation law provide for the payment of extended unemployment compensation during periods of high unemployment to eligible individuals as prescribed in the Act. The benefits provided under State law, in accordance with the Act and this Part, are hereafter referred to as Extended Benefits, and the program is referred to as the Extended Benefit Program.

§ 615.2 Definitions.

For the purposes of the Act and this Part—

(a) "Act" means the "Federal-State Extended Unemployment Compensation Act of 1970" (Title II of Pub. L. 91–373; 84 Stat. 695, 708), approved August 10, 1970, as amended from time to time, including the 1980 amendments in section 416 of Pub. L. 96–364 (94 Stat. 1208, 1310), approved September 26, 1980, and in sections 1022 and 1024 of Pub. L. 96–499 (94 Stat. 2599, 2656, 2658), approved December 5; 1980, and the 1981 amendments in sections 2401 through 2404 and section 2505(b) of Pub. L. 97–35 (95 Stat. 357, 874–875, 884) approved August 13, 1981, and the 1982 amendment in section 191 of Pub. L. 97–248 (96 Stat. 324, 407) approved September 3, 1982, and the 1983 amendment in section 522 of Pub. L. 98–21 (97 Stat. 148) approved April 20, 1983.

(b) "Base period" means, with respect to an individual, the base period as determined under the applicable State law for the individual's applicable benefit year.

(c)(1) "Benefit year" means, with respect to an individual, the benefit year as defined in the applicable State law.

(2) "Applicable benefit year" means, with respect to an individual, the current benefit year if, at the time an initial claim for Extended Benefits is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual's most recent benefit year. For this purpose, the most recent benefit year for an individual who has unexpired benefit years in more than one State when an initial claim for Extended Benefits is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed. The individual's most recent benefit year which expires in an Extended Benefit Period is the applicable benefit year if the individual, cannot establish a second benefit year or is precluded from receiving regular compensation in a second benefit year solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(7)).

(d) "Compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

(e) "Regular compensation" means compensation payable to an individual under a State law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.

(f) "Additional compensation" means compensation totally financed by a State and payable under a State law by reason of conditions of high unemployment or by reason of other special factors and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85.

(g) "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an Extended Benefit Period, under those provisions of a State law which satisfy the requirements of the Act and this Part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to in this Part as Extended Benefits.

(h) "Eligibility period" means, with respect to an individual, the period consisting of:

(1) The weeks in the individual's applicable benefit year which begin in an Extended Benefit Period, or with respect to a single benefit year, the weeks in the benefit year which begin in more than one Extended Benefit Period, and

(2) If the applicable benefit year ends within an Extended Benefit Period, any weeks thereafter which begin in such Extended Benefit Period,

but an individual may not have more than one eligibility period with respect to any one exhaustion of regular benefits, or carry over from one eligibility period to another any entitlement to Extended Benefits.

(i) "Sharable compensation" means:

(1) Extended Benefits paid to an individual under those provisions of a State law which are consistent with the Act and this Part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in (ii), reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year; and

(2) Regular compensation paid to an individual with respect to weeks of unemployment in the individual's eligibility period, but only to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to the individual with respect to prior weeks of unemployment in the applicable benefit year, exceeds 26 times and does not exceed 39 times the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law in such benefit year: *Provided*, that such regular compensation is paid under provisions of a State law which are consistent with the Act and this Part.

(j)(1) "Secretary" means the Secretary of Labor of the United States;

(2) "Department" means the United States Department of Labor, and shall include the Employment and Training Administration, the agency of the United States Department of Labor headed by the Assistant Secretary of Labor for Employment and Training to whom has been delegated the Secretary's authority under the Act in the Secretary's Order No. 4–75 (40 FR 18515) and Secretary's Order No. 14–75.

(k)(1) "State" means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

(2) "Applicable State" means, with respect to an individual, the State with respect to which the individual is an "exhaustee" as defined in § 615.5, and in the case of a combined wage claim for regular compensation the term means the "paying State" as defined in § 616.6(e) of this chapter.

(3) "State agency" means the State Employment Security Agency of a State which administers the State law.

(l)(1) "State law" means the unemployment compensation law of a State, approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)).

(2) "Applicable State law" means the law of the State which is the applicable State for an individual.

(m)(1) "Week" means, for purposes of eligibility for and payment of Extended Benefits, a week as defined in the applicable State law.

(2) "Week" means, for purposes of computation of Extended Benefit "on" and "off" and "no change" indicators and insured unemployment rates and the beginning and ending of Extended Benefit Periods, a calendar week, but

does not include weeks claimed for Extended Benefits and additional compensation under State law and weeks claimed under 5 U.S.C. Chapter 85.

(n)(1) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the Extended Benefit Program as if the individual filing a claim for Extended Benefits were filing a claim for regular compensation, except as provided in paragraph (n)(2).

(2) "Week of unemployment" in section 202(a)(3)(A) of the Act means a week of unemployment, as defined in paragraph (n)(1) of this section, for which the individual claims Extended Benefits.

(o) For the purposes of section 202(a)(3) of the Act—

(1) "Employed," for the purposes of section 202(a)(3)(B)(ii) of the Act, and "employment," for purposes of section 202(a)(4) of the Act, means service performed in an employer-employee relationship as defined in the State law. That law also shall govern whether that service must be covered by it, must consist of consecutive weeks, and must consist of more weeks of work than are required under section 202(a)(3)(B) of the Act.

(2) "Average weekly benefit amount," for the purposes of section 202(a)(3)(D), means the weekly benefit amount (including dependants' allowances payable for a week of total unemployment and before any reduction because of earnings, pensions or other requirements) applicable to the week in which the individual failed to take an action which results in a disqualification as required by section 202(a)(3)(B) of the Act.

(3) "Individual's capabilities," for the purposes of section 202(a)(3)(C), means work which the individual has the physical and mental capacity to perform and which meets the minimum requirements of section 202(a)(3)(D).

(4) "Reasonably short period," for the purposes of section 202(a)(3)(C), means the number of weeks specified by State law.

(5) "Gross average weekly remuneration," for the purposes of section 202(a)(3)(D)(i), means the remuneration offered for a week of work before any deductions for taxes or other purposes, and in case the offered pay may vary from week to week it shall be determined on the basis of recent experience of workers performing work similar to the offered work for the employer who offered the work.

(6) "And," as used in section 202(a)(3)(D)(ii), shall be interpreted to mean "or".

(7) "Provisions of the applicable State law," as used in section 202(a)(3)(D)(iii), include statutory provisions and decisions based on statutory provisions, such as not requiring an individual to take a job which requires traveling an unreasonable distance to work, or which involves an unreasonable risk to the individual's health, safety or morals. They also include labor standards and training provisions required under sections 3304(a)(5) and 3304(a)(8) of the Internal Revenue Code of 1954 and section 236(a)(2) of the Trade Act of 1974.

(8) A "systematic and sustained effort," for the purposes of section 202(a)(3)(E), means all of the following:.

(i) A high level of job search activity throughout the given week, compatible with the number of employers and employment opportunities in the labor market reasonably applicable to the individual;

(ii) A plan of search for work involving independent efforts on the part of each individual which result in contacts with persons who have the authority to hire in addition to any search offered by organized public and private agencies such as the State employment service and union or private placement offices or hiring halls;

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, except the individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable) in the same manner that such work is found by people in the community;

(iv) A search not limited to classes of work or rates of pay to which the individual is accustomed or which represent the individual's higher skills, and which includes any work within the individual's capabilities, except the individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable);

(v) A search by every claimant, without exception for individuals or classes of individuals other than those in approved training, as required under section 3304(a)(8) of the Internal Revenue Code of 1954 and section 236(a)(2) of the Trade Act of 1974; and

(vi) A search suspended only when severe weather conditions or other calamity forces suspension of such activities by most members of the community.

(9) "Tangible evidence" of an active search for work, for the purposes of section 202(a)(3)(E), means a written record which can be verified. It must include the actions, taken, types of work sought, dates and places where work was sought, the name of the employer or person who was contacted and the outcome of the contact.

(10) "Date" of a disqualification, as used in section 202(a)(4), means the date the disqualification begins, as determined under the applicable State law.

(11) "Jury duty," for purposes of section 202(a)(3)(A)(ii), means the performance of service as a juror, during all periods of time an individual is engaged in such service, in any court of a State or the United States pursuant to the law of the State or the United States and the rules of the court in which the individual is engaged in the performance of such service.

(12) "Hospitalized for treatment of an emergency or life-threatening condition," as used in section 202(a)(3)(A)(ii), means an individual who was admitted to a hospital as an inpatient for medical treatment. Treatment for an "emergency or life threatening condition" shall be considered for these purposes if determined to be such by the hospital officials or attending physician that provide the treatment for a medical condition existing upon or arising after hospitalization. For purposes of this definition, the term "medical treatment" refers to the application of any remedies which have the objective of effecting a cure of the emergency or life-threatening condition. Once an "emergency condition" or a "life-threatening condition" has been determined to exist by the hospital officials or attending physician, the status of the individual as so determined shall remain unchanged until release from the hospital.

(p)(1) "Claim filed in any State under the interstate benefit payment plan," as used in section 202(c), means any interstate claim for a week of unemployment filed pursuant to the interstate benefit payment plan, but does not include:

(i) A claim filed in Canada, or

(ii) A visiting claim filed by an individual who has received permission from his/her regular reporting office to report temporarily to a local office in another State and who has been furnished intrastate claim forms on which to file claims, or

(iii) A transient claim filed by an individual who is moving from place to place searching for work.

(2) "The first 2 weeks," as used in section 202(c), means the first two weeks for which the individual files claims for Extended Benefits under the interstate benefit payment plan in an agent State in which an Extended Benefit Period is not in effect during such weeks.

(q) "Benefit structure" as used in section 204(a)(2)(D), for the requirement to round down to the "nearest lower full dollar amount" for Federal reimbursement of sharable regular and sharable extended compensation means all of the following:

(1) Amounts of regular weekly benefit payments;

(2) Amounts of extended weekly benefit payments;

(3) The State maximum or minimum weekly benefit;

(4) Partial and part-total benefit payments;

(5) Amounts payable after deduction for pensions; and

(6) Amounts payable after any other deduction required by State law.

§ 615.3 Effective period of the program.

An Extended Benefit Program conforming with the Act and this Part shall be a requirement for a State law effective on and after January 1, 1972, pursuant to section 3304(a)(11) of the Internal Revenue Code of 1954, (26 U.S.C. 3304(a)(11)). Continuation of the program by a State in conformity and substantial compliance with the Act and this Part, throughout any 12-month period ending on October 31 of a year subsequent to 1972, shall be a condition of the certification of the State with respect to such 12-month period under section 3304(c) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(c)). Conformity with the Act and this Part in the payment of regular compensation and Extended Benefits to any individual shall be a continuing requirement, applicable to every week as a condition of a State's entitlement to reimbursement for any sharable compensation as provided in the Act and this Part.

§ 615.4 Eligibility requirements for extended benefits.

(a) *General.* An individual is entitled to Extended Benefits for a week of unemployment which begins in the individual's eligibility period if, with respect to such week, the individual is an exhaustee as defined in § 615.5, files a timely claim for Extended Benefits, and satisfies the pertinent requirements of the applicable State law which are consistent with the Act and this Part.

(b) *Qualifying for Extended Benefits.* The State law shall specify whether an individual qualifies for Extended Benefits by earnings and employment in the base period for the individual's applicable benefit year as required by section 202(a)(5) of the Act (and if it does not also apply this requirement to the payment of sharable regular benefits, the State will not be reimbursed under § 615.14), as follows:

(1) One and one-half times the high quarter wages; or

(2) Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reduction because of earnings, pensions or other requirements) which applied to the most recent week of regular benefits; or

(3) Twenty weeks of full-time insured employment, and if this alternative is adopted, the term "full-time" shall have the meaning provided by the State law.

§ 615.5 Definition of "Exhaustee."

(a)(1) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(i) Has received, prior to such week, all of the regular compensation that was payable under the applicable State law or any other State law (including regular compensation payable to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) for the applicable benefit year that includes such week; or

(ii) Has received, prior to such week, all of the regular compensation that was available under the applicable State law or any other State law (including regular compensation available to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. Chapter 85) in the benefit year that includes such week, after the cancellation of some-or all of the individual's wage credits or the total or partial reduction of the individual's right to regular compensation; or

(iii) The applicable benefit year having expired prior to such week and the individual is precluded from establishing a second (new) benefit year, or the individual established a second benefit year but is suspended indefinitely from receiving regular compensation, solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(7)): *Provided,* that, an individual shall not be entitled to Extended Benefits based on regular compensation in a second benefit year during which the individual is precluded from receiving regular compensation solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(7)); or

(iv) The applicable benefit year having expired prior to such week, the individual has insufficient wages or employment, or both, on the basis of which a new benefit year could be established in any State that would include such week; and

(v) Has no right to unemployment compensation for such week under the Railroad Unemployment Insurance Act or such other Federal laws as are specified pursuant to this paragraph, and

(vi) Has not received and is not seeking for such week unemployment compensation under the unemployment compensation law of Canada, unless the Canadian agency finally determines that the individual is not entitled to unemployment compensation under the Canadian law for such week.

(2) An individual who becomes an exhaustee as defined above shall cease to be an exhaustee commencing with the first week that the individual becomes eligible for regular compensation under any State law or 5 U.S.C. Chapter 85, or has any right to unemployment compensation as provided in paragraph (a)(1)(v) of this section, or has received or is seeking unemployment compensation as provided in paragraph (a)(1)(vi) of this section. The individual's Extended Benefit Account shall be terminated upon the occurrence of any such week, and the individual shall have no further right to any balance in that Extended Benefit Account.

(b) *Special Rules.* For the purposes of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, an individual shall be deemed to have received in the applicable benefit year all of the regular compensation payable according to the monetary determination, or available to the individual, as the case may be, even though—

(1) As a result of a pending appeal with respect to wages or employment or both that were not included in the original monetary determination with respect to such benefit year, the individual may subsequently be

determined to be entitled to more or less regular compensation; or

(2) By reason of a provision in the State law that establishes the weeks of the year in which regular compensation may be paid to the individual on the basis of wages in seasonal employment—

(i) The individual may be entitled to regular compensation with respect to future weeks of unemployment in the next season or off season, as the case may be, but such compensation is not payable with respect to the week of unemployment for which Extended Benefits are claimed; and

(ii) The individual is otherwise an exhaustee within the meaning of this section with respect to rights to regular compensation during the season or off season in which that week of unemployment occurs; or

(3) Having established a benefit year, no regular compensation is payable during such year because wage credits were cancelled or the right to regular compensation was totally reduced as the result of the application of a disqualification.

(c) *Adjustment of week.* If it is subsequently determined as the result of a redetermination or appeal that an individual is an exhaustee as of a different week than was previously determined, the individual's rights to Extended Benefits shall be adjusted so as to accord with such redetermination or decision.

§ 615.6 Extended benefits; weekly amount.

(a) *Total unemployment.* (1) The weekly amount of Extended Benefits payable to an individual for a week of total unemployment in the individual's eligibility period shall be the amount of regular compensation payable to the individual for a week of total unemployment during the applicable benefit year. If the individual had more than one weekly amount of regular compensation for total unemployment during such benefit year, the weekly amount of extended compensation for total unemployment shall be one of the following which applies as specified in the applicable State law:

(i) The average of such weekly amounts of regular compensation; or

(ii) The last weekly benefit amount of regular compensation in such benefit year; or

(iii) An amount that is reasonably representative of the weekly amounts of regular compensation payable during such benefit year.

(2) If the method in paragraph (a)(1)(iii) of this section is adopted by a State, the State law shall specify how such amount is to be computed. If the method in paragraph (a)(1)(i) of this section is adopted by a State, and the amount computed is not an even dollar amount, the amount shall be raised or lowered to an even dollar amount as provided by the applicable State law for regular compensation.

(b) *Partial and part-total unemployment.* The weekly amount of Extended Benefits payable for a week of partial or part-total unemployment shall be determined under the provisions of the applicable State law which apply to regular compensation, computed on the basis of the weekly amount of Extended Benefits payable for a week of total unemployment as determined pursuant to paragraph (a) of this section.

615.7 Extended benefits; maximum amount.

(a) *Individual account.* An Extended Benefit Account shall be established for each individual determined to be eligible for Extended Benefits, in the sum of the maximum amount potentially payable to the individual as computed in accordance with paragraph (b) of this section.

(b) Computation of amount in individual account.

(1) The amount established in the Extended Benefit Account of an individual, as the maximum amount potentially payable to the individual during the individual's eligibility period, shall be equal to the lesser of—

(i) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's applicable benefit year; or

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount referred to in (b)(1)(ii) of this section, reduced by the regular compensation paid (or deemed paid) to the individual during the individual's applicable benefit year.

(2) If the State law so provides, the amount in the individual's Extended Benefit Account shall be reduced by the aggregate amount of additional compensation paid (or deemed paid) to the individual under such law for prior weeks of unemployment in such benefit year which did not begin in an Extended Benefit Period.

(c) *Changes in accounts.* (1) If an individual is entitled to more or less Extended Benefits as a result of a redetermination or an appeal which awarded more or less regular compensation or Extended Benefits, an appropriate change shall be made in the individual's Extended Benefit Account pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(2) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to regular compensation with respect to such week as the result of a redetermination or an appeal, the Extended Benefits paid shall be treated as if they were regular compensation up to the greater amount to which the individual has been determined to be entitled, and the State agency shall make appropriate adjustments between the regular and extended accounts. If the individual is entitled to more Extended Benefits as a result of being entitled to more regular compensation, an amended determination shall be made of the individual's entitlement to Extended Benefits. If the greater amount of regular compensation results in an increased duration of regular compensation, the individual's status as an exhaustee shall be redetermined as of the new date of exhaustion of regular compensation.

(3) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to more or less regular compensation as the result of a redetermination or an appeal, and as a consequence is entitled to less Extended Benefits, any Extended Benefits paid in excess of the amount to which the individual is determined to be entitled after the redetermination or decision on appeal shall be considered an overpayment which the individual shall have to repay on the same basis and in the same manner that excess payments of regular compensation are required to be repaid under the applicable State law.

(d) *Reduction Because of Trade Readjustment Allowances.* Section 233(d) of the Trade Act of 1974, requiring a reduction of Extended Benefits because of the receipt of trade readjustment allowances, shall be applied as follows:

(1) It shall apply only to an individual who has not exhausted his/her Extended Benefits at the end of the benefit year.

(2) The amount to be deducted is the product of the weekly benefit amount for Extended Benefits multiplied by the number of weeks for which trade readjustment allowances were paid (regardless of the amount paid for any such week) up to the close of the last week that begins in the benefit year.

(3) The amount to be deducted shall be deducted from the balance of

Extended Benefits not used as of the close of the last week which begins in the benefit year.

§ 615.8 Provisions of State Law Applicable to Claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of the Act or this Part, the terms and conditions of the applicable State law which apply to claims for, and the payment of regular compensation shall apply to claims for, and the payment of, extended benefits. The provisions of the applicable State law which shall apply to claims for, and the payment of, Extended Benefits include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals and employers, as appropriate;

(4) Determinations, redeterminations, and appeal and review;

(5) Ability to work and availability for work, except as provided otherwise in this section;

(6) Disqualifications, including disqualifying income provisions, except as provided by paragraph (c) of this section;

(7) Overpayments, and the recovery thereof;

(8) Administrative and criminal penalties;

(9) The Interstate Benefit Payment Plan;

(10) The Interstate Arrangements for Combining Employment and Wages, in accordance with Part 616 of this chapter.

(b) *Provisions not to be applicable.* The State law and regulations shall specify those of its terms and conditions which shall not be applicable to claims for, or payment of, Extended Benefits. Among such terms and conditions shall be at least those relating to—

(1) Any waiting period;

(2) Monetary or other qualifying requirements, except as provided in § 615.4(b); and

(3) Computation of weekly and total regular compensation.

(c) *Terminating disqualifications.* A disqualification in a State law, as to any individual who voluntarily left work, was suspended or discharged for misconduct, gross misconduct or the commission or conviction of a crime, or refused an offer of or a referral to work, as provided in sections 202(a)(4) and (6) of the Act—

(1) As applied to regular benefits which are not sharable, is not subject to any limitation in sections 202(a) (4) and (6).

(2) As applied to eligibility for extended benefits, shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds for regular benefits which are not sharable. If the State law does not also apply this provision to the payment of what would otherwise be sharable regular benefits, the Federal share of such benefits will not be reimbursable under § 615.14.

(3) Will not apply in regard to eligibility for Extended Benefits in a subsequent eligibility period.

(d) *Determinations of job prospects.* (1) As to each individual who files an initial claim for Extended Benefits, the State agency shall classify the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period, as "good" or "not good," and shall notify the individual in writing of such classification and of the requirements applicable to the individual under the provisions of the applicable State law corresponding to section 202(a)(3) of the Act and this Part.

(2) If an individual is thus classified as having good prospects, but those prospects are not realized by the close of the period the State law specifies as a reasonably short period, the individual's prospects will be automatically reclassified as "not good" or classified as "good" or "not good" depending on the individual's job prospects as of that date.

(3) Whenever an issue arises concerning an individual's failure to apply for or accept an offer of work (section 202(a)(3)(A)(i) of the Act and paragraphs (e) and (f) of this section), or to actively engage in seeking work (section 202(a)(3)(A)(ii) and (E) of the Act and paragraph (g) of this section), an appealable determination shall be made of the individual's job prospects at the time the issue arose and shall be included in the written determination on the issue.

(4) If an individual's job prospects are determined in accordance with the preceding paragraph (d)(3) of this section, to be "good," the suitability of work will be determined under the standard State law provisions applicable to claimants for regular compensation which is not sharable; and if determined to be "not good," the suitability of work will be determined under the definition of suitable work in the State law provisions corresponding to section 202(a)(3) of the Act and this Part. Any determination or classification of an individual's job prospects is mutually exclusive, and only one suitable work definition shall be applied to a claimant as to any failure to accept or apply for work or seek work with respect to any week.

(e) *Requirement of referral to work.* (1) Each State agency shall refer Extended Benefit claimants to "suitable" work, as required by section 202(a)(3)(F) of the Act and this Part, except that no individual shall be referred to any work with respect to which the individual is protected by labor standards and training provisions required by section 3304(a)(5) or section 3304(a)(8) of the Internal Revenue Code of 1954, or section 236(a)(2) of the Trade Act of 1974, or the provisions of section 202(a)(3)(D) of the Act and this Part.

(2) To make such referrals, the State agency shall assure that each Extended Benefit claimant is registered for work and continues to be considered for referral to job openings as long as he/she continues to claim benefits.

(3) In referring claimants to available job openings, the State agency shall apply to Extended Benefit claimants the same priorities, policies, and judgments as it does to other applicants, except that it shall not restrict referrals only to work at higher skill levels, prior rates of pay, customary work, or preferences as to work or pay for individuals whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good."

(4) For referral purposes, any work which does not exceed the individual's capabilities shall be considered suitable work for an Extended Benefit claimant, except as modified by this paragraph (e).

(5) For Extended Benefit claimants whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good" work shall not be suitable, and referral to a job shall not be made, if—

(i) The gross average weekly remuneration for the job does not exceed the sum of the individual's weekly benefit amount plus any supplemental unemployment benefits (SUB) (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954), payable to the individual for all weeks, or

(ii) The job is not listed with the State employment service, or

(iii) The job pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or any applicable State or local minimum wage, or

(iv) Failure to accept or apply for the job would not result in a denial of

compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(6) In addition, if the State agency classifies or determines that an individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are "good," referral shall not be made to a job which would not be suitable under the State law provisions applicable to claimants for regular benefits, and the individual shall be ineligible for extended compensation for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by State law.

(7) If the State law does not also apply this paragraph (e) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to reimbursement under the Act and § 615.14 in reqard to such regular compensation.

(f) *Refusal of work.* The State law shall provide, as required by section 202(a)(3)(A)(i) of the Act, that if an individual who claims Extended Benefits fails to accept an offer of work or fails to apply for work to which he/she was referred by the State agency—

(1) If, when the failure occurred,

(i) The individual's prospects for obtaining work in his/her customary occupation within a reasonably short period are classified or determined to be "good," the agency shall determine whether the work is suitable under the standard State law provisions which apply to claimants for regular compensation which is not sharable, and the individual shall be ineligible for extended compensation for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by State law.

(ii) The individual's prospects for obtaining work in his/her customary occupation are classified or determined to be "not good," the State agency shall determine whether the work is suitable under the definition corresponding to section 202(a)(3) (C) and (D) of the Act and this Part and the individual shall be ineligible for extended compenstion for the week in which the failure occurs and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount, as provided by State law.

(2) For an individual whose prospects of obtaining work in his/her customary occupation within the period specified by State law are classified or determined to be "not good," the term "suitable work" shall mean any work which is within the individual's capabilities, except—

(i) If the gross average weekly remuneration for the work does not exceed the sum of the individual's weekly benefit amount plus any supplemental unemployment benefits (SUB) (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to the individual for all weeks;

(ii) If the work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or any applicable State or local minimum wage;

(iii) If the work was not offered in writing or was not listed with the State employment service;

(iv) If failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law, as defined in § 615.2(o)(7).

(3) If the State law does not also apply this paragraph (f) to the payment of what would otherwise be sharable regular compensation, the State will not be entitled to reimbursement under the Act and § 615.14 in regard to such regular compensation.

(g) *Actively seeking work.* (1) An individual who claims Extended Benefits (or sharable regular compensation) shall be required by the State law, as provided in sections 202(a)(3) (A)(ii) and (E) of the Act, to make a systematic and sustained search for work which is "suitable work" as provided in paragraph (f) of this section, throughout each week beginning with the week in which the individual files an initial claim for such benefits, and to furnish tangible evidence of such efforts.

(2) If the individual fails to thus search for work, or to furnish tangible evidence of such efforts, he/she shall be ineligible for extended compensation for the week in which the failure occurred and thereafter until the individual is employed in at least four weeks with wages from such employment totaling not less than four times the. individual's weekly benefit amount, as provided by State law.

(3) State law may provide that eligibility for Extended Benefits be determined under the applicable provisions of State law for regular compensation without regard to the disqualification provisions otherwise applicable in paragraph (g)(2) of this section, for any individual who fails to engage in a systematic and sustained search for work throughout any week because such individual is:

(i) Serving on jury duty, or

(ii) Hospitalized for treatment of an emergency or life-threatening condition. The conditions in (i) and (ii) must be applied to individuals filing claims for Extended Benefits in the same manner as applied to individuals filing claims for regular compensation.

(4) If the State law does not also apply this paragraph (g) to the payment of what would otherwise be sharable regular compensation, the State will not be entitled to reimbursement under the Act and § 615.14 in regard to such regular compensation.

(h) *Information to Claimants.* The State agency shall assure that each Extended Benefit claimant (and claimant for sharable regular compensation) is informed in writing—

(1) Of the State agency's classification of his/her prospects for finding work in his/her customary occupation within the time set out in paragraph (d) of this section as "good" or "not good,"

(2) What kind of jobs he/she may be referred to, depending on the classification of his/her job prospects,

(3) What kind of jobs he/she must be actively engaged in seeking each week depending on the classification of his/her job prospects, and what tangible evidence of such search must be furnished to the State agency with each claim for benefits, and

(4) The resulting disqualification if he/she fails to apply for work to which referred, or fails to accept work offered, or fails to actively engage in seeking work or to furnish tangible evidence of such search for each week for which Extended Benefits or sharable regular benefits are claimed, beginning with the week following the week in which such information is furnished in writing to the individual.

§ 615.9 Restrictions on entitlement.

(a) *Disqualifications.* If the week of unemployment for which an individual claims Extended Benefits is a week to which a disqualification for regular compensation applies, including a reduction because of the receipt of disqualifying income, or would apply but for the fact that the individual has exhausted all rights to such compensation, the individual shall be disqualified in the same degree from receipt of Extended Benefits for that week.

(b) *Additional compensation.* No individual shall be paid additional compensation and Extended Benefits with respect to the same week. If both are payable by a State with respect to the same week, the State law may provide for the payment of Extended Benefits instead of additional compensation with respect to the week. If Extended Benefits are payable to an individual by one State and additional compensation is payable to the individual for the same week by another State, the individual may elect which of the two types of compensation to claim.

(c) *Interstate claims.* An individual who files claims for Extended Benefits under the Interstate Benefit Payment Plan, in a State which is not in an Extended Benefit Period for the week(s) for which Extended Benefits are claimed, shall not be paid more than the first two weeks for which he/she files such claims.

(d) *Other restrictions.* The restrictions on entitlement specified in this section are in addition to other restrictions in the Act and this Part on eligibility for and entitlement to Extended Benefits.

§ 615.10 Special provisions for employers.

(a) *Charging contributing employers.* (1) Section 3303(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C. 3303(a)(1)) does not require that Extended Benefits paid to an individual be charged to the experience rating accounts of employers.

(2) A State law may, however, consistently with section 3303(a)(1), require the charging of Extended Benefits paid to an individual; and if it does, it may provide for charging all or any portion of such compensation paid. Sharable regular compensation must be charged as all other regular compensation is charged under the State law.

(b) *Payments by reimbursing employers.* If an employer is reimbursing the State unemployment fund in lieu of paying contributions pursuant to the requirements of State law conforming with sections 3304(a)(6)(B) and 3309(a)(2) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)(6)(B) and 3309(a)(2)), the State law shall require the employer to reimburse the State unemployment fund for not less than 50 percent of any sharable compensation that is attributable under the State law to service with such employer; and as to any other compensation which is not sharable compensation under § 615.14, the State law shall require the employer to reimburse the State unemployment fund for 100 percent, instead of 50 percent, of any compensation paid.

§ 615.11 Extended benefit periods.

(a) *Beginning date.* Except as provided in paragraph (d) of this section, an Extended Benefit Period shall begin in a State on the first day of the third calendar week after a week for which there is a State "on" indicator in that State;

(b) *Ending date.* Except as provided in paragraph (c) of this section, an Extended Benefit Period in a State shall end on the last day of the third week after the first week for which there is a State "off" indicator in that State.

(c) *Duration.* An Extended Benefit Period which becomes effective in any State shall continue in effect for not less than 13 consecutive weeks.

(d) *Limitation.* No Extended Benefit Period may begin in any State by reason of a State "on" indicator before the 14th week after the ending of a prior Extended Benefit Period with respect to such State.

§ 615.12 Determination of "on" and "off" indicators.

(a) *Standard State indicators.* (1) There is a State "on" indicator in a State for a week if the head of the State agency determines, in accordance with paragraph (c) of this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Equalled or exceeded 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years, and

(ii) Equalled or exceeded 5.0 percent.

(2) There is a State "off" indicator in a State for a week if the head of the State agency determines, in accordance with paragraph (c) of this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Was less than 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years, or

(ii) Was less than 5.0 percent.

(3) The revised State indicators in paragraph (a) shall apply to weeks beginning after September 25, 1982.

(b) *Optional State indicators.* (1)(i) A State may, in addition to the State indicators in paragraph (a) of this section, provide by its law that there shall be a State "on" indicator in the State for a week if the head of the State agency determines, in accordance with paragraph (c) of this section, that, for the pericd consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law equalled or exceeded 6.0 percent even though it did not meet the 120 percent factor required under paragraph (a) of this section.

(ii) A State which adopts the optional State indicator must also provide that, when it is in an Extended Benefit Period, there will not be an "off" indicator until (A) the State rate of insured unemployment is less than 6.0 percent, and (B) either its rate of insured unemployment is less than 5.0 percent or is less than 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years.

(2) The revised State indicators in this paragraph (b) shall apply to weeks beginning after September 25, 1982.

(c) *Computation of rate of insured unemployment.*—(1) *Equation.* Each week the State agency head shall calculate the rate of insured unemployment under the State law (not seasonally adjusted) for purposes of determining the State "on" and "off" and "no change" indicators. In making such calculations the State agency head shall use a fraction, the numerator of which shall be the weekly average number of weeks claimed in claims filed (not seasonally adjusted) in the State in the 13-week period ending with the week for which the determination is made, and the denominator of which shall be the average monthly employment covered by the State law for the first four of the last six calendar quarters ending before the close of the 13-week period. The quotient obtained is to be computed to four decimal places, and is not otherwise rounded, and is to be expressed as a percentage by multiplying the resultant decimal fraction by 100.

(2) *Counting weeks claimed.* To determine the average number of weeks claimed in claims filed to serve as the numerator under paragraph (c)(1) of this section, the State agency shall include claims for all weeks for regular compensation, including claims taken as agent State under the Interstate Benefit Payment Plan. It shall exclude claims—

(i) For Extended Benefits under any State law,

(ii) For additional compensation under any State law, and

(iii) Under any Federal law except joint claims which combine regular compensation and compensation payable under 5 U.S.C. Chapter 85.

(3) *Method of computing the State 120 percent factor.* The rate of insured

unemployment for a current 13-week period shall be divided by the average of the rates of insured unemployment for the corresponding 13-week periods in each of the two preceding calendar years to determine whether the rate is equal to 120 percent of the average rate for the two years. The quotient obtained shall be computed to four decimal places and not otherwise rounded, and shall be expressed as a percentage by multiplying the resultant decimal fraction by 100. The average of the rates for the corresponding 13-week periods in each of the two preceding calendar years shall be one-half the sum of such rates computed to four decimal places and not otherwise rounded. To determine which are the corresponding weeks in the preceding years—

(i) The weeks shall be numbered starting with week number 1 as the first week ending in each calendar year.

(ii) The 13-week period ending with any numbered week in the current year shall correspond to the period ending with that same numbered week in each preceding year.

(iii) When that period in the current year ends with week number 53, the corresponding period in preceding years shall end with week number 52 if there is no week number 53.

(d) *Amendment of State indicator rates.* (1) Because figures used for determinations under this section may contain errors and because it is not practical to apply any correction in a State "on" or "off" or "no change" indicator retroactively either to recover amounts paid or to adjudicate claims for past periods in which claimants failed to make the required active search for work, any "on" or "off" or "no change" indicator determined under this section shall not be corrected more than three weeks after the close of the week to which it applies. If any figure used in the computation of a rate of insured unemployment is later found to be wrong, the correct figure shall be used to redetermine the rate of insured unemployment and of the 120 percent factor for that week and all subsequent weeks, but no determination of previous "on" or "off" or "no change" indicator shall be affected unless the redetermination is made within the time the indicator may be corrected under the first sentence of this paragraph. Any change hereunder shall be subject to the concurrence of the Department.

(2) Any determination of the rate of insured unemployment and its effect on an "on" or "off" or "no change" indicator made under this section may be challenged by appeal or by other proceedings, as shall be provided by State law, but the implementation of any change in the indicator from one week to another shall not be stayed or postponed. In a hearing on any such challenge the issue may be limited to the accuracy of the determination of the rate of insure unemployment. If an error in that rate affecting the "on" or "off" or "no change" indicator is discovered in such a hearing or other proceeding, its retroactive effect shall be limited as provided in paragraph (d)(1) of this section.

(e) *Notice to Secretary.* Within 10 calendar days after the end of any week with respect to which the head of a State agency has determined that there is an "on," or "off," or "no change" indicator in the State, the head of the State agency shall notify the Department of the determination. The notice shall state clearly the State agency head's determination of the specific week for which there is a State "on" or "off" or "no change" indicator. The notice shall include also the State agency head's findings supporting the determination, with a certification that the findings are made in accordance with the requirements of this section and § 615.15. Determinations and findings made as provided in this section shall be accepted by the Department, but the head of the State agency shall comply with such provisions as the Department may find necessary to assure the correctness and verification of notices given under this paragraph. A notice shall not become final, for purposes of paragraph (d) of this section until such notice is accepted by the Secretary.

§ 615.13 Announcement of the beginning and ending of extended benefit periods.

(a) *State indicators.* Upon receipt of the notice required by § 615.12(e) which is acceptable to the Department, the Department shall publish in the **Federal Register** a notice of the State agency head's determination that there is an "on" or an "off" indicator in the State, as the case may be, the name of the State and the beginning or ending of the Extended Benefit Period, whichever is appropriate. The Department shall also notify appropriate news media, the heads of all other State agencies, and the Regional Administration of the Employment and Training Administration of the State agency head's determination of such State "on" or "off" indicator and of its effect.

(b) *Publicity by State.* Whenever a State agency head determines that there is an "on" indicator in the State by reason of which an extended benefit Period will begin in the State, or an "off" indicator by reason of which an Extended Benefit Period in the State will end, the head of the State agency shall promptly announce the determination through appropriate news media in the State and notify the Department in accordance with § 615.12(e). Such announcement shall include the beginning or ending date of the Extended Benefit Period, whichever is appropriate. In the case of an Extended Benefit Period that is about to begin, the announcement shall describe clearly the unemployed individuals who may be eligible for Extended Benefits during the period, and in the case of an Extended Benefit Period that is about to end, the announcement shall also describe clearly the individuals whose entitlement to Extended Benefits will be terminated.

(c) *Notices to individuals.* (1) Whenever there has been a determination that an Extended Benefit Period will begin in a State, the State agency shall provide prompt written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not end prior to the beginning of the Extended Benefit Period, and who exhausted all rights under the State law to regular compensation before the beginning of the Extended Benefit Period.

(2) The State agency shall provide such notice promptly to each individual who begins to claim sharable regular benefits or who exhausts all rights under the State law to regular compensation during an Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

(3) The notices required by paragraphs (C) (1) and (2) of this section shall describe those actions required of claimants for sharable regular compensation and Extended Benefits and those disqualifications which apply to such benefits which are different from those applicable to other claimants for regular compensation which is not sharable.

(4) Whenever there has been a determination that an Extended Benefit Period will end in a State, the State agency shall provide prompt written notice to each individual who is currently filing claims for Extended Benefits of the forthcoming end of the Extended Benefit Period and its effect on the individual's right to Extended Benefits.

§ 615.14 Payments to States.

(a) *Sharable compensation.* (1) Except as provided in paragraphs (b) and (c) of this section—

(i) The Department shall promptly upon receipt of a State's report of its

expenditures for a calendar month reimburse the State in the amount the State is entitled to receive under the Act and this part.

(ii) The Department may instead advance to a State for any period not greater than one day the amount the Department estimates the State will be entitled to be paid under the Act and this part for that period.

(iii) Any payment to a State under this section shall be based upon the Department's determination of the amount the State is entitled to be paid under the Act and this part, and such amount shall be reduced or increased, as the case may be, by any amount by which the Department finds that a previous payment was greater or less than the amount that should have been paid to the State.

(2) Any payment to a State pursuant to paragraph (a)(1) of this section shall be made by a transfer from the extended unemployment compensation account in the Unemployment Trust Fund to the account of the State in such Fund, in accordance with section 204(e) of the Act.

(b) *Payments not to be made to States.* Because a State law must contain provisions fully consistent with sections 202 and 203 of the Act, the Department shall make no payment under paragraph (a), whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1954—

(1) In respect of any regular or extended compensation paid to any individual for any week if the State does not apply—

(i) The provisions required by section 202(a)(3), relating to failure to accept work offered or a referral to work or to actively engage in seeking work, or section 202(a)(4), relating to terminating a disqualification, as to weeks beginning after March 31, 1981;

(ii) The provisions required by section 202(a)(5), relating to qualifying employment, as to weeks beginning after September 25, 1982; or

(2) In respect of any regular or extended compensation paid to any individual for any week which was not payable by reason of the provision required by section 202(c), as to weeks which begin after May 31, 1981, or May 31, 1982, as determined by the Department with regard to each State.

(c) *Payments not to be reimbursed.* The Department shall make no payment under paragraph (a) of this section in respect of any regular or extended compensation paid under a State law—

(1) As provided in section 204(a)(1) of the Act, if the payment made was not sharable extended compensation or sharable regular compensation as defined in subsections (b) and (c) of section 204, or extended compensation as defined in section 205(3).

(2) As provided in section 204(a)(2)(A) of the Act, if the State is entitled to reimbursement for the payment under the provisions of any Federal law other than the Act.

(3) As provided in section 204(a)(2)(B) of the Act, if—

(i) For the first week in an individual's eligibility period with respect to which Extended Benefits or sharable regular benefits are paid to the individual, that first week begins after December 5, 1980, and the State law provides for the payment (at any time or under any circumstances) of regular compensation to any individual for the first week of unemployment in any such individual's benefit year.

(ii) In the case of a State with respect to which the Department finds that legislation is required in order to end the payment (at any time or under any circumstances) of regular compensation for any such first week of unemployment, this paragraph (c)(3) shall not apply to the first week in an individual's eligibility period which began before the end of the first regularly scheduled session of the State legislature that ends after January 4, 1981.

(iii) In the case of a State law which is changed so that regular compensation is not paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall not apply to any week which begins after the effective date of such change in the State law.

(iv) In the case of a State law which is changed so that regular compensation is paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall apply to all weeks which begin after the effective date of such change in the State law.

(4) As provided in section 204(a)(2)(C) of the Act, for any week with respect to which Extended Benefits are not payable because of the payment of trade readjustment allowances, as provided in section 233(d) of the Trade Act of 1974, and § 615.7(d). This Paragraph (c)(4) applies to any week which begins after October 31, 1982, or 1983, as determined by the Department in regard to each State.

(5) As provided in section 204(a)(3) of the Act, to the extent that such compensation is based upon employment and wages in service performed for governmental entities or instrumentalities to which section 3306(c)(7) of the Internal Revenue Code of 1954 (26 U.S.C. 3306(c)(7)) applies, in the proportion that wages for such service in the base period bear to the total base period wages.

(6) If the payment made was not sharable extended compensation or sharable regular compensation, as defined in subsections (b) and (c) of section 204 of the Act, because the payment was not consistent with the requirement of—

(i) Section 202(a)(3) of the Act, and § 615.8 (e), (f), and (g);

(ii) Section 202(a)(4) of the Act, and § 615.8(c);

(iii) Section 202(a)(5) of the Act, and § 615.4(b).

(7) If the payment made was not sharable extended compensation or sharable regular compensation, as defined in subsections (b) and (c) of section 204 of the Act, because there was not in effect in the State an Extended Benefit Period in accord with the Act and this Part.

(8) As provided in section 204(a)(2)(D) of the Act, if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount, for the 50 percent Federal share on the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount. This paragraph shall apply to any sharable regular compensation or Extended Benefits paid to individuals whose eligibility periods begin on or after October 1, 1983, unless a later date, as determined by the Department, applies in a particular State under the grace period of section 191(b)(2) of Pub. L. 97–248.

(9) Any payment made to a claimant for any week with respect to which the claimant was either ineligible for or not entitled to the payment.

(d) *Effectuating authorization for reimbursement.* (1) If the Department believes that reimbursement should not be authorized with respect to any payments made by a State that are claimed to be sharable compensation paid by the State because the State law does not contain provisions required by the Act and this Part, or because such law is not interpreted or applied in rules, regulations, determinations or decisions in a manner that is consistent with those requirements, the Department may at any time notify the State agency in writing of the Department's view. The State agency shall be given an opportunity to present its views and arguments if desired.

(2) The Department shall thereupon decide whether the State law fails to

include the required provisions or is not interpreted and applied so as to satisfy the requirements of the Act and this Part. If the Department finds that such requirements are not met, the Department shall notify the State agency of its decision and the effect thereof on the State's entitlement to reimbursement under the provisions of section 204 of the Act.

(3) Thereafter, the Department shall not authorize any payment under paragraph (a) of this section in respect of any sharable regular or extended compensation if the State law does not contain all of the provisions required by sections 202 and 203 of the Act and this Part, or if the State law, rules, regulations, determinations or decisions are not consistent with such requirements, or which would not have been payable if the State law contained the provisions required by the Act and this Part or if the State law, rules, regulations, determinations or decisions had been consistent with such requirements. Loss of reimbursement for such compensation shall begin with the date the State law was required to contain such provisions, and shall continue until such time as the Department finds that such law, rules and regulations have been revised or the interpretations followed pursuant to such determinations and decisions have been overruled so as to accord with the Federal law requirements of the Act and this Part, but no reimbursement shall be authorized with respect to any payment that did not fully accord with the Act and this Part.

(4) A State agency may request reconsideration of a decision issued pursuant to paragraph (d)(2) of this section within 10 calendar days of the date of such decision, and shall be given an opportunity to present views and arguments if desired.

(5) Concurrence of the Department in any State law provision, rule, regulation, determination or decision shall not be presumed from the absence of notice issued pursuant to this section.

(6) Upon finding that a State has made payments for which it claims reimbursement that are not consistent with the Act or this Part, such claim shall be denied; and if the State has already been paid such claim in advance or by reimbursement, it shall be required to repay the full amount to the Department. Such repayment may be made by transfer of funds from the State's account in the Unemployment Trust Fund to the Extended Unemployment Compensation Account in the Fund, or by offset against any current advances or reimbursements to which the State is otherwise entitled, or the amount repayable may be recovered for the Extended Unemployment Compensation Account by other means and from any other sources that may be available to the United States or the Department.

(e) *Compensation under Federal unemployment compensation programs.* The Department shall promptly reimburse each State which has paid sharable compensation based on service covered by the UCFE and UCX Programs (Parts 609 and 614 of this chapter, respectively) pursuant to 5 U.S.C. Chapter 85, an amount which represents the full amount of such sharable compensation paid under the State law, or may make advances to the State. Such amounts shall be paid from the appropriations or accounts established for those programs, rather than from the Extended Unemployment Compensation Account.

(f) *Combined-wage claims.* If an individual was paid benefits under the Interstate Arrangement for Combining Employment and Wages (Part 616 of this chapter) any payment required by paragraph (a) shall be made to the States which contributed the wage credits.

(g) *Interstate claims.* Where sharable compensation is paid to an individual under the provisions of the Interstate Benefit Payment Plan, any payment required by paragraph (a) of this section shall be made only to the liable State except as provided in paragraph (e) of this section.

§ 615.15 Records and reports.

(a) *General.* State agencies shall furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of the Act and this Part.

(b) *Recordkeeping.* Each State agency will make and maintain records pertaining to the administration of the Extended Benefit Program as the Department requires, and will make all such records available for inspection, examination and audit by such Federal officials or employees as the Secretary or the Department may designate or as may be required by law.

(c) *Weekly report of Extended Benefit data.* Each State shall file with the Department within 10 calendar days after the end of each calendar week a weekly report entitled ETA 5–39, Extended Benefit Data. The report shall include:

(1) The data reported on the form ETA 5–39 for the week ending (date). Week-ending dates shall always be the Saturday ending date of the calendar week beginning at 12:01 a.m. Sunday and ending 12:00 p.m. Saturday.

(2)(i) The number of continued weeks claimed for regular compensation in claims filed during the week ending (date). The report shall include intrastate continued weeks claimed and interstate continued weeks claimed (taken as agent State) but shall exclude interstate continued weeks claimed (received as liable State) and continued weeks claimed for regular compensation filed solely under 5 U.S.C. Chapter 85.

(ii) The report of the number of continued weeks claimed filed in the State for regular compensation shall not be adjusted for seasonality.

(3) The average weekly number of weeks claimed in claims filed in the most recent calendar week and the immediately preceding 12 calendar weeks.

(4) The rate of insured unemployment for the current 13-week period.

(5) The average of the rates of insured unemployment in corresponding 13-week periods in the preceding two years.

(6) The current rate of insured unemployment as a percentage of the average of the rates in the corresponding 13-week periods in the preceding two years.

(7) The 12-month average monthly employment covered by the State law for the first 4 of the last 6 complete calendar quarters ending prior to the end of the last week of the current 13-week period to which the insured unemployment data relate. Such covered employment excludes Federal civilian and military employment covered by 5 U.S.C. Chapter 85.

(8) The date that a State Extended Benefit Period begins or ends, or a report that there is no change in the existing Extended Benefit Period status.

(d) The State agency head shall submit to the Secretary, for his approval, the method used to identify and select the weeks claimed used in the determination of an "on" or "off" or "no change" indicator. Any change in the method of identification and selection of such weeks claimed constitutes a new plan which must be submitted for the Secretary's approval.

(Reporting and recordkeeping requirements and information collection requirements contained in paragraph (c) approved by the Office of Management and Budget under control number 1205–0028)

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 607]

Establishment of Sonoma Coast Viticultural Area; Revision of Russian River Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing to establish a viticultural area in Sonoma County, California, to be known as "Sonoma Coast," and to revise the boundary of the approved Russian River Valley viticultural area. This notice is based on a petition submitted by Ms. Sara Schorske, a wine industry consultant residing in Santa Rosa, California. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

DATES: Written comments must be received by January 22, 1987.

ADDRESSES: Send written comments to:

Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385.

Copies of the petition, maps, and written comments received in response to this notice will be available during normal business hours at:

ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John A. Linthicum, FAA, Wine and Beer Branch, (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR, Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, AFT published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2), outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.,) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geogological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

Ms. Sara Schorske, a wine industry consultant residing in Santa Rosa, California, petitioned ATF to establish a viticultural area in Sonoma County, to be known as "Sonoma Coast," and to revise the boundary of the approved Russian River Valley viticultural area.

Sonoma Coast

General Description

The size of the petitioned area is approximately 750 square miles. It includes 35 bonded wineries and 11,452 acres of grapevines, approximately one-third of the total grapevine acreage in the county.

ATF has established 10 viticultural areas in Sonoma County: Sonoma Valley, Los Carneros, Chalk Hill, Alexander Valley, Sonoma County Green Valley, Dry Creek Valley, Russian River Valley, Northern Sonoma, Knights Valley, and Sonoma Mountain. In addition, all of Sonoma County is within the approved North Coast viticultural area.

Name

"Sonoma Coast" is the name of a State beach located north of Bodega Bay. The mountain ranges located within sight of the Pacific Ocean, although known by many proper names throughout the State, are generically called the Coast Ranges.

In addition, the petitioner claims that variants of the name "Sonoma Coast" have also applied to the petitioned area historically. Most of the petitioned area is located in the Fifth Supervisory District of Sonoma County. This area has been called "the coastal region of the county" since an agriculture census taken in 1893. Most of the petitioned area is also located in the Coastal Planning Area, established by the Sonoma County Planning Department. In addition, tourism pamphlets refer to part or all of the petitioned area as "the coastal region."

Geographical Features Which Affect Viticultural Features

The petitioned area includes only the portion of the county which is under very strong marine climate influence. The climate of the area is manifested by persistent fog and the classification "Coastal Cool," under Robert L. Sisson's microclimate classification system. This system defines a "Coastal Cool" area as an area having a cumulative duration of less than 1,000 hours between 70° and 90° Fahrenheit, during the months of April through October.

The inland limit of the area under persistent fog varies greatly. Thermograph readings supporting the Coastal Cool classification are taken at finite points. Therefore, the establishment of the proposed inland boundary is difficult, since it could be established anywhere between the locations of thermographs with readings above and below the threshold described above.

In addition to the "Coastal Cool" versus "Coastal Warm" climate classification, the petition contains other evidence that the proposed boundary corresponds approximately with geographical features which affect viticultural features. The Environmental Resources Management section of the Sonoma County General Plan contains a map of the marine fog intrusion which shows that it corresponds approximately with the proposed boundary.

The proposed boundary corresponds approximately with four vegetation regions which are distinctively coastal: Coastal Cypress/Pine, Redwood, Coastal Prairie/Scrub Mosaic, and Coastal Saltmarsh, according to A.W. Kuchler's *Natural Vegetation of California.*

The proposed boundary corresponds approximately with the maximum July temperature of 84° F. isobar in Robert Elwood's *Climate of Sonoma County*. It is noteworthy that the maximum July temperature of 86° F. isobar is much farther inland, and the lower maximum July temperature isobars are closely spaced. This implies that the proposed boundary corresponds with a significant change in microclimate.

Russian River Valley

The Russian River Valley viticultural area was established in T.D. ATF–159, published in the **Federal Register** of October 23, 1983, at 48 FR 48813. Russian River Valley final rule, ATF concluded that the entire area was "Coastal Cool" and that this microclimate distinguished it from the neighboring Alexander Valley which was classified as "Coastal Warm." The petition for establishment of the "Sonoma Coast" viticultural area challenges the accuracy of the boundary between "Coastal Cool" and "Coastal Warm" at the inland limit of the Russian River Valley viticultural area.

Mr. Sisson has never tested the microclimate in the eastern one-third of the approved Russian River Valley viticultural area. Throughout most of this area, the terrain is too steep for practical grape-growing. However, there are a few isolated, but well-established vineyards in this area. The selection of grape varieties and viticultural practices at these vineyards more closely resemble "Coastal Warm" characteristics than "Coastal Cool."

Mr. Louis Foppiano participated in drafting the petition for establishment of the Russian River Valley viticultural area. He stated that Franz Valley Road was chosen as the eastern boundary for convenience, and not on the basis of specific historical or geographical evidence. He believes that the area to be excluded in this proposal is probably warmer than the rest of the approved area.

Mr. Mark Lingenfelder is Vineyard Manager of Chalk Hill Winery, formerly Donna Maria Vineyards, located in the relatively undeveloped area between Chalk Hill Road and Brooks Creek. He believes that it would be reasonable to remove this area from the Russian River Valley viticultural area since it is probably warmer than the rest of the approved area.

Inland to the east of the Russian River Valley and the proposed "Sonoma Coast" boundaries, the approved Knights Valley area was classified as Region III on the basis of thermograph readings located in the approved area. This classification is warmer than either "Coastal Cool" or "Coastal Warm."

In T.D. ATF–233, published in the **Federal Register** of August 26, 1986 at 51 FR 30352, ATF extended the southern boundary of the "Coastal Warm" Alexander Valley viticultural area to include a transitional area east of Healdsburg. Sometimes this area is under persistent fog and is "Coastal Cool," and at other times it is not. Since the purpose of the proposed revision of the Russian River Valley is to curtail it to areas which are "Coastal Cool," ATF is also proposing to eliminate this northeasternmost area from the approved Russian River Valley.

Based on the foregoing discussion, ATF is proposing to revise the eastern and northeastern inland boundary of the approved Russian River Valley viticultural area by removing areas which are not persistently "Coastal Cool." This revision would remove approximately one-third of the area, most of which is too mountainous for practical grape-growing.

Proposed Boundaries

Sonoma Coast

Along the outer limit of places known by the name "Sonoma," the proposed boundary of the "Sonoma Coast" area follows the shorelines of the Pacific Ocean and San Pablo Bay, and the county lines between Sonoma County and Mendocino County, Marin County, and Napa County.

The proposed inland boundary follows approximately the inland limit of the very strong marine climate influence. South of the City of Santa Rosa, it follows the boundaries of the Los Carneros and Sonoma Valley viticultural areas. Between the cities of Santa Rosa and Healdsburg, the proposed inland boundary follows (1) straight lines connecting Taylor Mountain, a point near the town of Mark West Springs, and the headwaters of Brook Creek, (2) Brooks Creek to the Russian River, and (3) the revised southern boundary of Alexander Valley to the beginning point of the boundary of the Russian River Valley area, south of Healdsburg. Between Healdsburg and Monte Rio, the proposed inland boundary follows the boundary of the Russian River Valley area. From Monte Rio, the proposed inland boundary follows the boundary of the Northern Sonoma viticultural area to the peak of Big Oat Mountain. The proposed inland boundary proceeds in a straight line, through steep terrain, from the peak of Big Oat Mountain to the Sonoma County-Mendocino County line.

Russian River Valley

Between the cities of Santa Rosa and Healdsburg, the proposed revision of the boundary of the Russian River Valley coincides with the proposed inland boundary of the "Sonoma Coast" area between these two cities, as described in the previous paragraph.

Public Participation—Written Comments

ATF requests comments from all interested persons concerning this proposed viticultural area. This notice proposes one possible boundary for the "Sonoma Coast" viticultural area. However, comments concerning other possible boundaries for this viticultural area will be given consideration. ATF is particularly interested in comments on the following two issues:

1. The petitioner and ATF have attempted to propose the inland boundary of the "Sonoma Coast" area and the proposed revision of the boundary of the Russian River Valley area at the approximate limit between areas which are classified Coastal Cool versus areas which are classified Coastal Warm. Public comments suggesting modification of either proposed boundary should include thermograph readings or other data showing that the suggested modification divides Coastal Cool areas from Coastal Warm areas more accurately than the proposed boundary.

2. Each of the eleven approved areas in, or including, Sonoma County was established on the basis of marine climate influence, among other geographical features. ATF is concerned that the name "Sonoma Coast" might erroneously imply that portions of the county which are not included in this proposed area are not under the marine climate influence. ATF would like to receive comments on this issue.

Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his or her requests, in writing, to the Director

within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this proposal is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse affect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural area, Wine.

Authority and Issuance

PART 9—[AMENDED]

27 CFR Part 9—American Viticultural Areas is proposed to be amended as follows:

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of sections for 27 CFR Part 9 is amended by adding the heading of § 9.116 to Subpart C to read as follows:

Sec.

* * * * *

9.116 Sonoma Coast.

Par. 3. Section 9.66 is amended—

by revising paragraph (b),
by revising introductory paragraph (c),
by revising paragraphs (c)(1) through (c)(5),
by revising paragraphs (C)(12) through (c)(20), and
by removing paragraphs (c)(21) through (c)(24).

As amended, § 9.66 reads as follows:

§ 9.66 Russian River Valley.

* * * * *

(b) The appropriate maps for determining the boundary of the Russian River Valley viticultural area are ten U.S.G.S. topographic maps in the 7.5-minute series, as follows:

(1) Healdsburg, California, dated 1955, photorevised 1980;

(2) Guerneville, California, dated 1955;

(3) Cazadero, California, dated 1978;

(4) Duncan Mills, California, dated 1979;

(5) Camp Meeker, Calfiornia, dated 1954;

(6) Valley Ford, California, dated 1954, photorevised 1971;

(7) Sebastopol, California, dated 1954, photorevised 1968;

(8) Santa Rosa, California, dated 1954, photorevised 1968 and 1973;

(9) Mark West Springs, California, dated 1958, photoinspected 1978; and

(10) Jimtown, California, dated 1955, photorevised 1975.

(c) *Boundary.* The Russian River Valley viticultural area is located in Sonoma County California. Begin on the *Healdsburg map,* at the bridge (known locally as the Healdsburg Avenue Bridge) at which a light-duty, hard or improved surface road, identified on the map as Redwood Highway, crosses the Russian River, immediately south of the city of Healdsburg.

(1) Follow the Russian River southerly to a point, near the confluence with Dry Creek, opposite a straight line extension of a light-duty, hard or improved surface road (known locally as Foreman Lane).

(2) Proceed in a straight line to that road and follow it westerly, then south, then westerly, onto the *Guerneville map,* across a secondary highway, hard surface road (known locally as Westside Road), and continue westerly, then northwesterly to the point at which it crosses Felta Creek.

(3) Follow Felta Creek approximately 18,000 ft. westerly to its headwaters, at the confluence of three springs, located approximately 5,800 feet northwesterly of Wild Hog Hill.

(4) Proceed in a straight line southwesterly to the southwest corner of Section 9, Township 8 North, Range 10 West.

(5) Proceed in a straight line southwesterly, onto the *Cazadero map,* to the point in, Section 24, Township 8 North, Range 11 West, at which Hulbert Creek crosses the 160 ft. contour line.

* * * * *

(12) Follow Mark West Road across the *Santa Rosa map* onto the *Mark West Springs map* to the point, near the benchmark at 184 ft. elevation in Section 34, Township 8 North, Range 8 West, at which Mark West Road crosses an unnamed stream which flows northwesterly into Mark West Creek.

(13) Proceed northerly in a straight line to the headwaters of Brooks Creek, in Section 4, Township 8 North, Range 8 West.

(14) Follow Brooks Creek northwesterly, onto the *Healdsburg map,* to its confluence with the Russian River.

(15) Proceed southwesterly in a straight line to an unidentified peak at elevation 672 ft.

(16) Proceed northwesterly in a straight line ot the peak identified as Black Peak.

(17) Proceed northwesterly in a straight line to an unidentified peak at elevation 857 ft.

(18) Proceed northwesterly in a straight line to the peak of Fitch Mountain at elevation 991 ft.

(19) Proceed northwesterly, onto the *Jimtown map,* in a straight line to the intersection, near a benchmark at elevation 154 ft. in the town of Chiquita, of a light-duty, hard or improved surface road (known locally as Chiquita Road) and a southbound primary highway, hard surface road (known locally as Healdsburg Avenue).

(20) Follow that road (known locally as Healdsburg Avenue) southerly, onto the *Healdsburg map,* through the city of

Healdsburg to the beginning point described in paragraph (c)(1) of this section.

Par. 4. Subpart C of 27 CFR Part 9 is amended by adding § 9.116 to read as follows:

§ 9.116 Sonoma Coast.

(a) *Name.* The name of the viticultural area described in this section is "Sonoma Coast".

(b) *Approved map.* The approved maps for determining the boundary of the Sonoma Coast viticultural area are, as follows:

(1) The U.S.G.S. Topographic Map of Sonoma County, California, scale 1:100,000, dated 1970; and

(2) Five U.S.G.S. topographic maps in the 7.5-minute series, as follows:

(i) Mark West Springs, California, dated 1958, photoinspected 1978;

(ii) Healdsburg, California, dated 1955, photorevised 1980;

(iii) Jimtown, California, dated 1955, photorevised 1975;

(iv) Guerneville, California, dated 1955; and

(v) Cazadero, California, dated 1978.

(c) *Boundary description.* In general, the boundary description of the Sonoma Coast viticultural area is found on the U.S.G.S. Topographic Map of Sonoma County, California, scale 1:100,000, dated 1970. When a point of the boundary description is found on one of the 7.5-minute quadrangles, the boundary description indicates this in parentheses. The boundary description is as follows:

(1) The beginning point is the point at which the Sonoma County-Mendocino County line meets the shoreline Pacific Ocean.

(2) The boundary follows the shoreline of the Pacific Ocean southerly to the Sonoma County-Marin County line.

(3) The boundary follows the Sonoma County-Marin County line southeasterly to San Pablo Bay.

(4) The boundary follows the shoreline of San Pablo Bay easterly to the Sonoma County-Napa County line.

(5) The boundary follows the Sonoma County-Napa County line northerly to the peak of Arrowhead Mountain.

(6) From the peak of Arrowhead Mountain, the boundary proceeds in a straight line westerly to the peak of Sonoma Mountain.

(7) From the peak of Sonoma Mountain, the boundary proceeds in a straight line northwesterly to the peak of Taylor Mountain.

(8) From the peak of Taylor Mountain, the boundary proceeds in a straight line northwesterly to the point, near the benchmark at 184 ft. elevation in Section 34, Township 8 North, Range 8 West, at which Mark West Road crosses an unnamed stream which flows northwesterly into Mark West Creek. (Mark West Springs map)

(9) From this point, the boundary proceeds northerly in a straingt line to the headwaters of Brooks Creek, in Section 4, Township 8 North, Range 8 West. (Mark West Springs map)

(10) The boundary follows Brooks Creek northwesterly to its confluence with the Russian River. (Healdsburg map)

(11) The boundary proceeds southwesterly in a straight line to an unidentified peak at elevation 672 ft. (Healdsburg map)

(12) The boundary proceeds northwesterly in a straight line to the peak identified as Black Peak. (Healdsburg map)

(13) The boundary proceeds westerly in a straight line to an unidentified peak at elevation 857 ft. (Healdsburg map)

(14) The boundary proceeds westerly in a straight line to the peak of Fitch Mountain at elevation 991 ft. (Healdsburg map)

(15) The boundary proceeds northwesterly in a straight line to the intersection, near a benchmark at elevation 154 ft. in the town of Chiquita, of a light-duty road (known locally as Chiquita Road) and a southbound primary highway, hard surface road (known locally as Healdsburg Avenue). (Jimtown map)

(16) The boundary follows that road (known locally as Healdsburg Avenue) southerly through the city of Healdsburg to the point at which it is a light-duty, hard or improved surface road, identified on the map as Redwood Highway, which crosses the Russian River, immediately south of the city of Healdsburg at a bridge (known locally as the Healdsburg Avenue Bridge). (Healdsburg map)

(17) The boundary follows the Russian River southerly to a point, near the confluence with Dry Creek, opposite a straight line extension of a light-duty, hard or improved surface road (known locally as Foreman Lane) located west of the Russian River. (Healdsburg map)

(18) The boundary proceeds in a straight line to that road and follows it westerly, then south, then westerly, onto the Guerneville map, across a secondary highway, hard surface road (known locally as Westside Road), and continues westerly, then northwesterly to the point at which it crosses Felta Creek. (Guerneville map)

(19) The boundary follows Felta Creek approximately 18,000 ft. westerly to its headwaters, at the confluence of three springs, located approximately 5,800 feet northwesterly of Wild Hog Hill. (Guerneville map)

(20) The boundary proceeds in a straight line southwesterly to the southwest corner of section 9, Township 8 North, Range 10 West. (Guerneville map)

(21) The boundary proceeds in a straight line southwesterly to the point in, section 24, Township 8 North, Range 11 West, at which Hulbert Creek crosses the 160 ft. contour line. (Cazadero map)

(22) The boundary follows Hulbert Creek southerly to its confluence with the Russian River.

(23) The boundary follows the Russian River southwesterly to its confluence with Austin Creek.

(24) From this point, the boundary proceeds in a straight line northwesterly to the peak of Pole Mountain.

(25) From the peak of Pole Mountain, the boundary proceeds in a straight line northwesterly to the peak of Big Oat Mountain.

(26) From the peak of Big Oat Mountain, the boundary proceeds in a straight line northwesterly to the peak of Oak Mountain.

(27) From the peak of Oak Mountain, the boundary proceeds in a straight line northwesterly approximately 14.5 miles to the Sonoma County-Mendocino County line at the northeast corner of section 25, Township 11 North, Range 14 West.

(28) The boundary follows the Sonoma County-Mendocino County line west, then southwesterly to the beginning point

Approved: October 16, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-24103 Filed 10-23-86; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3099-1]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval rulemaking.

SUMMARY: Today's proposed rulemaking pertains to rules developed by Indiana to satisfy the Clean Air Act's (ACT) Reasonably Available Control Technology (RACT) requirements for

Stage I Gasoline Dispensing Regulations. USEPA's proposed approval of this action is based upon a revision which was submitted by the State to satisfy the requirements of Part D of the ACT.

DATE: Comments on this revision and on the proposed USEPA action must be received by November 24, 1986.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206

Comments on this proposed rule should be addressed to: (Please submit an original and three copies, if possible.)

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

FOR FURTHER INFORMATION CONTACT:

Uylaine E. McHahan, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031

SUPPLEMENTARY INFORMATION:

Part I

Background

Under section 107 of the Clean Air Act, USEPA has designated certain areas in Indiana as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. See 43 FR 8962 (March 3, 1978), and 43 FR 45993 (October 5, 1978). Part D of the ACT requires the State to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the ozone NAAQS as expeditiously as practicable, but not later than December 31, 1982 (in certain cases by December 31, 1987). The requirements for an approvable SIP are described in a General Preamble for Part D Rulemaking published on April 4, 1979 (44 FR 20372), and at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

An adequate SIP for ozone is one that includes sufficient control of VOC emissions for stationary and mobile sources to provide for attainment of the ozone standard. For stationary sources, the plan must include, at a minimum, legally enforceable requirements reflecting the application of RACT for those sources for which USEPA has published Control Technique Guidelines (CTGs).[1] In general, where the State regulations are not supported by the information in the CTGs, the State must provide a demonstration that its regulations represent RACT or amend the regulations to be consistent with the information in the CTGs.

In response to the requirements of Part D of the Act, the State of Indiana revised its SIP to require control of VOC emissions from the stationary industrial sources addressed in USEPA's Group I CTGs. On February 11, 1980, the State submitted to USEPA a revision to the ozone portion of its SIP for the Group I sources of VOC emissions. USEPA took final action to conditionally approve the Group I sources' regulations on October 27, 1982 (47 FR 47552).[2]

On Novenber 25, 1980, the State submitted to USEPA as a revision to its ozone SIP, amendments to its VOC regulation, now codified as 325 IAC Article 8 [3], which controlled VOC emissions from the Group II sources. USEPA took final action to conditionally approve this revision on January 18, 1983 (48 FR 2124). Both of the conditional approvals were based upon a commitment from the State to correct deficiencies in the regulation.

In response to these conditional approvals, on November 7, 1984, Indiana promulgated revised VOC regulations 325 IAC 8–1.1, 8–2, 8–3, 8–4, and 8–5. The State submitted these revisions to USEPA on July 3, 1984, and January 30, 1985, to satisfy certain conditions of USEPA's approval. In addition, the applicability of the regulations was extended to cover St. Joseph and Elkhart Counties. On February 10, 1986 (51 FR 4912), USEPA approved Indiana's revised VOC RACT I and II regulations and the St. Joseph and Elkhart Counties RACT regulations, leaving two RACT deficiencies for future rulemaking.

[1] CTGs published before January 1, 1978, are referred to as "Group I CTGs" and pertain to "Group I Sources", and CTGs published between January 1, 1978, and January 1, 1979, are "Group II CTGs" and pertain to "Group II Sources".

[2] For more detail on conditional approvals, see 44 FR 38583 (July 2, 1979), and 44 FR 38583 (November 23, 1979).

[3] On October 6, 1980, the State resubmitted 1980 APC 15, recodified as 325 IAC Article 8. USEPA approved the State's recodification, but not the underlying regulations, on July 16, 1982 (47 FR 30972). On January 18, 1983, when USEPA codified its conditional approval of the RACT II regulations, it additionally revised the codification of the conditions of its October 27, 1982, approval of the RACT I regulation, 1980 APC 15, to reflect Indiana's recodification of that regulation to 325 IAC Article 8.

Today's proposal concerns one of the remaining outstanding conditional approval items, which pertain to Stage I vapor control recovery systems at gasoline dispensing facilities. This condition was set forth in the October 27, 1985, **Federal Register** and was later cited in February 10, 1986, **Federal Register.** This condition was codified at 40 CFR 52.777(c)(1)(i) and reads as follows:

(c) * * * The plan for stationary source volatile organic compound control must contain the following:

(i) For regulation 325 IAC 8–4, Petroleum Sources, the State must conduct a study to demonstrate that the 20,000 gallons per month throughput exemption meets RACT requirements and submit the results to USEPA within 6 months of the effective date of final categories. If the demonstrated emissions resulting from the State's exemption are not essentially equivalent to those resulting from the RACT requirements, then the State must submit to USEPA a rule which requires control of emissions from storage tanks at gasoline dispensing facilities with either 10,000 gallons per month or more throughput or 2,000 gallons capacity.

In response to this condition, Indiana chose to lower the throughput exemption to 10,000 gallons per month. The Indiana Air Pollution Control Board (Board) submitted revised rules incorporating this change to USEPA on January 23, 1986. This submittal consisted of revised Rule 325 IAC 8–4–6 (requirements for gasoline dispensing facilities Stage I vapor recovery systems) and revised Rule 8–1.1–3, which includes subsections (f), (g), and (h) (compliance date extensions for gasoline dispensing facilities). Today USEPA is proposing to approve Indiana's revised rules. These revised rules are discussed in Part II of this notice.

Part II

Description of the Revisions and USEPA's Evaluation of Them

To lower the throughput exemption to 10,000 gallons per month, Rule 325 IAC 8–4–6, Gasoline Dispensing Facilities, was revised as follows:

Section 6(a)—This applies to all gasoline dispensing facilities including service stations, filled by transports with a monthly throughput of at least 10,000 gallons and does not apply to those filled by tank wagons.

Section 6(b), which describes the controls required for such gasoline dispensing facilities, was not changed

This rule was amended to reflect the minimum throughput of 10,000 gallons per month for gasoline dispensing facilities that would be subject to the RACT regulations. The amendment of

this rule changes it such that it conforms with USEPA's CTG and, thus, satisfies one of the requirements of the conditional approval of the Part D Plan for ozone in Indiana (51 FR 4913). USEPA is proposing to approve the revised Rule 325 IAC 8–4–6.

The State also revised the compliance schedule portion of its rule such that a reasonable time was given for sources between 10,000 and 20,000 gallons per month to come into compliance. To do this, Rule 325 IAC 8–1.1–3 (f) and (g) were revised and new paragraph (h) was added as follows:

(f) All sources located in Clark, Floyd, Lake, Marion, Hendricks, and Porter counties with a monthly throughput of 20,000 gallons or greater and not meeting the requirements of 325 IAC 8–4–6 (Gasoline Dispensing Facilities) shall achieve compliance as expeditiously as practicable but not later than in the compliance schedule listed in subsection (a) of this section for those sources in operation prior to January 1, 1980.

The final compliance date in subsection (a) was December 31, 1982, for gasoline dispensing facilities with a monthly throughput of 20,000 gallons or greater.

This rule is essentially identical with the rule USEPA conditionally approved for gasoline dispensing facilities on October 27, 1982. USEPA is, therefore, proposing approval of this subsection of the rule.

(g) All sources located in Elkhart and St. Joseph counties with a monthly throughput of 20,000 gallons per or greater and not meeting the requirements of 325 IAC 8–4–6 (Gasoline Dispensing Facilities) shall achieve compliance as expeditiously as practicable but not later than the compliance schedule listed in subsection (c) of this section.

Subsection (c) requires that 20,000 gallons per month throughput or greater gasoline dispensing facilities in St. Joseph and Elkhart counties be in compliance with VOC RACT regulation no later than December 31, 1986. This compliance schedule was conditionally approved by USEPA on February 10, 1986 (51 FR 4913). Therefore, this restatement of the previous rule is also being proposed for approval.

(h) All sources located in Clark, Elkhart, Floyd, Hendricks, Lake, Marion, Porter, and St. Joseph counties which were in operation prior to January 1, 1980, and have a monthly throughput between 10,000 and 20,000 gallons; and all new sources (as of January 1, 1980) with a monthly throughput of 10,000 gallons or greater located anywhere in the State and not meeting the requirements of 325 IAC–8–4–6 (Gasoline Dispensing Facilities) shall achieve compliance as expeditiously as practicable but not later than indicated in the following compliance schedule.

(1) Submittal of plans and specifications to the Board by June 30, 1986.

(2) Contracts for emission control system or process modification awarded or purchase orders issued by August 31, 1986.

(3) Initiation of on-site construction or installation by October 31, 1986.

(4) Completion of on-site construction or installation by September 30, 1987.

(5) Demonstration of final compliance by December 31, 1987.

USEPA's Evaluation

USEPA is proposing to approve this subsection for the following reasons: (1) It requires an expeditious compliance schedule for sources with throughputs from 10,000 gallons per month to 20,000 gallons per month; (2) the compliance schedule is generally consistent with the amount of time that sources have been given to comply with VOC RACT I and RACT II regulations.

USEPA is proposing to approve this subsection and revised Rule 325 IAC 8–1.1–3 as a whole.

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

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

Authority: 42 U.S.C. 7401–7642.

Dated: June 30, 1986.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 86–24059 Filed 10–23–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[SW–FRL–3099–4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to exclude the solid wastes generated at one facility from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at one particular facility from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated the petition which is discussed in today's notice. Based on our review at that time, this petitioner was granted a temporary exclusion. Due to changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, this petition for which we propose to grant an exclusion has been evaluated both for the factors for which the wastes were originally listed, as well as all other factors and toxicants which might reasonably cause the wastes to be hazardous.

DATES: EPA will accept public comments on this proposed exclusion until November 3, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed exclusion by filing a request with Bruce R. Weddle, whose address appears below, by November 3, 1986. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments 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. Requests for a hearing should be addressed to Bruce R. 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. Communications should identify the regulatory docket number: "F–86–LPE–FFFFF".

The RCRA regulatory docket for this proposed rule is located at the 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 at (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 under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the 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 the waste does not exhibit any of the hazardous waste characteristics, as well as present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 260.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 6921(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to 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 waste, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to determine on a periodic basis whether these residues exhibit any of the hazardous waste characteristics.

Approach Used to Evaluate Delisting Petitions

The Agency first will evaluate the petition to determine whether the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (i.e., those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII hazardous constituents are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volume of raw materials used to the rate of waste generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose 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 waste generated. In this regard, the Agency has developed an analytical approach to the evaluation of wastes that are landfilled and land treated. See 50 FR 7882 (February 26, 1985), 50 FR 48886 (November 27, 1985), and 50 FR 48943 (November 27, 1985). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby hypothetical receptor wells—the "compliance point" (*i.e.*, the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at

the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.[1]

This approach evaluates the petitioned wastes by assuming reasonable worst-case land disposal scenarios. This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous.[2] The Agency believes this to be a reasonable outcome since a larger quantity of the waste (and the toxicants in the waste) might not be diluted sufficiently to result in compliance point concentrations that are less than the level of regulatory concern. The selected approach predicts that the larger the waste volume, the higher the level of toxicants at the compliance point. The mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (i.e., any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than the level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

The Agency is using this approach as one factor in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating wastes proposed for exclusion in today's publication. As a result of this evaluation, the Agency is proposing to grant the petition discussed in this notice.

It should be noted that EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavit submitted with each petition bind the petitioners to present truthful and accurate results. The Agency, however, has initiated a spot sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The Amendments specifically require the Agency to provide notice and an opportunity for comment before granting a final exclusion. Thus, a final exclusion will not be granted for the petition proposed today until all public comments (including those at requested hearings, if any) are addressed.

Petitioners

The proposed exclusion published today involves the following petitioner: Lederle Laboratories, Pearl River, New York.

Lederle Laboratories

A. Petition for Exclusion

Lederle Laboratories (Lederle), a Division of the American Cyanamid Company, located in Pearl River, New York, produces vitamins, antibiotics, and other pharmaceuticals. Lederle has petitioned the Agency to exclude its filter press sludge and composted sludge,[3] presently listed as EPA Hazardous Waste No. F003—The following spent non-halogenated solvents: xylene, acetone, ethyl acetate, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) or one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these solvents and spent solvent mixtures; and EPA Hazardous Waste No. F005—The following spent non-halogenated solvents: toluene and pyridine; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, and F004; and still bottoms from the recovery of these solvents and spent solvent mixtures.

Lederle originally submitted their petition on March 27, 1981. Based on the Agency's review of their petition, Lederle was granted a temporary exclusion on November 22, 1982 (see 47 FR 52677).[4] The Agency granted the exclusion (at that time) on the basis that the treatment sludge did not exhibit the characteristic of ignitability and the total concentration of hazardous organic chemical products in the treatment sludge was low.[5,6] Since that time, 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 factors are present and 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 Lederle'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) determine if the waste is non-hazardous with respect to factors and toxicants other than those for which the waste was originally listed. Today's notice is the Agency's re-evaluation of Lederle's petition.

In support of their petition, Lederle has submitted a detailed description of its wastewater treatment process (including schematic diagrams) and analytical results of the filter press sludge. In addition, EPA conducted a spot check sampling visit in December

[1] The Agency recently proposed a similar approach, including a ground water transport model, as part of the land disposal restrictions rule (see 51 FR 1602, January 14, 1986). The Agency, however, has not completed its evaluation of the comments on this proposal. If a regulation is promulgated, using the ground water transport model, the Agency will consider revising the delisting analysis at that time.

[2] Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot check verification data.

[3] Lederle petitioned the Agency to exclude the filter press sludge, composted sludge, and wastewater influent at its Pearl River, New York facility. This notice discusses the Agency's re-evaluation of the petition for the filter press sludge and composted sludge. Lederle has withdrawn their request for an exclusion of the wastewater influent.

[4] Lederle was granted a temporary exclusion for their filter press sludge and wastewater influent. Lederle has, however, withdrawn their request for an exclusion for the wastewater influent.

[5] The following commercial chemical products are discharged into the facility's wastewater treatment system: acetone, acetonitrile, acetyl chloride, acrylamide, aniline, benzene, benzene sulfonyl chloride, benzidine, n-butyl alcohol, chloroform, cresols, cyclohexane, cyclohexanone, cyclophosphamide, di-n-butyl phthalate, 1,1-dichloroethane, 1,2-dichloroethane, dimethylamine, 1,1-dimethyl hydrazine, 1,2-dimethyl hydrazine, 1,4-dioxane, dipropylamine, ethyl acetate, ethylene oxide, ethyl ether, formic acid, furan, hexachlorophene, hydrazine, hydrofluoric acid, iodomethane, isobutyl alcohol, lead acetate, maleic anhydride, methanol, methylene chloride, methyl ethyl ketone, methyl isobutyl ketone, naphthalene, 1,4-naphthoquinone, 1-naphthylamine, 2-naphthylamine, nitrobenzene, 4-nitrophenol, pentachlorobenzene, phenol, pyridine, reserpine, resorcinol, saccharin, selenious acid, streptozotocin, tetrachloromethane, tetrahydrofuran, thiourea, toluene, 1,1,1-trichloroethane, trypan blue, and xylene.

[6] The commercial chemical product portion of Lederle's waste probably could be excluded by the November 17, 1981 amendment to the mixture rule (see 40 CFR 261.3(a)(2)(iv)(E)); however, Lederle or EPA could not determine the actual daily influent wastewater contribution. This portion of the petition was therefore processed for exclusion under 40 CFR 260.22.

1983. Lederle (and EPA) reported ignitability test results of the filter press sludge; total constituent analyses, and EP toxicity and Oily Waste EP (OWEP) test results of the filter press sludge for the EP toxic metals and nickel; analytical results for total cyanide; results from total oil and grease analyses of the filter press sludge; and results from and organic analyses of the filter press sludge for the organic priority pollutants and selected organics. Lederle (and EPA) also reported total constituent analysis, and EP toxicity and OWEP test results for the EP toxic metals and nickel; total cyanide test results; and results from oil and grease analyses for the composted sludge. Lederle further submitted an estimate of the quantities of hazardous materials, including still bottoms, spent solvents, and commercial chemical products, that are discharged to the wastewater treatment system. As noted above, the Agency requested much of this information to determine if toxicants, other than those for which the waste was listed, are present in the waste at levels of regulatory concern.

Lederle maintains a large pharmaceutical manufacturing and laboratory complex that produces antibiotics and vitamins. Lederle's Industrial Waste Treatment Plant (IWP) treats an average of 1.5 million gallons of influent per day, of which approximately 95 percent is non-hazardous wastewater, 4.5 percent is listed hazardous waste due to the presence of ignitable solvents, and 0.02 percent is listed hazardous waste due to the presence of toxic wastes (of which 99 percent are still bottoms from the combined recovery of methanol and toluene). Lederle claims that all still bottoms are analyzed prior to discharge to the IWP and those that contain more than 5 percent solvent are re-distilled. Still bottoms discharged to the IWP are primarily water. Lederle also claims that ethyl benzene and carbon disulfide are not discharged to the IWP and that the major use of 1,1,1-trichloroethane is as a carrier in a coating process, from which it could not be discharged as a pure product. Lederle also claims that the following constituents are discharged to the IWP not in pure form, but primarily as a result of *"de minimus"* losses (exempt from regulation by an exemption to the mixture rule—40 CFR 261.3(a) (2)(iv)): acetonitrile, benzene, chloroform, ethylene oxide, formaldehyde, methylene chloride, reserpine, saccharin, and 1,1,1-trichloroethane. Lederle claims that all of the commercial chemical products are used in conducting research and are more likely to be discharged to the IWP as a result of equipment or bottle washings, or are modified or reacted in some way and therefore not discharged as the pure commercial chemical product identified by the hazardous waste listings. The IWP also may receive wastewater collected as a result of plant spills. Lederle claims, however, that such spills are infrequent and small, and that such a spill is discharged only if the material is biodegradable and innocuous to the wastewater treatment system.

The spent solvents, distillation bottoms from solvent recovery, and commercial chemical products are fed into Lederle's IWP. Treatment of these influent waters consists of lime and polymer addition for pH control, flocculation, and primary clarification. The resulting sludge then is dewatered on a belt filter press. This sludge is referred to as the primary filter press sludge. Effluent from primary treatment is processed through a high-purity oxygen activated sludge waste treatment operation (Union Carbide Unox System) to secondary clarifier units. Treatment sludge is thickened and dewatered on a belt filter press to approximately 20 to 25 percent solids. This sludge is referred to as the secondary filter press sludge. The liquid effluent is sent to a publicly owned treatment works (POTW) in Orangeburg, New York. Lederle composts their primary and secondary filter press sludges on site with leaves using the windrow method.[7] After 28 days, finished composted sludge is distributed to various people and groups for use as a soil conditioner. Lederle claims to generate a maximum of 20,640 cubic yards of filter press sludge per year. The volume of the finished composted sludge is also approximately 20,640 cubic yards. Lederle claims that its filter press sludge and composted sludge are non-hazardous because the constituents of concern are present in insignificant concentrations. Lederle also believes that the filter press sludge and composted sludge are not hazardous for any other reason.

The characterization of the filter press sludge was based on samples collected hourly from the sludge receiving box over a 4- to 6-hour period and composited. One composite filter press sample was collected in this manner in December 1981. This sample was analyzed for the priority pollutants, acetonitrile, ethyl acetate, ethyl ether, furan, methanol, methyl isobutyl ketone, pyridine, and toluene, and other organics. (Pyridine and toluene are listed constituents for EPA Hazardous Waste No. F005; the other organics may enter the IWP.) Lederle also provided EP leachate data for the EP toxic metals for a sample collected in June 1980. (Details regarding the collection of this sample were not provided.) Three additional composite samples were collected in August 1981 and analyzed for pyridine and toluene using more sensitive analytical techniques. These four samples also were subjected to ignitability testing. In July 1986, Lederle collected five samples from both the primary and secondary filter presses and analyzed these ten samples for pyridine concentrations.

Four composite composted sludge samples were collected in March 1985 from four separate compost windrows. Each windrow represents sludge generated at a different time period. Each composite consisted of two random sludge samples taken from each side of the windrow during dry weather. Four additional compost samples were collected in June 1986 and analyzed for pyridine concentrations. Lederle claims that filter press and composted sludge samples were taken so that the effects of routine disposal of F003 and F005 wastes could be observed. Lederle claims that the samples taken represent the variability that might be encountered as part of system operation. Lederle further claims that in order to ensure the continued beneficial re-use of the composted sludge, discharges to the IWP are controlled procedurally (*e.g.*, processes are operated in a consistent manner, and raw materials do not vary significantly).

In addition, during the Agency's spot check sampling visit in December 1983, grab samples of both the primary and secondary filter press sludge were collected from the belt filter press as the sludge fell into the receiving box. Time constraints did not allow for a random composite to be taken; therefore, these two samples were collected as authoritative grab samples. Three composite samples of the composted sludge also were collected. Each composite sample was composed of three subsamples collected randomly from the upper, middle, or lower third of the compost pile.

Lederle submitted results indicating that the filter press sludge is not ignitable. Ignitability tests that were run on four representative filter press samples using the Pensky-Martens

[7] In the windrow compost method, equal portions of sludge and leaves are mixed and placed into a long trench. The compost then is turned periodically with a bulldozer so that alternate sides of the compost trench are exposed to weathering. Lederle also adds lime to the compost.

closed cup tester indicated a flashpoint greater than 150°F for all samples. EP toxicity analyses of the one filter press sample revealed concentrations of the EP toxic metals presented in Table 1. A summary of the maximum total concentrations of the listed constituents for EPA Hazardous Waste No. F005 is presented in Table 2.

TABLE 1.—FILTER PRESS SLUDGE EP LEACHATE CONCENTRATIONS (mg/l)

Constituents	EP leachate analyses
Arsenic	0.006
Barium	7.0
Cadmium	<0.005
Chromium	<0.05
Lead	.019
Mercury	<0.0002
Selenium	.010
Silver	.01

<: Denotes concentrations below the detection limit.

TABLE 2.—MAXIMUM FILTER PRESS SLUDGE CONCENTRATIONS (ppm)

Listed constituents	Total constituent analyses
Pyridine	<5.0
Toluene	5.9

The filter press sludge samples collected by the Agency were analyzed for total and leachable concentrations of the OWEP metals, nickel, and cyanide.[8] Maximum filter press sludge concentrations are reported in Table 3.

TABLE 3.—FILTER PRESS SLUDGE CONCENTRATIONS

Constituents	Total constituent analyses (mg/kg)	OWEP analyses (mg/l)
Arsenic	<13	0.01
Barium	26	<2.7
Cadmium	<6	<0.006
Chromium	12	<0.05
Lead	<27	0.15
Mercury	0.96	0.002
Nickel	20	[1]<0.25
Selenium	<13	<0.03
Silver	<3	<0.01
Cyanide	<2.5	[2]0.22

<: Denotes concentrations below the detection limit.
[1] The leachate nickel data are from standard EP leachate analyses of the filter press sludge.
[2] Leachable cyanide tests were not required since cyanide is not used in the process and the total content was low. The maximum leachable cyanide concentration was determined based on the dilution inherent to the Oily Waste EP toxicity test which includes consideration of the volume of the oily fraction of the waste. (See the public docket for a discussion of this determination presented in a memorandum to M. Morse from D. Topping.)

The primary and secondary filter press sludges collected by the Agency were analyzed for the organic priority pollutants and other specific organic compounds. Table 4 summarizes the concentrations of organic constituents in the filter press sludge.[9]

TABLE 4. CONCENTRATIONS OF ORGANICS IN THE PRIMARY AND SECONDARY FILTER PRESS SLUDGES (ppm)

Constituents	Primary filter press sludge	Secondary filter press sludge
Benzene	<0.5	<0.5
Benzo(a)anthracene	<19	<2.5
Benzo(a)pyrene	<19	<2.5
3,4-Benzofluoranthene	<19	<2.5
Benzo(k)fluoranthene	<19	<2.5
Chrysene	<19	<2.5
Ethyl benzene	<2.5	<0.5
Methyl isobutyl ketone	7.3	1.4
Naphthalene	<19	<2.5
PCB-1242	<0.1	<0.1
PCB-1254 [1]	<0.1	<0.1
Phenol	11	<28
Tetrachloroethylene	<0.5	<0.5
Toluene	3.1	0.59
Xylenes	1.3	<0.5

<: Denotes concentration below detection limit.
[1] Using alternate PCB methodologies (Method 8080 using an alternate column and Method 680 from SW-846), EPA found that the original reported level of 0.15 ppm for PCB-1254 in the secondary filter press sludge, was a positive interference from non-PCB constituents.

Lederle submitted reactivity tests on four representative composted sludge samples. Maximum concentrations of total cyanide and sulfides were 2.5 and 17 ppm, respectively. Lederle also submitted the analysis results for pyridine from four representative composted sludge samples. The maximum pyridine concentration reported was <0.25 ppm. Total constituent and OWEP analyses for the EP toxic metals, nickel, and cyanide of the composted sludge collected during the Agency's spot check sampling visit revealed the maximum concentrations presented in Table 5. The maximum oil and grease level reported for the composted sludge was 20 percent.

TABLE 5.—MAXIMUM COMPOSTED SLUDGE CONCENTRATIONS

Constituents	Total constituent Analyses (mg/kg)	OWEP analyses (mg/l)
Arsenic	8.6	<0.02
Barium	38	<3.3
Cadmium	<3	<.012
Chromium	9.1	<.11
Lead	36	.20
Mercury	0.89	.002
Nickel	23	[1]<.25
Selenium	<5	<.06
Silver	<1	<.01
Cyanide	1.6	.08

[1] The leachable nickel data are from standard EP leachate analyses of the composted sludge.
[2] See footnote 2 for Table 3.

The Agency analyzed three composted sludge samples for the priority pollutants. Concentrations of organic constituents detected in the composted sludge are presented in Table 6.[10]

TABLE 6.—MAXIMUM CONCENTRATIONS OF ORGANICS DETECTED IN COMPOSTED SLUDGE (ppm)

Constituents	Total constituent analysis
Methyl isobutyl ketone	0.6
Carbon disulfide	.59
PCB-1242[1]	<.1
PCB-1254[1]	<.1

[1] Using alternate PCB methodologies (Method 8080 using an alternate column and Method 680 from SW-846), EPA found that the original reported levels of 0.2 and 0.17 ppm (for PCB 1242 and PCB 1254 respectively) were positive interferences from non-PCB constituents.

Using a mass balance demonstration, Lederle has estimated that the maximum combined influent concentration of pyridine, toluene and all constituents (listed in footnote 5) that are designated as toxic under 40 CFR 261.33f (except for 1,1,1-trichloroethane which is used as a carrier in a coating process) results in an estimated influent concentration (i.e., total toxicant concentration) of 26 ppm, assuming that the total annual volume of toxicants used is discharged on a single day.[11] Lederle has included in this calculation chemicals that have been used as intermediates, and carriers that have reacted in these processes and therefore are disposed as wastes that no longer are covered by the hazardous waste listings in 40 CFR 261.33.

[8] The Agency requests that the OWEP test be run for wastes containing greater than 1 percent oil and grease content. Oil and grease levels in the primary and secondary filter press sludges were 37 and 46 percent, respectively.

[9] Phthalates and isophorone compounds were detected in the sludge samples. Phthalate concentrations were determined by the Agency to be a result of procedural contamination (*i.e.*, phthalates were detected in the procedural blanks), whereas, isophorone concentrations are suspected to be an artifact formed during the extraction. (See "Artifact Formation in the Soxhlet Extraction of Environmental Samples with Acetone." Lafleur and Pangaro, Analytical Letters, 14(A19) 1613–1624 (1981). The presence of these constituents is also discussed later in this notice. The Agency's sampling and analysis report is available in the public docket.

[10] See footnote 7.

[11] Lederle's temporary exclusion (see 47 FR 52677) reported an estimated worst-case total toxicant concentration of 48 ppm. Lederle has re-surveyed and re-calculated this total concentration to obtain an estimated 26 ppm total toxicant concentration. (Lederle assumed that the total annual toxicant load of 149 kg/year was discharged on a single day and reported that their wastewater plant flow equaled 1.5 million gallons per day.)

B. Agency Analysis and Action

Lederle has demonstrated that its waste treatment system and composting process produces non-hazardous wastes. The Agency believes that the ten composite samples collected from the filter press and the nine composite composted sludge samples adequately represent any variation that may occur in the wastes.[12] The key factor that could vary the constituent concentration in the filter press and composted sludges would be the discharge of different raw materials to the IWP. The Agency believes that since samples from the filter press and compost windrows were collected in 1981, 1985, and 1986, the time period of sample collection was sufficient to cover any concentration variation that might occur in the sludge. The Agency believes, therefore, that the filter press and composted sludge samples are representative of the waste Lederle generated.

The hazardous constituents of concern for EPA Hazardous Waste No. F003 (listed for the characteristic of ignitability) that are used in the production process at Lederle and that enter the IWP as spent solvents or still bottoms from solvent recovery include: xylene, acetone, ethyl acetate, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol. Other ignitable constituents discharged to the IWP include: acetonitrile, aniline, benzene, cyclohexane, dimethylamine, dipropylamine, ethylene oxide, furan, isobutyl alcohol, methyl ethyl ketone, tetrahydrofuran, and xylene. Flashpoint tests run on the filter press sludge indicate that the flashpoints are greater than 150 °F. Section 261.21(a)(i) of the regulations considers solutions with flashpoints above 140 °F generally to be non-ignitable. The Agency therefore considers the concentrations of F003 and other constituents present in the filter press sludge, and similarly the resulting composted sludge, not to be of regulatory concern with respect to the characteristic of ignitability.

The Agency has evaluated the mobility of the EP toxic metals, nickel, and cyanide using the vertical and horizontal spread (VHS) model.[13] The VHS model generated compliance point values using the 20,640 cubic yards of filter press sludge per year maximum generation rate and the maximum reported extract levels as input parameters. Compliance point concentrations for the composted sludge were calculated using a volume of 20,640 cubic yards and the maximum reported extract levels. These compliance point concentrations are presented in Table 7. (When leachate concentrations were below the detection limits, the value of the detection limit was used.)

TABLE 7.—VHS MODEL: CALCULATED COMPLIANCE POINT CONCENTRATIONS (PPM)

Compliance point concentrations	Constituents		Regulatory standards
	Filter press sludge	Composted sludge	
Arsenic	0.0016	<0.003	0.05
Barium	<0.43	<0.52	1.0
Cadmium	<0.0009	<0.002	0.01
Chromium	<0.008	<0.017	0.05
Lead	0.024	0.032	0.05
Mercury	0.0003	0.0003	0.002
Nickel	<0.04	<0.04	0.35
Selenium	<0.005	<0.009	0.01
Silver	<0.0016	<0.0016	0.05
Cyanide	0.02	0.013	0.2

<: Denotes that the leachate concentration was below the detection limit.

The filter press sludge and composted sludge exhibited arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver levels (at the compliance point) below their respective National Interim Primary Drinking Water Standards; nickel levels below the Agency's interim health advisory;[14] and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.[15] The composted sludge's maximum sulfide and cyanide contents (17 and 2.5 ppm, respectively) are low enough to not be of regulatory concern from an air contamination route. That is, the Agency believes these levels to be sufficiently low so as to preclude the generation of hazardous levels of toxic gases. The presence of these toxicants at the reported levels, therefore, is not of regulatory concern.

The Agency also has evaluated the filter press sludge for the listed constituents of concern for EPA Hazardous Waste No. F005: toluene and pyridine; and other detected hazardous organics. (The VHS model analysis was not used to evaluate methyl isobutyl ketone levels detected in the filter press sludge, as this constituent is listed solely for its ignitability (not toxic) properties.) The VHS model generated compliance point values using the 20,640 cubic yards per year maximum generation rate and the maximum concentrations of organics predicted by the Agency's Organic Leachate Model (OLM).[16] Predicted leachate concentrations, compliance point concentrations, and regulatory standards are presented in Table 8.[17]

TABLE 8.—VHS MODEL: CALCULATED LEACHATE AND COMPLIANCE POINT CONCENTRATIONS FOR THE FILTER PRESS SLUDGE[3] (ppm)

Constituents	Predicted leachate concentration		Compliance point concentration		Regulatory standards
	[Baseline]	[95 percent]	[Baseline]	[95 percent]	
Phenol	0.765	1.075	0.12	0.170	3.5
Pyridine	[1]<1.089	[1]<1.668	[2]<.17	[2]0.26	0.07
Toluene	.073	.090	.012	.014	10
Xylenes	.0178	.0228	.003	.004	2

[1] Maximum concentration obtained from the Agency's sampling results.
[2] Exceeds regulatory standard.
[3] Initial PCB analyses using SW-846 Analytical Method 8080 showed false positive results.

The filter press sludge exhibited phenol, toluene, and xylene concentrations below their respective regulatory standards. The Agency initally believed PCB concentrations were detected in the filter press sludge, however, upon re-evaluation using SW-846 Analytical Method 8080 (with an alternate column) as well as confirmation by Method 680, the Agency has determined that the initial findings of Method 8080 were positive interferences from other non-PCB

[12] The two grab samples of the filter press sludge and the three composite samples of the composted sludge collected by the Agency confirm that Lederle's sampling was representative of the waste.

[13] See 50 FR 7882, Appendix I, February 26, 1985, for a detailed explanation of the development of the VHS model for use in the delisting program. See also the final version of the VHS model, 50 FR 48896, Appendix, November 27, 1985.

[14] See 50 FR 20247 (May 15, 1985) for a description of the development of the Agency's interim standard for nickel. To date, the Agency has collected enough statistically defensible data from its ongoing nickel toxicity study to indicate that the interim standard of 350 ppb will decrease.

[15] Drinking Water Standards, U.S. Public Health Service Publication 956, 1962 (0.2 ppm).

[16] For a discussion of the Agency's proposed organic leachate model (OLM), see 50 FR 48944, November 27, 1985. See 51 FR 27061, Notice of Data Availability and Request for Comment, July 29, 1986, for a discussion of the revised OLM.

[17] For the VHS model evaluation of the filter press sludge, the Agency used the maximum reported organic concentration of the primary *or* secondary filter press sludge sample as input parameters. The Agency believes that, since the primary and secondary filter press sludges are mixed prior to composting, the maximum reported organic concentration (for either sample) would represent the worst case.

constituents. These constituents, therefore, are not of regulatory concern. Lederle, in their original petition, reported pyridine levels in the filter press sludge that were of concern to the Agency (*i.e.*, maximum value equal to 2.45 ppm). Lederle claims that spent solvent from operations using pyridine at one time were discharged to the IWP and therefore could have resulted in the pyridine levels observed in the original sludge data. Lederle has since altered their treatment of spent solvents and all process wastewaters (including equipment wastes), however, and these wastes no longer are discharged to the IWP, but are sent off site for incineration. Recent analyses reported after these changes indicate that pyridine is not detected and, therefore, is not of regulatory concern.[18]

The Agency also has evaluated the composted sludge for the listed constituents of concern for EPA Hazardous Waste No. F005: toluene and pyridine; and other detected hazardous organics. (Again, VHS model analysis was not used to evaluate methyl isobutyl ketone levels detected in the composted sludge, as this constituent is listed solely for its ignitability (not toxic) properties.)

The VHS model generated compliance point concentrations using a volume of 20,640 cubic yards and the maximum reported concentrations of organics predicted by the Agency's OLM. Predicted organic leachate concentrations, compliance point concentrations, and regulatory standards are presented in Table 9.

TABLE 9.—VHS MODEL: CALCULATED LEACHATE AND COMPLIANCE POINT CONCENTRATIONS FOR THE COMPOSTED SLUDGE (PPM)

Constituents	Predicted leachate concentrations		Compliance point concentrations		Regulatory standards
	[Base]	[95 percent]	[Base]	[95 percent]	
Carbon disulfide	0.029	0.039	0.004	0.005	3.5
Pyridine	0.143	0.229	0.02	0.036	0.07
Toluene [1]	0.073	0.090	0.012	0.014	10

[1] Lederle did not submit information on toluene concentrations in the composted sludge. Since the composted sludge consists of filter press sludge and leaves, the Agency believes that toluene concentrations in the composted sludge are equal to or lower than toluene concentrations in the filter press sludge. The Agency has used the filter press sludge toluene concentration (*i.e.*, 5.9 ppm) to evaluate composted sludge levels.

The composted sludge exhibited carbon disulfide, pyridine, and toluene concentrations below their respective regulatory standards. These constituents, therefore, are not of regulatory concern.

The Agency further notes that phthalate levels detected in the filter press and compost sludges, when subjected to the VHS model analyses, did not exceed their respective regulatory standards. In addition, the following commercial chemical products were not detected during analyses of the filter press sludge and composted sludge for the organic priority pollutants benzene, benzidine, 1,1-dichloroethane, 1,2-dichloroethane, chloroform, naphthalene, 4-nitrophenol, tetrachloromethane, and 1,1,1-trichloroethane. Where hazardous constituents in a waste are determined to be non-detectable using appropriate analytical methods, the Agency will not, as a matter of policy, regulate the waste as hazardous. These constituents, therefore, are not of regulatory concern. In addition, Lederle has submitted mass balance information regarding the commercial chemical products that enter the IWP to support their claim that hazardous constituents, if present in the waste, would be present in the wastes in low concentrations.

The Agency has evaluated the data Lederle submitted with respect to the remaining hazardous commercial chemical products that were discharged to the IWP. The Agency has estimated that the maximum combined concentration of all carcinogenic chemicals discharged to the IWP to be less than 1 ppm. Lederle has estimated that the maximum total toxicant concentration discharged to the IWP is 26 ppm, assuming that the total annual volume of toxicants are discharged on a single day. The Agency believes that this is an overly conservative estimate; the actual daily influent concentrations will almost certainly be much lower because Lederle has included in this calculation chemicals that have been used as intermediates, carriers that have reacted in these processes, and constituents that have been listed solely for the characteristic of ignitability. Furthermore, this estimate is based on the premise that the total *annual* volume of toxicants will be discharged on a *single* day.

Based upon the constituents and factors evaluated (including Lederle's mass balance demonstration), the Agency believes that. Lederle has demonstrated that the filter press sludge and compost sludge generated at their facility is non-hazardous and, as such, should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Lederle Laboratories, located in Pearl River, New York, for its waste, as described in the petition. (The Agency notes that the exclusion remains in effect unless the waste varies from that originally described in the petition, (*e.g.*, the waste is altered as a result of changes in the manufacturing or treatment processes).[19] In addition, generators still are obligated to determine whether these wastes exhibit any of the characteristics of hazardous waste.)

II. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here since this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense which would be imposed on the petitioner by an effective date six months after promulgation and the fact that such a deadline is not necessary to achieve the purpose of section 3010, we believe that this rule should be effective

[18] The Agency notes that pyridine concentrations reported in Lederle's initial filter press sludge samples in the original petition were determined using SW-846 methods, resulting in non-detect levels at a detection limit less than 10 ppm. These same samples were reanalyzed using a more sensitive technique based on selected ion monitoring and one of three samples showed a detect at a concentration of 2.45 ppm. Fourteen additional samples were analyzed in June of 1986 using EPA's approved methodology at EPA's contracting laboratory. Pyridine was not detected above 0.25 ppm for the four compost sludge samples. Using this detection level in the OLM/VHS model analysis generated a compliance point concentration that does not exceed the regulatory standard for pyridine. For the ten filter press sludge samples collected, pyridine concentrations were less than 5 ppm. The Agency notes that, due to the oily waste matrix of the filter press sludge, the observed detection limit for the filter press sludge analyses is greater than the detection limit from the compost sludge analyses. The detection limit of 5 ppm for pyridine would generate a compliance point concentration above the regulatory standard. The Agency has stated in previous notices that where hazardous constituents in a waste are determined to be non-detectable using appropriate analytical methods, the Agency will, as a matter of policy, not regulate the waste as hazardous. The Agency is not indicating that these detection limits are appropriate minimum limits for all petitioners. These will be determined on a case-by-case basis and will depend on the waste matrix. The Agency believes that since Lederle has changed their pyridine disposal practices (*i.e.*, pyridine wastes are no longer discharged to the IWP) and used appropriate analytical methods to determine pyridine concentrations in the wastes, that pyridine levels are not of regulatory concern.

[19] The current exclusion applies only to the processes covered by the original demonstration. A facility may file a new petition if it alters its process. Should such a change occur, the facility must treat its waste as hazardous until a new exclusion is granted.

immediately. These reasons also provide a basis for making this rule effective immediately under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

III. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding wastes generated at specific facilities from EPA's list of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Authority: Sec. 3001 RCRA, 42 U.S.C. 6921.

Dated: October 15, 1986.

Jeffery D. Denit,

Acting Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix IX, add the following wastestreams in alphabetical order to table 1:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Lederle Laboratories.	Pearl River, New York.	Spent non-halogenated solvents and still bottoms (EPA Hazardous Waste Nos. F003 and F005) generated from the recovery of the following solvents: xylene, acetone, ethyl acetate, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, methanol, toluene, and pyridine. Exclusion applies to primary and secondary filter press sludges and compost soils generated from these sludges.

[FR Doc. 86–24055 Filed 10–23–86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-3100-6]

Hazardous Waste; Availability of Justifications for Denying Petitions

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and request for comment.

SUMMARY: Today's notice announces the availability of individual justifications for denying the petitions submitted by Rock Island Refinery Corporation, Indianapolis, Indiana, and Sun Oil Company, Yabucoa, Puerto Rico as incomplete petitions. The proposed denials for these two facilities were published in 50 FR 47763–65, November 20, 1985, and 50 FR 2526–28, January 17, 1986. These justifications are available in the public docket for comment. Included as a part of these petition-specific justifications is the Agency's basis for compiling the list of constituents requested to be analyzed for petroleum refinery waste petitioners. The Agency has requested that petroleum refineries submit total concentration data for these additional hazardous constituents as a part of their delisting petitions. The Agency requests public comment on this justification as it applies to Rock Island's and Sun Oil's facilities. The Agency will address comments on this list constituents on a case-by-case (*i.e.*, petition-specific) basis due to variability of production processes at different refineries.

DATES: EPA will accept public comments on this information until October 31, 1986. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this notice as it relates to the constituent-specific data required by the Agency or the justifications for denial. The request should be filed with Bruce Weddle, whose address appears below, by October 31, 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), 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variance Section, Assistance Branch, PSPD/OSW (WH–563), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this docket number: "F–86–ORJN–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 public docket where this information can be viewed is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (sub-basement), Washington, DC 20460. The docket is open 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 at (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 $0.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9346, or at (202) 382–3000. For technical information, contact Ms. 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: The Agency has proposed to deny exclusions for Rock Island Refinery Corporation and Sun Oil Company, Yabucoa, Puerto Rico on the basis of insufficient information to support their petitions, under 40 CFR 260.20 and 260.22 (see 50 FR 47763–65, 51 FR 2526–28 and regulatory docket numbers "Section 3001—Delisting Petitions (6) and (7))". Separate justifications for each denial outline the information which has not been received in response to Agency requests and are filed in the public

docket. A section of these justifications (in the docket) includes the rationale behind the compilation of a list of hazardous inorganic and organic constituents suspected in refinery wastes. This list was one of several pieces of information requested of petroleum refining petitioners under the Hazardous Waste Amendments of 1984. In January, 1984, the Agency began informing petroleum refineries of the impending reauthorization of the Resource Conservation and Recovery Act. In addition, the Agency outlined additional analytical data likely to be required. This information included a list of potentially hazardous inorganic and organic constituents suspected in refinery wastes for which analytical (total content) data was requested. The list has since been revised and more recent requests have been sent to petitioners. The Agency is requesting comments on this list of constituents with respect to these two petitioners. The Agency will continue to accept comments on this list of constituents on a case-by-case basis for other refinery petition decisions due to variability of production processes that may occur at different facilities.

Dated: October 21, 1986.

Bruce Weddle,

Director, Permits and State Programs Division.

[FR Doc. 86-24198 Filed 10-23-86; 8:45 am]

BILLING CODE 6560-50-M

Notices

Federal Register
Vol. 51, No. 206
Friday, October 24, 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

The Statewide central filing system of Utah is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by L. D. Muir, Director, Division of Corporations and Commercial Code, Utah Department of Business Regulation, for farm products produced in that State as follows:

Berries
- Raspberries
- Strawberries

Citrus Fruits
- Grapefruit
- Lemons
- Limes
- Oranges
- Tangelos
- Tangerines

Farm Cotton
- Cotton

Farm Dairy Products
- Milk

Feed Crops
- Barley
- Corn (field)
- Hay
- Oats
- Sorghum grain
- Wheat (feed)

Food Grains
- Rice
- Rye
- Wheat (food)

Forest Products
- Trees

Farm Products
- Fish
- Shell fish

Fruits
- Apples
- Apricots
- Avocados
- Bananas
- Cherries
- Coffee
- Dates
- Figs
- Grapes & raisins
- Nectarines
- Olives
- Papayas
- Peaches
- Pears
- Persimmons
- Pineapples
- Plums & prunes
- Pomegranates

Greenhouse and Nursery Products
- Flowers
- Shrubbery

Livestock
- Cattle & calves
- Dairy cattle
- Goats
- Horses
- Hogs
- Mules
- Sheep & lambs

Misc. Crops
- Hops
- Mint
- Mushrooms
- Popcorn

Melons
- Cantaloupe
- Crenshaw
- Honeydew
- Watermelon

Misc. Livestock
- Mohair
- Wool

Oil Crops
- Flaxseed
- Peanuts
- Soybeans
- Sunflower seeds

Poultry & Poultry Products
- Chickens
- Ducks
- Eggs
- Geese
- Pheasants
- Turkeys

Sugar Crops
- Bees wax
- Honey
- Maple syrup
- Sugar beets
- Sugar cane

Seed Crops
- Grass seeds
- Legume seeds

Farm Tobacco
- Tobacco

Truck Crops
- Artichokes
- Asparagus
- Beans (lima)
- Beans (snap)
- Beets
- Brussels sprouts
- Broccoli
- Cabbage
- Carrots
- Cauliflower
- Celery
- Corn (sweet)
- Cucumbers
- Eggplant
- Escarole
- Garlic
- Lettuce
- Onions
- Peas (green)
- Peppers
- Radishes
- Spinach
- Squash
- Tomatoes

Tree Nuts
- Almonds
- Pistachio
- Walnuts

Vegetables
- Beans (dry)
- Peas (dry)
- Potatoes
- Sweet potatoes
- Taro

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: October 21, 1986.

B. H. (Bill) Jones,

Administrator, Packers and Stockyards Administration.

[FR Doc. 86-24108 Filed 10-23-86; 8:45 am]

BILLING CODE 3410-KD-M

DEPARTMENT OF COMMERCE

Office of the Secretary

Presidential Board of Advisors on Private Sector Initiatives; Open Meeting

AGENCY: Office of the Secretary, Office of the General Counsel and Office of Business Liaison, Commerce.

SUMMARY: The Presidential Board of Advisors on Private Sector Initiatives will hold a meeting on November 6,

1986. Committee meetings will also be held on this date. Public comment is welcome.

Time and Place

Presidential Board of Advisors on Private Sector Initiatives.

Thursday, November 6, 1986, 3:45–4:30 p.m., at the Willard Intercontinental Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Committee Meetings

Thursday, November 6, 1986, 2:15–3:30 p.m. at the Willard Intercontinental Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: The Committee Control Officer, Mr. Robert H. Brumley, Deputy General Counsel, U.S. Department of Commerce, (202/377–4772) or the Alternate Control Officer, Nancy J. Olson, Director, Office of Business Liaison, U.S. Department of Commerce, (202/377–3942), Main Commerce Building, Washington, DC 20230.

Dated: October 21, 1986.

Robert H. Brumley,

Deputy General Counsel.

[FR Doc. 86–24167 Filed 10–22–86; 3:09 pm]

BILLING CODE 3510-BW-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: October 24, 1986.

FOR FURTHER INFORMATION CONTACT: William L. Matthews or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–5253/2786.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a(a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements.

Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews no later than October 31, 1987.

	Periods to be reviewed
Antidumping Duty Proceedings and Firms	
Carbon steel bars and structural shapes from Canada:	
Western Canada Steel	9/85–6/86
Replacement parts for self propelled bituminous paving equipment from Canada:	
Fortress Allatt	9/85–8/86
General Construction	9/85–8/86
National Paver Parts	9/85–8/86
Parker Hannifin	9/85–8/86
Sheet piling from Canada: Acier Casteel	9/85–8/86
Steel Jacks from Canada: J.C. Hallman	9/85–8/86
Kraft Condenser Paper from Finland: Tervakoski	9/85–8/86
Woodwind pads for musical instruments from Italy: Pisoni	9/85–8/86
Countervailing Duty Proceedings	
Portland Hydraulic Cement and Cement Clinker from Mexico	1/85–12/85
Lamb Meat from New Zealand	6/25/85–3/31/86
Carbon Steel Wire Rod from Argentina	1/83–12/85

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and §§ 353.53a(c) and 355.10(c) of the Commerce Regulations (19 CFR 353.53a(c), 355.10(c); 50 FR 32556, August 13, 1985).

Dated: October 17, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86–24121 Filed 10–23–86; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-602]

Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil; Final Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain carbon steel butt-weld pipe fittings from Brazil are being, or are likely to be, sold in the United Stats at less than fair value. The U.S. International Trade Commission (ITC) will determine, within 45 days of publication of this notice, whether these imports are materially injuring or are threatening material injury to, a United States industry.

EFFECTIVE DATE: October 24, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2613 or 377–1769.

SUPPLEMENTARY INFORMATION:

Final Determination:

We have determined that certain carbon steel butt-weld pipe fittings from Brazil are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The margin applicable to all exporters in 52.25 percent.

Case History

On February 24, 1986, we received a petiton in proper form filed by the U.S. Butt-Weld Fittings Committee, in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on March 17, 1986 (March 24, 1986, 51 FR 10069), and notified the ITC of our action.

On April 2, 1986, the ITC found that there is a reasonable indication that imports of certain carbon steel butt-weld pipe fittings from Brazil are materially injuring a U.S. industry (U.S. ITC Pub. No. 1834, April, 1986).

On April 24, 1986, we presented a questionnnaire to counsel for Conforja, S/A. (Conforja), the only Brazilian exporter of the subject merchandise to the United States. On June 17, 1986, we received a letter from Conforja

indicating that it did not intend to reply to the questionnaire.

We published a preliminary determination of sales at less than fair value on August 11, 1986 (51 FR 28733). Our notice of the preliminary determination provided interested parties with an opportunity to submit views orally or in writing. Accordingly, we held a public hearing on September 19, 1986.

Standing Issue

One U.S. producer, Tube Turns, Inc., opposes this investigation and maintains that the petition was not filed "on behalf of" a U.S. industry, as is required by section 732(b)(1) of the Act.

As we have previously stated, *see e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10041 (March 24, 1986), neither the Act nor the Commerce regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where parties opposing an investigation provide a reasonable indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties do, in fact represent a major proportion of the industry. We determined that Tube Turns, the only member of the domestic industry to oppose the investigation, does not represent a major proportion of that industry.

Scope of Investigation

The product covered by this investigation are carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging. These advancements may include any one or more of the following: coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 610.8800 of the *Tariff Schedules of the United States Annotated (TSUSA)*.

The period of investigation for this case is September 1, 1985 through February 28, 1986.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. Because there was no response to our questionnaire, we used the United States price and foreign market value provided in the petition as the best information available pursuant to section 776(b) of the Act.

United States Price

Petitioner based United States price on the average customs unit values from Bureau of Census statistics of the subject merchandise imported from Brazil during the period January through October 1985.

Foreign Market Value

Petitioner based foreign market value on constructed value as defined in section 773(e) of the Act. The cost of materials and fabrication was calculated by petitioner based on United States manufacturing inputs and Brazilian values. To the sum of materials and fabrication cost, petitioner added the statutory minimums of 10 and 8 percent for general expenses and profit, respectively. Petitioner then added United States costs for packing.

Comments

Comment 1: Respondent and two importers, TSI Industries Incorporated (TSI) and Silbo Corporation (Silbo), argue that the Department should terminate the investigation because the petition lacks sufficient information concerning foreign market value and United States price upon which to base the initiation of an antidumping investigation.

DOC Response: We disagree. The information contained in the petition is consistent with the requirements of the Act and the Regulations.

Comment 2: Respondent, TSI, and Silbo argue that the Department should terminate the investigation for lack of standing, and, at a minimum, is required according to the CIT decision in *Gilmore Steel Corp.* v. *U.S., 585 F. Supp. 670 (1984) to conduct a thorough and meaningful standing investigation, because the petitioner failed to show that a majority of the domestic industry affirmatively supports the petition.*

DOC Response: We disagree. See the "Standing Issue" section of this notice.

Comment 3: Respondent, TSI, and Silbo argue that the Department should amend the definition of product scope to avoid circumvention of any antidumping duty order that may be issued as a result of this investigation.

DOC Response: Based on the respondent's comment and questions raised by the ITC and by the U.S. Customs Service, we have clarified the scope as reflected in the wording in the "Scope of Investigation" section of this notice by inserting the words "if forged" before the words "have been advanced after forging."

Continuation of Suspension of Liquidation

We are directing the United States Customs Service to continue to suspend liquidation of all entries of certain carbon steel butt-weld pipe fittings from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after August 11, 1986, the date of publication of the preliminary determination in the **Federal Register.** The United States Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The bond or cash deposit amount (shown below) established in our preliminary determination of August 11, 1986, remains in effect.

Manufacturer/producer/exporter	Weighted-average margin percentage
All Producers/Manufacturers/Exporters	52.25

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on certain carbon steel butt-weld fittings from Brazil entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the

amount by which the foreign market value exceeds the United States price.

This determination is being published pursuant to section 735(d) of the Act (19 U.S.C. 1763d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

October 20, 1986.

[FR Doc. 86-24118 Filed 10-23-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-605]

Certain Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Final Determination of Sales at Less Than Fair Value

AGENCY: International, Trade Administration, Import Administration Commerce.

ACTION: Notice.

SUMMARY: We have determined that certain carbon steel butt-weld pipe fittings (butt-weld pipe fittings) from Taiwan are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Taiwan that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: October 23, 1986.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp (202-377-1769), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value as provided in section 735 of the Tariff Act of 1930, as amended (19 U.S.C. 1673d) (the Act). The dumping margins range from 6.84 percent to 87.30 percent, and the weighted-average margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On February 24, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Fittings Committee, in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are causing material injury, or threaten material injury, to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We initiated the investigation on March 17, 1986 (51 FR 10069, March 24, 1986), and notified the ITC of our action.

On April 2, 1986, the ITC found that there is a reasonable indication that imports of butt-weld pipe fittings from Taiwan are materially injuring a U.S. industry (U.S. ITC Pub. No. 1834, April 1986).

We presented questionnaires to Rigid Industries (Rigid) on May 1, 1986, to Chup Hsin Enterprises (Chup Hsin) and Gei Bey Corporation (Gei Bey) on May 22, 1986, and to Chung Ming Pipe Fitting Manufacturing Company, Ltd. (C.M.) on May 24, 1986, since we had information indicating that they accounted for approximately 95 percent of the exports to the United States during the period of investigation. A response was received on June 13, 1986, from Rigid. Responses were received from C.M. on June 23, 1986, and June 27, 1986, following C.M.'s request for an approval of a two-week extension of the due date. C.M.'s initial response lacked sufficient detail in its product descriptions to permit proper product comparisons. In addition, many entries in the computer sales listings were unclear as to their meaning and the units in which they were denominated. Also, C.M. did not submit a proper non-proprietary summary on a timely basis. Gei Bey and Chup Hsin did not respond. On August 4, 1986, we issued an affirmative preliminary determination (51 FR 28735, August 11, 1986). C.M. submitted a revised response on August 7, 1986. On August 12, 1986, petitioner alleged that Rigid was selling butt-weld pipe fittings at less than the cost of production in the home market. We determined that there was not sufficient time remaining prior to the due date for our final determination in which to investigate the allegation.

Standing Issue

One U.S. Producer, Tube Turns, Inc., opposes this investigation and maintains that the petition was not filed "on behalf of" a U.S. industry, as required by section 732(b)(1) of the Act.

As we have previously stated, *see e.g., Final Affirmative Countervailing Duty Determination: Certain Fresh Atlantic Groundfish from Canada,* (51 FR 10041, 10043, March 24, 1986), neither the Act nor the Commerce Regulations requires a petitioner to establish affirmatively that it has the support of a majority of a particular industry. The Department relies on petitioner's representation that it has, in fact, filed on behalf of the domestic industry, until it is affirmatively shown that this is not the case. Where parties opposing an investigation provide a reasonable indication that there are grounds to doubt a petitioner's standing, the Department will review whether the opposing parties, do, in fact, represent a major proportion of the industry. We determined that Tube Turns, the only member of the domestic industry to oppose the investigation, does not represent a major proportion of that industry.

Scope of Investigation

The products covered by this investigation are certain carbon steel butt-weld type pipe fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, etc., and, if forged, have been advanced after forging.

These advancements may include any one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. These fittings are currently provided for under item 610.8800 of the *Tariff Schedules of the United State Annotated (TSUSA).*

The period of investigation is September 1, 1985, through February 28, 1986.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Rigid and C.M. in the United States were made at less than fair value, we compared the United States price with the foreign market value, as specified below. Since Gei Bey and Chup Hsin did not respond, we based United States price and foreign market value on the best information available in accordance with section 776(b) of the Act.

United States Price

As provided for in section 772(b) of the Act, for sales by Rigid and C.M., we based United States price or purchase price because their butt-weld pipe fittings were sold to unrelated purchasers in the United States prior to importation. We made deductions from F.O.B. or C.I.F. prices for ocean freight, marine insurance, brokerage, and foreign inland freight, as appropriate. Duty drawback was added in accordance with section 772(d)(1)(B) of the Act, where appropriate.

Since Gei Bey and Chup Hsin did not respond, we calculated purchase price for these two companies on the basis of offers by a Taiwan manufacturer, reported in the petition, as the best information available. This price represents offers for sale to unrelated purchasers in the United States, reduced by estimated costs of importation, as provided in section 772(d)(2) of the Act.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for Rigid sales in the home market. We made deductions from delivered prices for inland freight and insurance. We made an adjustment for differences in credit terms between the respective markets, in accordance with § 353.15(a) of our regulations. For comparisons involving commissions on the U.S. sales, we made an allowance for selling expenses in the home market in accordance with 353.15(c) of our regulations. We also deducted home market packing costs and added U.S. packing costs.

C.M. had inadequate home market sales. Therefore, in accordance with section 773(a)(1)(B) of the Act, we based foreign market value for C.M. on sales to third countries. We made deductions from C.I.F. prices for inland freight, ocean freight, insurance, brokerage and handling charges. We made an adjustment for differences in credit terms in accordance with § 353.15 of our regulations. We added duty drawback. We deducted third country packing and added U.S. packing. Where we made comparisons to similar merchandise, we made an adjustment for differences in physical characteristics in accordance with § 353.16 of our regulations.

For Gei Bey and Chup Hsin, we used information provided by the petitioner as the best information available to determine foreign market value. Petitioner based foreign market value on constructed value. The costs of materials and fabrication were calculated by petitioner based on U.S. manufacturing inputs and by applying Taiwanese values, where appropriate. To the sum of materials and fabrication cost, petitioner added the statutory minimums of ten and eight percent for general expenses and profit, respectively. Petitioner then added U.S. costs of packing.

Petitioner's Comments

Petitioner's Comment 1: Petitioner argues that the deductions from United States price for ocean freight and inland freight and the U.S. packing added to the foreign market value were improperly allocated. Petitioner contends that allocation on the basis of weight would be more appropriate than an allocation basd on the relative value of individual fittings within a given shipment.

DOC Response: While we agree generally with the petitioner that the most appropriate allocation would be on relative weight, the value based allocation methodology used by the respondent is reasonable. In addition, we do not have information on which to reallocate these costs. The total costs have been verified, and we have used the respondent's allocation of cost in our final determination.

Petitioner's Comment 2: Petitioner claims that the calculation of drawbacks by Rigid is incorrect since it is based on the average per kilogram drawback for all of 1985 on all products and, therefore, includes products exported outside the period of investigation, other products and products shipped to other countries.

DOC Response: We have limited the drawback used in our calculation to that applicable on shipments to the United States of the product under investigation during the period of investigation.

Petitioner's Comment 3: Petitioner argues that the Department unlawfully failed to conduct an investigation into whether Rigid was selling in the home market at prices below the cost of production.

DOC Response: Petitioner's allegation that Rigid was selling in the home market at less than cost was received 70 days prior to the due date of the final determination. Based on the facts in this investigation, we determined that we needed at least 86 days under accelerated procedures in order to conduct a proper investigation of that allegation. Since there was not sufficient time remaining, we did not conduct the investigation. Furthermore, we believe that the petitioner had sufficient information prior to the preliminary determination to allow the filing of a timely allegation. We did not make a determination on sufficiency of the allegation since it was untimely.

Respondents' Comments

Respondents' Comment 1: Respondents argue that the petitioner does not have proper standing in this investigation and that the investigation should be terminated.

DOC Response: We disagree. See the "Standing Issue" section of this notice.

Respondents' Comment 2: Rigid argues that its allocation of inland freight, ocean freight and packing is reasonable and should be used for the final determination.

DOC Response: See our response to "Petitioner's Comment 1."

Respondents' Comment 3: C.M. argues that there was sufficient information on the record at the time of the preliminary determination to form the basis for our analysis, and that there is ample information currently on the record to form the basis for the final determination.

DOC Response: Sufficient questions were unanswered at the time of the preliminary determination concerning the product groupings and the basis for reporting prices and charges to warrant use of best information available. Supplemental information has been submitted, verified, and used for purposes of this determination.

Interested Parties' Comments

Interested Parties' Comment 1: Respondent, TSI and Silbo argue that the Department should terminate the investigation for lack of standing, and, at a minimum, is required according to the CIT decision in *Gilmore Steel Corp. v. U.S.* 585 F. Supp. 670 (1984) to conduct a thorough and meaningful standing investigation, because the petitioner failed to show that a majority of the domestic industry affirmatively supports the petition.

DOC Response: We disagree. See the "Standing Issue"section of this notice.

Interested Parties' Comment 2

TSI Industries, Inc. and Silbo Steel Corp., importers of butt-weld pipe fittings, argue that the Department should amend the definition of the product scope to avoid circumvention of any antidumping duty order that may be issued as a result of this investigation.

DOC Reponse: Based on the importers' comment and questions raised by the ITC and the Customs Service, we have clarified the scope as reflected in the wording in the "Scope of Investigation" section of this notice by inserting the words "if forged" before the words "have been advanced after forging."

Verification

As provided in section 776(b) of the Act, we verified all information used in this determination by using standard verification procedures, including examination of all relevant sales and accounting records.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of butt-weld pipe fittings from Taiwan that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**.

The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign maket value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percentage
Rigid	6.84
C.M	8.57
Gei Bey	87.30
Chup Hsin	87.30
All Others	49.46

ITC Notification

In accordance with section 735(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports are materially injuring, or are threatening material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as result of the suspension of liquidation will be refunded or cancelled.

However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing Customs officers to assess an antidumping duty on butt-weld pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

October 20, 1986.

[FR Doc. 86-24119 Filed 10-23-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. OEE-2-86]

Export Privileges; Computer Hardware Vertriebs GmbH; Comserv Computer Leasing GmbH; Decision and Order

Having reviewed the record and based on the facts addressed in this proceeding, I affirm the following Report and Recommendation of the Administrative Law Judge. This constitutes final agency action in this matter.

Dated: October 21, 1986.

Paul Freedenberg,

Assistat Secretary for Trade Administration.

In the Matter of: Werner Scheele, d/b/a Compuer Hardawre Vertriebs GmbH; Comserv Computer Leasing GmbH; Respondents (OEE-2-86)

Report and Recommendation

Procedural Background

On July 31, 1986 the Deputy Assistant Secretary for Export Enforcement of the U.S. Department of Commerce issued *ex parte*, upon request of the Department's Office of Export Enforcement, an Order Denyng Export Privileges, 51 FR 28400 (August 7, 1986) ("Denial Order"), to Werner Scheele, doing business as Computer Hardware Vertriebs GmbH and as Comserv Computer Leasing GmbH. Respondent Scheele and these two firms are all located in the Federal Republic of Germany. Issuance of the denial Order was under the authority of § 387.8 of the Export Administration Regulations, 15 CFR Parts 368–399 (1986) ("Regulations"), promulgated pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 20401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) ("Act").

The asserted basis of the Denial Order, under Section 387.8 of the Regulations, is that Respondent Scheele and these two firms failed to answer interrogatories served on them March 5, 1986. The Denial Order denies U.S. export privileges to Respondent Scheele and these two firms for five years from July 31, 1986 or until they either answer the interrogatories or present adequate reasons for not answering.

This Denial Order proceeding comes after another proceeding involving a different type of denial order—a temporary denial order—that was issued under 388.19 of the Regulations against Respondent Scheele and other parties for 60 days on December 9, 1985, 50 FR 50931 (December 13, 1985), and renewed for another 60 days on February 6, 1986, 51 FR 5389 (February 13, 1986). This temporary denial order was vacated by the Department's Assistant Secretary for Trade Administration on March 13, 1986, 51 FR 9697 (March 20, 1986).

Respondent Scheele appealed the Denial Order by an October 2, 1986 telex to this Office. Prior to this October 2 telex, Respondent Scheele had written this Office regarding the Denial Order in September 11 and 30, 1986 telexes, in a September 17, 1986 letter (apparently reproducing the Septemer 11 telex and received in this Office October 3, 1986), and in a September 23, 1986 letter (received in this Office October 7, 1986). Agency Counsel replied to the appeal October 14, 1986; and the appeal is now ready for a decision.

Arguments of the Parties

In his October 2 appeal, Respondent Scheele argued that the Denial Order was based, not on any failure to answer the interrogatories, but rather "on an arrangement *'contra legem'* "between the appropriate authorities in the governments of the United States and of the Federal Republic of Germany. To support this argument, Respondent Scheele cited certain communications between these authorities that preceded

issuance of the Denial Order. In his reply, Agency Counsel contended that the request for issuance of the Denial Order was based solely on Respondents' failure to answer the interrogatories. To buttress this contention, Agency Counsel submitted a copy of the request made to the Department's Deputy Assistant Secretary for issuance of the Denial Order, such request stating as its justification only the failure of an answer to the interrogatores.

In addition, Respondent Scheele argued, in his Septebmer 23 letter, that he had been misled as to the significance of the interrogtories by at least three factors. First, he said that the interrogatories were unsigned. Second, he claimed that he sent a March 6, 1986 telex inquiring about them to this Office, but received no reply. Third, he noted that the temporary denial order, which was pending when he was served with the interrogatories on March 5, was then vacated on March 13. Agency Counsel argued that, in agreeing to vacating of the temporary denial order, he had expressly noted that the pertinent investigation was ongoing, and further observed that Respondent Scheele had failed to contact the U.S. official named in the interrogatories as available for any questions about them.

Matter addressed in Recommendation

Because of the accelerated procedure required by the Regulations for resolving this appeal, the only matters addressed will be those raised by Respondent Scheele's October 2 telex. Therefore the arguments advanced in Respondent Scheele's September 23, letter, which was received in this Office October 7, will not be considered in this appeal. These arguments may, however, be the subject of a new appeal of the Denial Order, and the September 23 letter and its attachments may be incorporated by reference. In this connection, it should be noted that this Office has been unable to locate any record of receipt of the March 6 telex that Respondent Scheele asserted was sent to this Office. If Respondent Scheele does pursue another appeal, he is directed to serve Agency Counsel simultaneously, as required by § 388.19(e)(3) of the Regulations.

Paragraph V of the Denial Order provides that Respondent Scheele may appeal it in accordance with § 388.19(e) of the Regulations. That Section implements, for a temporary denial order, a statutory mandate that an appeal thereof be resolved within 15 working days (Act section 13(d)(2)). This statutory mandate does not by its terms apply to a denial order for failure to answer interrogatories, but § 387.8(c) of the Regulations and Paragrpah V of the Denial Order extend to Respondent Scheele the benefit of this fast procedure.

Using this accelerated procedure, however, requires that the time limits of § 388.19(e)(3) be closely observed, because they are so short. Agency Counsel has only seven working days to reply to an appeal. For Respondent Scheele's October 2 appeal, Agency Counsel thus had until October 14, the day when he actually did file, to make this reply. To hold Agency Counsel also responsible for a reply by October 14 to a submission received October 7—three working days after October 2—would reduce this reply time by almost half. Such a result would be inconsistent with the prescribed Regulatory procedure. Consequently, Respondent Scheele's appeal is benefiting from the fast § 388.19(e) procedure for resolution, but at the cost of his having to raise in another appeal any arguments contained in submissions received by this Office after his October 2 telex.

Discussion

Respondent Scheele's appeal in his October 2 telex fails to supply a justification for vacating the Denial Order. His recitation of the dates of certain inter-governmental communications, without any specificity as to their contents, falls far short of establishing his claim that something other than a failure to answer the interrogatories underlay the issuance of the denial Order.

Agency Counsel's submission, on the other hand, does sustain his position. his submitted copy of the request to the Department's Deputy Assistant Secretary for issuance of the Denial Order both provides, in the circumstances of this proceeding, an adequate record of such issuance, and also supports Agency Counsel's contention that the failure to answer the Interrogatories was in fact the basis for the Denial Order. Under § 387.8 of the Regulations, that failure—which Respondent Scheele does not dispute—is a sufficient basis for the issuance and the maintenance, up to five years, of the Denial Order.

Recommendation

Accordingly, it is the Recommendation of the undersigned that Respondent Scheele's appeal be *denied,* and that the Denial Order be *affirmed.* Such Recommendation shall constitute the final resoluton of this appeal if and when the Recommendation is accepted by the Secretary pursuant to § 388.19(e)(5) of the Regulations.

Dated October 17, 1986.

Thomas W. Hoya,

Administrative Law Judge.

[FR Doc. 86-24122 Filed 10-23-86; 8:45 am]

BILLING CODE 3510-DT-M

President's Export Council, Foreign Trade Practices and Negotiations Subcommittee; Change in Meeting Schedule

On October 20, 1986, a notice dated October 15, 1986, was published in the **Federal Register** (51 FR 37212), announcing a meeting of the President's Export Council Subcommittee on Foreign Trade Practices and Negotiations on November 5, 1986, from 1:00 p.m. to 4:00 p.m. in Room 4830 of the Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC.

The purpose of this notice is to announce that the times of the General and Executive Sessions have changed. The General Session will be held from 1:00 p.m. to 1:50 p.m. The Executive Session will be held from 1:50 to 4:00 p.m.

For further information or copies of the minutes, contact Sylvia Lino (202) 377-1125, Room 3213, U.S. Department of Commerce, Washington, DC, 20230.

Dated: October 21, 1986.

Amy F. Dale,

Acting Director, President's Export Council.

[FR Doc. 86-24123 Filed 10-23-86; 8:45 am]

BILLING CODE 3510-DR-M

Prospects for Adjustment Assistance to Firms Producing Steel Fork Arms

The Department of Commerce, pursuant to section 264 of the Trade Act of 1974, has completed a report on the steel fork arms industry. This report is required whenever the U.S. International Trade Commission (USITC) conducts an import relief investigation under section 201 of the Trade Act. The report discusses existing adjustment assistance programs which can help firms respond to import competition. A summary of Commerce's findings follows:

On June 4, 1986, the USITC determined that steel fork arms were not being imported into the United States in such increased quantities as to be a substantial cause of serious injury (or threat thereof) to the domestic industry producing like or directly competitive articles.

Under section 251 of the 1974 Trade Act, a firm may petition the Department

of Commerce to be certified as eligible to apply for trade adjustment assistance. Certification requires that increased imports of articles like or directly competitive with those produced by the petitioning firm contributed importantly to: (1) A significant decline, actual or threatened, in employment; and (2) either an absolute decline in total sales or production, or a decline in sales or production of a product line that represents at least 25 percent of the firm's total production. A trade-impacted producer may petition the Department for certification at any time regardless of a prospective Commission finding or its results.

Although the USITC found no serious injury to the steel fork arms industry, the criterion upon which a firm's petition is judged for certification is somewhat less stringent. On this basis it is possible that a petitioning firm could be certified eligible to apply for adjustment assistance, assuming the other qualifying criteria are met, even though the industry received a negative Commission determination following a section 201 investigation. Between 1978 and June 1986, the Department of Commerce certified one steel fork arms firm, on the basis of its production of the items included in the USITC investigation, to qualify for some degree of trade adjustment assistance. Because of the lack of specific company data, the Department is unable to determine which other firms could meet certification criteria.

The program of trade adjustment assistance for firms authorized by the Trade Act under Title II, Chapter 3, and administered by the International Trade Administration (ITA) in the Department of Commerce, expired on December 19, 1985. The Consolidated Omnibus Budget Reconciliation Act of 1985 extends the program authorization until September 30, 1991. Technical assistance is available for trade-impacted firms but financial assistance is no longer available. Technical assistance may be used for management and operational assistance, and for feasibility studies and related research to aid in developing and implementing a firm's recovery plan.

There are six other financial or technical assistance programs administered by Federal agencies that might facilitate the orderly adjustment of firms in the steel fork arms industry producing the products covered in the USITC investigation. ITA also administers an industrywide trade adjustment assistance program if a substantial number of firms have been certified as eligible to apply for adjustment assistance. The Small Business Administration has three programs for qualified firms which have been adversely affected by increased imports: The Regular Business Loan Program; the Certified Development Company Program; and a Management Assistance Program. Finally, the Farmers Home Administration administers two programs that could assist firms affected by imports: the Business and Industrial Development Loans and the Community Facilities Program.

Copies of the report, "Prospects for Adjustment Assistance to Firms Producing Steel Fork Arms" are available from John Lien, Office of special Industrial Machinery, Room 2128, U.S. Department of Commerce, Washington, DC 20230, telephone 202–377–0679.

Frank S. Besson III,

Deputy Assistant Secretary for Capital Goods and International Construction.

[FR Doc. 86–24125 Filed 10–23–86; 8:45 am]

BILLING CODE 3510-DR-M

[Case No. OEE–1–86]

Export Privileges; La Physique Appliquee Industrie et al.

In the matter of La Physique Appliquee Industrie, 5 Rue de Pacalaire 38170 Seyssinet-Pariset, France, and Les Accessoires Scientifiques, Varigney, 70800 Conflans-Sur-Lanterne, France, Respondents; Order renewing temporary denial of export privileges.

On September 30, 1986, the Office of Export Enforcement, International Trade Administration, United States Department of Commerce (Department), pursuant to the provisions of § 388.19 of the Export Administration Regulations, 15 CFR Parts 368–399 (1986) (the Regulations), issued pursuant to the Export Administration Act of 1979, 50 U.S.C. app. 2401–2420 (1982), as amended by the Export Administration Amendments Act of 1985, Pub. L. 99–64, 99 Stat. 120 (July 12, 1985) (the Act), asked the Deputy Assistant Secretary for Export Enforcement to renew an order temporarily denying all United States export privileges to La Physique Appliquee Industrie (LPAI) of Seyssinet-Pariset, France, and Les Accessoires Scientifiques (LAS) of Conflans-Sur-Lanterne, France (hereinafter collectively referred to as respondents). The initial order was issued on April 23, 1986 (51 F.R. 15955, April 29, 1986) and renewed on June 20, 1986 (51 F.R. 23256, June 26, 1986) and August 21, 1986 (51 F.R. 30688, August 28, 1986).

Section 388.19(d)(2) of the Regulations provides that LPAI or LAS may oppose renewal of the temporary denial order by filing written submissions with the Deputy Assistant Secretary not later than seven days before the expiration of the Order. Such opposition was received by the Deputy Assistant Secretary on October 14, 1986.

As a result of my review of the record before me, I find that the Department has established that a violation is imminent. In this regard, it is important to note that the matter is still under investigation by the Department. Moreover, subsequent to the August 1986 renewal of an order temporarily denying export privileges against the respondents, the Department advised that French authorities, also, are investigating into the transactions in question.

The material facts out of which this proceeding arose are not, in my view, seriously disputed by the parties. What is disputed between the parties is the conclusions to be drawn from those facts. Based on the record before me, I find that the Department's investigation is focusing on serious violations which may have been committed by the respondents. The Department's investigation to date has given it sufficient reason to believe that respondents herein may have participated in a scheme to divert highly sensitive U.S.-origin goods and technology to the Union of Soviet Socialist Republics (U.S.S.R.) and other Eastern bloc countries. Further, there is sufficient reason to believe that respondents may continue to seek to obtain U.S.-origin goods and technology which they may divert to the U.S.S.R. or other Eastern bloc countries.

The evidence presented to me established a very strong basis for the Department's belief that: (1) On at least two occasions, LPAI, acting in response to an order from LAS, purchased U.S.-origin goods; (2) The ultimate destination of those U.S.-origin goods was intended to be the U.S.S.R.; (3) If an export license or reexport authorization request had been requested by either respondent identifying the U.S.S.R. as the country of ultimate destination, which it was not, the Department would not have authorized that export or reexport; (4) Further, LAS currently has a contract with the U.S.S.R. which calls for LAS to supply equipment of a similar type and nature to equipment in the two transactions which are the principal focus of the Department's investigation; (5) Again, export or reexport of this

equipment to the U.S.S.R. would not be authorized by the Department; (6) That the respondents have had substantial business experience in import and export transactions involving scientific and technical products; (7) Respondent LAS was a consignee of licensable U.S. technology and commodities under a distribution license in 1978 and, as such, the respondent would have had considerable experience handling U.S.-controlled commodities and reason to know the requirements of the Regulations; (8) In 1977, respondent LAS, in a statement made by its President in connection with a distribution license application, expressly stated that LAS would "comply with the U.S. Export Administration Regulations", including the provision pertaining to the general distribution license procedure; (9) The respondents knew or had reason to know the requirements of the Regulations at the time of the occurrence of the alleged illegal reexportation here in question; (10) An investigation by the Department into these alleged violations is ongoing; (11) French authorities are also investigating into the matters which gave rise to the Department's request for this order; and, (12) A violation may be likely to occur in the future unless action is taken to prevent respondents from gaining access to U.S.-orign goods and technical data.

In this third renewal request, the Department contends, and the above facts support the contention, that the activities of the respondents in connection with the export and reexport of U.S.-origin goods demonstrates that they may have engaged in deliberate and covert violations of the Act and Regulations, and demonstrates the likelihood of future violations by them unless action is taken to preclude such attempts.

Given the ongoing nature of the investigation, the Department cannot easily summarize its investigative progress. The Department has shown in its submission that the investigation is, in fact, active, but is stymied by the French government's reluctance to furnish, at this time, evidence in its possession, because the French authorities are also conducting their own investigation into the underlying transactions, and also because of a pending trial in Luxembourg concerning the respondents in connection with the exportation of the equipment in question. Respondents do not dispute the value of the information which may be revealed by the trial in Luxembourg and the investigation in France. While the Department may be waiting to obtain the evidence which may become available upon the completion of these proceedings in Europe before deciding on whether to pursue formal charges, I find that the information presently available and submitted by the Department is ample to establish a reason to believe a violation is imminent.

The respondents argue that owing to the fact that six months have passed since the original temporary denial order was issued, the renewal of that proscription would in effect transmute its temporary nature into one of permanent duration contrary to Congressional intent. On this point, it suffices to say that mere passage of time does not necesarily remove the need which a temporary denial order is intended to address. Neither the Act nor the Regulations sets an artificial limit on the use of the temporary denial order. If the Department makes a showing, as it does here, that renewal is a necessary preventive measure, approval would be appropriate

The respondents also contend that since the French government had previously approved the contract between respondent LAS and the Soviet Union, which calls for the former to supply equipment of a type and nature similar to the equipment involved in the Department's investigation, the respondents' attempted reexport of the equipment covered by the contract could not have been "covert". In short, respondents take the position that if the French government approved the contract, their attempted reexportation must have been lawful under French law.

There is no basis to assume that approval of the contract by the French government means approval for the subject reexport transaction. That the French authorities themselves are investigating into the attempted reexport by respondents shatters the validity of any such assumption. Also, respondents could have intended to abide with applicable French legal requirements and, *at the same time*, intended to covertly circumvent the requirements of US. law. In any event, even if the attempted reexport in question were legal under French law, that would not necessarily make the conduct legal under the Act.

Therefore, based on the record before me, I find that renewal of the order temporarily denying export privileges to respondents is necessary in order to prevent an imminent violation and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations in order to reduce the substantial likelihood that respondents will continue to engage in activities which are in violation of the Act and the Regulations.

Accordingly, it is hereby

Ordered

I. All outstanding validated export licenses in which any respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forth with to the Office of Export Licensing for cancellation.

II. The respondents, their successors or assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported or to be exported from the United States in whole or in part, or that are otherwise subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (a) As a party or as a representative of a party to any export license application submitted to the Department, (b) in preparing or filing with the Department any export license application or reexport authorization, or any document to be submitted therewith, (c) in obtaining or using any validated or general export license or other export control document, (d) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported, and (e) in financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend only to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial may be made applicable to any person, firm, corporation, or business organization with which any respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. No person, firm, corporation, partnership or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing

shall, with respect to U.S-Origin commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related party, or whereby any respondent or any related party may obtain any benefit thereform or have any interest or participation therein, directly or indirectly: (a) Apply for, obtain, transfer or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transhipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any respondent or any related party denied export privileges; or (b) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any export, reexport, transshipment, or diversion of any commodity or technical data exported or to be exported from the United States.

V. In accordance with the provisions of Section 388.19(e) of the Regulations, any respondent may, at any time, appeal this temporary denial order by filing with the Office of Administrative Law Judges, U.S. Department of Commerce, Room H–6716, 14th Street and Constitution Avenue NW., Washington, DC 20230, a full written statement in support of the appeal.

VI. This order shall become effective on October 20, 1986 and shall remain in effect for 60 days.

VIII. In accordance with the provisions of § 388.19(d) of the Regulations, the Department may seek renewal of this temporary denial order by filing a written request not later than 20 days before the expiration data. Any respondent may oppose any request to renew this temporary denial order by filing a written submission with the Deputy Assistant Secretary for Export Enforcement, which must be received not later than seven days before the expiration date of this order.

A copy of this order renewing the temporary denial of export; privileges shall be served upon the respondents and published in the **Federal Register.**

Dated: October 20, 1986.

Theodore W. Wu,

Deputy Assistant Secretary for Export Enforcement.

[FR Doc. 86–24063 Field 10–23–86; 8:45 am]

BILLING CODE 3510–25–M

Short Supply Review on Aluminum-Killed Cold Rolled Steel Sheet; Request for Comments

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short supply determination under Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products with respect to aluminum-killed cold rolled steel sheet.

EFFECTIVE DATE: Comments must be submitted no later than November 3, 1986.

ADDRESS: Send all comments to Nicholas C. Tolerico, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Room 3099, (202) 377–3833.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the U.S.-Japan Arrangement Concerning Trade in Certain Steel Products provides "if the U.S. . . . determines that because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular category or sub-category (including substantial objective evidence such as allocation, extended delivery periods or other relevant factors), an additional tonnage shall be allowed for such category or sub-category. . . ."

We have received a short supply request for aluminum-killed cold rolled sheet, in coils, conforming to AISI standard C 1001 to be used in the manufacture of aperture masks for television screens. The dimensions of the steel in question are 381–762 mm in width, and .0762–.3048 mm in thickness. Weight per coil may range from 1,500 to 3,000 kgs.

This is a request for an extension of a previous request for a short supply determination on this aluminum-killed cold rolled sheet received on May 22, 1985. In reviewing the previous request, the Department determined that short supply conditions existed, and subsequently granted short supply licenses for 2,340 metric tons in the same sizes covered by this second request.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than ten days from publication of this notice. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also include with it a submission without proprietary information which can be placed in the public file. The public file will be maintained in the Central Records Unit, Import Administration, U.S. Department Commerce, Room B–099 at the above address.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

October 20, 1986.

[FR Doc. 86–24124 Filed 10–23–86; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting, November 17–18, 1986, of its Habitat and Environmental Protection Management Committee and Advisory Panels, to explore ways in which various Panels might become more actively involved in advising the Council on potential threats to fisheries habitats. The public meeting will be held at the Landmark Motor Hotel Inn, 2601 Severn Avenue, Metairie, LA. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: October 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–24126 Filed 10–23–86; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Issuance of Permit: Zoo Negara (P383)

On July 30, 1986, notice ws published in the **Federal Register** (51 FR 27235) that an application had been filed by Zoo Negara, Hulu Kelang, 6800, Ampang, Selangor, Malaysia, to export California Sea lions (*Zalophus californianus*) and South American sea lions (*Otaria flavescens*) from the San Diego Zoo for public display.

Notice is hereby given that on October 17, 1986, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Permit for the above taking subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: October 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–24104 Filed 10–23–86; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda as published in the **Federal Register** (September 26, 1986, page 34239), for the South Atlantic Fishery Management Council's public meeting, October 27–31, 1986, in St. Simons Island, GA, has been amended to indicate that the Gulf of Mexico and South Atlantic Fishery Management Councils will convene jointly, October 27–30, 1986, as well as convene separately on October 30 and 31. All other information remains unchanged. For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Dated: October 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–24127 Filed 10–23–86; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish/Seamount Groundfish Plan Monitoring Team will convene a public meeting, October 27, 1986, at 8:30 a.m. at 1164 Bishop Street, Conference Room 1605, Honolulu, HI, to discuss the October 1986 draft of limited entry recommendations; discuss the status of the native rights project, as well as to discuss other Team business. For further information contact Kitty Simonds, Exective Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: October 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–24128 Filed 10–23–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Withdrawal of Application: Dr. Jay C. Sweeney (P378)

On March 26, 1986 notice was published in the **Federal Register** (51 FR 10420) that an application had been filed by Dr. Jay C. Sweeney to collect eight (8) Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display. The animals would be maintained at South Seas Plantation Resort, Captiva Island, Florida.

Notice is hereby given that this application was withdrawn and the withdrawal request has been acknowledged and accepted without prejudice by the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: October 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86–24129 Filed 10–23–86; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Modification of Permit; Dr. Donald Siniff Modification No. 2 to Permit No. 479

Notice is hereby given that pursuant to the provisions of section 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 479 issued to Dr. Donald Siniff, Department of Ecology and Behavioral Biology, 109 Zoology Building, University of Minnesota, Minneapolis, Minnesota 55455, on July 25, 1984 (49 FR 30770), and modified on October 18, 1985 (50 FR 43760), is further modified as follows:

Section A.4 is added:

"4. Five (5) Weddell seal pups may be radio-tagged using an intraperitoneal implant."

Section B.2 is replaced by:

"2. By December 31 of each year the permit is valid, the Holder shall submit a report summarizing: the number, species, sex, and size of animals taken; methods, dates, and locations, of taking; and any problems or complications that occurred in connection with the research. The report shall also include the number of animals implanted, the date of tagging, the exact procedures followed, any problems encountered including adverse effects from any of the activities, the results of any post mortem examinations performed, and an evaluation of the date collected from implanted (successes and failures) versus non-implanted pups."

Sections B.5. 6, and 7 are added as follows:

"5. The Permit Holder shall make ever feasible effort to recover and treat instrumented animals that show signs of aberrant behavior or stress as a result of the intraperitoneal implants.

6. Research activities shall be suspended if more than one animal dies during or at such time following the activities that mortality can reasonably be attributed to the activities. A report shall be submitted to the Service so that the experimental protocol and handling procedures can be reviewed and, if necessary, revised to the satisfaction of the National Marine Fisheries Service to

assure that additional mortalities do not occur.

7. Necropsies shall be performed on any animals that die during the project in order to evaluate both the long and short term effects of capture, handling, and radio implants."

This modification became effective on October 21, 1986.

Documents submitted in connection with the above modification are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: October 21, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-24130 Filed 10-23-86; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic And Atmospheric Administration

[Modification No. 4 to Permit No. 351; (P191B)]

Marine Mammal Permit Modification; California Department of Fish and Game Center

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Scientific Research Permit No. 351 issued to the California Department of Fish and Game, 1416 Ninth Street, Sacramento, California 95814 (46 FR 43732), as modified on December 17, 1981 (46 FR 62684), July 1, 1982 (47 FR 28730), and January 10, 1984 (49 FR 1265), is further modified as follows.

Section B.4 is deleted and replaced by:

"4. This permit is valid with respect to the taking authorized herein until December 31, 1987."

This modification becomes effective on October 24, 1986.

Documents submitted to connection with the above modification and Permit are available for review in the following offices:

Protected Species Division, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm. 805, Washington, DC 20009; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Dated: October 20, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-24054 Filed 10-23-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Bilateral Textile Consultations With the Government of the Hungarian People's Republic Concerning Category 434 (Men's Other Wool Coats)

October 20, 1986.

On September 29, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, done at Geneva on December 20, 1973, as further extended on July 31, 1986, requested the Government of the Hungarian People's Republic to enter into consultations concerning exports to the United States of other wool coats in Category 434, produced or manufactured in Hungary.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of the Hungarian People's Republic, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of textile products in Category 434, produced or manufactured in Hungary and exported to the United States during the twelve-month period which began on September 29, 1986 and extends through September 28, 1987 at a level of 5,659 dozen.

A summary market statement concerning this category follows this notice.

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).

Anyone wishing to comment or provide data or information regarding the treatment of Category 434 under Article 3 of the Multifiber Arrangement, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the Category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce 14th and Constitution Avenue NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

Chairman, Committee for the Implementation of Textile Agreements.

Hungary—Market Statement

Category 434—Men's and Boys' Other Wool Coats

September 1986.

Summary and Conclusions

U.S. imports of Category 434 from Hungary were 12,347 dozen during the year ending July 1986, 99 percent above the level imported a year earlier. During the first seven months of 1986, imports from Hungary were 8,408 dozen, over five times the level imported during the same period of 1985 and 54 percent more than the amount imported during the full year 1985.

The U.S. market for Category 434 has been disrupted by imports. The sharp and substantial increase in imports from Hungary has contributed to this disruption.

U.S. Production and Market Share

U.S. production of Category 434 declined 19 percent from 365 thousand dozen in 1982 to 294 thousand dozen in 1984. Although production increased to 351 thousand dozen in 1985, it remained four percent below the 1982 level. The U.S. manufacturers' share of the market declined from 91 percent in 1982 to 68 percent in 1985.

U.S. Imports and Import Penetration

U.S. imports of Category 434 grew from 35 thousand dozen in 1982 to 119 thousand dozen in 1984, a threefold increase. This upward trend continued in 1985 as imports increased another 40 percent reaching 167 thousand dozen. Imports continue to increase in 1986. During the first seven months of 1986 Category 434 imports were 74,806 dozen, 29 percent above the amount imported during the same period a year earlier. The ratio of imports to domestic production increased fivefold, rising from 10 percent in 1982 to 48 percent in 1985.

Duty-Paid Value and U.S. Producers' Price

All of Category 434 imports from Hungary during the first seven months of 1986 entered under TSUSA number 381.8315—men's and boys' wool overcoats, topcoats and car coats, not knit, not ornamented. These coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable coats.

[FR Doc. 86-24117 Filed 10-23-86; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER87-8-000, et al.]

Electric Rate and Corporate Regulation Filings; Boston Edison Co., et al.

October 17, 1986.

Take notice that the following filings have been made with the Commission:

1. Boston Edison Company

[Docket No. ER87-8-000]

Take notice that Boston Edison Company of Boston, Massachusetts ("Edison") on October 6, 1986 tendered for filing an amendment to an existing coordination agreement for the exchange of power between itself and the Connecticut Light and Power Company and Eastern Massachusetts Electric Company, both Northeast Utilities Companies of Hartford, Connecticut ("the NU Companies"). Edison requests that this Amendment be made effective on December 7, 1986.

Under the existing agreement, the parties negotiate daily or weekly power exchanges wherein Edison supplies power from its Pilgrim 1 nuclear power station in return for capacity from the NU Companies' units, Pilgrim's energy costs, and a negotiated capacity charge. The filed amendment expands Edison nuclear source base to include all its nuclear entitlements, and adjusts the energy and capacity charge calculations to reflect this expansion. The parties state that the purpose of the power exchanges continues to be the attainment of greater efficiencies of operation.

Copies of the filing have been served upon the NU Companies and the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Company

[Docket No. ER87-9-000]

Take notice that Boston Electric Edison Company of Boston, Massachusetts ("Edison") on October 6, 1986 tendered for filing an amendment to an existing coordination agreement for the exchange of power between itself and the Connecticut Light and Power Company and Western Massachusetts Electric Company both Northeast Utilities companies of Hartford, Connecticut ("the NU Companies). Edison requests that this Amendment be made effective on December 7, 1986.

Under the existing agreement, the parties negotiate daily or weekly power exchanges wherein Edison supplies commingled power from its fossil steam units in return for capacity from the NU Companies' units, Edison's marginal energy costs, and a negotiated energy reservation charge. The filed amendment expands Edison's fossil steam source base to include all charge calculations to reflect this expansion. The parties state that the purpose of the power exchanges continues to be the attainment of greater efficiences of operation.

Copies of the filing have been served upon the Companies and on the Department of Public Utilities of the Commonwealth of Massachusetts.

Comment date: October 27, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company

[Docket No. ES87-2-000]

Take notice that on October 9, 1986, Louisville Gas and Electric Company filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, to issue not more than $150,000,000 of short-term debt on or before December 31, 1988 with a final maturity no later than December 31, 1989.

Comment date: November 12, 1986, in accordance with Standard Paragraph E at the end of this notice.

4. Iowa Public Service Company

[Docket No. ER86-640-000]

Take notice that on October 3, 1986, Iowa Public Service Company tendered for filing a revision to an executed Firm Power Service Agreement, dated May 29, 1986, where by Iowa Public Service Company will supply Union Electric Company with firm electric power commencing June 1, 1986 and continuing through September 20, 1986, which agreement was tendered for filing with the Commission on August 7, 1986. The filing utility states that copies of the filing have been mailed to each of the parties to the agreement and to the Iowa Utilities Board.

Iowa Public Service Company requests that the Commission waive its prior notice requirements and accept the revision for filing with an effective day of May 29, 1986.

Comment date: October 24, 1986, in accordance with Standard Paragraph E at the end of this notice.

5. Niagara Mohawk Power Corporation

[Docket No. EC86-24-000]

Take notice that on October 16, 1986, Niagara Mohawk Power Corporation ("Niagara") tendered for filing an amended application pursuant to section 203(a) of the Federal Power Act seeking approval of a proposed sale and leaseback of jurisdictional facilities and petition for declaratory order that the parties to the transaction, other than Niagara, will not as a result of their participation in such transaction, become "public utilities" as that term is defined in section 201(e) of the Federal Power Act. The amendment consists of a revenue requirements analysis comparing leasing to ownership of Niagara's Volney-Marcy transmission line.

Comment date: October 24, 1986, in accordance with Standard Paragraph E at the end of this document.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb.

Secretary.

[FR Doc. 86-24093 Filed 10-23-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8956-001, et al.]

Surrender of Preliminary Permits; Geoffrey Shadroui, et al.

October 17, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Geoffrey Shadroui

[Project No. 8956-001]

Take notice that Geoffrey Shadroui, Permittee for the Ripley Hydro Project No. 8956, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 8956 was issued on October 11, 1985, and would have expired on September 30, 1988. The project would have been located on the Otter Creek, in Rutland County, Vermont.

The permittee filed the request on September 22, 1986.

2. Burlington Energy Development Associates

[Project No. 9083-001]

Take notice that the Burlington Energy Development Associates, Permittee for the Dalton Dam No. 6 Project No. 9083 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9083 was issued on October 11, 1985, and would have expired on September 30, 1988. The project would have been located on the East Branch Housatonic River, in Berkshire County, Massachusetts.

The permittee filed the request on September 24, 1986.

3. Burlington Energy Development Associates

[Project No. 9651-001]

Take notice that the Burlington Energy Development Associates, the permittee for the James V. Turner Reservoir Project No. 9651, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9651 was issued on March 31, 1986, and would have expired on February 28, 1989. The project would have been located on the Ten Mile River, in Providence County, Rhode Island and Bristol County, Massachusetts.

The permittee filed the request on September 24, 1986.

4. Burlington Energy Development Associates

[Project No. 9065-001]

Take notice that the Burlington Energy Development Associates, Permittee for the Risingdale Pond Project No. 9065, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9065 was issued on October 11, 1985, and would have expired on September 30, 1988. The project would have been located on the East Branch Housatonic River, in Berkshire County, Massachusetts.

The permittee filed the request on September 24, 1986.

5. Burlington Energy Development Associates

[Project No. 9081-001]

Take notice that the Burlington Energy Development Associates, Permittee for the Center Pond Project No. 9081, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9081 was issued on October 11, 1985, and would have expired on September 30, 1988. The project would have been located on the East Branch Housatonic River, in Berkshire County, Massachusetts.

The permittee filed the request on September 24, 1986.

6. Burlington Energy Development Associates

[Project No. 9082-001]

Take notice that the Burlington Energy Development Associates, Permittee for the Dalton Dam No. 1 Project No. 9082 has requested that the preliminary permit be terminated. The preliminary permit for Project No. 9083 was issued on October 11, 1985, and would have expired on September 30, 1988. The project would have been located on the East Branch Housatonic River, in Berkshire County, Massachusetts.

The permittee filed the request on September 24, 1986.

Standard Paragraphs

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24094 Filed 10-3-86; 8:45 am]

BILLING CODE 6717-01-M

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

[Docket No. TA87-1-20-000 & 001]

October 21, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on October 16, 1986, tendered for filing Substitute Seventh Revised Sheet No. 205 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that Substitute Seventh Revised Sheet No. 205 is being filed pursuant to the provisions of section 7 of its Rate Schedule F-4 to reflect in its rates, effective November 1, 1986, a decrease in the Contract Adjustment Demand Rate to be charged by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern") as set forth in Texas Eastern's October 2, 1986 filing.

Algonquin Gas requests that the Commission accept the above tariff sheet to be effective as proposed.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24095 Filed 10-23-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-15-20-002 and CP82-119-020]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 21, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on October 16, 1986 tendered for filing Second Substitute Ninth Revised Sheet No. 204 and Substitute Tenth

Revised Sheet No. 204 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F–3 changes in the underlying rates of National Fuel Gas Supply Corporation ("National Fuel") as set forth in National Fuel's October 1, 1986 compliance filing proposed to be effective August 1, 1986.

Algonquin Gas requests that the Commission accept Second Substitute Ninth Revised Sheet No. 204 to be effective August 1, 1986 to coincide with the proposed effective date of National Fuel's rate change and to accept Substitute Tenth Revised Sheet No. 204 to be effective November 1, 1986, the same proposed effective date as the sheet being replaced.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–24096 Filed 10–23–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86–18–20–002, TA86–19–20–002 and CP82–119–021]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

October 21, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on October 16, 1986, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Substitute Fourteenth Revised Sheet No. 203
Proposed to be effective September 1, 1986
Substitute Fifteenth Revised Sheet No. 203
Proposed to be effective September 2, 1986
Substitute Sixteenth Revised Sheet No. 203
Proposed to be effective November 1, 1986

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedule F–2 changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), as reflected in Consolidated's September 30, 1986 compliance filing proposed to be effective September 1, 1986.

Algonquin Gas requests that the Commission accept the above tariff sheets to be effective as proposed.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and intersted state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–24097 Filed 10–23–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86–304–001]

Columbia LNG Corp.; Proposed Changes in FERC Gas Tariff

October 21, 1986.

Take notice that on October 10, 1986, Columbia LNG Corporation (Columbia) tendered for filing the following proposed changes to its FERC Gas Tariff, to be effective June 8, 1986:

Original Volume No. 1

Second Revised Sheet No. 1

Original Volume No. 2

First Revised Sheet No. 1
Original Sheets Nos. 7–20

Columbia states that these tariff sheets are being filed in compliance with a certificate of public convenience and necessity issued April 28, 1986 in Docket No. CP86–304–000 by which Columbia was authorized to transport for Washington Gas Light Company up to 300,000 Dth equivalent of natural gas per day at a rate not to exceed 15,500 Dth per hour, and to construct and operate the related delivery tap.

The transportation rate to be charged is $.0453 per Dth equivalent of gas received. This is the unit rate based upon an annual cost of service for the pipeline facilities that has been developed in accordance with the cost-of-service billing provisions set forth in section 3 of Columbia's Rate Schedule LNG. Columbia further proposes to credit $.0158 of each $.0453 per Dth received to the minimum bill that is being charged to Columbia Gas Transmission Corporation pursuant to § 3.8 of Columbia's Rate Schedule LNG.

Columbia requests such waivers of the Commission's regulations as may be deemed necessary to permit the tariff sheets to become effective as of June 8, 1986, the date on which service commenced pursuant to the certificate granted in Docket No. CP86–304–000.

A copy of the filing has been served upon Columbia's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 28, 1986 Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–24098 Filed 10–23–86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87–1–45–000, 001]

Inter-City Minnesota Pipelines Ltd., Inc.; Annual Purchased Gas Adjustment Filing

October 21, 1986.

Take notice that on October 15, 1986, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City) tendered for filing Twenty-Ninth Revised Sheet No. 4, Fourth Revised Sheet No. 60, and Fifth Revised

Sheet No. 61 to its FERC Gas Tariff, Original Volume No. 1.

Inter-City states that proposed Twenty-Ninth Revised Sheet No. 4 reflects Inter-City's annual PGA adjustment. It also reflects reduced gas costs achieved by contract renegotiations effected as of October 15. The new pricing provisions reduce Inter-City's Western Zone purchased gas cost from $3.94 to $2.57 per MMBtu; the Eastern Zone commodity cost has been lowered from $2.36 to $1.53. Inter-City further states that the revisions to Fourth Revised Sheet No. 60 and Fifth Revised Sheet No. 61 are housekeeping in nature. They delete rate references so as to avoid repeated revisions as price changes occur. The references deleted are to the same rates that are embodied on proposed Twenty-Ninth Sheet No. 4 and are thus redundant to the tariff.

On September 29, 1986, Inter-City requested a waiver of the filing date and 30-day notice period for this filing. Inter-City also requests any other waivers of the Commission's regulations deemed necessary, so that this filing may become effective November 1, 1986. Copies of this filing have been served on all customers of Inter-City and on the Minnesota Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before October 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24099 Filed 10-23-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-94-006]

Sea Robin Pipeline Co.; Compliance Tariff Filing

October 21, 1986.

Take notice that on October 10, 1986, Sea Robin Pipeline Company (Sea Robin) submitted the following tariff sheets as part of Sea Robin's FERC Gas Tariff Original Volume No. 1 in compliance with the Commission's September 26, 1986 order as modified by its October 1, 1986 order extending the due date for this filing:

Appendix 1

Substitute Original Sheet No. 4-A2
Substitute Original Sheet No. 49 Original Sheet No. 49-A
Substitute Original Sheet No. 57
Substitute Original Sheet No. 68
Substitute Original Sheet No. 69
Substitute Original Sheet No. 74
Substitute Original Sheet No. 75
Substitute Original Sheet No. 79

Sea Robin states that the filing of these tariff sheets is being made under protest and without prejudice to Sea Robin's right to raise matters related thereto on rehearing, at the technical conference and elsewhere as this proceeding progresses.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211. All such motions or protests must be filed on or before October 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any protestant a party to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-24100 Filed 10-23-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3099-5]

Environmental Impact Statements; Filed October 14, 1986 Through October 17, 1986; Availability

AGENCY: Environmental Protection Agency, Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed October 14, 1986 Through October 17, 1986 Pursuant to 40 CFR 1506.9

EIS No. 860423, Final, COE, CA, Guadalupe River Flood Control Plan, Adjacent Streams, Santa Clara County, Due: November 24, 1986, Contact: Arijs Rakstins (415) 974-0379.

EIS No. 860424, Draft, FHW, GA, GA-400 Extension, I-85 to I-285, Construction, Fulton County, Due: December 8, 1986, Contact: Louis Papet (404) 347-4751.

EIS No. 860425, Final, AFS, MI, Ottawa National Forest, Land and Resource Management Plan, Due: November 24, 1986, Contact: Joseph Zylinski (906) 932-1330.

EIS No. 860426, Draft, AFS, OH, Wayne National Forest, Land and Resource Management Plan, Due: January 22, 1987, Contact: Harold Godlevske (812) 275-5987.

• EIS No. 860427, Final, Adoption, COE, GA, Lake Alma Project, Reservoir Construction and Development, Outdoor Recreation Opportunities, Bacon County, Due: November 24, 1986, Contact: Charles Belin (912) 944-5838.

EIS No. 860428, DSuppl, COE, GA, Lake Alma Project, Reservoir Construction and Development, Outdoor Recreation Opportunities, 404 Permit, Bacon County, Due: December 8, 1986, Contact: Charles Belin (912) 944-5838.

EIS No. 860429, Draft, CDB, MI, Jefferson/Conner Industrial Revitalization Project, CDBG, UDAG and Section 108 Loan, Wayne County, Due: December 8, 1986, Contact: Thomas Andrews (313) 224-6380.

EIS No. 860430, Final, FHW, MA, US 44 Relocation, MA-58 to MA-3, Relocation, Plymouth County, Due: December 1, 1986, Contact: Edwin Holahan (617) 494-2253.

Amended Notice

EIS No. 860397, Final, BLM, CO, Little Snake Resource Area, Resource Management Plan, Moffat, Rio Blanco and Routt Counties, Due: November 24, 1986, Published FR 10-3-86—Review period reestablished.

Dated: October 21, 1986.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 86-24084 Filed 10-23-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3099-6]

Environmental Impact Statements and Regulations Prepared October 6, 1986 Through October 10, 1986; Availability of EPA Comments

Availability of EPA comments prepared October 6, 1986 through October 10, 1986 pursuant to the Environmental Review Process (ERP), under sections 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076/73. An

explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EIS's

ERP No. D-AFS-E82053-00, Rating EC1, Southern Pine Beetle Suppression Program on Federal and Non-Federal Lands, Wilderness Areas, AL, AR, FL, KY, LA, MS, NC, SC, WV, OK, TN, TX, and GA. Summary: In general, EPA has no major objections to the the Forest Service's preferred alternative of using Integrated Pest Management techniques in the general forest and a very selective and targeted approach in wilderness areas. However, EPA's review has identified a number of concerns that should be addressed in the final EIS, including pesticide interactions, visibility protection, and biological alternatives.

ERP No. D-BIA-K85051-AZ, Rating EU3, San Xavier/Tucson Planned Community Development lease Approval, San Xavier District, Tohono O'Odham Nation (Papago) Indian Reservation, AZ. Summary: EPA has categorized this project as environmentally unsatisfactory due to: (1) Severe air quality impacts in an area that already has numerous violations of Federal air quality standards, (2) the project's inconsistency with the State Implementation Plan, and (3) impacts to ground and surface water quality. EPA believes that the draft EIS should be revised or supplemented because it did not adequately describe the overall project impacts or alternative which could reduce the magnitude of the impacts. If these issues are not resolved at the final EIS stage this EIS will be a candidate for referral to the Council on Environmental Quality for resolution.

Final EIS's

ERP No. F-COE-E32041-FL, Ft. Pierce Harbor Navigation Improvement, Indian River, FL. Summary: EPA has reviewed the final EIS and continues to have some concerns regarding restoration of seagrasses in the Causeway borrow area and documentation that justifies the channel deepening.

ERP No. F-COE-K35027-TT, Kwajalein Atoll Causeway Dredge and Fill Material Discharge Project, 404 Permit, Republic of the Marshall Islands. Summary: EPA's review indicates that the final EIS adequately assesses the environmental impact of the proposed action. EPA requested that the Army Corps coordinate project planning with the Kwajalein Development Authority to ensure that the necessary infrastructure to protect public health and welfare (sewer lines, etc.) is developed.

Regulation

ERP No. R-FAA-A52161-00, 14 CFR Parts 21 and 36, Noise Certification Standards for Propeller-Driven Small Airplanes (51 FR 25500). Summary: EPA has no objections to the proposed revisions.

Dated: October 21, 1986.

William D. Dickerson,

Acting Director, Office of Federal Activities.

[FR Doc. 86-24085 Filed 10-23-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00233; FRL-3102-2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the Special Review of each of the following: Alachlor, cadmium, and dinocap; a set of issues being considered by the Agency related to the apparent oncogenicity of oxadiazon; and a review of the Guide Standard and Protocol for Testing Microbial Water Purifiers.

DATES: The meetings will be held Wednesday and Thursday, November 19 and 20, 1986, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meetings will be held at: Howard Johnson's Hotel, Dominion #1, 2650 Jefferson Davis Highway, Arlington, VA 22202, (703-684-7200).

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-769C), 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall Building No. 2, Arlington, VA, (703-557-7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of a set of scientific issues in connection with the Agency's proposed regulatory decision on alachlor.

2. Review of a set of scientific issues in connection with the Agency's proposed regulatory decision on cadmium.

3. Review of a set of scientific issues in connection with the Agency's 1921 Jefferson Davis Highway, Arlington, VA, (703-557-3661).

4. Review of a set of scientific issues being considered by the Agency related to the apparent oncogenicity of oxadiazon.

5. Review of the Guide Standard and Protocol for Testing Microbial Water Purifiers.

6. Completion of any unfinished business from previous Panel meetings.

7. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to item 1 may be obtained by contacting:

By mail: David Giamporcaro, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

Copies of documents relating to item 2 may be obtained by contacting:

By mail: Valerie Beal, Registration Division (TS-767C), Office of Pesticide Programs, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

Copies of documents relating to item 3 may be obtained by contacting:

By mail: Paul Parsons, Registration Division (TS-767C), Office of Pesticide Programs, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7400).

Copies of documents relating to item 4 may be obtained by contacting:

By mail: Francis Mann, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 236, Crystal Mall Building No. 2, Arlington, VA, (703-557-2805).

Copies of documents relating to item 5 may be obtained by contacting:

By mail: Juanita Wills, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agnecy, 401 M. St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 711, Crystal Mall Building No. 2,

proposed regulatory decision on dinocap.

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral and/or written statements should notify the Executive Secretary and submit 10 copies of a summary no later than November 5, 1986, in order to ensure appropriate consideration by the Panel.

Dated: October 20, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 86-24197 Filed 10-23-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140079; FRL-3100-1]

Contractor and Subcontractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized several contractors and subcontractors for access to information which has been submitted to EPA under various sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street, SW., Washington, DC 20460, (202-554-1404)

SUPPLEMENTARY INFORMATION: Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. Section 12 requires a person to report his or her intent to export certain chemical substances to foreign countries.

In accordance with 40 CFR 2.306(j), EPA has determined that the following contractors and subcontractors will require access to CBI submitted to EPA under TSCA to successfully perform work under the contracts described in the following sections of this notice.

I. Previously Announced Contracts

Access to CBI by the contractors and subcontractors shown on the chart below was announced in earlier **Federal Register** notices. EPA is issuing this notice to inform submitters of changes in the TSCA CBI access status under these contracts.

Contract No.	Contract Name	Address	Authorized sections of TSCA	Site information	FR publication date/cite	Extended expiration date
68-02-4246	Battelle Memorial Institute	505 King Ave., Columbus, OH.	All	EPA headquarters	Oct. 31, 1985 (50 FR 45483)	Sept. 30, 1987.
	Subcontractors: Westat, Incorporated.	1650 Research Blvd., Rockvile, MD.				
	Univ. of N.C.	401 Rosenau, 201H Chapell Hill, NC				
	K.S. Crump & Co	1201 Gaines Street, Ruston, La				
	Wash. Consulting Group	1625 I Street, NW., Suite 214, Washington, DC				
68-02-3980	Centaur Associates, Incorporated.	1400 I Street, NW., Suite 700, Washington, DC.	4, 5, 6, and 8	EPA Headquarters Centaur's & SRI's facilities.	Oct. 29, 1984 (49 FR 43501)	Aug. 31, 1987.
	Subcontractor: SRI International.	333 Ravenswood Ave. Menlo Park, CA.				
68-01-6746	CRC Systems, Incorporated	4020 Williamsburg Court, Fairfax, VA.	5, 6, and 8	EPA Headquarters	Nov. 17, 1983 (48 FR 52353)	Sept. 30, 1987.
68-02-3990	Dynamac Corporation	11140 Rockville Pike, Rockville, MD.	4, 5, and 8	EPA Headquarters, Dynamac's facilities.	May 3, 1985 (50 FR 18914)	Sept. 30, 1987.
68-02-3970	General Science Corporation	8401 Corporate Drive, Landover, MD.	4, 5, 6, and 8	EPA Headquarters	Jan. 31, 1985 (50 FR 4591)	June 14, 1987.
68-02-3976	ICF, Incorporated	1850 K Street, NW., Suite 950, Washington, DC.	4, 5, 6, and 8	EPA Headquarters ICF's SRI's and PEI's facilities.	Oct. 11, 1984 (49 FR 39912)	Sept. 30, 1987.
	Subcontractors: SRI International.	333 Ravenswood, Avenue, Menlo Park, CA				
	PEI Associates, Incorporated	11499 Chester Rd., P.O. Box 46100, Cincinnati, OH				
68-02-4228	Life Systems, Inc., Incorporated.	24755 Highpont Road, Cleveland, OH, also 1725 Jefferson Davis Highway, Suite 803, Arlington, VA.	4, 5, 6, and 8	EPA Headquarters LSI's facilities.	Sept. 3, 1985 (50 FR 35597)	Sept. 30, 1988.
	Subcontractors: Hampshire Research Association.	4158 S. 36th Street Arlington, VA.			Apr. 3, 1986 (51 FR 11477)	
68-02-4240	Mathtech, Incorporated	511 Leesburg Pike, Suite 702, Fals Church, VA.	4, 5, 6, and 8	EPA Headquarters Mathtech's, PEI's, SRI's, and ICF's facilities.	Sept. 20, 1985 (50 FR 38199).	Sept. 30, 1987.
	Subcontractors: PEI Associates, Incorporated.	11499 Chester, Rd. Cincinnati, OH				
	SRI International	333 Ravenswood Avenue, Menlo Park, CA				
	ICF, Incorporated	1850 K Street NW., Suite 950, Washington, DC				
68-02-4236	Maxima Corporation	2101 E. Jefferson, Street, Rockville, MD.	All	EPA Headquarters	Sept. 20, 1985 (50 FR 38199).	Sept. 30, 1987.

Contract No.	Contract Name	Address	Authorized sections of TSCA	Site information	FR publication date/cite	Extended expiration date
68-02-3991	MITRE Corporation	1820 Dolley, Madison Blvd., McLean, VA.	4, 5, and 8	EPA Headquarters MITRE's facilities.	May 3, 1985 (50 FR 18914)	Sept. 30, 1987.
68-01-6973	Molecular Design Limited	2132 Farallon Drive, San Leandro, CA.	All	EPA Headquarters	Sept. 19, 1985 (50 FR 38028).	Sept. 5, 1987.
68-01-7037	Planning Research Corporation.	303 East Wacker Drive, Suite 600, Chicago, IL.	All	EPA Headquarters PRC's facilities.	Jun. 13, 1985 (50 FR 24831)	Dec. 31, 1986.
68-02-4210	Science Application, Int'l. Corporation (formerly JRB Associates).	8400 Westpark Drive McLean, VA.	5, and 8	EPA Headquarters SAIC's facilities.	Feb. 27, 1985 (50 FR 7960)	Sept. 30, 1988.
68-01-6919	SYCOM, Incorporated	14080 Sullyfield Circle, Chantilly, VA.	All	EPA Headquarters	Feb. 11, 1985 (50 FR 5671)	Sept. 30, 1987.
68-02-4209	Syracuse Research Corporation.	Merrill Lane, Syracuse, NY	4, 5, and 8	EPA Headerquarters SRC's facilities.	Jan. 28, 1985 (50 FR 3835)	Sept. 30, 1988.
68-02-3971	Technical Resources Incorporated.	3202 Monroe Sreet, Suite 300, Rockville, MD.	5, and 6	EPA Headquarters	May 3, 1985 (50 FR 18914)	Sept. 30, 1987
68-02-4242	Tracor-Jitco, Incorporated	1601 Research Blvd., Rockville, MD.	5 and 8	EPA Headquarters Tracor's facilities.	Sept. 30, 1985 (50 FR 38199).	Sept. 30, 1988.
68-02-3968	Versar, Incorporated	6850 Versar Center, Springfield, VA.	4, 5, 6, and 8	EPA Headquarters Versar's facilities.	Dec. 24, 1984 (49 FR 49894)	Sept. 30, 1989.

II. New Contractors and Subcontractors

Access to CBI by the contractors and subcontractors described in this sunit is being announced for the first time. EPA is issuing an initial notice to affected business informing them that EPA may provide access to TSCA CBI to these contractors and subcontractors under the contracts that are indicated on a need-to-know basis.

Under contract no. 68–01–7176, subcontractor CRC Systems, Incorporated, 4020 Williamsburg Court, Fairfax, VA will assits the Office of Toxic Substances' Information Management Division in developing a Microcomputer Document Tracking System. Completion of this system involves making the microcomputer system like the mainframe version it replicates. The subcontractor will not conduct substantive review of any CBI; however the CFR employees will require access to CBI on computer screens in order to evaluate technical aspects and perform the contract tasks. In addition, the employees will occasionally be required to review CBI documents to compare hard copy data to those data elements contained in the systems. Several new systems need to be developed to support new OTS requirements. Systems to be accessed include Chemical ID (CHEMD), Molecular Access System (MACCS), Chemical Update System (CUS), Chemicals in Commerce Information System (CICIS), and Confidential Chemical Information Data Base (CCID). CRC personnel will be given access to information submitted under all reporting provisions of TSCA. All access to TSCA CBI under this contract will take place at EPA Headquarters. CRC is working as a subcontractor under the Computer Sciences Corporation (CSC). Access to TSCA CBI by CSC was previously announced in the **Federal Register** of October 31, 1985 (50 FR 45483). Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1987.

Under contract no. 68–01–7230, Dynatrend, Incorporated, 1911 N. Fort Meyer Drive, Arlington, VA, will assist the Office of Administration and Resource Management's Facilities and Support Services Division's General Services Branch in providing 24 hour security support at EPA facilities. To provide this support, contractor employees may be required to enter areas where TSCA CBI is stored. They will enter those rooms only in emergency situations such as for repair of electronic access control card readers, to respond to alarms, to control fire or water damage, or in the event of a medical or other emergency. In these situations Dynatrend personnel will need clearance for access to information submitted under all reporting provisions of TSCA. All access to TSCA CBI under this contract will take place only at EPA facilities. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1988.

Under contract no. 68–02–4248, PEI Associates, Incorporated, 11499 Chester Road, Cincinnati, OH and its subcontractor, Clement Associates, 1850 K Street, NW., Suite 450, Washington, DC, will assist the Office of Toxic Substances' Economics and Technology Division in performing analyses of new and existing chemicals including their manufacture, processing, and use; potential new uses; occupational exposures; environmental releases; the effectiveness of engineering controls and personal clothing; and the costs associated with these controls. This work will require an in-depth knowledge of the chemical industry, chemical engineering, industrial hygiene, and control alternatives. Information received from industry by EPA or the contractor through this effort may claimed CBI. PEI personnel will be given access to informaton submitted under sections 4, 5, 6, and 8 of TSCA. Access to TSCA CBI under this contract will take place at EPA Headquarters and PEI's facilities. Clearance for access to TSCA CBI under this contract is scheduled to expire on September 30, 1988.

The contractors and subcontractors listed above that are authorized to transfer CBI materials from EPA Headquarters to their facilities will, upan completing review of the CBI materials, return them to EPA. Contractors and subcontractors requiring access to TSCA CBI at their facilities will be authorized for such access under the EPA "Contractor Requirements for the Control and Securitry of TSCA Confidential Business Information" security manual. EPA has received their security plans and will perform the required inspections of their facilities before CBI access at the sites will be allowed. Contractor and subcontractor personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security precedures before they are permitted access to TSCA CBI.

Dated: October 17, 1986.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 86–24132 Filed 10–23–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51642; FRL–3087–8]

Certain Chemicals Premanufactured Notices

Correction

In FR Doc. 86–21939, beginning on page 34497, in the issue of Monday, September 29, 1986, make the following corrections:

1. On page 34497, third column, twelfth line in the "DATES" caption,

"December 16, 196" should read "December 16, 1986".

2. On page 34498, second column, before the last line in the column, add the heading "P 86–1680".

3. On page 34499, first column, under "P 86–1687", after the fifteenth line, "86–1688" should read "P 86–1688".

4. On the same page, first column, seventh line from the bottom, "P 86–1689" should appear as boldface heading preceding the "Manufacturer" line.

5. On the same page, third column, second heading, "P 84–1695" should read "P 86–1695".

6. On page 34500, first column, eighth line, after "land" insert "and air.".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Wisconsin Major-Disaster Declaration; Amendment

[FEMA-775-DR]

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Wisconsin (FEMA-775-DR), dated October 7, 1986, and related determinations.

DATED: October 15, 1986.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3616.

Notice

The notice of a major disaster for the State of Wisconsin, dated October 7, 1986, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 7, 1986:

Waukesha County as an adjacent area for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaser Assistance.)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, FEderal Emergency Management Agency.

[FR Doc. 86–24053 Filed 10–23–86; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

Ramona Savings and Loan Association; Fillmore, California; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Ramona Savings and Loan Association, Fillmore, California on September 12, 1986.

Dated: October 20, 1986.

Jeff Sconyers,

Secretary.

[FR Doc. 86–24105 Filed 10–23–86; 8:45 am]

BILLING CODE 6720-01-M

Republic Savings Bank; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in Section 406(c)(2) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(2) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Republic Savings Bank, South Beloit, Illiniois, on October 2, 1986.

Dated: October 20, 1986

Jeff Sconyers,

Secretary.

[FR Doc. 86–24106 Filed 10–23–86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Citicorp; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization lised in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration or resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 7, 1986.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York; to retain Securities Industry Software Corporation, Evergreen, Colorado, and thereby engage in data processing and data transmission activities for the financial services industry, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–24050 Filed 10–23–86; 8:45 am]

BILLING CODE 6210-01-M

F&M Financial Services Corp., et al.; Formations of; Acquisitions by; and Merger, 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 November 13, 1986.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *F&M Financial Services Corporation*, Menomonee Falls, Wisconsin; to acquire 100 percent of the voting shares of Bank of Fond du Lac, Fond du Lac, Wisconsin.

2. *NBD Bancorp, Inc.*, Detroit, Michigan; to acquire 100 percent of the voting shares of Omnibank Corp., Wyandotte, Michigan, and thereby indirectly acquire Wyandotte Savings Bank, Wyandotte, Michigan.

3. *NBD Southern Corporation*, Detroit, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Omnibank Corp., Wyandotte, Michigan, and thereby indirectly acquire Wyandotte Savings Bank, Wyandotte, Michigan.

4. *Republic Bancorp, Inc.*, Flint, Michigan; to acquire 67 percent of the voting shares of Peoples State Bank, Williamston, Michigan. Comments on this application must be received by November 10, 1986.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *R. Darryl Fisher, M.D., Inc. Pension Trust*, Ada, Oklahoma; to become a bank holding company by acquiring 78 percent of the voting shares of Pontotoc County Bank, Roff, Oklahoma.

Board of Governors of the Federal Reserve System, October 20, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-24051 Filed 10-23-86; 8:45 am]

BILLING CODE 6210-10-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 86-1492—UAL, Inc.'s proposed acquisition of voting securities of Frontier Airlines, Inc., People Express Airlines, Inc., (People Express, Inc., UPE).	July 18, 1986.
(2) 86-1354—AFG Industries, Inc.'s proposed acquisition of voting securities of Hamilton Glass Products, Inc., (John Joseph Summers, UPE).	July 22, 1986.
(3) 86-1358—The Coca-Cola Company's proposed acquisition of voting securities of Four D Productions, Inc., (Danny and Donna Arnold, UPE's).	Do.
(4) 86-1383—Villiage Super Market, Inc.'s proposed acquisition of voting securities of Starn's Markets, Inc..	Do.
(5) 86-1385—Schwan's Sales Enterprises, Inc.'s proposed acquisition of voting securities of Louis Sabatasso and Sabatasso Foods, Inc..	Do.
(6) 86-1387—Donna and Danny Arnold's proposed acquisition of voting securities of The Coca-Cola Company.	Do.
(7) 86-1388—McClatchy Newspapers' proposed acquisition of assets of Tribune Publishing Company and Herald Publishing Company, (Tribune Publishing Company, UPE).	Do.
(8) 86-1392—E.I. Du Pont de Nemours and Company's proposed acquisition of voting securities of Sierra Coal Company; Matewan Minerals Inc., (The Broken Hill Proprietary Company, Ltd., UPE).	Do.
(9) 86-1434—Union Underwear Company's (William F. Farley, UPE) proposed acquisition of voting securities of Russell Hosiery Mills, Inc., (Charles J. Russell, Sr., UPE).	Do.
(10) 86-1414—The Dee Corporation's proposed acquisition of voting securities of Pittco Associates LP, (M & H Sporting Goods, Inc., UPE).	July 23, 1986.
(11) 86-1426—The BF Goodrich's proposed acquisition of voting securities of Uniroyal Tire Limited, (CDU Holding, Inc., UPE).	Do.
(12) 86-1440—Cybernex Corporation's proposed acquisition of voting securities of Century Data Systems, Inc., (Xerox Corporation, UPE).	Do.
(13) 86-1450—Harris Corporation's proposed acquisition of voting securities of Scientific Calculations, Inc.	Do.
(14) 86-1402—Stewart Resnick's proposed acquisition of assets of Mobil Corporation and voting securities of T.M. Duche Nut, Co.	July 24, 1986.
(15) 86-1429—Ing. C. Olivetti & Sp. A Co.'s proposed acquisition of voting securities of Adler-Royal Business Machine and Newco, (Volkswagen AG, UPE).	Do.
(16) 86-1433—McGraw-Hill, Inc.'s proposed acquisition of assets of The Economy Company, (Ford C. Price, UPE).	Do.
(17) 86-1441—Cardis Corporation's proposed acquisition of voting securities of Tuneup Masters, Inc., (Andy Granatelli, UPE).	Do.
(18) 86-1442—J.P. Industries, Inc.'s proposed acquisition of assets of McCord Gasket Corporation, (Ex-Cell-O Corporation, UPE).	Do.
(19) 86-1457—The Fulcrum II Limited Partnership's proposed acquisition of voting securities of Congoleum Industries, Inc.	Do.
(20) 86-1476—Charles C. Johnston's proposed acquisition of voting securities of Systems, Inc., (Grumman Corporation, UPE).	Do.
(21) 86-1355—Baystate Health Systems, Inc.'s proposed acquisition of voting securities of Franklin Medical Center.	July 25, 1966.
(22) 86-1363—Liberty Mutual Insurance Company's proposed acquisition of voting securities of Stein, Roe & Farnham Incorporated—a newly-formed joint venture.	Do.
(23) 86-1364—American International Group, Inc.'s proposed acquisition of voting securities of Jurgovan and Blair, Inc..	Do.
(24) 86-1368—Compagnie Generale des Eaux's proposed acquisition of voting securities of Consumers Water Company.	Do.
(25) 86-1375—Occidental Petroleum Corporation's proposed acquisition of voting securities of Laurel Run Mining Company, (Dominion Resources, Inc., UPE).	Do.
(26) 86-1406—Merck & Co., Inc.'s proposed acquisition of assets of Water Management Technology, (Hercules, Inc., UPE)	Do.
(27) 86-1422—J.B. Hunt's proposed acquisition of voting securities of First American Bankshares, Inc.	Do.
(28) 86-1452—Torie Steele Group, Inc.'s (Sam Wyly, UPE) proposed acquisition of voting securities of Frost Bros., Inc. and Frost Bros. Investment Corporation, (Manhattan Industries, Inc., UPE).	Do.
(29) 86-1468—Buecherbund Gmbh & Co.'s proposed acquisition of voting securities of Scientific American, Inc.	Do.
(30) 86-1469—Buecherbund Gmbh & Co.'s proposed acquisition of voting securities of Scientific American, Inc.	Do.
(31) 86-1472—Buecherbund Gmbh & Co.'s proposed acquisition of voting securities of Scientific American, Inc.	Do.
(32) 86-1477—Hillside Capital, Inc.'s, (Hohn N. Irwin, III, UPE) proposed acquisition of voting securities of Congoleum Corporation, (Congoleum Industries, Inc., UPE).	Do.
(33) 86-1486—Acorn Industries, Inc.'s (Bennett S. LeBow, UPE) proposed acquisition of voting securities and assets of Brigham's, Inc., (Richard and Frederick Johnson, UPE's).	Do.

Transaction	Waiting period terminated effective
(34) 86-1487—Reserve Life Insurance Company's (C.A. Sammons, UPE) proposed acquisition of voting securities of Eureka Life Insurance Company of America.	Do.
(35) 86-1503—UAL, Inc.'s proposed acquisition of assets of Frontier Airlines, Inc., (People Express, Inc., UPE).	July 28, 1986.
(36) 86-1436—Fleming Companies, Inc.'s proposed acquisition of voting securities of Frankford-Quaker Grocery Co.	July 29, 1986.
(37) 86-1407—Ariadne Australia Limited's proposed acquisition of voting securities of KDI Corporation.	July 30, 1986.
(38) 86-1427—The 1964 Simmons Trust's proposed acquisition of voting securities of The Louisiana Land and Exploration Co.	Do.
(39) 86-1448—Carl C. Icahn's proposed acquisition of voting securities of Trans World Airlines, Inc., (Aero Limited Partnership, UPE).	July 31, 1986.
(40) 86-1451—Ciron Corporation's proposed acquisition of assets of American ACMI, (Baxter Travenol Laboratories, Inc., UPE).	Do.
(41) 86-1502—MLX Corp.'s proposed acquisition of voting securities of Pameco Corporation, (Henry L. Hillman, UPE).	Do.
(42) 86-1504—Pentair, Inc.'s proposed acquisition of voting securities of McNeil Corporation.	Do.
(43) 86-1510—MLX Corp.'s proposed acquisition of voting securities of M Co., Inc.	Do.
(44) 86-1483—Anthem Electronics, Inc.'s proposed acquisition of voting securities of Lionex Corporation, (Leonard L. Schley, UPE).	Aug. 1, 1986.
(45) 86-1494—Yukio Takahaski's proposed acquisition of assets of Kona Surf Resort and Convention Center, (Kona Pacific Associates—a partnership, UPE).	Do.
(46) 86-1495—Hotel Investors Trust's proposed acquisition of voting securities of Hotel Properties, Inc.	Do.
(47) 86-1526—Interpacific Investment Ltd.'s proposed acquisition of voting securities of Cross Oil & Refining Co., (Moore & Munger, Inc., UPE).	Do.
(48) 86-1423—The Quaker Oats Company's proposed acquisition of voting securities of Golden Grain Macaroni Co.	Aug. 5, 1986.
(49) 86-1430—Guilford Mills, Inc.'s proposed acquisition of voting securities of Gold Mills, Inc., (William A. Levin, Esquire).	Do.
(50) 86-1454—Lockheed Corporation's proposed acquisition of voting securities of Sanders Associates, Inc.	Do.
(51) 86-1313—Baker International Corporation's proposed acquisition of assets of National Mine Service Company, (Charter Consolidated, P.L.C., UPE).	Aug. 7, 1986.
(52) 86-1449—The Arlen Corporation's proposed acquisition of assets of whittar Industries, Inc., a partnership.	Do.
(53) 86-1458—Canada Malting Co. Limited's proposed acquisition of voting securities of Ohio Pure Foods, Inc., (Walter N. Mirapaul, UPE).	Do.
(54) 86-1464—NCR Corporation's proposed acquisition of voting securities of Datacopi, Inc.	Do.
(55) 86-1473—N.V. Amev's proposed acquisition of assets of Certified Leasing Company, (National Service Industries, Inc., UPE).	Do.
(56) 86-1488—Voting Trust of the Providence Journal Company's proposed acquisition of assets of WHAS, Inc.	Do.
(57) 86-1514—Richard W. Kazmaier, Jr.'s proposed acquisition of assets of Bike Athletic Company, (Colgate Palmolive Company, UPE).	Do.
(58) 86-1536—Grand Metropolitan Public Limited Company's proposed acquisition of assets of Foreign Vintages, Inc., (James Thompson, Glenmore Distillers Co., UPE's).	Do.
(59) 86-1480—Dover Corporation's proposed acquisition of assets of CTI Liquidating Corp., (John B. Payne, UPE).	Aug. 13, 1986.
(60) 86-1500—The Travelers Corporation's proposed acquisition of voting securities of Dillon, Reed & Co., Inc.	Do.
(61) 86-1517—Investment AB Beijer's proposed acquisition of voting securities of Calmar, Inc.	Do.
(62) 86-1523—Maus Freres International, N.V.'s proposed acquisition of assets of Gimbels Brothers, Inc., (B.A.T. industries p.l.c., UPE).	Do.
(63) 86-1530—Emmis Broadcast Corporation's (Jeffrey H. Smulyan, UPE) proposed acquisition of assets of 3 Radio Stations, (Doubleday & Company, Inc., UPE).	Do.
(64) 86-1531—Community Health Systems, Inc.'s proposed acquisition of voting securities of Hillside Medical Center, Inc., (National Medical Enterprises, Inc., UPE).	Do.
(65) 86-1542—Cookson Group plc's proposed acquisition of voting securities of VHI, Inc.	Do.
(66) 86-1562—Collins & Aikman Corporation's proposed acquisition of assets of Akro Corp. and other related companies, (Leonard and Harriet Narens, UPE's).	Do.
(67) 86-1566—Howard P. Hoeper, Peck-Lynn Group's proposed acquisition of voting securities of Buckeye Molding Company, (Aluminum Company of America, UPE).	Do.
(68) 86-1567—Basil D. Vyzis's proposed acquisition of voting securities of 15 Frederick and Nelson and 3 Crescent department stores, (B.A.T. Industries, p.l.c., UPE).	Do.
(69) 86-1575—Superfos a/s's proposed acquisition of voting securities of Bolisse AG.	Do.
(70) 86-1576—Fred W. Weitz and W. Weitz Residual Trust's proposed acquisition of assets of The Al Cohen Construction Co., (Al Cohen Enterprises Co., UPE).	Do.
(71) 86-1581—Staley Continental, Inc.'s proposed acquisition of voting securities of The HAVI Corp., Perlman Rocque Co., Perlman Rocque Ltd., Primms, Inc., The Perque Company, and Perlman Rocque Associates, (Robert Rocque and Theodore Perlman, UPE's).	Do.
(72) 86-1582—Staley Continental, Inc.'s proposed acquisition of voting securities of Theodore Perlman.	Do.
(73) 86-1583—R.W. Weitz Residual Trust's proposed acquisition of assets of The Al Cohen Construction Co., (Al Cohen Enterprises Co., UPE).	Do.
(74) 86-1483—W.R. Grace & Co.'s proposed acquisition of assets of Sound Video Unlimited, Inc., (Noel Gimbel, UPE).	Aug. 14, 1986.
(75) 86-1515—Welsh, Carson, Anderson & Stowe III's proposed acquisition of voting securities of Genicom Corporation.	Aug. 15, 1986.
(76) 86-1529—Ashland Oil, Inc.'s proposed acquisition of voting securities of Diamond Shamrock Coal Company, (Diamond Shamrock Corporation, UPE).	Do.
(77) 86-1546—Healthcare Property Investors' proposed acquisition of assets of The Hillhaven Corp., (National Medical Enterprises, Inc., UPE).	Do.
(79) 86-1561—Main Line Health, Inc.'s proposed acquisition of voting securities of The Foundation at Paoli.	Do.
(80) 86-1568—National Intergroup, Inc.'s proposed acquisition of voting securities of Lawrence Pharmaceuticals, Inc., (Lawrence J. DeBow, UPE).	Do.
(81) 86-1569—Yukio Takahashi's proposed acquisition of assets of Emerald Hotel Corporation.	Do.
(82) 86-1570—National Intergroup, Inc.'s proposed acquisition of voting securities of Lawrence Pharmaceuticals, Inc., (George M. Cohen, UPE).	Do.
(83) 86-1571—Convergent Technologies, Inc.'s proposed acquisition of assets of Digital Systems Division of UCCEL Corporation and proposed voting securities of OSI from Careal Holding A.G., (Walter Haefner, UPE).	Do.
(84) 86-1589—B.D. Hunter's proposed acquisition of voting securities of Service Corporation International.	Do.
(85) 86-1593—Forum Health Investors, Inc.'s (Ronald G. Williams, UPE) proposed acquisition of voting securities of Lincoln West Medical Center, Inc. and Metropolitan Hospital, Inc., (National Medical Enterprises, Inc., UPE).	Do.
(86) 86-1606—Freeport McMoRan, Inc.'s proposed acquisition of voting securities of Petro-Lewis Corporation.	Do.
(87) 86-1607—Freeport McMoRan, Inc.'s proposed acquisition of voting securities of Petro-Lewis Corporation.	Do.
(88) 86-1608—S.A. Cimenteries CBR's proposed acquisition of voting securities of Genstar Calveras Cement Corporation and Genstar Western Stone Products, Inc., (Imasco Ltd., UPE).	Do.
(89) 86-1617—Hallmark Cards Incorporated Voting Trust's proposed acquisition of voting securities of Spanish International Communications Corporation.	Do.
(90) 86-1615—Freeport-McMoRan, Inc.'s proposed acquisition of voting securities of American Realty Trust.	Aug. 18, 1986.
(91) 86-1636—The Oxford Financial Group's proposed acquisition of voting securities of Peter Kiewit Sons', Inc.	Do.
(92) 86-1558—JWT Group Inc.'s proposed acquisition of voting securities of Gray and Company, (Robert Keith Gray, UPE).	Aug. 21, 1986.
(93) 86-1574—Lydall, Inc.'s proposed acquisition of assets of Manning Paper Company, (Hammermill Paper Company, UPE).	Aug. 19, 1986.
(94) 86-1577—McCain, Inc.'s proposed acquisition of voting securities of International Fruit of Massachusetts, Inc., (George P. Nagel, Jr., UPE).	Do.
(95) 86-1609—Pacific Lighting Corporation's proposed acquisition of voting securities of Michigan Sporting Goods Distributors.	Do.
(96) 86-1642—Standard Motor Products, Inc.'s proposed acquisition of assets of EIS Division and voting securities of Industrial and Automotive Associates, Inc., ("Cali-Blok") (Parker-Hannifin Corporation, UPE).	Do.
(97) 86-1600—International Signal & Control Group PLC's proposed acquisition of assets of Cardian Electronics Division of General Signal Controls, Inc., (General Signal Corporation, UPE).	Aug. 20, 1986.
(98) 86-1616—Chicago Pacific Corporation's proposed acquisition of voting securities of The Furniture Group of America, Inc., (General Mills, Inc., UPE).	Aug. 21, 1986.
(99) 86-1618—AMACO, Inc.'s proposed acquisition of voting securities of American Medical Assurance Company, (American Medical Association, UPE).	Do.
(100) 86-1619—Sara Lee Corporation's proposed acquisition of assets of Gold Seal Company.	Do.
(101) 86-1620—Health Care Service Corporation's proposed acquisition of assets and business of Standard of America Life Insurance Co. and voting securities of subsidiaries, (The Northwestern Mutual Life insurance Co., UPE).	Do.
(102) 86-1637—Pacificorp's proposed acquisition of voting securities of Systems Leasing Corporation, (Phillip G. and Patricia A. Norton, UPE's).	Aug. 22, 1986.
(103) 86-1541—Georgetown Industries, Inc.'s proposed acquisition of voting securities of Vesuvius Crucible Company.	Aug. 25 1986.

Transaction	Waiting period terminated effective
(104) 86-1630—Owens-Illinois, Inc.'s proposed acquisition of voting securities of Care Corporation.	Aug. 26, 1986.
(105) 86-1635—Crane Co.'s proposed acquisition of assets of Harbor Group, (W. Roger Morton, UPE).	Do.
(106) 86-1670—Bundy Corporation's proposed acquisition of voting securities of CHR Industries, Inc., (Owens-Corning Fiberglas Corporation, UPE).	Do.
(107) 86-1592—Tribune Company's proposed acquisition of voting securities of The Daily Press Incorporated	Aug. 27, 1986.
(108) 86-1631—Illinois Tool Works, Inc.'s proposed acquisition of voting securities of Signode, (Signode Industries, Inc., UPE).	Do.
(109) 86-1545—Viacom International, Inc.'s proposed acquisition of voting securities of Cable T.V. Puget Sound, Inc., (Tribune Publishing Company, UPE).	Aug. 28, 1986.
(110) 86-1579—General Motors Company's proposed acquisition of voting securities of an unnamed Joint Venture Corporation.	Do.
(111) 86-1580—Deere & Company's proposed acquisition of voting securities of an unnamed Joint Venture Corporation.	Do.
(112) 86-1595—Deere & Company's proposed acquisition of voting securities of General Motors Corp.	Do.
(113) 86-1610—J.M. Voith Gmbh's proposed acquisition of assets of Allis-Chalmers Hydro, Inc., (Allis-Chalmers Corporation, UPE).	Do.
(114) 86-1652—MacLean-Fogg Company's, (Barry L. MacLean, UPE) proposed acquisition of assets of Reliable Power Products business of Reliance Electric Company, (Exxon Corporation, UPE).	Do.
(115) 86-1687—Delta Air Lines, Inc.'s proposed acquisition of voting securities of Jet America, Inc.	Do.

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Legal Technician, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-24075 Filed 10-23-86; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on October 10, 1986.

Public Health Service: (Call Reports Clearance Officer on 202-245-2100 for copies of packages).

Food and Drug Administration

Subject: Amendments to Performance Standard for Laser Products—Revision—(0910-0176)
Respondents: Businesses or other for-profit; Small businesses or organizations
Subject: Premarket Notification Submission (510 (k))—Revision—(0910-1020
Respondents: Businesses or other for-profit; Small businesses or organizations
Subject: Bronchodilator Drug Products for OTC Human Use—New—
Respondents: Businesses or other for-profit

Health Resources Service Administration

Subject: Health Professions and Nursing Student Loan Programs Promissory Notes—Revision—(0915-0074)
Respondents: Individuals or households; Non-profit institutions

National Institutes of Health

Subject: Study of Thyroid Cancer and Nodularity in High Radiation Background Areas in China—New—
Respondents: Individuals or households
Subject: 1987 Physician Knowledge Survey—High Blood Pressure Control—New—
Respondents: Businesses or other for-profit; Small businesses or organizations
OMB Desk Officer: Bruce Artim

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of package)
Subject: Information Collection Requirements in the System Performance Review, "Medicaid"—reinstatement—(0938-0487)—HCFA-R-86
Respondents: State or local governments
Subject: Health Prepayment Data Card Coding Sheet—Reinstatement—(0938-0161—HCFA-1929
Respondents: Businesses or other for-profit
Subject: Report of PRO Review Activity—Extension—(0938-0413)-HCFA-516
Respondents: Businesses or other for-profit; Small businesses or organizations
OMB Desk Officer: Fay S. Iudicello

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of package)
Subject: Application for Survivor's Benefits—Extension—(0960-0062)
Respondents: Individuals or households
Subject: Child Relationship Statement—Extension—(0960-0116)
Respondents: Individuals or households
OMB Desk Officer: Judy A. McIntosh

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503. ATTN: (name of OMB Desk Officer).

Dated: October 20, 1986.

Barbara S. Wamsley,

Acting Deputy Assistant Secretary for Management Analysis and Systems.

FR Doc. 86-24070 Filed 10-23-86; 8:45 am]

BILLING CODE 4150-04-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation—Steering Committee.

TIME AND DATE: Sunday November 16, 1986, 4:00-P.M.-6:00 P.M. Full Committee, November 17-18, 1986, 9:00 A.M.-5:00 P.M., November 17, 8:00 A.M.-5:00 P.M., November 18.

PLACE: (1) November 16-17, 1986 Capitol Holiday Inn 550 C Street SW., Washington, DC 20024

(2) November 18, 1986 Stonehenge Room 6th Floor Hubert H. Humphrey Building, 200 Independence Avenue SW. Washington, DC 20201

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be Considered: Reports by members of the Steering Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Steering Committee plans to discuss critical issues concerning prevention, family community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) acts in an advisory capacity to the President and the Secretary of the Department of Health

and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person For More Information: Susan Gleeson, R.N., M.S.N., 330 Independence Ave., SW., Room 4725-North, Washington, DC 20201, (202) 245-7635.

Dated: October 16, 1986.

Susan Gleeson,

Executive Director, PCMR.

[FR Doc. 86-24066 Filed 10-23-86; 8:45 am]

BILLING CODE 4130-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK 961-07-4213-15-2410; AA-8103-37[1]]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to Doyon, Limited, notice of which was published in the **Federal Register**, 51 FR 29160 and 29161 on August 14, 1986, is modified by a change in the Navigability Determination of June 9, 1986.

A notice of the modified DIC will be published once a week, for four (4) consecutive weeks, in the FAIRBANKS DAILY NEWS-MINER. Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Except as modified, the decision, notice of which was given August 14, 1986, is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-24041 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-JA-M

[AK961-07-4213-15-2410; AA-6665-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decision to issue conveyance (DIC) to **ISANOTSKI CORPORATION,** notice of which was published in the **Federal Register,** 51 FR 25120 on July 10, 1986, is modified by deleting the easement identified as EIN 100 C4.

A notice of the modified DIC will be published once in the *Aleutian Eagle* and once a week, for four (4) consecutive weeks, in *The Anchorage Times.* Copies of the modified DIC may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until October 24, 1986 to file an appeal on the issue in the modified DIC. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (906), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified the decision, notice of which was given July 10, 1986, is final.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-24042 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-JA-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-49024-J has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 19 S., R. 6 E.,
Sec. 16, SW¼NE¼
(40 acres).

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from March 1, 1986, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-49024-J as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1986, subject to the terms and conditions cited above.

Dated: October 15, 1986.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 86-24068 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-JC-M

[CO-010-07-4410-08; INT FES 86-15]

Extension of Due Date and Availability of Errata for the Final Little Snake Resource Management Plan/ Environmental Impact Statement; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of Due Date and Availability of Errata for the Final Little Snake Resource Management Plan.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management has prepared the Final Little Snake Resource Management Plan-Environmental Impact Statement (RMP/EIS). However, following public distribution of the RMP/EIS, it was discovered that portions of the document were inadvertently omitted during production. As a result of the omissions, errata information has been prepared and the due date for receipt of protests has been extended.

DATE: The due date for receiving protests, which must in writing has been extended to November 24, 1986.

ADDRESS: Protests should be sent to the BLM Director, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duane Johnson, Project Manager, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Telephone: (303) 824-8261.

SUPPLEMENTARY INFORMATION: During development of the Final Little Snake RMP/EIS for management of the Little Snake Resource Area in northwest Colorado, portions of the document were inadvertently omitted. The omissions include portions of the Coal Priority-Use Area and Other Mineral Priority-Use Area descriptions and all of the Oil and Gas Priority-use Areas description under the chapter entitled

[1] AA-8103-7, AA-8103-38, AA-8103-39, AA-8103-40, AA-8103-41, AA-8103-42, AA-8103-43, AA-8103-44, AA-8103-45, AA-8103-46, AA-8103-48, AA-8103-49, AA-8103-50, AA-8103-51, AA-8103-55

Proposed Resource Management Plan. In addition, portions were omitted from the chapter entitled Text Changes.

Availability: Single copies of the Final Little Snake RMP/EIS, Wilderness Technical Supplment, and errata pages may be obtained from the address listed above or from: Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Dated: October 16, 1986.

Cecil Roberts,

Acting State Director Colorado State Office.

[FR Doc. 86-24043 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-JB-M

[AA-620-4211-02-24-10]

Increase in Rental Rates on Simultaneous Oil and Gas Leases Delayed

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of rental reduction for simultaneous oil and gas leases for sixth year rental for one year period.

SUMMARY: The Secretary of the Interior has granted a rental reduction for one year for all simultaneous oil and gas leases whose rental rates will increase from $1 to $3 per acre for the sixth lease year. This rental reduction suspension action will be reviewed annually.

EFFECTIVE DATE: October 24, 1986.

ADDRESS: Director (620), Bureau of Land Management, 18th & C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gloria J. Austin, Bureau of Land Management, (202) 653-2190.

SUPPLEMENTARY INFORMATION: In response to the President's message regarding Federal energy assets, the Secretary of the Interior has granted a rental reduction for one year for all simultaneous oil and gas leases entering their sixth year from $3 per acre or fraction thereof to $1 per acre or fraction thereof. The rental reduction includes all simultaneous oil and gas leases issued, with a normal effective date of March 1, 1982, subject to the rulemaking published on January 20, 1982 (47 FR 2864) which became effective February 19, 1982. This policy, announced October 1, 1986, affects those lessees normally owing sixth year rental of $3 for the year beginning March 1987 through February 1988.

During the first half of FY 1986, Federal oil and gas lessees allowed approximately 7,000 acres on 11.1 million acres to terminate, either through failure to pay annual rentals or through formal relinquishment. This is a 55 percent increase over the number of leases returned for the same period in FY 1985.

The regulatory change (43 CFR Part 3103) of January 20, 1982, initiated for the purpose of encouraging diligence, is expected to have a counter-productive effect that will lead to an event greater return of leases to the Federal Government. The regulation imposes a $3 per acre annual rate on those leases entering their sixth year on which lessees have been paying $1 per acre for the first 5 years. This increase, or additional holding cost, will likely result in many of these leases being terminated or relinquished. It is anticipated that a rental reduction to $1 per acre will keep more lands under lease and allow more economical oil and gas development.

The rental reduction was granted by the Secretary under section 39 of the Mineral Leasing Act of 1920 (30 U.S.C. 209) only for the sixth lease year, and will be reviewed annually to determine whether or not to extend the policy.

Additionally, any simultaneous oil and gas leases that terminated during their primary term, but were reinstated under the Class II reinstatement procedures at 43 CFR 3108.2-3, do not revert to the $1 per acre rental amount, but retain the higher rental amount as provided under the terms of the Class II reinstated leases. Further, any simultaneous oil and gas leases for which all or a portion of the lands were determined to be within a known geologic structure prior to the begininng of their sixth year do not revert to the $1 per acre rental amount and shall require annual rental of $2 per acre or fraction thereof in accordance with 43 CFR 3103.2-2(d).

Dated: October 17, 1986.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 86-24044 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-86-M

[OR-23560, OR-943-07-4220-11: GP-07-005]

Oregon; Conveyance of Public Land: Order Providing for Opening of Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 80 acres of public land out of Federal ownership. This action will also open 80 acres of reconveyed land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: November 24, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 80 acres of land in Malheur County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Williamette Meridian

T. 7 S., R. 48 E.,

Sec. 18, N½NW¼.

The area described contains 80 acres in Baker County.

3. At 8:30 a.m., on December 1, 1986, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on December 1, 1986, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on December 1, 1986, the land described in paragraph 2 will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on December 1, 1986, the land described in paragraph 2 will be open to applications and offers under the mineral leasing laws.

Dated: October 15, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-24069 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

[FES 86-42]

Availability of Final Environmental Impact Statement (EIS) for the Kesterson Program, Merced and Fresno Counties, CA

AGENCY: Bureau of Reclamation, Interior.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared an Environmental Impact Statement (EIS) that addresses the impacts of alternative cleanup actions at Kesterson Reservoir and the San Luis Drain in Merced and Fresno Counties, California. This final EIS has been prepared in cooperation with the Fish and Wildlife Service and the Army Corps of Engineers.

ADDRESSES: Copies of the statement are available for inspection at the following locations:

Director, Office of Environmental Affairs, Bureau of Reclamation, Room 7429, Washington DC 20240, Telephone: (202) 343-4991

Regional Director, Bureau of Reclamation, Mid-Pacific Region, Attn: Kesterson Program, 2800 Cottage Way, Sacramento, CA 95825-1898, Telephone: (916) 978-5046

Division of Acquisition and Property Management, Document Systems Management Branch, Library Section, Code 823, Engineering and Research Center, Bureau of Reclamation, Denver Federal Center, Denver, CO 80225, Telephone: (303) 236-6969

FOR FURTHER INFORMATION CONTACT: Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs or the Regional Director at the above addresses. Copies will also be available for inspection in libraries in the project vicinity.

SUPPLEMENTARY INFORMATION: This final EIS (Volume I) presents a more detailed description of Reclamation's proposed Phased Approach, summarizes the expected impacts of the Phased Approach, makes corrections and revisions to the draft EIS (incorporated as Volume II of the Final EIS), and presents responses to comments made on the draft EIS. The proposed Phased Approach includes three elements: The Flexible Response Plan (FRP), the Immobilization Plan, and the Onsite Disposal Plan.

Under the Phased Approach, Reclamation proposes to implement the first phase, the FRP, in March 1987 if the latest available research results indicate that the FRP may achieve cleanup goals within 1-5 years. The Immobilization Plan will be tested simultaneously with the FRP. The Immobilization Plan will be implemented if early tests show it to be feasible and water quality or biological monitoring indicate the FRP is unsuccessful. If monitoring shows that neither the FRP nor the Immobilization Plan will achieve cleanup goals at Kesterson Reservoir, the Onsite Disposal Plan will be implemented.

Dated: October 20, 1986.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 86-23994 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Upper Delaware National Scenic and Recreational River; 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: October 31, 1986, 7:00 p.m.

Inclement Weather Reschedule Date: November 14, 1986*.

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 draft river management plan. The meeting will be open to the public.

* Announcements of cancellation due to inclement weather will be made by radio stations WDNH, WDLC, WSUL, and WVOS.

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, 1-¾ miles North of Narrowsburg, NY, Damascus Township, Pennsylvania.

Dated: October 15, 1986.

James W. Coleman, Jr.

Regional Director, Mid-Atlantic Region

[FR Doc. 86-24071 Filed 10-23-86; 8:45 am]

BILLING CODE 4310-70-M

Proposed 1987 United States World Heritage Nominations

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: The Department of the Interior, through the National Park Service, announces the identification of the three properties listed herein as proposed 1987 U.S. nominations to the World Heritage List. These properties were selected from among the potential 1987 nominations that were published in the **Federal Register** on July 28, 1986 (51 FR 26954), with a request for public comment. A draft nomination document will be prepared for each property listed herein, and will serve as the basis for determining later this calendar year whether to formally nominate the properties for World Heritage status.

In addition, the July 28, 1986, **Federal Register** notice referenced public comment suggesting the examination of specific properties not presently included on the U.S. Indicative Inventory of Potential Future Nominations with regard to their possible inclusion on the Indicative Inventory this year. The Federal Interagency Panel for World Heritage accomplished this examination at its August 25, 1986, meeting. Based upon submitted justifications, and other available information, the Panel did not recommend the addition of properties to the U.S. Indicative Inventory in 1986.

DATES: The Federal Interagency Panel for World Heritage will meet in November 1986 to review the accuracy and completeness of the draft nomination documents, and to make recommendations to the Department of the Interior. Subject to this review and necessary approvals, the Assistant Secretary for Fish and Wildlife and Parks will transmit nomination(s) to the

World Heritage Committee, through the Department of State, so that they are received no later than December 31, 1986, for evaluation during 1987. If approved and formally submitted, notice of U.S. World Heritage nominations will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Associate Director, Planning and Development, National Park Service, U.S. Department of the Interior, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Convention Concerning Protection of the World Cultural and Natural Heritage, now ratified by the United States and 89 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world.

Participating nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 216 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria. Under the Convention, each participating nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96–515; 16 U.S.C. 470a–1, a–2). On May 27, 1982, the Interior Department published in the Federal Register the policies and procedures that will be used to carry out this legislative mandate (47 FR 23392). These rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S. World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the U.S. Fish and Wildlife Service, and the Bureau of Land Management within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service, Department of Agriculture; and the Department of State.

Proposed 1987 United States World Heritage Nominations

The three cultural properties listed below have been identified as proposed 1987 U.S. nominations to the World Heritage List. The identification of these properties as proposed nominations indicates that a draft nomination document will be prepared for each property. This document will subsequently be evaluated by the Federal Interagency Panel for World Heritage when it convenes in November 1986, at which time a decision on whether to formally nominate the properties to the World Heritage List will be made.

The following cultural properties, indicated by major theme, have been identified as proposed 1987 United States World Heritage nominations. Also listed are the World Heritage criteria that the properties appear most nearly to satisfy:

I. Cultural Properties

Architecture: Early United States

Monticello, Charlottesville, Virginia (38°0′ N; 78°30′ W)

Thomas Jefferson, the third American President, was a great architect who practiced the Classic Revival style. In Monticello, his mansion, he combined elements of Roman, Palladian, and 18th-century French design with features expressing his extraordinary personal inventiveness. Criteria: (i) A unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence, over a span of time and within a cultural area of the world, on development in architecture.

University of Virginia Historic District

Charlottesville, Virginia (38°0′ N; 78°30′ W)

Includes original classrooms and professors' quarters housed in pavillions aligned on both sides of an elongated terraced court, as well as the domed Rotunda, a scaleddown version of the Pantheon. This building was the focal point of Thomas Jefferson's design. Jefferson envisioned a community of scholars living and studying in an architecturally unified complex of buildings. Criteria: (i) A unique artistic achievement, a masterpiece of the creative genius; and (ii) has exerted great influence, over a span of time and within a cultural area of the world, on developments in architecture.

Hawaiian

PU'UHONUA O HONAUNAU National Historical Park, Hawaii (19°25′ N; 155°55′ W)

This area (formerly known as City of Refuge National Historical Park) includes sacred ground, where vanquished Hawaiian warriors, noncombatants, and kapu breakers were granted refuge from secular authority. Prehistoric housesites, royal fishponds, and spectacular shore scenery are features of the park. Criteria: (iii) Bears a unique or exceptional testimony to a civilization which has disappeared; (iv) an outstanding example of a type of building or architectural ensemble which illustrates a significant stage in history; and (vi) directly or tangibly associated with ideas or beliefs of outstanding universal significance.

Dated: October 7, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86–24113 Filed 10–23–86; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Trinidad Bascara, M.D.; Revocation of Registration

Correction

In FR Doc. 86–23496, beginning on page 37090, in the issue of Friday, October 17, 1986, make the following correction:

On page 37090, third column, last paragraph, the date should read "November 17, 1986."

BILLING CODE 1505–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and use of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N-1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, telephone (202) 395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Commerce Department/Bureau of the Census
Department of Labor/Bureau of Labor Statistics
Occupational Mobility and Job Tenure Supplment (Jan. 1987 Supplement to the Current Population Survey)
CPS-1
One time only
Individuals or households
58,000 responses; 1,450 hours; one form

The data obtained in this Supplement will be used by the Bureau of Labor Statistics to evaluate the length of time people spend in a particular job, the length of time in a particular occupation, the incidence of job change and occupational change, and the reasons people change occupations.

Revision

Bureau of Labor Statistics
Information for the Producer Price Indexes, by Industry
1220-0008; BLS 473P, BLS 1810A, B, C, E, and A-F
Monthly repricing; Initiation of new respondents over the year
Businesses or other for profit; Federal agencies or employees; Small businesses or organizations
For BLS 1810A, B, C, E, and A-F (initiation): 4,500 responses; 9,000 hours; For BLS 473P (repricing): 885,558 responses; 265,667 hours; 6 forms

The Producer Price Index, which is one of the nation's leading economic indicators, is used as a measure of price movements, indicator of inflationary trends in the economy, inventory valuation measure for some organizations, and measure of purchasing power of the dollar at the primary market level. It is also used in market research and as a basis for escalation in long-term contracts.

Extension

Bureau of Labor Statistics
Report on Occupational Employment
1220-0042; BLS-2877
Annually
State or Local Governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations
191,474 responses, 95,737 hours, 62 forms

The OES Survey program is a Federal/State sample survey of employment by occupation in non-farm establishments that is used to produce data on current occupational employment and is a component in the development of employment and training programs and occupational information systems.

Employment Standards Administration
Request for Examination and/or Treatment
1215-0066; LS-1
On occasion
Individuals or households
165,000 responses; 178,200 hours; 1 form

Form is used by employers to authorize medical treatment for injured workers and by physicians to report findings of physical examinations and treatment recommended.

Occupational Safety and Health Administration
Maritime Employment Regulations
1218-0003
Annually
Businesses or other for profit; Small businesses or organizations
5,362 responses; 38,254 hours

OSHA needs this information to accredit companies to inspect and provide certification for cranes, derricks and accessory gear used in Longshoring and Shipyard industries and Marine terminals. Use of the OSHA Forms 70, 71, and 72 has proven successful, and their use has served as an aid to the Agency and the industry in tracking conditions germane to employee safety and health.

Designation of Competent Person, Log of Inspections and Tests by Competent Person
1218-0011; OSHA 73 and 74
On occasion
Businesses or other for profit; small business or organizations
400 respondents; 825 hours; 2 forms

The purpose of these paperwork requirements are to insure that shipyard personnel do not enter confined spaces that contain oxygen deficient, toxic, or flammable atmospheres and that qualified personnel test these spaces and the results of these tests are made available to those who must enter these spaces. Shipyards, barge cleaners, and repair facilities are affected.

Revision

Employment and Training Administration
Work Application/Job Order Recordkeeping
1205-0001
Recordkeeping
state or local governments

52 recordkeepers; 416 hours

Request is only for retention of information on work applications and job orders.

Job Corps Health Questionnaire (ETA 6–53)
1205–0033; ETA 6–53
On occasion
individuals or households
97,500 responses; 32,175 hours; 1 form

THe Health Questionnaire is used to obtain the health history of applicants to the program to determine medical eligibility. The applicant must not have a health condition which represents a potentially serious hazard to the youth or others, results in a significant interference in the normal performance of duties, or requires frequent, expensive, or prolonged treatment.

Interstate Arrangement for Combining Employment and Wages
1205–0170; IB–4, IB–5, and IB–6
Quarterly
State or local governments
53 respondents; 336,348 burden hours; 3 forms

These forms are used for administrative purposes to transfer data concerning claims filed under the Interstate Arrangement For Combining Employment and Wages between State agencies.

Reinstatement

Bureau of Labor Statistics
Supplementary Data System
1220–0083
Annual
State or local governments
21 responses, 164,760 hours, no forms

As a supplement to the Annual Survey of Occupational Injuries and Illnesses, the Supplementary Data System (SDS) develops information on characteristics of work-related injuries and illinesses. The SDS fills major needs for information which cannot be supplied by the Annual Survey needed by the Occupational Safety and Health Administration in program direction, compliance, and standards setting.

Collection of Information in Current Rules

Occupational Safety and Health Administration
Asbestos (Construction), OSHA 289
On Occasion
Businesses or other for profit; small businesses or organizations
188,779 responses; 1,338,900 hours; no forms

This regulation requires employees to train employees about the hazards of asbestos, to monitor employee exposure, to provide medical surveillance and to establish and maintain accurate records of employee exposure to asbestos. The standard applies to employers in the construction industries as defined in 29 CFR 1926.59.

Signed at Washington, DC, this 22nd day of October, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86–24101 Filed 10–23–86; 8:45 am]

BILLING CODE 4510–24–M

Extension of the Task Force on Economic Adjustment and Worker Dislocation

In accordance with the provisions of the Federal Advisory Committee Act and after consultation with GSA, the Secretary of Labor has determined that the extension of the Task Force on Economic Adjustment and Worker Dislocation for a period not to exceed ninety days (February 27, 1987) is in the public interest in connection with the performance of duties impsed on the Department.

The Task Force advises the Secretary of Labor on such matters as the causes and effects of worker dislocation and evaluates what is being done in the U.S. and in other nations to deal with this problem.

Former Under Secretary of Labor Malcolm Lovell, currently director of George Washington's Industrial Relations Institute, chairs the 21-member Task Force. The panel includes representatives from organized labor as well as members from the business and academic/public sector communities.

The Task Force functions solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. The extension of its charter will be filed under the Act 15 days from the date of this publication.

Interested persons are invited to submit comments regarding the extension of the Task Force on Economic Adjustment and Worker Dislocation. Such comments should be addressed to: Gerald P. Holmes, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Tel: (202) 523–7571.

Signed at Washington, DC, this 17th day of November 1986.

William E. Brock,

Secretary of Labor.

[FR Doc. 86–24035 Filed 10–23–86; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–17,491]

Avondale Mills, Eufaula, AL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 17, 1986 in response to a worker petition received on December 27, 1985 which was filed on behalf of workers and former workers of Alta Products Corporation, Wilkes-Barre, Pennsylvania.

Avondale Mills, Eufaula, Alabama ceased production and terminated all production and salaried workers on January 14, 1985 and sold the plant on January 31, 1985.

All workers were separated from the subject firm more than one year prior to the date of the petition. Section 223 of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 9th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86–24037 Filed 10–23–86; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–17,406]

Delco Systems Operations, Culpeper, VA; Negative Determination Regarding Application for Reconsideration

By an application dated September 17, 1986, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the petition filed on behalf of former workers of Delco Systems Operations in Culpeper, Virginia. The denial notice was published in the **Federal Register** on October 3, 1986 (51 FR 35442).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

3. If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioner claims that the Department's determination is inadequate since it does not include information which identifies the buyer-seller relationship between Delco Systems Operations and the Diesel Division of General Motors (DDGM) of Canada.

Findings in the investigation show that the workers at Delco's Culpeper facility produced gun turrets for light armored vehicles. The light armored vehicles are producted by DDGM in Canada for the United States Marine Corps. The gun turrets produced at Culpeper were sold and shipped under exclusive contract to DDGM of Canada, i.e., all sales of gun turrets were for export. The Culpeper facility closed in October 1985 and its work consolidated with that of DDGM's plant in London, Ontario. The light armored vehicles which incorporate the gun turret components were imported from DDGM of Canada by the United States Government not Delco Systems Operations or General Motors.

The Trade Act of 1974 provides benefits to workers when the Department substantiates that increased imports of articles like or directly competitive with those produced by the workers' firm contributed importantly to decreased sales and/or production and decreased employment at the firm. Lost export sales resulting from a shift of production to a foreign country is not a basis for certification under the terms of the Trade Act of 1974.

The findings in the Department's investigation recognized the buyer-seller relationship noted by the petitioner and the fact the gun turrets produced at Culpeper were shipped under exclusive contract to DDGM of Canada. The gun turrets produced at Culpeper are not like or directly competitive with the finished article—light armored vehicles produced in Canada. The courts have concluded that imported finished articles are not like or directly competitive with domestic component parts thereof (*United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F 2d 174 (D.C. Cir., 1974)). In that case the court held that imported finished women's shoes were not like or directly competitive with shoe counters, a component of footwear.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 9th day of October 1986.

Stephen A. Wander,

Deputy Director, Office of Legislation and Acturial Services, UIS.

[FR Doc. 86-24038 Filed 10-23-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,776]

Mountain City Manufacturing, Forest City, PA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 4, 1986 in response to a worker petition which was filed by the International Ladies' Garment Workers' Union, Local 109 on behalf of workers at Mountain City Manufacturing, Forest City, Pennsylvania.

The petitioning group of workers are subject to an ongoing investigation for which a determination has not yet been issued (TA-W-17,713). Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 6th day of October 1986.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 86-24039 Filed 10-23-86; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-17,196]

USX (Formerly United States Steel Corporation)

Forged Circular Products Operations, McKees Rocks, PA; Negative Determination Regarding Application for Reconsideration

By an application dated August 26, 1986, the United Steelworkers of America requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at USX (formerly United States Steel Corporation) Forged Circular Products Operations, McKees Rocks, Pennsylvania. The denial notice was published in the **Federal Register** on August 12, 1986 (51 FR 28903).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the Department's survey of USX customers purchasing forged circular steel products from the McKees Rocks, Pennsylvania plant was inadequate and listed two additional customers who allegedly increased import purchases of forged circular steel products.

Findings in the investigation show that both customers were surveyed. One customer had decreased foreign purchases of circular forged products (gear blanks) in 1985 compared to 1984; the other customer accounted for an insignificant portion of the survey group's reduced purchases from the McKees Rocks facility. All production operations at McKees Rocks were terminated in late 1985.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 6th day of October 1986.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 86-24040 Filed 10-23-86; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; New Extended Benefit Period in the State of Puerto Rico

This notice announces the beginning of a new Extended Benefit Period in Puerto Rico, effective on September 21, 1986, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the

Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit Period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on September 6, 1986, equals or exceeds 6 percent, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on September 21, 1986. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State unemployment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. (20 CFR 615.13(d)(2))

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on October 20, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

[FR Doc. 86-24102 Filed 10-23-86; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmenal agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Mississippi:
MS86-1(Jan. 3, 1986) ..... p. 438
MS86-3(Jan. 3, 1986) ..... p. 444

New York:
NY86-2(Jan. 3, 1986) ..... p. 650

NY86-3(Jan. 3, 1986) ..... pp. 661-662, p. 664
NY86-6(Jan. 3, 1986) ..... pp. 684-687, p. 691
NY86-7(Jan. 3, 1986) ..... pp. 693-699
NY86-10(Jan. 3, 1986) ..... pp. 727-728, pp. 733-734
NY86-18(Jan. 3, 1986) ..... pp. 784-790, pp. 790a-790b

Volume II

Arkansas AR86-1(Jan. 3, 1986). p. 4
Oklahoma OK86-13(Jan. 3, 1986). p. 822
Minnesota:
MN86-5(Jan. 3, 1986) ..... pp. 499, 501, and p. 503
MN86-7(Jan. 3, 1986) ..... p. 507, pp. 510-512, p. 514, pp. 518-520, and pp. 523-523a
MN86-8(Jan. 3, 1986) ..... pp. 525-526, pp. 528-529, p. 536, and pp. 538a-538b
Missouri:
MO86-1(Jan. 3, 1986) ..... p. 540
MO86-6(Jan. 3, 1986) ..... p. 583
MO86-7(Jan. 3, 1986) ..... p. 590
Wisconsin:
WI86-1(Jan. 3, 1986)..... pp. 946, 948
WI86-2(Jan. 3, 1986)..... pp. 950-951
WI86-10(Jan. 3, 1986)..... p. 989

Volume III

Colorado CO86-1(Jan. 3, 1986). p. 101

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80 Regional Government Depository Libraries and many of the 1,400 Government Depository Libararies across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 17th day of October 1986.

James L. Valin,

Assistant Administrator.

FR Doc. 86-23857 Filed 10-23-86; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (86-75)]

NASA Advisory Council, Aeronautics Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Aviation Safety Reporting System (ASRS).

DATE AND TIME: November 12, 1986, 9 a.m. to 5 p.m.; November 13, 1986, 8:30 a.m. to 1 p.m..

ADDRESS: National Business Aircraft Association, 1200 Eighteenth Street, NW., Suite 200, The Board Room, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne O. Teague, Code R, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1887).

SUPPLEMENTARY INFORMATION: The Subcommittee on ASRS was established to review the ASRS operations and NASA actions taken in response to Subcommittee recommendations. The Subcommittee, chaired by Mr. John Winant, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda:

November 12, 1986

9 a.m.—Chairperson's Opening Remarks.

9:15 a.m.—Administrative Announcements..

9:30 a.m.—Operations Reports.

10:30 a.m.—Research Report.

11:30 a.m.—Discussion of Federal Aviation Administration Issues.

1 p.m.—Discussion of ASRS Program Evaluation.

5 p.m.—Adjourn.

November 13, 1986

8:30 a.m.—Preparation of Subcommittee's Evaluation Report.

1 p.m.—Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

October 14, 1986.

[FR Doc. 86-24089 Filed 10-23-86; 8:45 am]

BILLING CODE 7510-01-M

[Notice (86-76)]

NASA Advisory Council (NAC), Space and Earth Science Advisory Committee (SESAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space and Earth Science Advisory Committee.

DATE AND TIME: November 12, 1986, 9:30 a.m. to 5:30 p.m.; November 13, 1986, 8:30 a.m. to 5:15 p.m.; November 14, 1986, 8:30 a.m. to 12:a.m. 12:00 Noon.

ADDRESS: National Aeronautics and Space Administration, Room 226-A, 600 Independence Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey D. Rosendhal, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1410).

SUPPLEMENTARY INFORMATION: The NAC Space and Earth Science Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space and Earth Science programs. The Committee is chaired by Louis Lanzerotti and is composed of 32 members.

Type of meeting: Open.

Agenda: Room 226-A

November 12, 1986

9:30 a.m. Introduction of New Members, Recent SESAC and NASA Advisory Council (NAC) Activities, Meeting Arrangements and Announcements.

10 a.m. Status of the Space Shuttle Program/Plans for Resumption of Operations.

10:30 a.m. The State of the Space and Earth Science Program.

1:30 p.m. The Forces Acting on the Space and Earth Science Program—A View from the Top of NASA.
2 p.m. A View the Space Science Board.
2:45 p.m. A View from the Office of Science and Technology Policy.
3:30 p.m. A View from the Office of Management and Budget.
5:30 p.m. Adjourn.

November 13, 1986

8:30 a.m. Status of the Space Station Program.
10 a.m. Task Force on Scientific Utilization of the Space Station.
11:15 a.m. Overview of SESAC Study Report/Implications for Future Committee Activities.
1:30 p.m. Final Report from the Earth System Science Committee.
3 p.m. Committee Discussion on Status of the Space and Earth Science Program.
4:30 p.m. Other Matters.
5:14 p.m. Adjourn.

November 14, 1986

8:30 a.m. Continuation of Discussion on the Status of the Space and Earth Science Program; Future Committee Activities; and Plans for the Next Meeting.
12 Noon. Adjourn.

Richard L. Daniels,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

October 15, 1986.

[FR Doc. 86-24090 Filed 10-23-86; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

FORMS SUBMITTED FOR OMB REVIEW

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public.

Agency Clearance Officer: Herman G. Fleming, (202) 357-9520
OMB Desk Officer: Carlos Tellez, (202) 395-7340
Title: Survey of United States-India Cooperative Science Activities
Affected Public: Individuals
Number of Responses: 100 responses; total of 100 burden hours
Abstract: The National Science Foundation, as Executive Agent for Science Technology Initiatives will systematically assess strengths in Indian science as potential new areas for consideration under the Science Technology Initiatives.

Dated: October 16, 1986.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 86-24034 Filed 10-23-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Archaeology/ Physical Anthropology; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Archaeology/ Physical Anthropology.

Date and Time: Nov. 13-14, 1986 and Nov. 17-18, 1986 8:30 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 1243, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. John Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7804.

Purpose of Meeting: To provide advice and recommendations concerning support for archaeology and physical anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 20, 1986.

[FR Doc. 86-24076 Filed 10-23-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Developmental Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following:

Name: Advisory Panel for Developmental Neuroscience.

Date and Time: November 6, 7, and 8, 1986; 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 543, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank Collins, Program Director, Developmental Neuroscience, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7042.

Purpose of Meeting: To provide advice and recommendations concerning support for research in developmental neuroscience.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 20, 1986.

[FR Doc. 86-24077 Filed 10-23-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Linguistics; Meeting

In Accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following:

Name: Advisory Panel for Linguistics.

Date and Time: November 10-12, 1986; 9:00 a.m. to 5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 1242 Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Paul G. Chapin, Program Director, for Linguistics, Room 320, National Science Foundation, Washington, DC 20550; (202) 357-7696.

Purpose of Meeting: To provide advice and recommendations concerning support for research in linguistics.

Agenda: To review and evaluate research proposal's as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L 92-463. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF on July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 20, 1986.

[FR Doc. 86-24078 Filed 10-23-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for History and Philosophy of Science; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for History and Philosophy of Science.

Date/Time: November 7-8, 1986—Firday-9:00 am to 5:30 pm; Saturday-9:00 am to 4:00 pm.

Place: National Science Foundation, 1800 G Street NW., Room 523, Washington, DC 20550.

Contact Person: Dr. Ronald J. Overmann, Program Director, History & Philosophy of Science (202) 357-9677, and Dr. Sara B. Nerlove, Acting Associate Program Director for History and Philosophy of Science (202) 357-7969, Room 316.

Purpose of Advisory Panel: To provide advice and recommendation concerning support for research in the History & Philosophy of Science Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Authority To Close Closing: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, of July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 20, 1986.

[FR Doc. 86-24079 Filed 10-23-86; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Political science; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Political Science.

Date/Time: November 13-14, 1986—Thursday-9:00am to 5:30pm; Friday-9:00am to 4:00pm.

Place: National Science Foundation, 1800 G Street NW., Room 212, Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Frank P. Scioli, and Dr. Lee P. Sigelman, Program Directors for Political Science (202) 357-9406, Room 316.

Purpose of Advisory: To provide advice and recommendation concerning support for research in the Political Science Program.

Agenda: To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority To Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, of July 6, 1979.

M. Rebecca Winkler,

Committee Management Officer.

October 20, 1986.

[FR Doc. 86-24080 Filed 10-23-86; 8:45 am]

BILLING CODE 7555-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-23702; File No. SR-Amex-86-24]

Self-Regulatory Organizations; Proposed Rule Change by American Stock Exchange, Inc. Relating to a Proposed Limited Trading Permits Plan.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 24, 1986, the American Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. is adopting a Limited Trading Permits Plan, and corresponding amendments to the Exchange Constitution, to increase the number of traders of non-equity options on the Floor of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, American Stock Exchange, Inc. and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose.

The Exchange is adopting a Limited Trading Permits Plan to increase the number of traders of non-equity options on the Floor. The Plan provides for the creation of 36 Limited Trading Permits ("LTPs"). These permits will be valid for one year, and can be renewed annually for a fee of $5,000 payable to the Exchange. The Exchange has focused on several factors in determining to add a limited number of traders to its trading floor.

In 1984, shortly after the Exchange initiated trading in its first broad index option based on the Major Market Index ("XMI"), the membership approved a plan to issue a new class of trading permits, called Options Trading Permits, or OTPs. These permits were designed to encourage trader participation in Exchange-traded option products other than individual stock options, particularly the new XMI option. Each OPT had a life of two years, but at the end of that period it could be converted into a full Options Principal Membership upon the payment of $100,000 in two installments.

A total of 108 OTPs were issued pursuant to the 1984 plan and the conversion of those permits OPMs occured on September 22, 1986. After that date, all of these members become eligible to trade stock options as well as index options. It can be expected that a number of these members will spend less of their time trading Major Market

Index options when they have the added freedom to trade individual stock options.

In July, 1986, the Exchange approved the introduction of a new option based on an index designed to gauge market trends affecting institutional portfolio holdings—the Institutional Index Option ("XII"). It is expected that trading in XII options will commence in October, 1986. There are also other new option products under consideration by the Exchange which could potentially add to the need for more traders.

The foregoing factors have prompted the Exchange to propose the LTP Plan to increase its floor capability. In order to implement the Plan, the Exchange's Constitution must be amended to establish an authorized number of LTPs and to provide for the qualifications, rights and obligations of LTP holders.

The essential elements of the Plan are as follows.

Trading privileges. LTP holders would be limited to trading options products other than individual stock options. This would include XMI options, XII options, industry group options, interest rate options and other new products that may be introduced in the future. As a means of assuring that there is adequate support for the new XII options, one-third of an LTP's total trading activitiy would have to be concentrated in that option. This is consistent with Exchange Rule 958, which provides that Registered Options Traders must execute a certain percentage of their quarterly options volume in assigned zones in order to foster depth and liquidity and fulfill their responsibilities to the market. The plan specifies that this zone requirement must remain in place for at least three months after the completion of the LTP rights offering. Thereafter the Board would have the authority to increase the size of this zone by permitting inclusion of trading activity in other non-equity options (except the XMI options) in calculation of the one-third requirement.

Issuance of rights. To implement the plan, each of the regular and options principal members of the exchange would be issued one options right. In the case of a leased membership, the rights would be issued to the lessor.

The rights would have a life span of 30 days from issuance. During this period, they could be freely traded in an Exchange-administered auction market, similar to the current seat market, or could be privately traded. The value of the rights would thus be determined by supply and demand. Non-members as well as members would be able to bid for the rights. Upon expiration of the 30-day offering period any options rights not exchanged for an LTP would expire and be of no further value.

Conversion of rights and activation of LTPs. A person accumulating 24 options rights could convert them into an LTP at any time during the 30-day offering period by paying the first quarterly installment of a $5,000 initial fee to the Exchange and delivering a notice signifying his election to exchange his rights for an LTP and his intention to activate his LTP promptly.[1]

An organization could acquire beneficial ownership of an LTP, but each LTP would have to be held in the name of an individual who meets the same qualifications as are applicable to options principal members. Nominees holding LTPs owned by a single individual would have to be associated with that individual in a firm or corporation, and an LTP holder affiliated with a firm or corporation would have to qualify it as a member organization if it were not already so qualified. Persons or firms acquiring LTPs would be required to initiate activation of such LTP, by filing with the Exchange an application for approval of the LTP, within 30 days from the end of the rights offering. If they failed to do so they would forfeit the LTP, which would be deemed expired.

Each LTP holder would be required to be at least the minimum age of majority required to be responsible for his contracts in each jurisdiction in which he conducts business. He would be required to submit a written application as prescribed by the Exchange. Further, the applicant would have to agree that his primary occupation will be the transaction of business in options other than individual stock options. Finally, the LTP holder would be required to pledge to abide by the Constitution, rules and policies of the Exchange and any subsequent amendments thereto.

LTP privileges and obligations. An LTP could be transferred at any time upon approval by the Exchange of the transferee and upon payment of applicable initiation and processing fees. An LTP could be leased at any time pursuant to a special transfer agreement. If an LTP were not renewed each year by payment of the annual fee, it would expire and could not be reissued.

LTP holders would not be entitled to participate in any distribution of the assets of the Exchange on dissolution or liquidation. Like OPMs, they would not be entitled to vote in elections for Governors or on changes to the Constitution and would have no rights to participate in the Gratuity Fund. Otherwise LTP holders would be subject to all the duties and obligations of members of the Exchange.

(2) Basis

The proposed Limited Trading Permits Plan and Constitutional amendments are consistent with section 6(b) of the Act in general and further the objectives of sections 6(b)(2) and 6(b)(5) in particular in that they will broaden access to the Exchange's options market and help perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange has determined that no burden on competition will be imposed by its Limited Trading Permit Plan. On the contrary, the Exchange proposal to increase the number of traders of non-equity options will enhance competition among registered options traders within its market and between the Exchange and other markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited with respect to the proposed rule change, and no written comments were received after the rule change was formulated and approved by the Exchange's Board of Governors.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] To avoid inequitable results if for some reason one or more members fail to make their options rights available for sale, the Exchange would be authorized to issue an LTP for fewer than 24 rights in a situation where a person, despite good faith efforts has been unable to buy the necessary number of rights in the market. Such person would be required to pay the Exchange an amount approximating the amount that would have been required to purchase the needed rights had they been for sale. However, in no event can more than 36 LTPs be issued.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW. Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commisson's Public Reference Section, 450 Fifth Street NW. Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 14, 1986.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 10, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-24086 Filed 10-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23715; File No. CBOE-86-31]

Self-Regulatory Organizations; Notice of Filing and Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Reduction of Trade Match Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on September 26, 1986 the Chicago Board Options Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Inc. ("CBOE") proposes to revise trade match fees pursuant to Exchange Rule 2.22 as follows:

Should year-to-date volume equal or exceed 660,000 contracts per day at the end of any quarter during fiscal year 1987, trade match fees will be reduced by one cent for the following quarter only. Similarly, should year-to-date volume equal or exceed 720,000 contracts per day at the end of any quarter during fiscal year 1987, trade match fees will be reduced by two cents for the following quarter only. Should year-to-date volume reach or exceed 660,000 contracts at the end of the fourth quarter, no fee reductions will be made during the first quarter of fiscal year 1988.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis of the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to reduce trade match fees when per day contract volume is high. The statutory basis for this proposed rule change is section 6(b)(4) of the Securities Exchange Act of 1934 ("Act"), in that it provides for a reasonable trade match fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) under the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principle office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted November 14, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 15, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-24109 Filed 10-23-86; 8:45 am]

BILLING CODE 8010-01-M

[(Release No. 34-23726; File No. SR-PCC-86-04)]

Self-Regulatory Organizations; Order Approving Rule Change by Pacific Clearing Corporation

On July 22, 1986 the Pacific Clearing Corporation ("PCC") submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The proposed rule change, among other things, would establish a new service, Trades Settling Pacific ("TSP"). Under TSP, PCC members that execute trades on either the New York Stock Exchange ("NYSE") or the American Stock Exchange ("AMEX"), but who are not members of the National Securities Clearing Corporation ("NSCC"), will be able to clear trades through NSCC and settle those trades at PCC. Notice of the

proposed rule change appeared in the Federal Register on August 21, 1986.[1] No comments were received.

In order to match up buy and sell orders and to minimize non-compared trades, a stock exchange usually sends its trade data to one clearing agency for trade comparison and settlement. Trades executed on the NYSE or AMEX routinely are sent to NSCC. In order to clear a trade executed on the NYSE or AMEX, therefore, the exchange member must either be an NSCC member or "give up" the trade to another exchange member who is an NSCC member.

Currently, a PCC member who is a member of NYSE or AMEX but is not a member of NSCC (a "non-clearing broker") must "give up" a trade executed on NYSE or AMEX by substituting for the PCC member the name of an NSCC member (a "clearing broker") who will clear and settle the trade for the PCC member. For example, if a non-clearing broker (a PCC member) executes a buy order on the floor of the exchange, the PCC member must "give up" the name of a clearing broker so the trade can be processed by NSCC. When NSCC receives the pertinent transactional information, trade comparison occurs as if the clearing broker executed the trade. The clearing broker also submits a buy order to NSCC with the PCC member as the contra party. When the trade is settled through the continuous net settlement system ("CNS"), the clearing broker nets out of the transaction, the contra party to the original trade delivers the securities to NSCC, and NSCC delivers the securities to the PCC member through the interface.

TSP, however, will allow PCC members who are members of NYSE or the AMEX but are not NSCC members to execute trades on the floor of NYSE or AMEX and settle those trades at PCC without having to give up the trade. In order to provide this service, PCC has joined NSCC as a full service member. This arrangement will allow a PCC member to join NSCC as a PCC-sponsored account. Thus, a TSP user can execute trades on the NYSE or AMEX, use NSCC processing services, and settle the trade at PCC. As part of the membership agreement, PCC will guarantee the indebtedness of sponsored members and will contribute to NSCC's clearing fund.[2]

Under the proposal, a PCC-sponsored member of NSCC who is a member of NYSE or AMEX need not engage a clearing broker to clear and settle trades executed on the floor of the NYSE or AMEX. Instead, trades executed by PCC members on the NYSE or AMEX will be entered into NSCC's clearing system. Trades eligible for CNS at NSCC will settle as any other interface trade. Thus, TSP will allow a PCC member to consolidate all settlement activities for trades executed on the NYSE, the AMEX or the Pacific Stock Exchange at PCC.

For trades ineligible for book-entry settlement, PCC will pick up securities certificates from NSCC three times daily. PCC will process these items as a sealed draft through its Securities Collection Division ("SCD"). PCC realizes that there is a potential interest loss claim against PCC for items not picked up from NSCC or not processed in a timely manner. PCC believes that its administrative and internal accounting controls regarding the picking up and processing of physical deliveries should minimize any potential loss. In addition, PCC experts the dollar value and the volume of pickups will be small.

PCC is amending its fee schedule to charge a monthly fee of $1,500.00 for TSP services. PCC also will charge members an $8.50 fee for each pick-up at NSCC. In addition, PCC will pass through to TSP users all NSCC charges.

PCC believes the proposed rule change is consistent with the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions and fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. PCC believes the proposed rule change also is consistent with section 17A(b)(3)(D) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among PCC members.

The Commission agrees with PCC that the proposed rule change is consistent with section 17A of the Act and will promote the prompt, accurate and safe clearance and settlement of securities transactions and the equitable allocation of reasonable fees and other charges among PCC members. The proposal allows PCC members greater opportunity to execute trades on the market of their choice and consolidate their trade settlement activities at PCC. PCC has operated TSP as a pilot program with one participant without operational or financial difficulty. Upon Commission approval of this proposal, PCC expects to make the service available to all members. The Commission therefore finds that the proposal is consistent with the Act and, in particular, with section 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-PCC-86-04) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 17, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-24110 Filed 10-23-86; 8:45 am]

BILLING CODE 8010-01-M

[1] Securities Exchange Act Release No. 23536 (August 15, 1986), 51 FR 30019 (August 21, 1986).

[2] Increases in a PCC's member's activity through TSP will result in an increase in the PCC member's minimum contribution to PCC's clearing fund.

[Release No. IC-15355; File No. 812-6453]

Application and Opportunity for Hearing; The Equitable Life Assurance Society of the United States, et al.

October 10, 1986.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), Separate Account No. 301 of Equitable ("SA-301"), Separate Account No. 302 of Equitable ("SA-302"), Separate Account No. 303 of Equitable ("SA-303") and Separate Account No. 304 of Equitable ("SA-304" and, together with SA-301, SA-302 and SA-303, the "300 Series"), and Harmony Investment Trust ("Trust"), an open-end investment company of the series/type, organized as a Massachusetts business trust, at 787 Seventh Avenue, New York, New York 10019, filed an application on August 8, 1986, and amendments thereto on September 17, 1986 and September 29, 1986, for an order pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, for exemption from the provisions of sections 17(a) and 17(d) of the 1940 Act and Rule 17d-1 thereunder to the extent necessary to permit (a) the combination of SA-302, SA-303 and SA-304 into SA-301 ("Continuing Account"); (b) the simultaneous reconstruction of SA-301 into a unit investment trust ("UIT") with seven investment divisions, four of which will be the functional equivalents of SA-301, SA-302, SA-303 and SA-304, as presently constituted; and (c) the simultaneous issuance of shares of the Trust to SA-301, as proposed to be reconstructed, in exchange for all of the assets, and related liabilities, of the 300 Series.

Under the application, Integrity Life Insurance Company ("Integrity") and Separate Account INA of Integrity ("SA-INA"), at 1350 Avenue of the

Americas, New York, New York 10019, also have filed for an order of the Commission pursuant to section 6(c) of the Act, for exemptions from the provisions of section 26(a)(2)(C) and 27(c)(2) of the Act to the extent necesary to permit payment to Integrity of certain mortality and expense risk charges under certain proposed variable annuity contracts to be issued by Integrity.

Also under the application, National Integrity Life Insurance Company ("National Integrity") and Separate Account NIA of National Integrity ("SA-NIA"), at 1350 Avenue of the Americas, New York, New York 10019, filed for an order of the Commission pursuant to section 6(c) of the Act, for exemptions from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit payment to National Integrity of certain mortality and expense risk charges under certain proposed variable annuity contracts to be issued by National Integrity.

Equitable, Integrity and National Integrity are collectively referred to in the application as the "Insurance Companies." The Continuing Account, SA-INA and SA-NIA are collectively referred to in the application as the "Separate Accounts." The Insurance Companies, the Separate Accounts, the 300 Series and the Trust are collectively referred to in the application as the "Applicants." Individuals who make contributions or for whom contributions are made under Equitable's Contracts, as defined below, are referred to in the application as "Participants."

All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and rules thereunder for the text of the applicable provisions.

According to the application, Equitable is a mutual life insurance company organized under the laws of the State of New York. The application provides that the separate accounts in the 300 Series were established by Equitable on October 19, 1981, pursuant to the insurance laws of the State of New York. The application notes that they fund benefits under certain annuity contracts and other agreements ("Equitable's Contracts") issued and administered by Equitable which currently fund various tax-favored retirement plans and arrangements under the Internal Revenue Code of 1954, as amended (the "Code"). The application states that at this time, each of the 300 Series separate accounts is registered under the Act as a management investment company.

The application also provides that Integrity, which was acquired by Equitable on October 31, 1984, is a stock life insurance company, organized in 1966 under the laws of the State of Arizona. The application provides that Integrity established SA-INA as a UIT on May 19, 1986 pursuant to the insurance laws of the State of Arizona. The application states that SA-INA is designed to fund benefits under certain annuity contracts and other agreements ("Integrity's Contracts") to be issued and administered by Integrity in connection with various tax-favored retirement programs and to fund other types of retirement benefits. The application further provides that on September 19, 1986, Integrity and SA-INA filed a registration statement on Form N-4 with respect to units of interest in SA-INA under Integrity's Contracts.

The application provides that National Integrity, which was acquired by Equitable on November 15, 1985, is a stock life insurance company, which was organized in 1968 under the laws of the State of New York. The application provides that National Integrity established SA-NIA as a UIT on May 19, 1986 pursuant to the insurance laws of the State of New York. The application states that SA-NIA is designed to fund benefits under certain annuity contracts and other agreements ("National Integrity's Contracts", and, together with Equitable's Contracts and Integrity's Contracts, the "Contracts") to be issued and administered by National Integrity in connection with various tax-favored retirement programs and to fund other types of retirement benefits. The application further provides that on September 19, 1986, National Integrity and SA-NIA filed a registration statement on Form N-4 with respect to units of interest in SA-NIA under National Integrity's Contracts.

According to the application, the Trust initially will be authorized to issue seven series or classes of shares, each of which will represent an interest in one of the Trust's Fund (collectively, "Funds") which, in turn, will correspond to an investment division of the Continuing Account, SA-INA and SA-NIA. The application represents that the Trust is, in part, a successor to the separate accounts in the 300 Series; SA-301, SA-302, SA-303 and SA-304 will be succeeded by the Money Market, Stock, Bond and Balanced Funds of the Trust. According to the application, in addition to the successor Funds, there are three new Funds: the Aggressive Stock, High Yield and Global Funds. According to the application, under the Trust's Declaration of Trust, the Board of Trustees of the Trust is authorized to create additional funds or delete funds.

According to the application, Participants will be permitted to transfer their contributions among these seven investment divisions of the Continuing Account.

The application states that the Continuing Account will be a separate investment account of Equitable, operated as a UIT, which will find benefits under Equitable's Contract. The application further provides that the Trust, which will succeed to the portfolio assets and related liabilities of the 300 Series, will be the continuing funding vehicle for Equitable's Contracts.

Equitable's Board, Integrity's Board, each of the 300 Series Committees (including all of the disinterested members) and the Trust's Board (composed exclusively of disinterested trustees) have adopted resolutions authorizing the Reorganization and all other actions necessary to restructure and combine the 300 Series into a single seperate account organized as a UIT investing in the Trust. The application notes that an Agreement and Plan of Reorganization ("Agreement") will be entered into, among Equitable, each of the 300 Series separate accounts, Integrity and the Trust, subject to the approval of the Participants. The application states that the Agreement provides that Integrity will assume all costs to be incurred in effecting the reorganization, including the expenses of organizing the Trust.

The application further provides that the reorganization will not have any adverse economic impact on the Participants' interests under Equitable's Contracts. The application provides that the overall level of fees and charges borne, directly or indirectly, by Participants will be no greater immediately after the reorganization than before it.

The application states that Participants under Equitable's Contracts currently have voting rights with respect to each of the 300 Series separate accounts in which they have an interest. Applicants state that the number of votes that may be cast is equal to the number of units of a particular separate account credited to the Participant. The application provides that following the reorganization, Participants will have the opportunity to instruct Equitable as to the voting of Trust shares, attributable to their respective interests under the Equitable's Contracts, on matters as to which they currently have a voting right. The application further

provides that Equitable will vote the shares of each Fund held by the Continuing Account, attributable to Equitable's Contracts, in accordance with instructions received from Participants. Applicants note that shares of the Trust held by the Continuing Account which are not attributable to Participants or for which instructions have not been received will be voted in proportion to the instructions received from Participants. The application also provides that Integrity and National Integrity intend to follow the same instruction procedure with respect to their Contracts.

Applicants assert that although the voting by the current Participants will be computed somewhat differently after the reorganization, they do not expect that these differences will, as a practical matter, diminish the Participants' existing voting rights.

I. Request for an Order Pursuant to Sections 17(b) and 6(c)

Applicants note that the Applicants may be deemed to be affiliated persons of each other or affiliated persons of an affiliated person under section 2(a)(3) of the Act, and the reorganization may be deemed to involve one or more purchases or sales of securities or property between and among certain of the Applicants, specifically Equitable, each of the 300 Series separate accounts, including SA–301 as the Continuing Account, and the Trust. Therefore, the Agreement and the Reorganization may require an exemption from section 17(a) of the Act, pursuant to sections 6(c) and 17(b) of the Act.

In this regard, Applicants argue that the terms of the proposed transactions, for the reasons summarized below, are reasonable and fair, including the consideration to be paid and received; do not involve overreaching; are consistent with the investment policies of each of the 300 Series separate accounts; and are consistent with the general purpose of the Act. Applicants further argue that, for the reasons discussed below, the terms of the Agreement and reorganization are consistent with the standards of section 6(c).

The application states that the proposed reorganization will benefit existing and further Participants by facilitating the future expansion of investment alternatives under Equitable's Contracts and subsequent contracts. Applicants note that the addition of new funds to the Trust, with different investment objectives, is more easily and economically accomplished with a UIT than by the establishment of a new management separate account. Applicant further state that this potential benefit is created at no cost to any Participants, as Integrity has undertaken to assume all expenses relating to the reorganization and the establishment of the Trust. Applicants represent that the transfer of the portfolio assets of the 300 Series in return for shares of the Trust will be affected in conformity with section 22(c) of the Act and Rule 22c–1 thereunder.

Applicants argue that the transaction is consistent with the investment objectives and policies of the 300 Series separate accounts, the investment divisions of the Continuing Account and Funds of the Trust. Applicants note that the investment objectives of each of the Funds derived from the 300 Series will be identical to the investment objectives of the corresponding 300 Series separate account immediately proceding the reorganization. Applicants state that the Reorganization will not require liquidation of any assets of any of the 300 Series separate accounts or the Trust. Therefore, Applicants note, neither the 300 Series nor the Trust will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. Applicants believe, based on a review of existing federal income tax laws and regulations, that the transfer of assets and the combination of the 300 Series separate accounts will be tax-free events. Therefore, Applicants note that the Continuing Account, the 300 Series and the Trust will not realize any gain or loss on the transfers or combination, and the Trust will success to the same adjusted basis, upon any subsequent disposition of such assets, as such assets had prior to the transfers.

Applicants point out that in each of Equitable's 300 Series prospectuses it has been disclosed that Equitable reserved the right, subject to compliance with applicable law and any necessary approval of Participants, to combine any two or more of the 300 Series separate accounts; to make certain transfers of separate account assets; to operate any of the separate accounts as a UIT, or in any other form permitted by law; and to deregister any 300 Series separate accounts under the Act, among other rights reserved. The application provides that these provisions are also included in Equitable's Contracts.

Finally, Applicants state that Participants will be fully informed of the terms of the Agreement through the proxy materials and will have an opportunity to approve or disapprove the Agreement and the reorganization at the meetings of Participants called for that purpose.

II. Request for an Order Pursuant to Sections 17(d) and 6(c) and rule 17d–1

Applicants note that the reorganization may also be deemed to be a tranaction that is prohibited under section 17(d). The application provides that the Agreement anticipates simultaneous purchase and sale transactions involving a number of registered companies, and each such purchase and sale transaction is dependent on the others. The application further provides that each purchase and sale transaction is, thus, and essential aspect of a more comprehensive plan.

In this sense, the Applicants note that each transaction may be deemed to be in connection with a joint participation within the contemplation of section 17(d) and Rule 17d–1. Accordingly, Applicants request an order pursuant to section 6(c) and Rule 17d–1 to eliminate any question of compliance with section 17(d) and Rule 17d–1.

Applicants argue that participation of each of the 300 Series separate accounts, including SA–301 as the Continuing Account, and the Trust in the Agreement will be on an equal basis and will not result in advantages to any one of the 300 Series or the Trust to the detriment of any other party. As the Applicants note above, each of the 300 Series will have its assets transferred to a corresponding Fund of the Trust with identical policies and restrictions. Applicants contend that since there will be no need to liquidate assets of any of the 300 Series or of the Trust will incur any extraordinary costs, such as brokerage commissions, in effecting the transfer of assets. Further, Applicants note that none of the 300 Series separate accounts or the Trust will bear any of costs of the reorganization, which will be borne entirely by Integrity.

The application also provides that the exchange of the assets of each of the 300 Series separate accounts for corresponding Fund shares will be effected on the same basis, in conformity with section 22(c) of the Act and Rule 22c–1 thereunder. Although Applicants note that the voting privileges under the UIT structure will be different from the voting rights under the management separate account structure, Applicants assert that these rights, in all fundamental respects, will remain the same.

Applicants argue that the reorganization will result in certain economies of scale and efficiencies of administration to the Insurance Companies that should also redound to the benefit of the Separate Accounts

and the Participants. Applicants further assert that the reorganization also will permit other separate accounts of the Insurance Companies to use the Trust as the underlying investment vehicle in order to fund their variable annuities, variable life insurance or other variable funding arrangements they may offer, and that the establishment of the Trust will benefit Participants by facilitating future expansion of investment alternatives under Equitable's Contracts and new contracts on a less costly basis than would be possible if new management separate accounts were used. Moreover, Applicants point out that Participants' interest will not be adversely affected because there should be no tax liabilities stemming from the reorganization and Integrity has undertaken to assume all costs relating to the reorganization and the establishment of the Trust.

Applicants, therefore, represent that the terms of the proposed Agreement and the related transactions meet all of the requirements of section 6(c) and 17(d) of the Act and Rule 17d–1 thereunder.

III. Request for an Order Pursuant to Sections 6(c) from Sections 26(a)(2) and 27(c)(2)

The applicant provides that Integrity's and National Integrity's Contracts each provide that there shall be deducted from SA–INA and SA–NIA, respectively, as asset charge intended to cover mortality risks, expenses and expense risks in connection with Integrity's and National Integrity's Contacts at the annual rate of 1.35% per annum (approximately .35% for mortality risks, .15% for expenses actually incurred and .85% for expense risks). For convenience,the application refers to Integrity's Contracts and SA–INA only, but the application is deemed to include National Integrity's Contracts and SA–NIA, as well, for purposes of the sections 26(a)(2) and 27(c)(2) exemptive request. Accordingly, the application provides that all representations of Integrity and SA–INA include like representations by National Integrity and SA–NIA.

The application provides that Integrity and SA–INA are proceeding in accordance with the terms of Rule 26a–1 under the Act in connection with the deduction from SA–INA of the expense charges. The application provides that Integrity and SA–INA are proceeding in accordance with the terms of proposed Rule 26a–3 promulgated under the Act (Released No. IC–14190, October 11, 1984) in connection with the deduction from SA–INA of the asset charge for the assumption of mortality and expense risks.

Although neither Integrity nor National Integrity concedes the applicability of sections 27(c)(2) and 26(a)(2)(C) of the Act to the mortality and expense risk charges to the extent that such charges are insurance charges and, therefore, not charges subject to regulation by the Commission, to remove any doubt that Integrity's Contracts and National Integrity's Contracts are in compliance with the act and rules thereunder, Integrity and National Integrity request an exemption from those sections to the extent necessary to permit the assessment of the mortality and expense risk charges in the manner described below.

The application provides that Integrity's own experience, expenses, risk evaluation, assessment of mortality and regulatory contingencies and profit are the ultimate determinants of charges with respect to all of its products. Integrity represents that the expense risk and mortality risk charges assessed on Integrity's Contracts are reasonable in amount based on the experience of and evaluation by Integrity and Equitable of the annuity product. Integrity and SA–INA also assert that the risk charge is within the range of industry practice for comparison with comparable annuity contracts. Integrity and SA–INA state that this representation is based upon an analysis of publicly available information by Integrity about similar variable annuity products, taking into consideration such factors as the manner of distribution, the degree of investment flexibility, payment minima and maxima, current charge levels, the existence of guaranteed expense charges, guaranteed annuity rates and guaranteed minimum death benefits. Integrity and SA–INA further represent that Integrity will maintain at its home office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Integrity's comparative survey.

Integrity and SA–INA further represent that Integrity has concluded that there is a reasonable likelihood that SA–INA's distribution financing arrangement, based on a contingent withdrawal charge, will benefit SA–INA and its Participants, and that Integrity will remain at its home office and make available to the Commission upon request a memorandum setting forth the basis for this representation. SA–INA will invest only in open-end management companies which have undertaken to have a board of directors, a majority of whom are not interested persons of such open-end management company, formulate and approve any plan under Rule 12b–1 promulgated under the Act to finance distribution expenses.

Integrity and SA–INA, and National Integrity and SA–NIA, each request an order exempting them from the provisions of section 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the payment to Integrity and National Integrity, respectively, of the aforementioned mortality and expense risk charges, and represent that the order requested is consistent with section 6(c).

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 4, 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 Applicants at the addresses stated above. Proof of service (by affidavit or, in 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. 86–24111 Filed 10–23–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–15358; File No. 812–6335]

Fenimore International Fund Inc., et al.; Application for Order

October 14, 1986.

Notice is hereby given that Fenimore International Fund Inc. ("Fund") and Drexel Series Trust ("Trust", collectively with the Fund, "Applicants"), 60 Broad Street, New York, New York 10004, each registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on April 2, 1986, and amendments thereto on June 9, 1986, June 25, 1986 and October 7, 1986, for an order of the Commission pursuant to section 6(c) of the Act, exempting the Fund from the provisions of sections

2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rules 22c–1 and 22d–1 thereunder, to the extent necessary to permit the Fund to assess a contingent deferred sales load on certain redemptions of its shares and to permit the Fund to waive the contingent deferred sales load in certain circumstances, and pursuant to section 11(a) of the Act to permit the Fund to offer to exchange its shares for shares of any current or future series of Trust, on the basis of their relative net asset values per share at the time of the exchange and impose a $5.00 service charge on each such exchange into Trust shares. The Trust applies for an order pursuant to section 11(a) of the Act to permit it to offer to exchange shares of any of its current or future series for shares of the Fund, on the basis of their relative net asset values per share at the time of the exchange except for a $5.00 service charge on each such exchange into the Fund's shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein and to the Act and the rules thereunder for the text of all applicable provisions.

According to the application, the Fund was organized as a corporation under Maryland law on January 11, 1984 and the Trust was organized as a business trust under Massachusetts law on September 24, 1984. Applicants represent that the Fund was originally a money market fund and has recently reorganized into an international equities fund. Applicants further represent that the Trust presently consists of seven series—Money Market Series, Government Securities Series, Bond-Debenture Series, Growth Series, Emerging Growth Series, Option Income Series and Convertible Securities Series. Although the Trust has no current intention to create and issue any additional series, Applicants request that the proposed exemptive relief with respect to the exchange of shares between the Fund and the Trust extend to the Trust's initial series of shares and any additional series or classes of shares that may at any time hereafter be offered on substantially the same basis.

The Fund proposes to offer its shares without an initial sales load so that investors will have the entire amount of their purchase payments fully invested when made. However, the Fund also proposes to pay to the distributor a contingent deferred sales load from the proceeds of certain redemptions of the Fund's shares. The Fund states that in no event could the aggregate amount of such charge exceed 5% of the aggregate purchase payments made by the investor. The Fund represents that the contingent deferred sales load would be imposed if an investor redeems an amount which causes the current value of the investor's account with the Fund to fall below the total dollar amount of purchase payments made by the investor during the preceding five years.

The Fund states that where a contingent deferred sales load is imposed, the rate of the load will decline from 5% to 1% depending on the number of years since the investor made the purchase payment from which an amount is being redeemed. Such load would be 5% in the first year and decrease by 1% per year. For purposes of applying the load, it is assumed that the redemption is made from the earliest purchase payment from which a redemption has not already been effected. The Fund states that no sales load would be imposed if the amount redeemed is derived from (1) increases in the value of the investor's account above the amount of purchase payments during the preceding five years, or (2) purchase payments made more than five years prior to the redemption.

The Fund proposes to waive the contingent deferred sales load in the following instances:

(i) Redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1954, as amended (the "Code"), of a shareholder (including one who owns the shares as joint tenant with his or her spouse), provided the redemption is requested within one year of the death or initial determination of disability; (ii) Any partial or complete redemption in connection with certain distributions from Individual Retirement Accounts ("IRAs") or other qualified retirement plans; (iii) Involuntary redemptions pursuant to the Fund's right to liquidate shareholder accounts if the aggregate net asset value of the shares held in the account is less than an amount specified from time to time by its board (currently, $100); and (iv) Redemptions by employee benefit plans for the benefit of employees of Drexel Burnham Lambert Incorporated, the Fund's principal underwriter, and its affiliates.

The Fund submits that the imposition of the proposed continent deferred sales load is fair and is in the best interests of its shareholders. The Fund submits that the proposed practice permits shareholders to have the advantage of greater investment dollars working for them from the time of their purchase of the Fund's shares. Additional elements of fairness are that the contingent deferred sales load will apply only to redemptions of amounts representing purchase payments—and then only during the first five years after such payments—and will not apply to increases in the value of a shareholder's account through increases in net asset value per share, or to amounts representing reinvestment of distributions.

The Fund submits that the waiver of the contingent deferred sales load on certain redemptions, noted above, would be fair and equitable and in the public interest and in the interest of shareholders. Further, the Fund states, that in each situation in which the load would be waived, the redeeming shareholder will be a member of a class of shareholders which is favored under the tax laws, or the securities laws, or the redeeming shareholder should not in fairness be penalized by the imposition of a sales load.

The Fund also proposes to provide a pro rata credit for a deferred sales load paid in connection with redemption of any shares of the Fund followed by a reinvestment effected within 30 days after such redemption. A shareholder may exercise this privilege only once.

The Fund and the Trust also propose to offer to exchange share of the Fund for shares of any series of the Trust, at their relative net asset values. Applicants state that there is no contingent deferred sales load on exchanges, but the Fund or the appropriate series of the Trust, as the case may be, proposes to charge a $5.00 service fee on the redemption involved in such exchanges (payable to the entity in which the shareholder is decreasing his investment and deducted by liquidation of the appropriate number of shares of such entity). The minimum amount which may be exchanged into the Fund is $1,000, and an exchange must completely eliminate the shareholder's account if it would reduce the shareholder's interest in the Fund or the applicable series of the Trust to less than the amount then specified by the respective board for involuntary redemptions (currently, $100).

Applicants represent that on any redemption of shares of the Fund or the Trust acquired by exchange of shares from the other, for purposes of applying the contingent deferred sales load, the shares acquired will retain the dates or purchase of the shares that were exchanged from the other mutual fund. Accordingly, the holding period will not be shortened because of an exchange.

Applicants assert that the exemptions they request are appropriate and in the public interest, consistent with the protection of investors and consistent

with the purposes fairly intended by the Act. The Fund further submits that waiver of the contingent deferred sales load under the above-described circumstances will not harm either the Fund or its remaining shareholders or unfairly discriminate among shareholders or purchasers. Applicants also submit that the imposition of a $5.00 service charge on exchanges between the Fund and the Trust is fair and will not harm shareholders or discriminate among shareholders.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than November 7, 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 Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorny-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. 86-24087 Filed 10-23-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15357; (File No. 812-6412)]

Strong Total Return Fund, Inc., et al.; Filing of Application Pursuant to Section 11 of the Act for an Order Approving Certain Offers of Exchange

October 14, 1986.

Notice is hereby given that Strong Total Return Fund, Inc., Strong Investment Fund, Inc., and Strong Opportunity Fund, Inc. ("Load Funds"); Strong Income Fund, Inc., Strong Money Market Fund, Inc., Strong Tax-Free Income Fund, Inc., Strong Tax-Free Money Fund, Inc. and Strong Government Securities Fund, Inc. ("No-Load Funds Inc", together with the Load Funds, "Funds"), each of which is registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, managment company; and Strong/Corneliuson Capital Managment, Inc. ("Strong/Corneliuson"), the prinicipal underwriter for the Funds (Funds and Strong/Corneliuson together, "Applicants"), 815 E. Mason Street, Suite 1610, Milwaukee, Wisconsin 53202, filed an application on June 17, 1986, and an amendment thereto on September 16, 1986, requesting an order pursuant to section 11(a) of the Act approving certain offers of exchange between the Funds to be made on a basis other than the relative net asset values of the shares to be exchanged. Applicants further request that any order issued be made applicable to any No-Load Fund which may become a Load Fund, and to any Load Fund which may change the level of its sales charges, as well as to any other investment company for which Strong/Corneliuson may in the future serve as principal underwriter ("Additional Funds"), as long as sales charge features are consistent with those described in the application for the proposed exchange plan. 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 text of the applicable provisions thereof.

Applicants state that Strong/Corneliuson is a broker-dealer registered as such under the Securities Exchange Act of 1934, and as an investment adviser under the Investment Advisers Act of 1940. As principal underwriter of each of the Funds, Strong/Corneliuson maintains a continuous public offering of shares of each of the No-Load Funds at their respective net asset values, without a sales charge, and of each of the Load Funds at their respective net asset values, with the addition of a sales charge. It is further stated that the applicable sales charge as a percentage of the offering price for the following Load Funds is currently; 1% for Strong Investment Funds, Inc. All Load Funds permit reinvestment of dividends without sales charges. From time to time, it is stated, sales charge may be imposed on No-Load Funds, such that they will be considered Load Funds, and from time to time the level of sales charges applicable to one or more of the Load Funds my change.

Applicants are requesting an order approving the following offers of exhange, each of which would require the payment of a $5.00 administative fee to defray the expenses of the transaction:

(1) Shares of any No-load Fund or Load Fund, including shares acquired through reinvestment of dividends and capital gains distributions ("reinvested shares"), may be exchanged for shares of any No-load Fund based on the relative net asset values of the shares at the time of the exchange without a sales charge;

(2) Shares of any No-load Fund, or Load Fund, acquired by exchange for shares of a Load Fund ("Predecessor Fund"), plus any reinvested shares, may be exchanged on the basis of relative net asset value without a sales charge for shares of any Load Fund with a sales charge that does not exceed the higher of (i) the sales charge of the Predecessor Fund at the time of the exchange, or (ii) the sales charge paid by the exchanging shareholder when he acquired the shares of the Predecessor Fund;

(3) Shares of any Load Fund ("Predecessor Fund") and reinvested shares may be exchanged on the basis of relative net asset value without a sales charge for shares of any Load Fund with a sales charge that does not exceed the higher of (i) the sales charge of the Predecessor Fund at the time of the exchange, or (ii) the sales charge paid by the exchanging shareholder when he acquired the shares of the Predecessor Fund;

(4) Shares of any No-load or Load Fund ("Initial Fund") that were not acquired by exchange of shares of another Fund, and reinvested shares, may be exchanged ("Initial Exchange") for shares of any Load Fund ("Successor Fund") based on relative net asset value, plus the sales charge applicable to the shares of the Successor Fund less the higher of (i) the sales charge, if any, the exchanging shareholder paid for the shares of the Intitial Funds, or (ii) the sales charge, if any, applicable to the Initial Fund at the time of the exchange;

(5) Shares of any No-load or Load Fund ("Predecessor Fund") acquired after an Intital Exchange through one or a series of further exchanges for shares of one or more Funds, may be exchanged for any Load Fund ("Successor Fund") based on relative net asset value, plus the sales charges applicable to the shares of the Successor Fund, less the higher of (i) the total sales charges, if any, the exchanging shareholder paid in acquiring the shares of the Initial Fund and all subsequent exchanges preceding the acquisition of the shares of the Predecessor Fund, or (ii) the sales charge, if any, applicable to the Predecessor Fund at the time of the exchange.

Applicants acknowledge that the $5.00 administrative fee to be charged in connection with the proposed exchange offers could be viewed as a divergence from the requirements of Section 11 (a). In addition, Applicants state that the proposed exchange plan would, in certain cases, enable a shareholder of a No-load Fund, or Load Fund

("Predecessor Fund"), to exchange his shares for shares of a Load Fund ("Successor Fund") or a basis other than net asset value, because he would have to pay the difference between the sales charge applicable to shares of the Successor Fund and the higher of (i) the sales charge applicable to the Predecessor Fund at the time of the exhange, or (ii) the sales charge he has already paid with respect to the acquisition of shares of the Intitial Fund and all subsequent exchanges preceding the acquisition of shares of the Predecessor Fund. Applicants state that in certain instances, when a No-load Fund institutes a sales charge, or a Load Fund increases the amount of its sales charge after an investor has purchased shares of that Fund, the investor would be able to have another Load Fund. Such an investor, therefore, may pay a lower total sales charge than an investor directly purchasing the latter Load Fund. Applicants anticipate that such instances will be relatively infrequent.

The purpose of the proposed exchange offers, it is stated, is to permit a shareholder whose investment objectives change to transfer his investment to a different Fund without, in the appropriate case, having to pay an additional full sales change. Applicants submit that the proposed offers are intended to treat those shareholders exchanging into a Fund and its existing shareholders equitably, without disrupting the distribution of shares of the Funds. Applicants represent that an investor acquiring shares of a particular Fund through any combination of exchanges and purchases of shares of other Funds will pay an amount at least equal to the sales charge paid by those investors who had invested directly in that particular Fund. To allow shareholders to exchange without payment of any additional sales charge, Applicants assert, could disrupt the Funds' distribution system since an investor could easily avoid the full sales charge of a Load Fund by first purchasing a No-load Fund, or a Load Fund with a lower sales charges, and switching to a Load Fund with a higher sales charge.

Notice is futher given that any interested person wishing to request a hearing on the application may, not later than November 5, 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 on by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delagated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-24088 Filed 10-23-86; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Actions Regarding Preshipment Inspection Practices of Private Inspection Companies on Behalf of Foreign Governments

AGENCY: Office of the United States Trade Representative.

ACTION: Implementation of an action plan to address problems associated with preshipment inspection programs.

SUMMARY: The United States Trade Representative has decided to implement a five part action plan to address problems associated with preshipment inspection programs. USTR will consult bilaterally with governments that have preshipment inspection requirements and will take multilateral and domestic actions as appropriate. These actions include possible domestic legislation and/or other appropriate actions to limit preshipment inspection activities within the United States.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Assistant General Counsel, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC, 20506; telephone (202) 395-3432.

BACKGROUND

The United States Trade Representative has decided to implement a comprehensive action plan to investigate and address problems connected with the activities of preshipment inspection companies. The U.S. Trade Representative's Office has been following developments in this area and on September 11, 1986, published a request for information regarding U.S. exporters' experiences with preshipment inspection companies. In their responses, exporters indicated that the private companies conducting preshipment inspections have unreasonably demanded business proprietary information related to the export price of merchandise and that this information may be used to prevent completion of export transactions. U.S. exporters also indicated that the preshipment inspection process is often time consuming and costly thereby making export activity less attractive.

Representatives of Florida exporters filed and then withdrew a Section 301 petition complaining about the activities of these companies on behalf of five Latin American and Caribbean countries. Twenty-three countries currently have preshipment inspection programs.

Recognizing, however, that serious problems exist with respect to the growing use of preshipment inspection programs and to ensure that U.S. commerce is not burdened by such practices, USTR has decided to take the following actions: (1) Consult bilaterally with each government that requires preshipment inspections; (2) pursue multilateral solutions in appropriate fora such as the Customs Valuation Code Committee or Customs Cooperation Council; (3) monitor closely the activities of preshipment inspection agents within the United States and any complaints about their activities within the United States; (4) consider possible domestic legislation or other appropriate action to limit preshipment inspection activities within the United States; and (5) request the U.S. International Trade Commission to conduct a study, under section 332 of the Tariff Act of 1930, of preshipment inspection practices and their effect on U.S. commerce and report the results of the study to USTR as expeditiously as possible.

The information received in response to the **Federal Register** notice of September 11, 1986, will be used in connection with the U.S. International Trade Commission's investigation of the effect of preshipment inspection practices on U.S. commerce.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 86-24133 Filed 10-23-86; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ending—October 17, 1986

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408,

409, 412, and 414. Answers may be filed within 21 days of date of filing.

Docket No. 44418

Parties: Members of International Air Transport Association
Date Filed: October 14, 1986
Subject: Germany to U.S. Fares
Proposed Effective Date: November 1, 1986

Docket No. 44419 R-1 & R-2

Parties: Members of International Air Transport Association
Date Filed: October 14, 1986
Subject: Specific Commodity Rates
Proposed Effective Date: October 10, 1986

Docket No. 44420 R-1—R-6

Parties: Members of International Air Transport Association
Date Filed: October 14, 1986
Subject: TC1 Promotional Fares
Proposed Effective Date: December 1, 1986

Docket No. 44421 R-1—R-10

Parties: Members of International Air Transport Association
Date Filed: October 14, 1986
Subject: Amend U.S.-Austria, Belgium-Germany Fares
Proposed Effective Date: November 1, 1986

Docket No. 44422 R-1 & R-2

Parties: Members of International Air Transport Association
Date Filed: October 15, 1986
Subject: Within TC3 Fares
Proposed Effective Date: January 1, 1987

Docket No. 44423 R-1—R-5

Parties: Members of International Air Transport Association
Date Filed: October 15, 1986
Subject: United States-Ireland Fares
Proposed Effective Date: January 2, 1987

Docket No. 44426

Parties: NWA Inc. and Trans World Airlines, Inc.
Date Filed: October 15, 1986
Subject: Joint Application of NWA Inc. and Trans World Airlines, Inc. pursuant to section 416 of the Act apply jointly for an exemption from the operation of section 408 of the Act, to the extent necessary to permit subsidiaries of NWA to purchase an undivided one-half interest in TWA assets employed in the operation of the PARS computer reservation system. TWA and NWA intend to utilize those assets in the formation and operation of a joint venture for the servicing and marketing of a computer reservation system.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-24065 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended October 17, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 44417

Date Filed: October 14, 1986.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 12, 1986.
Description: Application of Egyptair pursuant to section 402 of the Act and Subpart Q of the Regulations requests an amendment to its foreign air carrier permit to authorize carriage of persons, property, and mail between New York City, New York and Cairo, the United Arab Republic of Egypt, over the intermediate point Paris, France.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-24064 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-62-M

[(Order 86-10-38); Dockets 44432 et al.]

Order Instituting Investigation and Denying Petitions; U.S.-London Gateways Case

AGENCY: Department of Transportation.

ACTION: Order Instituting Investigation and Denying Petitions. (Order 86-10-38)—Dockets 44432, 44174, 44199, 44200, 44246, 44275, 44340, 44341, 43458, 44349, 44415 and 44416.

SUMMARY: The Department has instituted the *U.S.-London Gateways Case*, Docket 44432, to consider new service between the United States and London from among the following: American Airlines, Inc. (for Raleigh/Durham—Docket 44174), Piedmont Aviation Inc. (for Charlotte—Docket 44199), Delta Air Lines, Inc. (for Cincinnati—Docket 44246), and Pan American World Airways, Inc. (for Pittsburgh—Docket 44341). There is one new gateway selection under the United States-United Kingdom Air Services Agreement (Bermuda 2). In addition, the Department has decided to switch a current gateway selection from Tampa, Florida, to one of the four above-named cities. The *Gateways* case will also consider which U.S. carrier should receive certificate authority in the Baltimore-London market to replace World Airways. The Department is calling for interested air carriers to file applications for Baltimore-London authority. Finally, the Department has denied the Joint Petition of Charlotte and Piedmont (Docket 44200) and the Joint Petition of Charlotte, Tampa Bay Parties, and Piedmont (Docket 44340) that requested that Charlotte be specifically selected as a new gateway and that Piedmont receive Charlotte-London authority through the use of show-cause procedures. The Department will decide which two new gateways to select as a result of the *Gateways* case it has instituted.

DATES: Applications for Baltimore-London authority, motions to consolidate, and petitions for reconsideration of Order 86-10-38 should be filed by November 3, 1986. Answers shall be due 7 calendar days thereafter. Parties to the dockets listed above may obtain a service copy of the order by calling Documentary Services Division (202) 366-9328, or by writing to the address below.

ADDRESSES: Applications (Baltimore-London), motions to consolidate and petitions for reconsideration should be filed in Docket 44432, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 44432.

Dated: October 21, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-24112 Filed 10-23-86; 8:45 am]

BILLING CODE 4910-62-M

[Notice 86-12, Docket 44437]

Guidelines for the Selection of Co-Lead Managers of the Public Offerings of Conrail

Notice

These guidelines set forth the manner in which interested investment banking firms may participate in the process by which the Secretary of Transportation (the "Secretary") will select the co-lead managing underwriters for the public offering (the "Offering") of the United States Government's interest in the Consolidated Rail Corporation ("Conrail").

General Information

The selection process will consist of two stages. The initial stage will involve written and optional oral presentations by all interested investment banking firms. Based upon these presentations and other information developed by the Department of Transportation (the "Department"), the Secretary, in consultation with the Secretary of the Treasury and the Chairman of the Board of Directors of Conrail, will select a final group of not more than twelve investment banking firms. Those firms in the final group will be asked to make additional oral presentations. Based upon all information collected, the Secretary, in consultation with the Secretary of the Treasury and the Chairman of Conrail, will select the co-lead managing underwriters and designate one to coordinate and administer the Offering.

Pursuant to the Conrail Privitization Act (the "Act"), the Secretary will select at last four and not more than six co-lead managing underwriters. One of those firms selected will be designated by the Secretary to coordinate and administer the Offering. All co-lead managing underwriters will serve jointly and be compensated equally.

Firms which wish to be considered as co-lead managing underwriters must have been in existence on September 1, 1986. They must agree in writing to allow such audits by the General Accounting Office as the Comptroller-General of the United States deems appropriate of all accounts, books, records, memoranda, correspondence, and other documents and transactions of the co-lead managers associated with the Offering. They must also agree to work to assure that minority owned and controlled investment banking firms participate in the Offering to a significant degree.

Firms considering participating in the Offering should be aware that the United States Government will not provide any indemnification or contribution to underwriters for liabilities arising from the Offering. The making of a written submission by a firm pursuant to these Guidelines will be deemed by the United States Government as a confirmation and acknowledgement that each such firm understands that no such indemnification or contribution will be provided.

Firms should also be aware that the United States Government will provide representations and warranties for purposes of the Offering strictly limited only to those matters that were within the direct control of the United States Government as a shareholder of Conrail.

Firms that wish only to be considered for participation in the underwriting syndicate for the Offering should not make submissions at this time.

The Secretary reserves the right to modify, amend or supplement these Guidelines. Any such modification, amendment or supplement will be published and made available in the same manner as these Guidelines.

Criteria for Selection

Pursuant to the Act, the following criteria are to be considered by the Secretary about each interested firm:

1. The firm's institutional and retail distribution capabilities;
2. The firm's financial strength;
3. The firm's knowledge of the railroad industry;
4. The firm's experience in large-scale public offerings;
5. The firm's research capabilities;
6. The firm's reputation; and
7. The firm's contributions before the date of enactment of the Act in demonstrating and promoting the long-term financial viability of Conrail.

Critical Dates in the Selection Process

November 3, 1986—20 copies of the written submissions not in excess of 40 pages and requests to make oral presentations must be filed with the Department of Transportation, Office of Documentary Services, Docket Section, Room 4107, C-55, 400 7th Street, SW., Washington, DC 20590, Attention: Phyllis Kaylor/Docket No. 44437 by 5:00 p.m. EST.

November 6 and 7, 1986 (November 8, 1986, if necessary)—first-round oral presentations by interested firms.

November 12, 1986—selection and notification of not more than twelve first round participants for further consideration.

November 13 and 14, 1986—oral presentations of firms in the final group.

November 20, 1986—selection of co-lead managing underwriters and designation of one to coordinate and administer the Offering.

Written Submissions

All firms interested in participating in the Offering as co-lead managing underwriters must make a written submission on or before November 3, 1986. This written submission should address the firm's qualifications with respect to each of the statutory selection criteria set forth above under "Criteria for Selection".

This written submission should also address the following matters:

1. The firm's proposed method of valuing Conrail;
2. The method of distribution the firm intends to use in selling the Conrail shares including the mix between institutional or retail purchasers that that firm anticipates;
3. The estimated range of underwriting commissions and any other fees or costs the firm contemplates charging Conrail or the Department;
4. The manner in which the firm would seek to form the syndicate, including how shares would be allocated within the syndicate and retention determined;
5. The method by which the firm contemplates satisfying the mandate of the Act that minority owned or controlled investment banking firms have an opportunity to participate to a significant degree in the Offering;
6. The method by which the firm contemplates satisfying the mandate of the Act that the level of each investment banking firm's participation in the Offering be consistent with its financial capabilities;
7. A brief description of the offering and the after-market performance of the securities involved in each initial public offering in which the firm has acted as managing underwriter since January 1, 1985;
8. The considerations that distinguish the firm from other investment banking firms and that make it more suitable to be a co-lead managing underwriter; and
9. Any other matters the firm deems relevant to the selection process.

Written submissions are limited to a total of 40 pages (including graphics). This total also includes any written materials which the firm intends to distribute as part of its oral presentation, should it choose to make one. Each firm is also requested to provide the Department at this time with its Focus Report as of its last quarter. The Focus Report will not count toward the 40 page limit. The firm should indicate what information, if any, in such written submission it wishes to be

given confidential treatment by the Department pursuant to the Freedom of Information Act and should file one copy of a non-confidential version of its written submission. Twenty copies of the confidential version must be filed with the Department of Transportation, Office of Documentary Services, Docket Section, Room 4107, C–55, 7th Street, SW., Washington, DC 20590, Attention: Phyllis Kaylor/Docket No. 44437 before 5:00 p.m. EST on November 3, 1986.

Requests To Make Oral Presentations

At the time the firm files its written submission, if it wishes to make an oral presentation it should so request to the Secretary in the letter transmitting its written presentation.

Initial Oral Presentations

Initial oral presentations will be scheduled on either November 6 or 7, 1986 and, if necessary, November 8, 1986. Presentations will be strictly limited to twenty minutes each. Each firm choosing to make an oral presentation will be notified not later than November 5, 1986 of the date, time and location within the Department in Washington, DC for its presentation.

Selection of Final Group

On November 12, 1986, the Department will announce the selection of not more than twelve firms for further consideration in the selection process.

Final Oral Presentation

Final oral presentations by each finalist will be scheduled on either November 13 and 14, 1986. These presentations will be strictly limited to one hour. No written materials may be submitted as a part of this presentation except those expressly requested by the Department in the following paragraph. In addition to any other speakers, firms are requested to include a representative of the syndicate department who should be prepared to discuss in detail the firm's contemplated syndication process. Each finalist will be informed on November 12, 1986 of the date, time and location within the Department in Washington, DC for its final presentation.

Each finalist is also requested to provide the Department at this time with a sample underwriting agreement for a secondary offering which it used in a recent offering, together with comments as to which portions would not be applicable or would be expected to be modified for the Offering. Particular emphasis will be given to comments covering representations, warranties, indemnification and contribution.

Final Selection

The names of the firms selected as co-lead managing underwriters and of the firm selected to administer the Offering will be announced by the Department on November 20, 1986. The Department expects these firms to enter into a preliminary agreement with respect to the Offering.

Inquiries

Inquiries regarding the Guidelines and any other aspects of the Offering should be directed to the Office of Chief Counsel, Federal Railroad Administration, Suite 8206, 400 7th St., SW., Washington, DC 20590; telephone (202) 366–0616.

Dated at Washington, DC, October 22, 1986.

Jim Burnley,

Deputy Secretary.

[FR Doc. 86–24166 Filed 10–23–86; 8:45 am]

BILLING CODE 4910–62–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Nineteenth Century French Drawings from the Museum Boymans-van Beuningen." (see list [1]) imported from abroad for the temporary exhibition without profit within the United States are of cultural significane. I also determine that the temporary exhibition or display of the listed exhibit objects at the Baltimore Museum of Art, Baltimore, Maryland, beginning on or about December 13, 1986, to on or about January 25, 1987, the Los Angeles County Museum of Art, Los Angeles, California, beginning on or about February 26, 1987, to on or about April 12, 1987, and at the Kimbell Art Museum, Fort Worth, Texas, beginning on or about April 25, 1987, to on or about June 14, 1987 is in the national interest.

[1] A copy of this list may be obtained by contacting Mr. John Lindburg of the Office of the General Counsel of USIA. The telephone number is 202–485–7976, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: October 20, 1986.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 86–24073 Filed 10–23–86; 8:45 am]

BILLING CODE 8230–01–M

University Affiliations Program: Application Notice for Fiscal Year 1987

Applications for grants from U.S. institutions of higher education are invited under the University Affiliations Program.

Authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256 (Fulbright-Hays Act). The purpose of the Fulbright program is "to enable the government of the United States to increase mutual understanding between the people of the United States and people of other countries."

(Information collection involved in this program has been cleared by OMB Approval Number 3116–0179, expiration date 1/31/87. Renewal approval has been requested.)

Summary

The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional partnerships between U.S. and non-U.S. institutions of higher education. One-time grants-in-aid are available for a period of two to three years. Total funding available for each grant may not exceed $50,000 or $60,000, depending on locality.

The goal of the program is to facilitate bilateral institutional relationships which promote mutual understanding through faculty and staff exchanges.

Applications on behalf of the collaborating institutions must be received by USIA no later than 5:00 p.m., EST on January 29, 1987.

Participating institutions should be prepared to assign faculty or staff to the partner institution for teaching, lecturing or research assignments of one month or longer, maintain said person(s) on full salary and benefits, and receive visiting faculty or staff from the partner institution for one month or longer for the same or complimentary activities. USIA funds may be used only for participant travel costs and modest supplements for maintenance expenses. Institutional overhead is not allowable and all other costs related to the exchange program must be borne by the participating institutions.

Participants traveling under USIA grant support must be U.S. citizens (or nationals) if representing the U.S. partner institution, and nationals of the country or area of the foreign partner.

USIA support may be requested for a minimum of two years and a maximum of three years. The total request to USIA, covering eligible expenses of both institutions for the two- or three-year period, may not exceed the maximum allowable for the locality of request, as listed below. Complete program criteria and application guidelines appear below.

In Fiscal Year 1987, approximately 20 grants will be available world-wide through the regular competition for specific countries and themes. Awards will reflect Agency priorities and academic consideration.

In addition, up to seven grants will be available under special compeitions for the following special areas: Bicentennial of the U.S. Constitution (up to five grants, all areas worldwide), and International Relations/International Trade (up to two grants in specific areas of the People's Republic of China).

Proposals will be accepted either for the establishment of new affiliations or for the development of programs in new areas for existing affiliations not previously funded by USIA's Affiliations Program.

Proposals for funding ad hoc research projects, technical assistance projects and feasibility studies to plan affiliations will not be considered under this program.

All proposals recommended for funding will be subject to Agency review for conformity to relevant OMB and legal considerations. Funding of any proposal is subject to the regular procedures, regulations and requirements for Bureau of Educational and Cultural Affairs grants, including review by USIA's Office of General Counsel.

Eligibility

Eligibility has been determined by the United States Information Agency. Because one of the program's purposes is to strengthen ties between the U.S. and many areas of the world, geographic and thematic priorities have also been identified.

Africa: Proposals will be considered for any discipline(s) in the *humanities, social sciences, education and communications* for all countries listed below; however special consideation will be given to proposals in the fields noted after each country. Applicants should focus on one or two specific topics of interest.

The maximum amount of each grant is *$50,000.*

Cameroon and Senegal: *Journalism;*

Kenya: *Journalism and/or library science;*

Bukina Faso, Mauritius and Sierra Leone: *American Studies;*

Zimbabwe: *Public Administration;*

Benin, Botswana, Burundi, Central African Republic, Congo, Gabon, Lesotho, Liberia, Madagascar, Nigeria, South Africa, Uganda and Zaire: *No discipline priorities.*

American Republics: Only proposals which focus on the fields noted after each country will be accepted. The maximum amount of each grant is *$50,000.* Eligible for 1987 are:

Antigua, Argentina, Aruba, The Bahamas, Barbados, Bermuda, Bolivia, Chile, Colombia, Curaçao, Dominica, The Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Mexico, Paraguay, Peru, St. Lucia, Trinidad and Tobago, Uruguay and Venezuela: *Economics; History; Law; Political Science (Political Behavior and Methods of Analysis);*

Brazil: *Find Arts and/or Performing Arts (exchange activities should have an academic focus);*

Belize, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua: *Communications; Primary and Secondary Education; Social Sciences.*

East Asia/Pacific: *Only proposals for the following countries* and *fields specified* for each country will be considered in 1987. The maximum amount of each grant is *$60,000.*

Eligibility and Fields

Indonesia: *Social Sciences;*

Korea: *Korean Studies; American Studies; Communications; Education;*

Philippines: *Philippine Studies; American Studies (priority will be given for exchanges with provincial Philippine universities.)*

Europe: Any discipline(s) in the *humanities, social sciences, education and communications.* Applicants should focus on one or two specific topics of interest. The maximum amount of each grant is *$50,000.*

Eligible for 1987 are: Bulgaria, Czechoslovakia, Hungary, Romania and Yugoslavia.

Near East/South Asia: Any discipline(s) in the *humanities, social sciences, education and communications.* Applicants should focus on one or two specific topics of interest. (In instances where excellence of proposals is equal, priority will be given to those which introduce *American Studies.*)

Eligible for grants up to *$50,000 maximum* each: Bahrain, Morocco, Nepal and Tunisia.

Eligible for grants up to *$60,000 maximum* each: Egypt, India, Iraq, Israel, Jordan, Kuwait, Pakistan, Qatar, Syria and the United Arab Emirates.

Special Competitions

In addition to the above competitions, there will be two *special competitions* in 1987. Application guidelines and grant awards will be identical to the general competition. Proposals for a special competition should be so marked.

A. Up to five grants will be available to commemorate the *Bicentennial of the U.S. Constitution.* These grants are open to any area worldwide. For countries not listed in the general competition above, consult USIA concerning maximum grant amounts.

We invite applications dealing with the international dimensions of the origins and development of constitutional principles, the impact of the U.S. Constitution on other legal and political systems, the influence of other countries' legal and political practices upon the evolution of the U.S. constitutional system, and the cultural and social implications of constitutional arragements. Applicants should focus on one or two specific topics of interest.

Further guidance may be obtained by requesting, from the address below, *A Preamble for Programming,* used by USIA for special Bicentennial program planning.

B. Proposals are invited for special exchanges with the *People's Republic of China.* The maximum amount for these grants is $60,000 each. Only proposals for specific fields and with universities in specific provinces, as noted, will be considered in 1987:

International Relations: Heilongjiang, Jilin and Liaoning provinces only;

International Trade: Guangxi, Guizhou, Sichuan and Yunnan provinces only.

(Subject to the availability of funds, USIA may also fund in 1987 projects to develop bilateral relationships between one or more school districts, in consortium with U.S. and foreign colleges or universities, to promote *exchanges of secondary teachers.* Detailed guidelines would appear at a later date. Interested institutions should contact USIA at the address below for further details.)

Requirements for Application (all competitions)

1. *Eligibility:* Applications on behalf of the collaborating institutions must be

submitted by the U.S. partner. Eligible partner institutions are:

a. Accredited, degree-granting two-year and four-year undergraduate and/or graduate-level U.S. institutions of higher education.

b. Recognized degree-granting institutions of higher education overseas.

2. *Review Process:* Proposals will be reviewed for technical, academic and Agency considerations. Proposals which are technically ineligible (eligibility criteria follow) will not be forwarded for further review by the academic or Agency review committees.

Proposals must be received by USIA no later than *5:00 p.m. EST, January 29, 1987.*

Upon completion of the technical review, project directors of ineligible proposals will be informed in writing. Technically eligible proposals will be forwarded for substantive review. Proposals recommended on substantive grounds will be further considered by USIDA review committees. Agency review committees will then evaluate the proposals by specific criteria addressing factors of quality and geographical and program balance.

Program review criteria follow:

Technical Review Criteria

Within deadline, original proposal and eleven (11) complete copies, including: abstract, narrative, three-column budget, bio-sketches, required letters of agreement and summary of international linkages; eligible geographic and academic area(s); two- or three-year program (see detailed requirements below).

N.B.: U.S. institutions are responsible for assuring complete understanding and compliance to financial requirements by the foreign partner, and for obtaining the letter of commitment so stating in the specific format described below. No exceptions will be made.

Academic Review Criteria

a. Soundness of proposal, as reflected by focussed academic goals and selection of topics and activities;

b. Evidence of mutuality of benefits to the institutions involved in the exchanges;

c. Feasibilty of the program plan as it relates to the stated goals and selected topics and activities;

d. Academic experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required);

e. Evidence of strong mutual institutional commitment;

f. Evidence of participation and integration of faculty and administration of both institutions (department, college, division or school) in the planning of the proposed activities;

g. Evidence that the proposed individual exchanges are likely to achieve the program's overall goal of institutional academic development;

h. Mutual advancement of cultural and political understanding of the countries represented in the partnership through development of individual and institutional ties;

i. Demonstration that the partnership is likely to continue after the conclusion of USIA grant.

j. If the proposal is for support for an established, active linkage, evidence that the University Affiliations funding would allow for innovation in the exchange relationship.

Agency Review Criteria

a. USIS Overseas post assessments, in terms of need and feasibility;

b. Advancement of mutual cultural and political understanding between the countries represented in the partnership;

c. Academic quality, reflected in academic review category and summary notes;

d. Feasibility of program plan;

e. Promise of long-term impact;

f. Cost-effectiveness.

3. *Application Procedures:* Applicants must submit one original and eleven (11) complete copies of their proposals to: University Affiliations Program, United States Information Agency 301 4th Street SW., Washington, DC 20547.

In order to be eligible for review the proposal *must* include:

(1) *Summary document:* A typed, double-spaced abstract of approximately two pages.

(2) *Narrative,* total text not to exceed fifteen (15) typed, double-spaced pages, including:

a. A brief (two-page) description of the participating institutions and participating departments;

b. A detailed description of the proposed affiliation program including but not limited to: the name and qualifications of the designated project director; the roster of participants or representative sample of potential participants and their qualifications, including language skills; a statement of need; a detailed, specific description of proposed activities, including when and where they will occur; and the anticipated benefits of the program. First-year exchange participants must be identified. A plan for institutional evaluation of the program must also be included.

(3) A detailed, *three-column budget* outlining specific expenditures and source(s) from which funds are anticipated. The budget should include any in-kind and cash contributions to the program made by the U.S. and non-U.S. universities.

Required Format for Budget

All proposed expenditures should be individually listed, using the format below. Each request for travel should specify the number of round trips by number of participants per fiscal year. Each maintenance request should specify number of participants times per diem rate per fiscal year. Direct costs and usual overhead costs absorbed by each institution should be included, along with regular salary and benefits, under the column of contributions for each partner:

	USIA	U.S. Inst.	For. Inst.
Year 1 travel	$X	$X	$X
Maintenance costs	$X	$X	$X
Salary and Benefits	n/a	$X	$X
Year 2 travel	$X	$X	$X
Maintenance costs	$X	$X	$X
Salary and benefits	n/a	$X	$X
Year 3 travel	$X	$X	$X
Maintenance costs	$X	$X	$X
Salary and benefits	n/a	$X	$X
Totals	$X	$X	$X

(4) *Appendices,* which should be kept to a minimum but must include:

a. Bio-sketches of professional accomplishments of the potential participants, *not to exceed two pages in length each,* clearly indicating the level of language skills, overseas experience, knowledge of the prospective partner country as demonstrated through courses taught, relevant scholarly and non-scholarly travel, citizenship, publications, and research activities. Bio-sketches for the U.S. participants must be included; those of non-U.S. participants are desirable but not required.

b. Documentation of institutional support for the proposed affiliation, *including a signed letter of endorsement from the U.S. institution's (or consortium members') president, vice-president, chancellor or provost, as well as a signed letter of endorsement from the president (or equivalent) of the non-U.S. institution.* Both letters must specifically refer to the 1987 University Affiliations Program and commit the institution to maintaining exchange participants on full salary and benefits during the exchange.

N.B.: A general letter or agreement between the two institutions without

reference to this specific progrm will not fulfill this requirement.

c. A brief summary of ongoing, active international linkages at both partner institutions.

(U.S. institutions are reminded that in certain areas, host government approval must be obtained before any exchange program of this type may be carried out.)

4. *Budget: The only eligible budget items are:*

a. International airfare or overland travel costs for participants;

b. Compensation (supplements to salary and/or benefits) or modest per diem may be requested for such specific items as housing, food and other maintenance items while in exchange status. Participating universities will be expected to continue full salary and benefits for their own faculty. The maximum amount that may be requested for compensation supplements/per diem may not exceed the rates set by the U.S. Department of State for overseas locations and the General Services Administration (GSA) per diem allowances for U.S. localities. *Institutions are encouraged, in planning their budgets, to set temporary living allowances at a level which can be maintained after the period of USIA funding.* The USIA officers listed below will supply these rates upon request.

(U.S. institutions are reminded that in certain countries restrictions may be placed on the export of salary in local currency.)

Ineligible Budget Items

a. Institutional overhead, including postage, telephone or telex expenses;

b. Administrative expenses incurred in connection with the affiliation;

c. Expenses for student exchanges;

d. Costs for dependents;

e. Conference, seminar or publication costs;

f. Any costs for non-U.S. citizens or nationals from the U.S. institution, or non-citizens or non-nationals of the overseas host country or locality.

5. *Deadlines:* Complete proposal packages must be received by USIA *on or before* January 29, 1987, 5:00 p.m. EST.

Applicants are responsible for the submission of complete applications. *All* required items must be received by deadline.

6. *Notification:* All applicants will be notified of the results of the review process on or about May 15, 1987. Funded proposals will be subject to periodic reporting and evaluation requirements.

Inquiries

For questions concerning programming and budget, please contact:

Africa: Ms. Winnie Emoungu (E/AEA), Academic Exchanges Division, Africa Branch, (202) 485–7355.

American Republics: Ms. Paula Durbin (E/AEL), Academic Exchanges Division, American Republics Branch, (202) 485–7365.

East Asia and the Pacific: Mr. Glenn Shive (E/AEF), Academic Exchanges Division, East Asia/Pacific Branch, (202) 485–7402.

Europe: Mr. George Jewsbury (E/AEE), Academic Exchanges Division, Europe Branch, (202) 485–7420.

Near East/South Asia: Mr. Victor Ayoub (E/AEN), *or* Mrs. Kate Weddle, Academic Exchanges Division, Near East/South Asia Branch, (202) 485–6862.

General Inquiries: Mr. William Dant, Coordinator, University Affiliations Program, Office of Academic Programs, (202) 485–8489.

Dated: October 21, 1986.

Mark Blitz,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 86–24074 Filed 10–23–86; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 206
Friday, October 24, 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

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 28, 1986.

LOCTATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, DC

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

ANSI/CPSC Coordinating Committee

The Commissioners along with staff will be present at a regular meeting of the American National Standards Institute (ANSI)/CPSC Coordinating Committee at 10:00 a.m., October 28, 1986. An agenda for the meeting has been developed and information about its various items may be obtained from Douglas Noble, Voluntary Standards Coordinator, (301) 492–6550. The meeting will be chaired by Steven Spivak, Ph.D., University of Maryland.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

October 21, 1986.

[FR Doc. 86–24134 Filed 10–21–86; 5:07 pm]

BILLING CODE 65355-01-M

2

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 29, 1986.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1987 fee schedules for Federal Reserve check collection, funds transfer, automated clearing house, local securities, and book-entry securities services.
2. Proposed 1987 Private Sector Adjustment Factor for priced services.
3. Publication for comment of a proposal to implement a redeposit service for low-dollar return items in the Federal Reserve check collection service.
4. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Govenors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 22, 1986.

James Mc Afee,

Associate Secretary of the Board.

[FR Doc. 86–24147 Filed 10–22–86; 10:44 am]

BILLING CODE 6210-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:30 a.m., Wednesday, October 29, 1986, following a recess at the conclusion of the open meeting.

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. Federal Reserve Bank and Branch director appointments.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 22, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86–24148 Filed 10–22–86; 10:45 am]

BILLING CODE 6210-01-M

4

LEGAL SERVICES CORPORATION

TIME AND DATE: The Audit and Appropriations Committee meeting will commence at 8:00 a.m., Saturday, November 1, 1986, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Columbia Room, 550 C Street, SW., Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —March 13, 1986
3. FY 1986 Third Quarter Budget Review
4. FY 1987 Consolidated Operating Budget
5. FY 1988 Budget Mark
   —Initial Program and Public Comment
6. General Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863–1839.

Date issued: October 21, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–24114 Filed 10–21–86; 4:19 pm]

BILLING CODE 6820-35-M

5

LEGAL SERVICES CORPORATION

TIME AND DATE: The Provisions for the Delivery of Legal Services Committee meeting will commence at 10:00 a.m., Saturday, November 1, 1986, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Columbia Room, 550 C Street, SW., Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —April 9, 1986
3. Migrant Conciliation Panel Proposal
4. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863–1839.

Date issued: October 21, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–24115 Filed 10–21–86; 4:19 pm

BILLING CODE 6820–35–M

6

LEGAL SERVICES CORPORATION

TIME AND DATE: The Board of Directors meeting will commence at 10:30 a.m., Saturday, November 1, 1986, and continue until all official business is completed. An executive session is scheduled.

PLACE: Capitol Holiday Inn, Columbia Room & Jupiter Room, 550 C Street SW., Washington, DC 20024.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under the Government in the Sunshine Act [5 U.S.C. 552b(c)(2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —June 27 & 28, 1986
3. Report from the Provisions for the Delivery of Legal Services Committee
   —Migrant Conciliation Proposal
4. Report from the Audit & Appropriations Committee
   —FY 1986 Third Quarter Budget Review
   —FY 1987 Consolidated Operating Budget
5. Personal and Personnel Matters (Closed)
6. Litigation and Investigation Matters (Closed)
7. Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863–1839.

Date issued: October 21, 1986.

Timothy H. Baker,

Secretary.

[FR Doc. 86–24116 Filed 10–21–86; 4:19 pm]

BILLING CODE 6820–35–M

7

SECURITIES AND EXHCNAGE 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 October 27, 1986:

A closed meeting will be held on Tuesday, October 28, 1986, at 2:00 p.m. An open meeting will be held on Thursday, October 30, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 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 closed meeting scheduled for Tuesday, October 28, 1986, at 2:00 p.m., will be:

Formal orders of investigation.
Institution of injunctive action.
Institution of administrative proceedings.
Settlement of administrative proceedings.
Settlement of injunctive action.
Opinions.

The subject matter of the open meeting scheduled for Thursday, October 30, 1986, at 10:00 a.m., will be:

1. Consideration of whether to approve rule proposals submitted by the American Stock Exchange, Inc. and the New York Stock Exchange, Inc. Both proposals would ease restrictions imposed on an approved person affiliated with a specialist if an adequate "Chinese Wall" were established between the approved person and the specialist. For further information, please contact Sharon Lawson at (202) 272–2910 or Ellen K. Dry at (202) 272–2843.

2. Consideration of whether to issue a release proposing amendments to Rule 4–10 of Regulation S–X, which would rescind authorization to use the full cost method of accounting for oil and gas producers. For further information, please contact John W. Albert or John A. Heyman at (202) 272–2130.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: David H. Potel at (202) 272–2014.

Jonathan G. Katz,

Secretary.

October 21, 1986.

FR Doc. 86–24162 Filed 10–22–86; 1:11 pm]

BILLING CODE 8010–01–M

Federal Register

Friday
October 24, 1986

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 994
Egg Marketing Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 994

[Docket No. EMO-1]

Egg Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written exceptions to a proposed egg marketing agreement and order. The proposed program would authorize the establishment of programs and projects relating to research, consumer education, advertising, promotion, and product development for eggs, spent fowl, and products thereof. The order would provide for a 22-member national board consisting of producers and handlers and one public member to administer the order. Funds to administer the order would be obtained from mandatory non-refundable assessments levied on egg handlers. The first year assessment rate for the research and promotion programs would be set at one-half cent on each dozen eggs first handled, with subsequent maximum one-fourth cent annual increases allowed up to a 1-cent maximum rate. This proposal does not include a surplus removal program.

DATE: Written exceptions to this recommended decision must be filed by December 23, 1986.

ADDRESS: Send four copies of comments to the Hearing Clerk, United States Department of Agriculture, Room 1079 South Building, Washington, DC 20250, where they will be available for public inspection during regular business hours. Copies of this proposed rule may be obtained from Janice L. Lockard at the address listed below.

FOR FURTHER INFORMATION CONTACT: Janice L. Lockard, Poultry Division, AMS, USDA, Washington, DC 20250, Phone (202) 382-8132.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing published in the December 16, 1985, issue of the **Federal Register** (50 FR 51344), as corrected in the December 23, 1985, issue (50 FR 52332); and Termination of Rulemaking Proceedings in part (51 FR 37578), October 23, 1986.

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order which would provide for a research and promotion program for eggs and related products.

This recommended decision is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act" and the applicable rules of practice and procedure governing formulation of marketing agreements and marketing orders (7 CFR 900.1-900.18).

The proposed marketing agreement and order, hereinafter referred to collectively as the "order," were formulated on the record of a public hearing held in Atlanta, Georgia, January 8-10, 1986; Little Rock, Arkansas, January 15-16, 1986; San Francisco, California, January 29-30, 1986; Philadelphia, Pennsylvania, February 5-6, 1986; and Chicago, Illinois, February 27-March 1 and March 3, 1986. The Notice of Hearing, published on December 16, 1985, contained a proposal submitted by an industry task force, composed of producers, handlers, and processors. The proposal contained, in addition to the research and promotion program, provisions for the voluntary removal of laying hens by producers during periods of extreme egg surpluses. The Agricultural Marketing Service proposed certain modifications of the proposal which included provisions requiring a public member on the proposed Egg Marketing Board; providing for a periodic continuance referendum; and authorizing establishment of regulations to implement a surplus removal program.

It is anticipated that the Egg Research and Promotion Order (7 CFR 1250.301-1250.363) authorized by the Egg Research and Consumer Information Act (7 U.S.C. 2701 *et seq.*) would be terminated if the proposed order is adopted.

During the hearing on the proposal, a number of witnesses, including producers, handlers, and State and regional producer and promotional organizations, testified in favor of the research and promotion provisions of the order. In addition, an economist appearing on behalf of the proponents presented evidence relating to the potential effectiveness of a sustained advertising program. In general, proponents testified that current American Egg Board (AEB) research and promotion activities authorized by the Egg Research and Consumer Information Act were inadequately funded. Proponents believed that strong research programs were needed to develop alternative uses for their products and to address questions regarding the specific role of eggs in maintaining optimum health. In addition, proponents summarized the effectiveness of the AEB advertising and promotion program especially during the early years of the program when available funds were greatest and advertising costs lower, and indicated that additional funds could help achieve the objective to increase consumption and demand. They also testified that they believe that the refund provision in the existing order is not equitable because it allows some producers to benefit from the research and promotion programs without contributing their share of program costs.

Opposition to the research and promotion program came primarily from food manufacturers who argued that assessments would be passed on to them and ultimately to consumers without their receiving any of the benefits. Opponents, including some producers, also asserted that a national research and promotion marketing order program was unnecessary and voluntary company-sponsored research and promotion programs have been highly successful in certain segments of the poultry industry.

With respect to the surplus removal provisions of the proposed order, the proceedings for these provisions were terminated effective October 23, 1986 (51 FR 37578). As noted in that action, the hearing record reflects significant opposition within the industry and from other interested persons to the surplus removal provisions of the proposed order. Owners of various sizes of egg production operations, ranging from contract producers to large integrated firms, proffered evidence in opposition to the concept of surplus removal in general and to the program as proposed.

The proponents claimed that the egg industry is characterized by chronic egg surpluses and that removal of laying hens during periods of surpluses would, in their view, alleviate an egg surplus and stabilize egg prices. The proponents asserted that various indicators could be used by the proposed Egg Marketing Board to determine the quantity of hens to be removed and the most propitious time to do so.

Notwithstanding the lengthy record in this matter, the record evidence did not demonstrate that the proposed surplus removal program would effectuate the purposes of the Act. The desirable degree of price stability was never

specified, nor did the economic analysis and other similar evidence entered in the record establish that a predictable egg price cycle exists or that, even if it does exist, a surplus removal program would be effective in correcting problems associated with such a cycle. In addition, there was insufficient evidence to demonstrate that the Board could determine either that a surplus condition existed or the quantity of hens which would have to be removed in order to stabilize prices. Furthermore, an appropriate administrative mechanism suitable to achieve the objectives of a surplus removal program was not clearly or adequately specified.

Therefore, it was determined that the surplus removal provisions as published in the Notice of Hearing would not effectuate the declared policy of the Act and that the proceedings with respect to these were terminated.

Accordingly, §§ 994.60 through 994.64 regarding surplus removal which appeared in the proposed order accompanying the Notice of Hearing are deleted. Subsequent sections and any references thereto are renumbered, as appropriate. Miscellaneous changes are made to other sections of the proposed order, as appropriate, to delete provisions or references which relate to the surplus removal program.

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator has determined that this action would not have a significant impact on a substantial number of small entities.

In the Notice of Hearing, interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the order on small businesses. Based on the record evidence, a sizable majority of both egg handlers and egg producers could be considered small businesses for purposes of the RFA. In that regard, considerable testimony was presented concerning the various operations existing in the egg industry, such as production methods and marketing.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action in order that small businesses will not be unduly or disproportionately burdened. The Act requires the application of uniform rules to regulated handlers. Marketing orders and rules proposed thereunder are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are usually compatible with respect to small business entities. Since the handlers to be covered under this order are predominately small businesses, the order proposed in this proceeding would impose no disproportionate regulatory burdens on any groups of small entities within the industry.

The principal requirements of the order which would affect handlers are (1) a mandatory assessment to fund research and promotion programs and, (2) associated reporting and recordkeeping requirements. The order provides for an initial assessment of one-half cent per dozen eggs to be paid by the first handler of the eggs. The term "handle" includes processing, grading, or cartoning of eggs from a person's own production or from eggs purchased from another person. This term also includes placing eggs in the current of commerce, except as a common carrier of eggs owned by another person. "Handle" does not include washing and packing of nest run eggs or a producer's delivery of his/her own nest run eggs. Thus, firms performing these activities alone would not be subject to assessments. Producers would not have to pay the assessment unless they were also first handlers. Eggs produced by producers with fewer than 10,000 hens would not be subject to the assessments. The order also requires that every handler furnish to the Egg Marketing Board such information as will enable the Board to exercise its responsibilities and duties.

Record evidence indicates that under the current Egg Research and Promotion Order, as authorized by the Egg Research and Consumer Information Act, producers pay an assessment of 5 cents per 30-dozen case of eggs, which is approximately 0.17 cents per dozen. Under that order, assessments are collected and remitted by egg handlers to the AEB. The assessments provide funding for national research, promotion and advertising, and consumer education activities on eggs and spent fowl and products thereof. Producers may request refunds under that Act and, according to the latest available information, approximately 25 percent of the 2,199 producers participating in this program do so. Record evidence indicates that $7.6 million was collected under that order during 1985 and that refunds totaled $3.3 million. Under that order, both producers and handlers are subject to recordkeeping requirements and handlers are subject to reporting requirements.

Testimony and evidence of record suggest that the egg industry is now generally composed of four basic types of firms: (1) Handlers who market and/or process eggs, but who are not engaged in production; (2) independent producers who are engaged in egg production only and are not involved in the processing or marketing of eggs; (3) producers who produce eggs under contractual arrangements, but do not possess title to them; and (4) producer-handlers who are not only engaged in the production of eggs but also market and/or process eggs. Under the terms of the proposed order, firms that are involved in the handling of eggs whether as handlers or producer-handlers would be required to pay the assessments for those eggs for which firms were first handlers. Firms that are independent producers are not subject to assessments but many could nevertheless be affected indirectly by the operation of the order, if assessments are passed back to them from first handlers. Although there was testimony which recognized this possibility, the extent to which this pass back might occur was not clear. In addition, it was not clear whether contract producers would be affected if the producers with whom they have contractual arrangements chose to pass all or a portion of the assessment to them.

According to Statistical Reporting Service (SRS) figures, there were approximately 5,090.67 million dozen table eggs produced between December 1, 1984, and November 30, 1985. This figure includes production from flocks of 3,000 or more laying hens. The collection of the proposed initial assessment of one-half cent per dozen eggs produced from 10,000 or more laying hens would result in approximately $24 million available for funding the research, promotion, and consumer education programs.

According to AEB statistics for August 1986, there are 938 handlers remitting assessments under the Egg Research and Consumer Information Act. It is anticipated that all of these handlers under the current Egg Research and Promotion Order would be first handlers subject to the assessments under the proposed order. Of these handlers, approximately 80 percent could be classified as small entities. The proposed initial assessment of one-half cent per dozen eggs would be equivalent to approximately three-quarters of 1 percent of a handler's annual gross sales revenue derived from the sale of eggs. This is based on the Economic Research Service (ERS) average wholesale price of 66.4 cents per dozen. At the maximum rate of 1 cent provided in the proposed order, the assessment would be only 1½ percent of annual gross sales revenue. This assumes an average price to wholesalers of 66.4 cents per dozen, based on ERS' statistics. However, some handlers may be further processors and

distributors of eggs and, therefore, could derive a significant proportion of their revenue from activities other than egg handling. This would result in lessening the impact of assessments on such firms. In addition, of the 938 handlers currently remitting assessments under the present Egg Research and Promotion Order, it is estimated that 741 of these handlers are also producers who are already subject to assessments under that order at the rate of 0.17 cents per dozen eggs marketed. This represents approximately one-fourth of 1 percent of a handler's annual gross sales revenue derived from the sale of eggs. Accordingly, for these handlers currently paying assessments, the impact of the initial assessment in the proposed order would be less, representing approximately one-half of 1 percent for the initial assessment and approximately 1 percent at the maximum 1-cent rate.

There was some testimony with regard to the possible increased costs of eggs purchased by food manufacturers because of the assessment. In such instances all or a portion of the assessments would be passed forward to processors from first handlers. However, the extent to which this might occur was not clear in the record; nor was it specified in testimony that if this did occur whether the cost to consumers of the food manufacturers' products would increase.

The reporting and recordkeeping requirements in the proposed order would not require any significant additional cost or effort for handlers. Presently, under the existing Egg Research and Promotion Order, handlers who remit assessments are required to submit reports showing the number of eggs marketed from their own production and/or from production of others. These requirements are comparable to the reporting requirements for handlers in the proposed order. The proposed 2-year record retention period is also the same as that required presently under the current order. In addition, ordinary business records maintained by handlers for other purposes would generally contain any other required information.

Accordingly, it is determined that the proposed provisions of the order would not have a significant impact on handlers.

There are no reporting or recordkeeping requirements in the proposed order for producers. These firms which are engaged only in the production of eggs, commonly referred to as independent producers, may nevertheless be affected by the proposed operations of the order. There was testimony at the hearing indicating that handlers could pass back to producers in the form of lower prices paid for eggs purchased all or a portion of the assessments paid by first handlers. However, the extent to which this might occur is not clear from the record evidence.

Testimony and record evidence indicate that the egg industry has undergone some dramatic changes in the last 20 to 30 years. There have been significant advances in productivity at the producer level, resulting in lower per unit average costs. Some producers have expanded their operations to take advantage of economies of size in egg production and marketing. In addition, many producers have vertically integrated their operation both forward and backward.

Today, the industry is characterized in general by fewer but larger producers, as well as a greater number of producers who perform functions other than egg production, such as grading, cartoning, and processing. The number of small- and medium-sized producers has declined along with their share of total output. The industry breakdown for producers as of August 1986 is as follows:

Number of layers	Number of producers	Percent of total	Monthly production (thousand dozens)	Percent of total
3,001 to 10,000	549	25.0	5,960.6	1.6
10,001 to 20,000	483	22.0	11,710.9	3.2
20,001 to 50,000	512	23.3	27,570.3	7.6
50,001 to 100,000	275	12.5	32,905.6	9.0
100,001 to 500,000	283	12.8	104,222.5	28.6
500,001 to 1,000,000	64	2.9	74,946.0	20.6
More than 1,000,000	33	1.5	106,873.5	29.4
Total	2,199		364,189.4	

Source: Unpublished AEB Count of Active Producers by Size, August 1986.

The trend toward larger but fewer firms is also illustrated in a recent report in a trade journal (*Poultry Tribune*, December 1985) which suggested that only 61 producers accounted for approximately 56 percent of total egg production.

Of the 2,199 producers reported by AEB who are engaged in egg production in the 48 contiguous States, it is estimated that approximately 1,690 would be considered small entities. This is based upon a production level of 100,000 layers using a figure of 247 eggs per year (U.S.D.A SRS, *Layers and Egg Production 1985 Summary*). However, not all producers would in all instances be indirectly impacted by the proposed order because the order provides for a 10,000 layer exemption. Accordingly, firms producing eggs from less than 10,000 layers would not be considered producers for purposes of the order and handlers would not be subject to assessments in handling their eggs. This exemption could insulate at least 549 small producers owning laying hens in the 3,001 to 10,000 range from any potential impact of the order. Information regarding the exact number of producers owning less than 3,001 laying hens is not known.

It is unclear from the testimony and record evidence the extent to which handlers would pass back the impact of assessments upon independent producers. In this regard, much would depend on the bargaining power of the first handler relative to that of the producer or the next buyer in the marketing chain. Assuming, however, that assessments would be passed directly back to producers, their gross annual sales revenue would be reduced by not more than an estimated 1 percent. This is based on ERS' 1985 average price to producers of 50 cents per dozen. For those producers who are currently paying the AEB assessments of 0.17 cents per dozen eggs, the potential impact would be approximately 0.66 percent of sales revenues. In addition, for those producers who are diversified with other types of enterprises, the proportion of total revenues impacted by assessments would be less. Accordingly, it is determined that the order provisions would not have a significant impact on a substantial number of producers who might be impacted by the order provisions.

According to AEB statistics, it is estimated that there are 741 producers who are not only engaged in the production of eggs, but also market and/or process eggs. The impact or potential impact of the order provisions on these producer-handler firms would be as discussed above for producers and handlers. The impact of the order may vary depending upon the extent to which these firms are engaged in production, handling, or other activities. Nonetheless, based upon the foregoing,

it is determined that whether viewed as handlers, producers, or both, the impact on these firms would not be substantial.

Record evidence shows that, in addition to the national research and promotion program, conducted by the AEB pursuant to the Egg Research and Promotion Order, there are approximately 36 State and 2 regional promotion organizations which conduct individual egg promotion activities. These programs are funded either by voluntary or mandatory assessments and most tend to be independent of one another and operate on a relatively small scale. However, these programs are eligible for and do receive funds currently from the AEB on a matching fund basis. As a result, their individual programs are enhanced and strengthened. The proposed order also provides for funding for State and regional organizations. A mandatory assessment program as envisioned by the order would ensure consistent and enlarged funding not only on a national basis, but at the State and regional levels as well, through an increased share by eligible States and regions in the total amount collected under the proposed mandatory national program. Promotion and research activities performed by other industries also would benefit from an increased national effort through a cooperative funding provision in the order.

In determining that the egg research, promotion, and consumer education programs under the proposed order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions were carefully reviewed and every effort was made to minimize any unnecessary costs or requirements. Although the order would impose some additional costs and requirements on handlers, and possibly some producers, it is anticipated that the research and promotion programs under the proposed order would help to increase demand for eggs and spent fowl and products thereof. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) the reporting and recordkeeping provisions that are included in the proposed order will be submitted for approval to the Office of Management and Budget (OMB). They will not become effective prior to OMB approval.

Material Issues

The material issues presented on the record of the hearing are the following:

(1) Whether the marketing of eggs produced in the United States affects the current of interstate or foreign commerce;

(2) Whether a national program for funding research, promotion, and consumer education is needed by the egg industry and whether such program would tend to effectuate the declared policy of the Act;

(3) What the specific terms and provisions of the proposed order should be, including, but not limited to:

(a) The definition of terms used herein which are necessary and incidental to attain the declared policy and objectives of the Act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of the Egg Marketing Board which shall be the local administrative agency for assisting the Secretary in the administration of the order;

(c) The authority for establishing and financing the development and carrying out of programs and projects of advertising, research, consumer education, and promotion directed to improve, maintain, and develop domestic and foreign markets for eggs and spent fowl and their products;

(d) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(e) The establishment of requirements for reporting and recordkeeping; and

(f) Additional terms and conditions as set forth in the Notice of Hearing published in the December 16, 1985, **Federal Register** (50 FR 51344) which are common to all marketing agreements and marketing orders, and certain other terms as set forth in § 994.85 through § 994.87.

Findings and Conclusions

(1) *Commerce.* Record evidence indicates that egg production occurs in all States and that some regions are deficit-producing while others are surplus-producing. Evidence further shows that eggs move in significant quantities across State lines. Information entered in the record includes a USDA study (*The U.S Poultry Industry: Changing Economics and Structure*, ERS, USDA, July, 1983, Floyd Lasley) which provides data regarding the existence of net movements of eggs out of the West North Central, South Atlantic, and Pacific States into the New England, Middle Atlantic, and Mountain States. The South Central and South Atlantic regions both changed from deficit- to surplus-producing regions in the early 1960's. Additional evidence of the changing composition of interregional egg movements is the fact that the West North Central region's surplus declined by 37 percent between 1970 and 1980. During the same time period the Pacific region's surplus declined by 29 percent and the New England region's deficit declined by 81 percent.

In addition, production and prices in one State or region affect those in other States or regions. There were various publications entered on the record which contain egg price quotations or estimates of egg values, such as USDA's "Egg Market News Report" and "Agricultural Prices" which are widely used by the industry and which facilitate the dissemination of price information across the country. Testimony presented at the hearing indicates that there is a link between egg prices in diverse geographic locations. For example, there appears to be a high correlation among retail egg price fluctuations in the Los Angeles, New York, Atlanta, and Chicago markets.

Record evidence indicates that eggs are sufficiently alike in appearance and quality, so that it is possible for eggs from widely varying locations to compete in the same market. Several producers testified that they often ship eggs to regions other than their own. Record evidence also indicates that eggs are marketed in processed form as well as in the shell, which facilitates transportation between States and regions. Finally, evidence indicates that eggs move into foreign commerce from the United States and that such exported eggs constituted an average of 1.50 percent of total U.S. table egg production over the past 4 years.

Therefore, it is found that the marketing of eggs produced in the United States affects the current of interstate or foreign commerce. Hence, all commercial eggs produced in the United States as defined in this order should be subject to the provisions of this order. While the definition of "United States" in the Notice of Hearing included all 50 States, it has been determined that the proposed order should be applicable to the 48 contiguous States as explained in section (3) of this recommended decision.

(2) *Need for a Research and Promotion Program.* The egg industry has suffered from a declining demand for its product for more than 20 years despite the existence of voluntary or mandatory research and promotion programs at the national, State, regional, or private levels. These programs have not reversed the downward trend in the

demand for eggs. For example, the record evidence shows that the number of eggs used per person decreased from 317 eggs in 1963 to 261 in 1984. In addition, while the nominal price of eggs has increased, the real price (corrected for inflation) has declined. Real prices, in terms of 1984 dollars, decreased from $1.44 per dozen in 1969 to $.81 in 1984 for cartoned eggs delivered to New York retailers.

The record suggests several factors contributing to the decline in demand. Testimony indicates that eggs are recognized as among the most economical, high protein foods available in the supermarkets today and are listed in the meat group of the four basic food groups needed for nutrition. However, the positive nutritional attributes of eggs have been overshadowed in recent years by negative publicity surrounding the relationship of cholesterol and heart disease. This unfavorable publicity is seen as contributing to a loss of confidence by consumers in the nutritional benefits of eggs and accounts, at least in part, for the decline in consumption. Another important factor cited in decreased demand is the egg industry's inability to meet the needs of the population with changing lifestyles by developing new, convenient, low-cost egg products.

The record shows that promotion and research activities can have a positive effect on the demand for eggs as demonstrated by AEB programs authorized by the Egg Research and Consumer Information Act. Promotional activities at the national level are carried out under this program through assessments levied on producers owning over 3,000 laying hens. The assessment rate, established by statute is 5 cents per 30 dozen case of eggs. Total collections for the years 1980–1985 have averaged $7.5 million per year.

Testimony indicated that there is a correlation between levels of expenditures for advertising and promotion and per capita consumption. Exhibits entered into the record indicate that in 1977 and 1978, AEB implemented an aggressive national campaign utilizing television, radio, and national magazine advertising. During this period, per capita consumption of eggs increased from 267 in 1977 to 272 in 1978 and again upward to 278 in 1979. Due in part to inflation and increased costs for media space, however, AEB was unable to maintain the same level of advertising. Testimony indicated that because of this, per capita consumption resumed a downward trend. In 1978, AEB expended approximately $5.5 million on programs of advertising, research, and consumer education. In 1985, not accounting for inflation, AEB expended only $3.7 million for similar programs.

According to evidence submitted at the hearing, AEB has funded nutrition research over the years in an effort to determine the role of eggs in human nutrition. For example, in 1980, grants totaling approximately one-half million dollars were awarded to 17 scientists for research into the relationship between health and dietary cholesterol. Also in 1980, funds were available for distribution to eight researchers for research into product development, processing techniques and functional performance, institutional uses, and market test applications. In addition, fellowship grants were given to three university students to encourage research in the field of egg product and poultry science research.

By 1983, due to lower net income, AEB was able to fund only one nutrition research grant and three graduate fellowship grants. In 1984 and 1985, some monies were reallocated from the advertising budget in order to fund a cholesterol action program and an egg nutrition center.

Record evidence indicates that although expenditures for research must be considered as long term, such expenditures are needed to establish an adequate program of continuous research to ensure that consumers receive current information on the nutritional value of eggs.

Testimony at the hearing indicated that new product development is the most promising avenue for the egg industry; yet, very few egg producers are able to support or engage in significant or successful research and development activities. Because of the public's ever-changing lifestyle geared toward easier-to-prepare food items, it becomes all the more important to respond to this marketing challenge. With the additional funds that may be allocated in this area by the proposed order, new product development has the potential for increasing sales for egg products both domestically and abroad.

The AEB has provided funding to States and regions on a cooperative basis since the program began. Evidence was introduced concerning State and regional egg promotion programs currently in existence and the positive effect of such programs under the present order because State funds are matched by AEB funds for specific projects. In addition, the national, regional, and State programs complement each other through the distribution given by States of materials developed by AEB. Several representatives of State and regional promotion organizations testified in support of the proposed national research and promotion program. Those representatives testified as to the need for effective State and regional programs which would support a national effort. They specifically supported the proposed order provision which would provide that 15 percent of monies collected, less administrative expenses, would be allocated back to State and regional programs on a proportionate basis.

Under the AEB program, producers are eligible to receive refunds. The percentage of monies collected which are refunded has increased in the past several years, up to 43 percent at the end of 1985. The record contains some discussion about the mandatory requirement for paying assessments under the order as compared with the voluntary AEB program. Several witnesses referred to the "free rider syndrome" in the AEB program; i.e., producers who request refunds are receiving the same benefits of advertising, research, and promotion programs as are the producers who do not refund, creating an inequity in cost/benefits. These witnesses who were primarily producers testified in support of the proposed order provisions in which no refunds of assessments would be authorized. Therefore, sufficient funding would be available for these programs.

Concerns of opponents to the research and promotion program came primarily from food manufacturers and other users of eggs in further processed products who voiced no objection to the egg industry promoting "table grade eggs," but argued that they are better equipped and more knowledgeable themselves in promoting egg products and developing products using eggs. They asserted that assessments would be passed on to processors and on to consumers in increased prices for their products. However, there was no evidence indicating the extent to which this pass forward might occur. Other opponents, including producers, pointed out that voluntary, individual brand promotions are most effective, citing as an example the success of the broiler industry in developing and promoting their products. However, the evidence did not indicate whether a majority of egg producers had the ability to engage in such individual promotion or new product programs at the individual firm level or that such efforts would have an impact on national consumption. Further, record evidence shows that

generic promotion is designed to increase aggregate demand, so the entire industry would benefit and, in fact, some research shows that generic and brand promotions complement each other.

Evidence indicates that there is a great potential for increasing consumption for eggs, spent fowl, and products thereof through the proposed research and promotion program. Further, there was no indication in the testimony or briefs filed that the proposed program would be in conflict with the *Dietary Guidelines for Americans*, U.S. Department of Agriculture/U.S. Department of Health and Human Services, Home and Garden Bulletin No. 232, Second Edition, 1985. Research activities authorized under the order would provide consumers with up-to-date information regarding the nutritional attributes of eggs. In addition, expansion of markets and the development of new products would be beneficial to the future of the egg industry.

There was evidence that funds to finance advertising, research, consumer information, and promotion programs must be obtained by the egg industry through a structure such as contained in the proposed order to assure mandatory industry-wide participation and sufficient income on a regular basis to finance these programs.

Therefore, it is concluded that the record evidence supports the need for the research, promotion, and consumer education programs for eggs and spent fowl and products thereof and that the order would effectuate the declared policy of the Act.

(3) *Specific Terms and Provisions of the Order.* Certain terms are used frequently throughout the order. These terms are defined as follows to clearly delineate their meaning and to simplify the subsequent provisions in which they are used:

(a) "Secretary" should be defined to mean the Secretary of Agriculture of the United States or any other officer or employee of the United States Department of Agriculture who is authorized to act for the Secretary with respect to administration of this order. The definition has been modified from that contained in the Notice of Hearing. This change is nonsubstantive and is made to simplify the language of the definition.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program is to be operative and avoids the need for referring to the citation throughout the order.

The term "Egg Marketing Board" should be synonymous with "Board" and should be defined to identify the administrative agency established under the provisions of the order. The Board is authorized by the Act and the term "Board" is used throughout the order to avoid the necessity of repeating the Board's full name each time it is used. The reference to § 994.35 has been deleted from the proposed order in the Notice of Hearing to eliminate unnecessary cross referencing in the order language.

"Fiscal period" should be defined as the calendar year or other 12-month period that may be recommended by the Board and approved by the Secretary. This would provide sufficient flexibility to authorize the Board, with approval of the Secretary, to set the beginning of the fiscal period on the date most practicable and appropriate.

The definition of "person" should be defined in the order to mean any individual, partnership, corporation, association, or any other business unit. This definition conforms with the definition set forth in the Act.

"Producer" should be defined in the order to identify the person owning hens who is engaged in the production of commercial eggs from such hens. A person owning less than 10,000 laying hens would not be a producer under the order. In addition, producers are the persons, as defined in § 994.5, who will be eligible to vote in any referendum on the order and will be eligible to serve on the Board. The term also references the eggs which will be subject to assessment under § 994.61.

Testimony presented at the hearing raised concerns as to how the definition of producer would be applied to those persons who should properly be determined to be producers under the order. Because of the varied commercial relationships entered into by persons who are involved in the production of eggs, it was noted that there could be difficulties in identifying whether one or more persons would be a producer under the order.

The proposed definition of producer is any person who is engaged in the production of commercial eggs and owns 10,000 or more laying hens. Person would be defined as any individual, partnership, corporation, association, or any other business unit.

Determining who is a producer under the order is of importance not only for voting in referenda but also, under § 994.61 of the order, assessments are made on each dozen eggs handled which are produced by producers. In addition, there was testimony which suggested that contract producers should be included in the definition of producer and that all independent producers who own hens and have housing facilities should be excluded from the definition of producer in the order.

While commercial relationships in the egg production industry may be varied and examples of such relationships are numerous, the record evidence confirms that in any possible commercial relationship, the person involved in the production of eggs and who owns the laying hens, regardless of whether an individual, partnership, association, corporation, or other business unit should be defined in the order as a "person" and should be considered as one producer.

In some instances, owners of hens enter into agreements with persons who own facilities and who agree to house and feed the hens for a fixed fee and/or other arrangement. Those persons who own the facilities are known in the industry as contract producers. Record evidence indicates that the contract relationships between such persons are diverse. Testimony indicates that there is no verifiable data with regard to the number of contract producers or the percent of total production represented by contract production. Therefore, the definition of producer should be defined in such a manner as to clearly identify who is a producer. It is clear from testimony that the intent of this definition is to include only those persons who own laying hens. As defined, a producer must own the hens in order to be engaged in the production of eggs. When applied to a contract producer relationship, the person owning the hens would be a producer and not the person who owns the facilities. Accordingly, the recommendation to include contract producers in the definition of producer does not have merit and, therefore, the definition of producer is not so changed.

Persons who are engaged in the production of commercial eggs and also own less than 10,000 laying hens would not be a "producer" under the order. The definition of producer should be defined so that these small producers would not be directly impacted by the proposed order and, accordingly, handlers would not be subject to assessment in handling these producers' eggs. This exemption could insulate approximately 549 small producers currently paying assessments to AEB and who own laying hens in the 3,001 to 10,000 range from any potential impact of the order. Evidence indicates that commercial egg production from producers with less than 10,000 hens

represents a very small proportion of national production. Even if first handlers were subject to assessment for these producers' eggs, their assessments would not be a significant amount. However, the program costs and the paperwork involved in the collection of these assessments and verification from large numbers of individual transactions would not make the inclusion of these producers in the definition of producer cost effective. On the other hand, the recommendation to exclude all independent producers from the definition of producer would have the opposite impact in the order. Egg production by independent producers owning 10,000 or more laying hens represents such a significant amount of egg production that to exclude them from the definition of producer and not subject their production to assessments would deplete funds available for programs and projects to such an extent as to render the national research and promotion program ineffective. Accordingly, the recommendation to exclude all independent producers from the definition of producer does not have merit and the definition of producer is not modified to include such a change.

The term "handle" should be defined to include the functions performed by the persons to be regulated under the order. These functions include processing, grading, cartoning, or purchasing eggs or placing eggs in the current of commerce except as a common carrier of eggs owned by another person. However, to differentiate between the functions of handling and producing, the definition excludes certain activities which are customarily producer functions, such as washing, packing of eggs, or a producer's delivery of his/her own nest run eggs.

"Handler" should be defined in the order to identify the persons who would be subject to certain recordkeeping requirements provided by the Board, and who would have the responsibility for paying the assessments as a first handler and who would be eligible to serve as a member or alternate on the Board. Those persons performing producer functions only would not be considered handlers under the order. However, in those cases where producers are also functioning as handlers, such persons would be handlers under the order to the extent that they were engaged in the handling of eggs. It is recognized that some large users of eggs in food products would be handlers under this definition. During the hearing, the question was raised as to whether processors and purchasers of graded eggs, such as bakers, mayonnaise manufacturers, and food service companies, would qualify as handlers and thus be eligible to serve on the Board, even though they were not "first handlers" required to pay the assessment. The testimony was not conclusive with respect to this issue. Nor was the number or identity of persons who would not be regulated under the order as "first handlers" made clear. Nonetheless, the brief filed by the proponents suggested that handlers other than first handlers could serve on the Board. The American Bakers Association opposed the order and, in their brief, recommended that if the order were approved, users of eggs should be eligible to serve on the Board regardless of whether they were "first handlers."

Handlers who are not "first handlers" subject to the assessment under the order may be represented on the Board provided they are nominated by a certified organization which has met the criteria required for certification in § 994.70 and, therefore, no change in the order language is necessary.

Testimony indicated that there should be a system to verify first handler status so that eggs would be assessed only once. It was pointed out that AEB presently has the ability to identify first handlers through a computerized collection system utilized for the present order. In addition, AEB presently has the ability to identify those producers owning 3,001–10,000 hens so that eggs produced from such producers would not be subject to assessment. Accordingly, it is believed that the Board would be capable of identifying first handlers.

The term "hatching eggs" should be defined as eggs intended for the use by egg hatcheries for the production of baby chicks. Hatching eggs would not be subject to assessments under the order. These eggs are not sold as commercial eggs for human consumption either in shell form or in further processed form. Only commercial eggs are subject to assessments. However, if hatching eggs are at any time sold as commercial eggs, as defined in § 994.11 they would be assessed as any other commercial eggs covered by the order.

The term "hen or laying hen" was defined in the Notice of Hearing to identify domesticated female chickens which are raised primarily for the production of commercial eggs. A discussion ensued during the hearing as to whether the definition should be tied to a specific age; i.e., 18 weeks as specified in the proposal. It was pointed out that 15 years ago the industry identified a laying hen as one at least 22 to 24 weeks old. Since that time, the trend has been toward younger laying hens. The definition, therefore, has been modified in § 994.10 to exclude any reference to age and refers instead to a sexually mature female domesticated chicken raised primarily for the production of commercial eggs.

The term "commercial eggs" or "eggs" should be synonymous and should be defined as eggs subject to assessment under § 994.61. It is clear from record evidence that the intent of the order is to assess only those eggs that are commercially produced from domesticated chickens in the United States and which are sold for human consumption either as eggs or further processed eggs into dried, frozen, or liquid eggs. Record evidence indicates, however, that there are certain eggs produced in the United States which are not intended for human consumption. These eggs were identified in testimony as eggs from primary broiler-breeder flocks or broiler-breeder flocks. Therefore, the definition should exclude these eggs from the term "commercial eggs."

The definition of "egg product" should be defined to mean any dried, frozen or liquid eggs, with or without added ingredients, excepting products which contain eggs only in relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry. The definition of "egg products" corresponds with the definition as it appears in the Egg Products Inspection Act (21 U.S.C. 1031–1056).

"Spent fowl" should be defined to mean those hens that have been in production of commercial eggs but which have been removed from production for slaughter.

"Products of spent fowl" should be defined to mean those commercial products which are produced from spent fowl.

The definition "United States" which was contained in the Notice of Hearing included all 50 States of the United States. The Hawaii Department of Agriculture expressed strong opposition to inclusion of that State in the proposed order. Also, it was noted that separate legislative authorities, such as the Egg Research and Consumer Information Act, do not include Alaska and Hawaii. Record evidence confirms that commercial egg production is a part of the economy of all 50 States. However, substantial evidence indicates that Alaska and Hawaii should not be included in the proposed order.

According to *Poultry Production and Value: 1985 Summary*, USDA, SRS, April 1986, Hawaii's share of national egg production was only 0.32 percent of total egg production in the United States, while Alaska's share was only 0.02 percent. Record evidence shows that neither State ships eggs into interstate or foreign commerce, hence, eggs produced in each State are consumed entirely in each respective State. Although some eggs are shipped from the mainland, primarily from the western area, to Alaska and Hawaii, the amount is not considered significant. The exclusion of Hawaii and Alaska in the proposed order would not have a detrimental effect on the operation of the order. Therefore, it is found that the 48 contiguous States represent the smallest regional production area that is practicable and consistent with carrying out the declared policy of the Act and that the issuance of several orders would not effectively carry out the declared policy of the Act.

The term "marketing" should be defined as the sale or disposition of commercial eggs, spent fowl, or their products. For eggs, this term would include all of the activities that occur from the time they are produced until they or their products are sold to the ultimate consumer.

The term "promotion" should be defined as any action authorized by the Board to enhance the image, acceptability, or desirability of eggs or spent fowl or their products. Testimony noted that the term would include, among others, sales promotion, merchandising, publicity, consumer education, market research, or any other related activities. Although the term was defined in the Notice of Hearing to include paid advertising for eggs, egg products, spent fowl, and products of spent fowl, this definition is modified to limit paid advertising to eggs and egg products as authorized by the Act. Section 608c(6)(I) of the Act authorizes paid advertising for eggs and egg products and not spent fowl or products thereof. The record includes evidence that, with respect to paid advertising, funding should be permitted only for generic advertising except in cases of cooperative advertising whereby eggs or their products combine with a compatible generic or branded product to share the advertising message and cost. Sections 994.50(b) and 994.52(b)(3) provide for such generic advertising.

"Research" should be defined to include all types of research which would enhance the image, acceptability, or desirability of eggs or spent fowl or their products. Testimony indicated that an important component of this term is nutrition research; however, other types of research could include activities normally associated with promotional or marketing programs, product research, marketing research, packaging research, and consumer opinion attitude research.

The definition of "consumer education" should be defined to mean any activity which would communicate information about eggs to consumers. Testimony indicated that such activities could include the development of recipe or nutrition information brochures which are important in the overall promotion of eggs to consumers.

"Eligible organization" should be defined to identify those organizations which would be eligible to nominate producers and handlers to the Board. The term includes any organization, association, or corporation which represents egg producers and/or handlers of any egg producing area of the United States and certified by the Secretary pursuant to § 994.70.

(b) Record evidence shows that an administrative agency, to be known as the Egg Marketing Board, should be established to administer the order. In the Notice of Hearing, § 994.35 through § 994.45 covered the establishment, maintenance, composition, procedures, powers, duties and operation of the Board. The need for these provisions is supported by record evidence. The Notice of Hearing provided that the Board would be composed of 21 producer and handler members and 21 alternates. Three of the 21 members were designated as at-large producer and handler members on the Board. The Agricultural Marketing Service proposed in the Notice of Hearing that one of the three at-large positions be designated for a public member to represent consumer interests. The addition of a public member was adopted by the proponents at the hearing. However, in order to retain the three at-large positions on the Board, the proponents proposed at the hearing that an increase be made in total Board membership to 22 members and 22 alternates. The Board's composition, therefore, would include 18 producer and handler members and 18 alternates who would be nominated by certified organizations and appointed by the Secretary in accordance with § 994.37. In addition, three at-large producer and handler members and their alternates would be appointed by the Secretary from nominations submitted by the Board, as prescribed in § 994.37(f) of the proposed order. A public member and alternate should be appointed by the Secretary from nominations submitted by the Board or at his discretion. The proponents also proposed at the hearing that the order be amended to provide that at-large members be nominated by the Board in such a manner as to consider any representation imbalances, particularly relating to size, that might occur. These modifications have merit. Accordingly, §§ 994.35 and 994.37 have been amended to include these modifications. Also, miscellaneous, non-substantive changes have been made to §§ 994.35 through 994.38 and §§ 994.41 and 994.43 for consistency and simplicity of order language.

The terms of office for Board members and their alternates should be for terms of 3 years. A 3-year term would provide Board members sufficient time to develop their expertise and apply their talents to the maximum benefit of the Board. The initial terms for producer and handler members and their alternates, including at-large positions, should be staggered to avoid the Board members' terms expiring at the same time. To accomplish this, the initial appointments for the 21 producer and handler members and alternates should be for seven members to a 3-year term, seven members to a 2-year term, and seven members to a 1-year term. Testimony indicated that the public member's initial term should be 2 years and such provision has been added to § 994.36 of the order.

Nominations for the 18 producer and handler Board members representing each of the six geographic areas as specified in the order should be submitted to the Secretary by eligible organizations or, if the Secretary determines that a substantial number of producers or handlers are not members of an eligible organization or that their interests are not represented, then from nominations made by producers and handlers in the manner authorized by the Secretary.

Where there is more than one eligible organization, association, or cooperative within each geographic area, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary a nomination for each appointment to be made.

For the initial Board, nominations for the 18 producer and handler members should be submitted by eligible organizations to the Secretary within 60 days following approval of the order by

referendum. Section 994.37 in the Notice of Hearing provided for a 30-day period of time for this process. However, it is determined that a 30-day period of time is not reasonable for the Department to review and approve requests for certification of organizations under § 994.70 and for the submission of nominations by these organizations as provided in § 994.37(a). Therefore, a time period of 60 days is included in § 994.37(a).

Upon appointment of the initial 18 Board members representing the six geographic areas these Board members should nominate and submit to the Secretary for approval the initial appointment of three additional producer and handler members of the Board representing at-large positions on the Board and their alternates for such positions. As discussed previously, in making nominations for these three at-large positions, the Board, to the extent practicable, should consider representative composition of the Board appointments already made, particularly the size of members already appointed. While no time period is specified in the order for these initial nominations for at-large positions, it is anticipated that the Board's nominations will be submitted to the Secretary as soon as practicable.

Following establishment of the initial Board, nominations for subsequent Board members and alternates, including the at-large positions, should be submitted to the Secretary not less than 60 days prior to the expiration of the term of members and alternates previously appointed to the Board.

Testimony indicated that the Board members and alternates should not serve more than two consecutive 3-year terms. Renewal of a Board member's or alternate's term of office may be in the best interests of the industry in some situations; however, limiting members to not more than two consecutive 3-year terms would assure the industry of a broader mix of leadership and ideas. Nonetheless, it should be possible, after serving two consecutive 3-year terms, for Board members to serve as alternates or alternates to serve as members. Testimony at the hearing also indicated that members and alternates appointed for initial terms of less than 3 years would not be prohibited from serving two 3-year consecutive terms.

Representation on the Board for the 18 members who are not at-large members or who do not represent the public should be on a geographic basis. Testimony indicated that the geographic areas should duplicate the current designation of areas and production percentages currently in effect for the AEB. The designated geographic areas, therefore, should provide approximate representation on the Board on the basis of proportion of eggs produced in those areas to the total U.S. egg production, excluding Alaska and Hawaii. This is reflected in the latest analysis conducted by the AEB and the Department in 1984.

Based on record evidence, the order should specify in § 994.37(d) six geographic areas composed of the various States as follows:

Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California.

The States of Alasks and Hawaii were included in geographic area 6 in the Notice of Hearing. However, these States are not included in the proposed order as stated earlier in this document. The exclusion of Alaska and Hawaii does not otherwise affect the geographic area determination or the number of members and alternates to be appointed in any of the six geographic areas.

The order should provide for the following number of members of the Board and an equal number of alternate members: North Atlantic—3, South Atlantic—3, East North Central—3, West North Central—2, South Central—3, and Western—4. This distribution is reflective of the following approximate percentages of total U.S. egg production in each area: North Atlantic—17 percent, South Atlantic—17 percent, East North Central—17 percent, West North Central—12 percent, South Central—18 percent, and Western—19 percent.

In view of past and potential future shifts of egg production from State to State and between areas, the order should provide for a mandatory review by the Board, at least every 5 years, of egg production by geographic area to determine (1) whether the areas should be redefined, and (2) whether the number of Board members and their alternates needs changing so that representation is as balanced as is practicable. The number of members for each area should be determined by dividing the total volume of eggs produced in the United States for the calendar year previous to the date of review by 18, which provides a factor of volume of eggs per member and then dividing the total volume of eggs for each area by such factor. Any reapportionment of geographic areas or modification of membership resulting from such review should be submitted to the Secretary for approval.

Testimony indicated that persons selected by the Secretary as Board members and alternates should file a written acceptance promptly after being notified of their selection. Such acceptance should reflect an agreement to (1) participate actively on the Board, (2) disclose any position held in any organization that has a contractual relationship with the Board, and (3) withdraw from voting on matters before the Board where such membership as an officer or board member capacity is in any organization which proposes to contract with the Board. However, members who are not officers or board members of nonprofit industry organization should be permitted to vote. Testimony emphasized the importance of obtaining preliminary assurances from prospective candidates, through the nomination process, that they would be willing to accept the terms of the agreement to serve on the Board, which is reflected in § 994.38 regarding a nominee's agreement to serve on the Board.

The procedure for conducting meetings of the Board should conform with the by-laws to be adopted by the Board. However, such matters as the method of voting and quorum requirements should be set forth in the order.

The order should provide that any action taken by the Board require the concurrence of a majority of the votes cast. Fifteen members of the Board should constitute a quorum at any assembled meeting of the Board, and any action of the Board should require the concurring votes of at least eight members. The Notice of Hearing provided in § 994.39(a) that 11 members would be necessary for a quorum. Proponents proposed the change from 11 to 15 at the hearing in the interest of requiring a larger representation for Board meetings. This change has merit and is incorporated into the order.

At any assembled meeting, all votes should be cast in person. The Board should be authorized, however, to vote

by telephone, telegraph, or other means of communication for expediency. Any vote cast by telephone should be confirmed promptly in writing to provide a written record of such votes.

In the event a vacancy occurs, due to death, removal, resignation, or disqualification of any producer or handler member or alternate member, a successor should be appointed from the most recent list of nominations from the geographic area concerned. If necessary, nominations could also be made in accordance with the procedures established in the order for original nominations. Section 994.40 is modified to clarify the nomination procedure when a vacancy occurs for members and alternates representing the six geographic areas, the at-large positions, and the public. A public member or alternate vacancy should be filled from nominations submitted by the Board or by the Secretary at his discretion. It should be unnecessary to fill any unexpired term for any member or alternate of 6 months or less.

The order should provide that an alternate member shall be selected for each member of the Board. Each alternate selected should have the same qualifications for membership as the member. There could be occasions when a Board member is unable to attend a meeting or meetings when members are absent. Moreover, in the event of death, removal, resignation, or disqualification of a member, the alternate should act until a new member is nominated and selected by the Secretary.

The order should provide that no member of the Board, or any alternate, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or alternate in performance of his/her duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

The order should provide that Board members, and alternates when acting as members, shall be reimbursed for out-of-pocket expenses necessarily incurred in the performance of their duties. Record evidence supported a further provision for the establishment of compensation at a rate to be determined by the Board and approved by the Secretary. Testimony indicated that a specific rate should not be included in the order so that any changes in the rate could be made by the Board and approved by the Secretary without the need for a referendum. The order should also permit actual expenses and compensation where specifically authorized for alternates, notwithstanding that the Board members for whom they serve as alternates also attend meetings.

The Board should be given those specific powers which are set forth in section 608c(7)(C) of the Act. Such powers are necessary to enable an administrative agency of this character to function properly under the order. Thus, the Board is given the power to administer the order; to issue rules and regulations to effectuate the order; to investigate and report violations; and to recommend amendments to the order.

The Board's duties, as set forth in the order, are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature, the necessity of which is supported by record evidence. The Board should meet and organize and select from among its members a chairman and such officers as may be necessary. Testimony from proponents strongly recommended that terms of Board officers should not exceed 1 year and should be limited to two consecutive terms in the same office. Although the order language was not modified by proponents in this regard, such provision would be appropriate for inclusion in the bylaws of the Board.

The Board should adopt such rules and bylaws with the approval of the Secretary, for its conduct as it may deem advisable. The Board also should be authorized to appoint such committees and subcommittees from Board membership, as necessary, and appoint individual consultants or groups of knowledgeable persons who can provide special expertise to the Board in administering its programs.

The Board should serve as intermediary between any concerned parties and the Secretary, thus alleviating the necessity for involvement of the Secretary in issues more appropriately resolved at the Board level. However, any unresolved issues should be reported to the Secretary.

The Board should keep minutes, books and, records which will clearly reflect all of its acts and transactions. Upon request, the Board should provide information to the Secretary from such documents. In addition, the Board should give the same notice of meetings of the Board and committees to the Secretary as is given to members so that representatives of the Secretary may attend such meetings. These provisions are necessary so that the Secretary is able to perform oversight responsibilities.

Since day-to-day activities of the Board cannot be performed by Board members, another duty of the Board should be to employ such persons as the Board deems necessary and to determine the compensation and define the duties of each. The Board should also take steps to protect the handling of Board funds through fidelity bonds.

The Board must maintain records of its activities and disbursement of funds. Accordingly, it should maintain books and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board.

To enable the Board and all persons paying assessments to plan accordingly, the Board should prepare and submit to the Secretary for approval a budget on a fiscal year basis of its anticipated expenses in the administration of the order, including probable costs of all programs or projects. The Board must delay funding any project until adequate funds have been collected. However, the Board should begin as soon as practicable to develop programs and projects and enter into contracts or agreements with national, regional, or State egg organizations or other organizations or other entities, as appropriate. Such contracts or agreements would be subject to the approval of the Secretary, and would provide for the development and execution of programs or projects of research, product development, advertising, promotion, or education, and the payment of the cost thereof with funds collected pursuant to the order. The Board should further establish procedures under which such proposals may be submitted, including submission of projects together with budgets showing estimated costs, and the right of the Secretary or employees of the Board to audit the records of the contracting party. Notwithstanding the Board's authority to enter into contractual arrangements with other entities, the Board should be authorized to recommend to the Secretary plans and projects developed on its own initiative.

To provide an accounting of funds received and spent, the Board should cause its books to be audited by a certified public accountant at the end of each fiscal period and submit a copy of each audit to the Secretary. A copy should also be made available at the principal office of the Board for inspection by producers and/or handlers. However, it is determined that information of a confidential nature should be removed from the report, and

§ 994.45(h) of the order is changed accordingly.

With the approval of the Secretary, the Board should invest, pending disbursement pursuant to a plan or project, funds collected through assessments pursuant to § 994.61 in obligations of the United States Government or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States Government; and to receive and evaluate, or, on its own initiative, develop and budget for plans or projects to promote the use and consumption of eggs, egg products, spent fowl, or products of spent fowl, as well as projects for egg research and consumer education and to make recommendations to the Secretary regarding such proposals. Section 994.45 (k) has been modified to specify that late payment charges provided in § 994.64 may also be invested as well as assessments.

Testimony at the hearing indicated that as part of the communication program to keep egg producers, handlers, and the public properly advised, the Board should make at least an annual report available of the activities carried out and provide an accounting of funds received and expended. This provision has merit and is consistent with provisions in other orders. Accordingly, a new paragraph (m) has been added to § 994.45.

(c) The Board should have the authority to determine the type of advertising, research, consumer education, and promotion activities to be undertaken and it should have the responsibility for initiating and recommending to the Secretary the establishment of any plans or projects authorized under the Act for eggs, egg products, spent fowl, or products thereof. These provisions appear in § 994.50 and are supported by record evidence. Such plans or projects could include, among others, developing existing and new markets and expanding markets outside the United States as well as developing new uses for eggs, spent fowl, and their products. Since it is not possible to anticipate all the promotion, research, and consumer information activities that may be needed, the authority should be broad and flexible to enable the Board to use the most efficient and effective methods of carrying out its objectives. The Board may develop programs and projects on its own initiative or contract with other organizations with approval of the Secretary.

No advertising or promotion program shall use false or unwarranted claims or use unfair or deceptive acts or practices regarding competing products. The record evidence is clear that only generic promotion and advertising will be permitted since this would be a national program of benefit to all producers and handlers. However, as stated previously, cooperative advertising could be permitted whereby eggs or egg products, combine with a compatible generic or brand product other than eggs or egg products to share the advertising message and cost.

Testimony at the hearing was that a provision should be included in the order for a periodic evaluation of the promotion programs implemented under the authority of the order. It was pointed out that such evaluation would benefit the Board and protect the interests of egg handlers and producers as well as the public. This recommendation has merit and, accordingly, has been added as paragraph (c) to § 994.50 to provide that an evaluation shall be arranged and funded by the Board at least once every 3 years. Additionally, § 994.50 has been reformatted for consistency with other sections of the order.

The record evidence supports the need for funding for research projects involving diet and health issues and development of new products and new uses. To assure that funds would be available for these two programs, the order should set minimum percentages of 5 percent of assessments collected for each program, less projected expenses. Although there was some concern expressed at the hearing that the minimum percentages would be interpreted as maximums, the record indicates that there is strong support for funding at levels above 5 percent. Subject to approval of the Secretary, the Board should have the discretion to increase that amount.

The record evidence includes considerable information about State and regional promotion programs which are funded at various rates either on a voluntary or mandatory basis. Testimony from several State and regional promotion organizations cited the compatibility of these programs and those of the AEB. Because of the effectiveness of the cooperative funding program, the number of State promotion organizations receiving cooperative funds from the AEB increased from 17 in 1976 to 39 5 years later. To encourage States and regions to continue and enlarge upon their programs, the order should specify that 15-percent, less expenses, be allocated to qualified State or regional egg promotion, research, or consumer education programs. This 15 percent allocation should be proportionate to the amount of assessments collected from the area in which the program operates.

The record indicates that brown egg production represents a small segment of total national production. However, there is a high concentration of brown egg production in the New England States, and there is some brown egg production in other geographic areas. Testimony noted that brown eggs are distinguished from white eggs only by shell color. Testimony further pointed out that brown egg producers in the New England States currently fund, on a voluntary basis, a brown egg advertising program which has been effective in that area.

While there is no evidence in the record that would demonstrate the need for a separate marketing order for brown eggs, based upon testimony at the hearing, the order should provide that a procedure be developed to ensure that programs for brown eggs are included at a level equal to the funding attributable to brown egg assessments. The order should also provide that the Board may contract with brown egg organization(s) for the purpose of developing and conducting programs for brown eggs. In so doing, the organization would be required to meet the same contractual terms as specified in § 994.45(i) with respect to developing plans or projects with attendant budgets, maintaining records, and submitting reports. Section 994.51(d) has been modified to clarify the language of the provision. Funding for any such brown egg organization should be based on the proportion of funds received from brown egg production less administrative expenses and less the 15 percent allocated to any State in the predominately brown egg area. Record evidence supports inclusion of this provision in § 994.51(d). Although there was some concern expressed about whether assessments from brown eggs could be accounted for separately, it was pointed out that a computerized system, such as that presently used by the AEB for tracking producers and production, could identify assessments attributable to brown eggs.

As stated earlier, evidence indicates that there are many State and regional organizations which presently conduct egg promotion, research, or consumer education programs. To be eligible to receive funds under § 994.51(c) of the order, any such State or regional organization must apply for certification

and must meet certain requirements as specified in the order. The Secretary then should determine eligibility under the order. There should be a provision included in the order that cooperative promotion and research activities may be conducted with other products even though such products may utilize a brand or trade name other than eggs, spent fowl, or their products. Such cooperative advertising could include bakers, other users of eggs, and a variety of products and companies. However, cooperative advertising would be restricted to eggs and egg products, as explained earlier and as clarified in § 994.53.

(d) The Board should be authorized to incur such expenses for research, promotion, advertising and consumer education and such other expenses for the administration, maintenance, and functioning of the Board as are approved by the Secretary. After the first year of operation, the Board must limit its expenses to the amounts received from assessments or in the reserve as provided in § 994.62.

The funds to cover the expenses of the Board should be obtained through assessments collected from handlers first handling eggs under regulations issued by the Board and approved by the Secretary. As noted in the record and briefs, there was some concern that handlers would be required to pay the assessment rather than producers, as is the case with several research and promotion programs on other commodities authorized by separate legislation. The Act permits regulation of handlers only and prohibits regulation of producers. Therefore, handlers, as the regulated entities, would be required to pay the assessment.

The order should provide for an initial assessment rate of one-half cent per dozen eggs marketed. Record evidence indicates that a one-half cent assessment would generate approximately $24 million which would provide the industry with sufficient funds to initiate meaningful research and promotion programs beneficial to the egg industry and the public.

After the first year, the Board should be allowed to increase the assessment rate by up to one-fourth cent per dozen eggs per year, but in no event to increase the assessment rate above a 1-cent maximum. Such a restriction on the assessment rate is necessary so handlers would know the maximum assessment which can be levied upon them. This restriction still should provide a sufficient level of assessments to finance national programs of research, promotion and consumer information. The Board should also have the flexibility to lower the rate at any time as well. Approval of the Secretary should be required for any increases or decreases in the assessment rate. The proposed section on assessments has been modified to reflect deletion of those terms and provisions relating to the surplus removal program.

The order should prohibit the use of funds for political activity or for the purpose of influencing governmental policy or action. The only exception should be that funds collected under the order may be used in recommending amendments to such order.

The Board should be allowed to authorize other organizations or agencies to collect assessments on its behalf as approved by the Secretary.

The Board should have the authority to establish a special reserve at the end of a fiscal period, not to exceed the limit set by the Board and approved by the Secretary. Funds in the reserve may be used during subsequent fiscal periods. Further, the Board should have authority to suspend the collection of assessments when the reserve exceeds the established limit.

The order should provide that in the event of termination, any monies collected and not spent would be distributed as the Secretary directs, provided that to the extent practicable, such funds would be returned pro rata to the persons who contributed.

The order should provide that late payment charges should be imposed on handlers who fail to pay assessments due to the Board by the due date, to be established by the Board. In addition, any outstanding amounts due plus late payment charges not paid should be subject to an interest charge. Any late payment and interest charges should be prescribed by the Board and approved by the Secretary before they are put into effect.

Record evidence indicates that any organization representing producers and/or handlers may apply for certification by the Secretary to participate in nominating the 18 producer and handler members to the Board to represent the geographic area of the organization. To be eligible, such an organization should be required to submit a request for certification which includes the geographic territory covered by its active members; the nature and size of its active membership, proportion of members who are commercial egg producers and/or handlers, egg production by State of its members and volume produced and/or handled by its members in such State; the extent to which the membership is represented in setting policies; evidence of the organization's stability and permanency; sources of its operating funds; functions of the organization; and, a statement of the organization's ability and willingness to further the aims and objectives of the order. The principal consideration for eligibility should be whether any organization's members represent a substantial number of producers and/or handlers who produce and/or handle a substantial volume of the area's commercial eggs to reasonably warrant its participation in the nomination process. The Secretary's decision is final for certification of organizations.

(e) The Board should have authority, with the approval of the Secretary, to require that all handlers, including egg-type hatchery operators and started pullet dealers, submit to the Board such reports and information as it may need to perform its functions and fulfill its responsibilities under the order. The record evidence is that in the normal course of business, handlers have the necessary information in their possession and, based on the requirements of the existing order, the proposed order's requirement that they furnish such information to the Board in the form of reports should not constitute an undue burden

In order for the Board to effectively investigate and verify compliance with the order, each handler should be required to maintain for each fiscal period complete records with respect to eggs handled and eggs disposed of as will substantiate any reports required. Such records should be retained for not less than 2 years after the end of the fiscal period in which the transaction occurred, so that, if needed in connection with enforcement, the requisite records will be available for that purpose. For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Board through its duly authorized agents and employees, should have access to and authority to examine such records. This section has been modified to reflect that the Secretary and the Board have access to records not only through their employees but also through their agents.

All reports and records submitted by handlers would be required to be kept confidential and the contents disclosed to no person other than employees of the Secretary and the Board. Only such information so furnished or acquired as the Secretary deems relevant should be disclosed by them, and then only in a suit or administrative hearing brought at the direction or upon the request of the

Secretary. However, information may be compiled and released on a composite basis and such release of information should disclose neither the identity of the person furnishing the information nor such person's individual operations. This is necessary to prevent disclosure of information that may affect the trade or financial position of business operations of individual handlers.

(f) The provisions of § 994.76 through § 994.83 of the order are common to marketing agreements and orders now operating. The provision in § 994.84 regarding patents and copyrights is generally included in research and promotion program orders. All such provisions are incidental to and not inconsistent with the Act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading are as follows: § 994.76 Right of the Secretary; § 994.77 Duration of immunities; § 994.78 Derogation; § 994.79 Separability; § 994.80 Amendments; § 994.81 Termination or suspension; § 994.82 Proceedings after termination; and § 994.83 Effect of termination or amendment. Those provisions applicable to the marketing agreement only are: § 994.85 Counterparts; § 994.86 Additional parties; and § 994.87 order with marketing agreement.

The order should require periodic continuance referenda to reassess the level of producer support for the order. Such a provision was proposed by the Agricultural Marketing Service in the Notice of Hearing, which provided that the Board should recommend to the Secretary that a referendum be conducted within every 5-year period beginning on the effective date of the order. If, as a result of any referenda, the requisite number of producers did not favor continuation of the order, the Secretary would not be required to terminate the order. The referendum results would, however, provide the Secretary with a source of information, among others, to determine whether the order tends to effectuate the declared policy of the Act, as stated in § 994.81(a). Subsection (b)(1) of § 994.81 provides that the Secretary would terminate the order if a majority of all producers favored such termination provided that the majority had produced more than 50 percent of the total volume of such eggs for market. The criteria for termination is identical to that contained in the Act.

A question was raised during the hearing regarding the voting percentages to be used in the continuance referenda. Section 994.81(b)(2) does not specify the percentage necessary for a favorable vote by producers inasmuch as the action would not be the sole determinant of whether the order should be terminated. However, the results of such referenda should be based on the number of producers participating. Such requirements should be the same percentages set forth in section 8(c)(8) of the Act with respect to producer approval of the issuance of an order. This requires approval by at least two-thirds of the producers voting in the referendum or by producers who have produced at least two-thirds of the volume of production voted during a representative period. This is an appropriate basis for ascertaining whether egg producers favor continuation of the program. In the event that the requisite majority of producers, by number or volume of production represented in a referendum, do not approve continuation of the order, the Secretary should consider termination of the order but would not be required to terminate. In evaluating the merits of termination, the Secretary should not only consider the results of the continuance referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

Ruling on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed June 9, 1986, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing.

Of the 20 briefs filed, 9 were in favor of the research and promotion provision of the proposed order and 11 were opposed. Those favoring the proposal including the proponents, individual producers and handlers, a State Department of Agriculture, the American Farm Bureau Federation, and a State Farm Bureau Federation, focused on the need for adequate funds for such a program to increase per capita use of eggs, citing that the egg industry could not compete for consumer dollars at the present time. Further, it was pointed out by a State Farm Bureau Federation and others that a well-funded generic advertising program had increased sales for some commodities and that it is likely that egg sales would increase under such a program. The brief filed by the proponents stated that approximately $24 million would be raised annually with a one-half cent assessment which would provide the egg industry an opportunity to fund not only promotion and advertising, but several other programs. In addition, funds would be available to respond to the growing need for expansion of new markets and development of new products using eggs, spent fowl and their products. Other points included the value of strengthening grass roots support through appropriate funding allowances for existing State and regional promotion programs.

Briefs filed in opposition included several food manufacturers, a producer trade association, a State Department of Agriculture, a public interest group, and food retailer/wholesaler associations. Several briefs opposed the proposal in general. Others focused on the proponents' failure to establish a need for such a program or to justify a nationwide program covering all types of eggs. It was further pointed out that there is evidence that voluntary, individual promotions are most effective and that regional promotion efforts have been successful. Specific points made by food manufacturing organizations, opined that the burden of the proposed assessment would fall disproportionately on buyers of breaker eggs and that manufacturers of egg products already bear the costs of developing and promoting their own products containing eggs.

In addition to briefs filed, comments from approximately 70 individuals, many of whom were producers and handlers, were received and considered. Most of the comments either supported or opposed the proposed order in general, without specifically referencing the research and promotion provision contained in the Notice of Hearing.

These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth herein. In addition to the issues already discussed, it was argued that the proposed marketing order would violate the Act in section 608c (1) and (10) and section 608c(6)(I) of the Act because there is no legal basis for a research and promotion program that is not related to a marketing order with regulatory features, such as grades, sizes, and quality. Therefore, it was asserted that research and promotion cannot stand

alone. It was also asserted that Department policy prohibited inclusion of research and development projects and marketing promotion in marketing orders unless such orders also contained regulatory provisions.

With respect to these arguments, it should be noted that the language of section 8c(6) provides that orders shall contain one or more of the terms and conditions as enumerated in paragraphs (A) through (J). Paragraph (I) refers specifically to research and promotion, including paid advertising and, therefore, would be considered as one term standing alone. Further, there is no indication of congressional intent to prohibit orders dealing exclusively with research and promotion. In addition, the present policy of the Department does not preclude the establishment of orders dealing with research and promotion programs.

Several recommendations and suggestions made during the hearing were adopted and the provisions of the order have been revised from the proposed order which accompanied the Notice of Hearing. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions as set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously cited in this decision.

General Findings

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

(1) The marketing of eggs and derivatives of egg production produced in the 48 contiguous United States is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

(2) The proposed marketing agreement and order is limited in its application to the smallest regional production area which is practicable and consistent with carrying out the declared policy of the Act, and the issuance of several orders would not effectively carry out the declared policy of the Act;

(3) The proposed marketing agreement and order regulates handlers in the same manner as and is applicable only to persons in the respective classes of commercial activity specified in the proposed marketing agreement and order upon which a hearing has been held;

(4) There are no differences in the production and marketing of eggs and spent fowl in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) The proposed marketing agreement and order and all the terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 994

Marketing agreement and order, Eggs.

Recommended Marketing Agreement and Order

The following marketing agreement and order are recommended as the detailed means by which the foregoing conclusions may be carried out. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

1. The order would add Part 994 to read as follows:

PART 994—EGGS

Subpart—Egg Marketing Order

Definitions

Authority: Secs. 1–9, 48 Stat. 31, as amended (7 U.S.C. 601 *et seq.*)

Subpart—Egg Marketing Order

Definitions

§ 994.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture who has been delegated or who may hereafter be delegated the authority to act for the Secretary.

§ 994.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 11, 1933), as amended and reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–9, 48 Stat. 31, as amended, 7 U.S.C. 601 *et seq.*).

§ 994.3 Egg Marketing Board.

"Egg Marketing Board" or "Board" means the administrative body established pursuant to this subpart.

§ 994.4 Fiscal period.

"Fiscal period" means the calendar year or such other 12-month period that may be recommended by the Board and approved by the Secretary.

§ 994.5 Person.

"Person" means any individual, partnership, corporation, association, or any other business unit.

§ 994.6 Producer.

"Producer" means any person who is engaged in the production of commercial eggs and owns 10,000 or more laying hens.

§ 994.7 Handle.

"Handle" means to grade, carton, process, purchase, or in any manner place eggs or cause eggs to be placed in the current of commerce (except as a common carrier of eggs owned by another). Such term shall not include the washing, packing of cases, or the delivery of a producer's own nest run eggs.

§ 994.8 Handler.

"Handler" means any person who handles eggs.

§ 994.9 Hatching eggs.

"Hatching eggs" means eggs intended for use by hatcheries for the production of baby chicks.

§ 994.10 Hen or laying hen.

"Hen" or "laying hen" means a sexually mature domesticated female chicken raised primarily for the production of commercial eggs.

§ 994.11 Commercial eggs or eggs.

"Commercial eggs" or "eggs" means eggs from domesticated hens, including egg-type breeder hens, which are sold for human consumption either in shell egg form or for further processing into egg products. Eggs from primary broiler breeder hens and/or broiler breeder hens shall not be considered "commercial eggs" or "eggs" pursuant to this section.

§ 994.12 Egg product.

"Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in relatively small proportion or historically have not been, in the judgment of the Secretary, considered by consumers as products of the egg food industry.

§ 994.13 Spent fowl.

"Spent fowl" means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

§ 994.14 Products of spent fowl.

"Products of spent fowl" means commercial products produced from spent fowl.

§ 994.15 United States.

"United States" means the 48 contiguous States of the United States and the District of Columbia.

§ 994.16 Marketing.

"Marketing" means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl in any channel of commerce.

§ 994.17 Promotion.

"Promotion" means any action to increase consumption of eggs, egg products, spent fowl, or products of spent fowl. "Promotion" does not include paid advertising for spent fowl or products of spent fowl.

§ 994.18 Research.

"Research" means any type of research, including nutrition, to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl.

§ 994.19 Consumer education.

"Consumer education" means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

§ 994.20 Eligible organization.

"Eligible organization" means any organization, association, or cooperative which represents egg producers and/or handlers of any egg producing area of the United States certified by the Secretary pursuant to this subpart.

Egg Marketing Board

§ 994.35 Establishment and membership.

There is hereby established an Egg Marketing Board composed of 22 members, including producers and handlers and one public member, and 22 alternates who shall have the same qualifications as the member for whom they are the alternate. Such members and alternates shall be appointed by the Secretary from nominations pursuant to § 994.37.

§ 994.36 Term of office.

The members of the Board, and their alternates, shall serve for terms of 3 years, except initial appointments for producer and handler members and their alternates including the three at-large positions shall be divided equally for terms of 1, 2, and 3 years. The public member's initial term shall be 2 years. Each member and alternate member shall continue to serve until his/her successor has been qualified for Board membership and is appointed by the Secretary. No member or alternate shall serve for more than two consecutive 3-year terms.

§ 994.37 Nominations.

All nominations authorized under § 994.35 shall be made in the following manner.

(a) Within 60 days of the approval of this Order by referendum, nominations for 18 producer and handler members and alternates shall be submitted to the Secretary for approval and appointment for each geographic area as specified in paragraph (d) of this section, by eligible organizations, associations, or cooperatives certified pursuant to § 994.70, or, if the Secretary determines that a substantial number of producers or handlers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such producers or handlers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board in accordance with paragraph (a) of this section;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary a nomination for each appointment to be made;

(d) For purposes of nominating the 18 producer and handler members and their alternates to the Board, the 48 States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States) consisting of Vermont, New Hampshire, Maine, Massachusetts, Connecticut, Rhode Island, New York, Pennsylvania, New Jersey, Delaware, Maryland, and the District of Columbia; Area 2 (South Atlantic States) consisting of Virginia, West Virginia, North Carolina, South Carolina, Georgia, and Florida; Area 3 (East North Central States) Ohio, Indiana, Illinois, Michigan, and Wisconsin; Area 4 (West North Central States) Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas; Area 5 (South Central States) Kentucky, Tennessee, Alabama, Mississippi, Arkansas, Louisiana, Oklahoma, and Texas; and Area 6 (Western States) Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Idaho, Washington, Oregon, and California. The number of members of the initial Board, and their alternates, who shall be appointed from each area are: Area 1–3; Area 2–3; Area 3–3; Area 4–2; Area 5–3; and Area 6–4;

(e) At least every 5 years, and not more often than every 3 years, the Board shall review the geographic distribution of egg production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of areas and/or a modification of the numbers of members from areas in order to best reflect the geographic distribution of egg production volume in the United States. The number of members for each area which shall serve on the Board shall be determined by dividing the total volume of eggs produced in the United States for the calendar year previous to the date of review by 18 which provides a factor of volume of eggs per member, and then dividing the total volume of eggs for each area by such factor. In determining the volume of eggs produced in the United States, the Board and the Secretary shall utilize the information received by the Board pursuant to § 994.75 and data published by the Department;

(f) Upon appointment of the initial 18 Board members representing areas described in paragraph (d) of this section, such Board members shall nominate, and submit to the Secretary for approval and appointment, 3 additional producer and handler members of the Board representing at-large positions on the Board and 3 alternates for such positions. In making nominations for the three at-large positions, the Board, to the extent practical, should consider the representative composition of the Board appointments made pursuant to (a) to (d) of this section and should utilize such nominations to provide representation to producers owning various size laying hen flocks. An additional position shall be filled by a public member. The public member and alternate member shall be nominated by the Board or selected by the Secretary at his discretion.

(g) The terms of the members of the Board representing at-large positions and their alternates shall expire upon the date of expiration of terms of Board members representing regions described in paragraph (d) of this section. Following the appointment of the initial Board, nominations for at-large positions and alternates for such positions on the Board shall be submitted to the Secretary by the Board at least 60 days prior to the expiration of the term for the position for which it was submitted.

§ 994.38 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Actively serve on the Board if appointed;

(b) Disclose any position held with or any ownership interest in any organization that has a contractual relationship with the Board; and

(c) Withdraw from voting on matters where a Board member, or an alternate acting on behalf of a Board member, is an officer or board member of, or holds an ownership interest in, any organization proposing to contract with the Board. Membership in a nonprofit industry organization shall not require abstention from voting under this section.

§ 994.39 Procedure.

(a) Fifteen members of the Board shall be necessary to constitute a quorum and a majority of those present and voting will be required to pass any motion or approve any Board action.

(b) The Board may provide for meetings by telephone, telegraph, or other means of communication and any vote cast at such a meeting shall be confirmed promptly in writing: *Provided,* That if any assembled meeting is held, all votes shall be cast in person.

§ 994.40 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member, or an alternate member, of the Board, the Secretary shall appoint a successor from the most recent list of nominations from the geographic area concerned for the position or from nominations made by the Board for any at-large positions. A public member or alternate vacancy shall be filled from nominations submitted by the Board or by the Secretary at his discretion. Replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

§ 994.41 Alternate members

An alternate member of the Board, during the absence of the member for whom he/she is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his/her alternate shall act for him/her until a successor for such member is appointed and qualified.

§ 994.42 Personal liability.

No member of the Board, or any alternate, shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member or alternate in performance of his/her duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 994.43 Expenses and compensation.

The members of the Board, and their respective alternates when acting as members, shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties under this subpart and shall receive compensation at a rate to be determined by the Board and approved by the Secretary. Whenever specifically authorized or approved by the Board, an alternate member shall be reimbursed for reasonable expenses necessarily incurred by him/her in attending Board meetings and shall receive compensation at the rate provided in this section, notwithstanding that the Board member for whom he/she serves as alternate also attends such meeting.

§ 994.44 Powers.

The Board shall have the following powers:

(a) To administer this subpart in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 994.45 Duties.

It shall be the duty of the Board:

(a) To meet and organize, to select a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board and such minutes, books, and records shall be subject to examination at any time by the Secretary or any authorized agent or representative;

(f) To provide for the bonding of all persons handling Board funds in an amount and with surety thereon satisfactory to the Secretary;

(g) Prior to the beginning of each fiscal period, to submit to the Secretary a budget of projected income and expenses for such fiscal period, together with a report thereon;

(h) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this subpart. A copy of each report shall be furnished to the Secretary. A copy of each such report also shall be made available at the principal office of the Board for inspection by producers and/or handlers; however, information of a confidential nature shall be removed from the report;

(i) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State egg organizations or other organizations or entities for the development and conduct of activities authorized pursuant to this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 994.61. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party.

(j) To disseminate information to producers and handlers or eligible organizations through programs or by direct contact utilizing the public postage system or other system(s);

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments pursuant to § 994.61 and any late payment charges pursuant to § 994.64 in obligations of the United States Government or any agency thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve system or in obligations fully guaranteed as to principal and interest by the United States Government; and

(l) To receive and evaluate, or, on its own initiative, develop and budget for plans or projects to promote the use and consumption of eggs, egg products, spent fowl, or products of spent fowl, as well as projects for egg research and consumer education and to make recommendations to the Secretary regarding such proposals.

(m) To prepare and make public, at least annually, a report of activities carried out and an accounting of funds received and expended.

Research and Promotion

§ 994.50 Advertising, research, cousumer education, and promotion program.

(a) The Board shall develop and submit to the Secretary for approval advertising, research, consumer education, and promotion programs or projects undertaken under the authority of this subpart.

Such programs or projects may provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising of eggs and egg products; and sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided,* That any such program or project shall be directed towards increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(2) The establishment and carrying on of research projects and studies with respect to the nutritional attributes, sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated; and

(3) The development and expansion of markets outside the United States and additional uses for eggs, egg products, spent fowl, and products of spent fowl.

(b) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

(c) At least once every 3 years the Board shall conduct studies subject to the approval of the Secretary, to determine the effectiveness of the activities authorized and conducted pursuant to this section.

§ 994.51 Allocation of expenditures for research and promotion.

(a) At least 5 percent of the assessments collected pursuant to § 994.61, less projected expenses of the Board, shall be allocated for research projects involving diet and health issues and/or the dissemination of information relating to diet and health issues.

(b) At least 5 percent of the assessments collected pursuant to § 994.61, less projected expenses of the Board, shall be allocated for projects involving new product and new uses research and development and/or marketing of new products.

(c) Fifteen (15) percent of the funds collected pursuant to § 994.61, less the projected expenses of the Board, shall be allocated to those State or regional egg promotion, research, or consumer education programs which are qualified pursuant to § 994.52. Funding to qualified promotion, research, or consumer education programs shall be made on a quarterly basis and shall be proportionate to the amount of assessments collected pursuant to § 994.61 from the area in which the qualified promotion, research, and/or consumer education program operates.

(d) The Board shall establish a procedure to ensure that brown eggs are included in programs for promotion, research, and consumer education at a level which is equal to the percentage for research and promotion funding which is attributable to brown egg handler assessments, less projected expenses and less the 15 percent of funds collected allocated to any State, as specified in paragraph (c), in the predominately brown egg area. In accordance with § 994.45(i), the Board may contract with a brown egg producer and/or handler organization or a committee composed of brown egg producers and handlers to develop and conduct programs for brown eggs.

§ 994.52 Qualified State or regional egg promotion, research, or consumer education programs.

(a) Any organization which conducts a State or regional egg promotion research or consumer education program may apply to the Secretary for certification of qualification so that such program may be eligible to receive funding pursuant to § 994.51(c).

(b) In order to be certified by the Secretary as a qualified program, the program must:

(1) Provide for the conduct of activities as defined in § 994.50 that are intended to increase consumption of eggs, egg products, spent fowl, and products of spent fowl generally;

(2) Be financed primarily by producers and/or handlers, either individually or through cooperative associations; and

(3) Not use false or unwarranted claims or make references to private brand or trade names in its advertising and promotion of eggs, egg products, spent fowl, and products of spent fowl; and no funds provided by the Board pursuant to § 994.51(c) shall be utilized to promote eggs by using references to State or regional production.

§ 994.53 Cooperative advertising, research, promotion, and consumer education.

Nothing in this subpart shall prohibit the Board or qualified State or regional egg promotion, research or consumer education organizations from engaging in cooperative advertising for eggs and egg products or research, promotion, or consumer education activities for egg products, spent fowl and products of spent fowl, even though such programs may utilize a brand or trade name of a product other than eggs, egg products, spent fowl, or products of spent fowl.

Expenses and Assessments

§ 994.60 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its establishment, maintenance, and functioning and to enable the Board to exercise its powers and perform its duties. The funds to cover such expenses shall be paid from assessments received pursuant to § 994.71. Following the initial year of operation, the Board is only authorized to incur expenses at a level at which it receives assessments to cover such expenses, with the exception of funds utilized from the reserve pursuant to § 994.62.

§ 994.61 Assessments.

(a) Each handler first handling eggs pursuant to regulations issued by the Board and approved by the Secretary, shall pay an assessment to the Board on each dozen eggs handled which are produced by producers as defined in § 994.6 at such times and in such manner as prescribed by the Board.

(b) The first-year assessment rate shall be at the rate of ½ cent per dozen of eggs marketed. Following the initial year of operation, the Board, with the approval of the Secretary, may increase or decrease the level of assessments collected: *Provided,* That such assessment rate shall not increase at a rate greater than ¼ cent per year up to a maximum rate of 1 cent per dozen eggs marketed.

(c) The Board funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to this subpart.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to act as the Board's agents to collect assessments in its behalf pursuant to regulations established by the Board and approved by the Secretary.

§ 994.62 Excess funds.

At the end of a fiscal period, funds collected in excess of the year's expenses for research, promotion, and consumer education, shall be placed in a separate special reserve not to exceed limits as the Board, with the approval of the Secretary, shall establish. Funds in such reserve shall be available for use by the Board for research, promotion, and consumer education activities during subsequent fiscal periods. If the funds contained in the special reserve exceed the limit placed on the special reserve, the Board, with the approval of the Secretary, shall temporarily suspend collection until funds in the special reserve are equal to or below the established limit.

§ 994.63 Accounting of funds upon termination of Order.

Any money collected as assessments pursuant to this subpart and remaining unexpended after termination of this subpart shall be distributed in such manner as the Secretary may direct: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

§ 994.64 Late payment charges.

There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be prescribed by the Board with the approval of the Secretary.

Certification of Organizations

§ 994.70 Certification of organizations.

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members to the Board to represent the geographic area in which the organization represents egg producers and/or handlers. Such eligibility shall be based, in addition to other available information, upon a certified report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers and/or handlers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced and/or handled by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producer and/or handler membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of this subpart.

The primary consideration in determining the eligibility of an organization shall be whether its membership consists of a substantial number of egg producers and/or handlers who produce and handle a substantial volume of the applicable geographic area's commercial eggs to reasonably warrant its participation in the nomination of members for the Board. The Secretary shall certify any organization which the Secretary finds to be eligible under this section and such determination as to eligibility shall be final.

Miscellaneous Provisions

§ 994.75 Reports and records.

(a) Upon the request of the Board, with the approval of the Secretary, every handler, including handlers who are also egg-type hatchery operators and/or started pullet dealers, shall

furnish to the Board in such manner and at such time as may be prescribed, such information as will enable the Board to exercise its responsibilities and duties under this subpart.

(b) Each handler shall establish and maintain for at least 2 succeeding years such records and documents with respect to eggs handled and eggs disposed of by such handler as will substantiate the reports required by this subpart.

(c) For the purpose of assuring compliance with the recordkeeping requirements and verifying reports filed by handlers, the Secretary and the Board through their duly authorized employees and agents, shall have access to and the authority to examine such records.

(d) All information obtained from the reports, records, and documents required to be maintained under this subpart shall be kept confidential by all persons, including employees of the Secretary and the Board and all officers and employees of contracting parties, and shall not be available to Board members and alternates or any other handlers, producers, or other interested persons. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in this subpart shall be deemed to prohibit that such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this subpart and the regulations issued thereunder.

§ 994.76 Right of the Secretary.

The members of the Board (including successors and alternates), and any agent or employee appointed or employed by the Board, shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval by the Secretary, the disapproved action of the said Board shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 994.77 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 994.78 Derogation.

Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 994.79 Separability.

If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof, to any other person, circumstance, or thing, shall not be affected thereby.

§ 994.80 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by the Secretary.

§ 994.81 Termination or suspension.

(a) *Failure to effectuate policy of Act.* The Secretary may terminate or suspend the operation of any or all of the provisions of this subpart whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) *Producer referendum.* (1) The Secretary shall terminate in accordance with Section 8(c)(16) (B) of the Act, the provisions of this subpart at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers who, during the preceding fiscal period, have been engaged in the production for market of eggs: *Provided,* That such majority has during such period, produced for market more than 50 percent of the volume of such eggs for market.

(2) The Board shall recommend to the Secretary within every 5-year period beginning on the effective date hereof that a referendum be conducted to ascertain whether continuance of this subpart is favored by the producers.

(c) *Termination of Act.* The provisions of this subpart shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 994.82 Proceedings after termination.

(a) Upon the termination of the provisions of this subpart, the then-functioning members of the Board shall continue as trustees for the purpose of liquidating the affairs of the Board, of all the funds and property then in the possession of or under control of the Board, including claims for any funds unpaid or property not delivered at the time of termination. Action by said trusteeship shall require the concurrence of a majority of said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and shall upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the Board or its members, pursuant to this section, shall be subject to the same obligations imposed upon the members of the Board and upon the said trustees.

§ 994.83 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this subpart or any regulation issued under this subpart, or (b) release or extinguish any violation of this subpart or of any regulation issued under this subpart, or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 994.84 Patents, copyrights, trademarks, inventions, and publications.

(a) Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board.

(b) Funds generated by such patents, copyrights, trademarks, inventions, or publications shall be considered income

subject to the same fiscal, budget, and audit controls as other funds of the Board.

(c) Upon termination of this subpart, the Board shall transfer custody of all patents, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided for in § 994.82 of this subpart.

***§ 994.85 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 994.86 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 994.87 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an Order providing for regulating the handling of eggs in the same manner as is provided for in the agreement.

Signed in Washington, DC on October 20, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86–23963 Filed 10–23–86; 8:45 am]

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Friday
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Part III

Environmental Protection Agency

40 CFR Part 600

Fuel Economy Test Procedures; Revised Fuel Economy Calculation Equation and Light Truck Mileage Accumulation Limits; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL-3075-8]

Fuel Economy Test Procedures; Revised Fuel Economy Calculation Equation and Light Truck Mileage Accumulation Limits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule establishes a revised fuel economy calculation equation for gasoline-fueled light trucks and passenger automobiles. The revised equation, which is effective for 1988 and later model years, will directly adjust fuel economy test results for variations in test fuel properties. A similar equation which was proposed for diesel vehicles will not be implemented. Presently, insufficient technical information is available on the influence of diesel test fuel properties on fuel economy results to promulgate a revised fuel economy calculation equation for diesel vehicles. Further, diesel fuel properties have closely approximated the reference fuel properties, and, thus it is unnecessary to correct for variation in diesel fuel property at this time.

This final rule also adopts a test vehicle mileage accumulation limitation of 6,200 miles for light trucks effective beginning with the 1989 model year. Tests performed on light trucks with acccumulated mileage greater than 6,200 miles will be mathematically adjusted to yield the equivalent of a 4,000-mile vehicle test result. This provision is being adopted to make consistent the mileage limitations applicable to passenger cars and light trucks. An identical requirement has already been adopted for passenger automobiles.

Together with the revised fuel economy equations and the light truck mileage accumulation limitation, EPA also proposed light truck Corporate Average Fuel Economy (CAFE) adjustments. These adjustments were proposed to account for the fuel economy influences of those test procedure changes which had affected the stringency of the light truck fuel economy standards. Several aspects of the light truck CAFE adjustments will require further study by EPA. To expedite the implementation of the new fuel economy equation and the light truck mileage accumulation limits, EPA decided to finalize these issues today and consider the light truck CAFE adjustments in a separate rulemaking action.

DATE: This final rule is effective November 24, 1986.

ADDRESS: Copies of material relevant to this rulemaking are contained in Public Docket No. A–85–16 at the U.S. Environmental Protection Agency, West Tower Lobby, Gallery I, 401 M Street, SW., Washington, DC 20460. The docket may be inspected between 8 a.m. and 4 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Whitehead, Certification Policy and Support Branch, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, (313) 668–4205.

SUPPLEMENTARY INFORMATION:

I. Revised Fuel Economy Equation

EPA's fuel economy test procedures specify equations for calculating fuel economy (40 CFR 600.113–78). These equations are based on the carbon balance technique which allows fuel economy to be determined from measurement of exhaust emissions. This technique relies upon the premise that the quantity of carbon in a vehicle's exhaust gas is equal to the quantity of carbon consumed by the engine as fuel. A general equation for calculating fuel economy in miles per gallon (mpg) using the carbon balance technique is as follows:

$$\text{mpg} = \frac{\text{grams carbon/gal fuel}}{\text{grams carbon in exhaust/mile}} \quad (1)$$

This general equation is applicable to any carbon-based fuel. The current equations for both gasoline-fueled vehicle and diesel vehicle fuel economy assume constant fuel properties. However, the EPA test fuel specifications (40 CFR 86.113–82) which limit several fuel properties do not, in fact, define a unique fuel, so fuel properties can and have varied over time.

In the December 7, 1984 supplemental NPRM concerning passenger automobile CAFE adjustment, EPA acknowledged the effect these changing test fuel properties had on past model year fuel economy test results and proposed granting compensatory CAFE credits. EPA also proposed that future model year passenger automobile CAFE results be adjusted on the basis of average annual EPA test fuel properties. EPA requested comments regarding this proposal and other future improvements in the fuel economy measurement methodology to account for variations in test fuel properties.

Comments received in response to the December 7, 1984 supplemental NPRM supported the adoption of adjustments to compensate for the impact on CAFE of varying fuel properties. The annual CAFE adjustment based on average EPA test fuel properties was acceptable for prior model year passenger vehicles. However, manufacturers recommended that for future model years the fuel economy equation be revised to account for variations in test fuel properties. The revised equation would yield a calculated fuel economy value equal to that which the current equation would yield if 1975 model year test fuel had been used.

EPA responded to the comments by issuing the July 1, 1985 NPRM (50 FR 27188), which proposed among other things, revised fuel economy calculation equations for the 1987 and later model years. The proposed equations would directly compensate for variations in test fuel properties, thus, eliminating the need for future passenger automobile or light truck CAFE adjustments to account for such variations.

A. General Description of the Final Rule

The rules promulgated here today for calculating vehicle fuel economy have the following provisions:

1. A revised fuel economy calculation equation for gasoline-fueled vehicles is established for 1988 and later model years. Use of this equation requires an analysis of batch of test fuel property values of carbon weight fraction (CWF), net heating value (NHV), and specific gravity (SG). These values are used with the exhaust emission test results to calculate vehicle fuel economy. To reduce potential problems associated with inadequate leadtime, manufacturers can, at their option, delay implementation of this revised equation at their laboratories until the 1989 model year. However, EPA will implement the revised equation for all 1988 model year fuel economy tests conducted at its laboratory.

2. This rule defers final action on the proposed revised fuel economy calculation equation for diesel-fueled vehicles until sufficient vehicle test data is available.

B. Discussion of Issues and Comments

The Summary and Analysis of Comments, as placed in the public docket, presents detailed explanations of the issues, summaries of the public comments, analyses of the comments, and recommendations. Following is an abbreviated discussion of the issues and EPA's decisions regarding revision of the fuel economy equation.

EPA has considered three alternatives to compensate for the potential impact of varying test fuel properties. First, EPA considered tightening the test fuel specifications for the particularly sensitive properties so any allowable variation would have an insignificant impact on CAFE test results. Second, EPA considered determining an annual CAFE adjustment based on the average properties of the test fuel used by EPA. Third, EPA considered revising the fuel economy equation to compensate on a test-by-test basis for the specific fuel used in each test.

1. Revised Test Fuel Specifications

The current fuel economy calculation equation assumes that certain fuel properties are fixed. In practice, these test fuel properties are not fixed and some variation occurs. This variation impacts the fuel economy test results and, thus, the stringency of the CAFE standards.

EPA suggested in the July 1, 1985 NPRM that if all fuel properties affecting CAFE results were included in the specifications for future test fuels and sufficiently narrow tolerances for these properties were defined, the need for future fuel economy adjustment might be eliminated. While this option initially appeared to offer convenience and simplicity, further examination revealed that procurement of sufficient fuel meeting extremely tight tolerances may be technically impossible and economically infeasible at the current level of petroleum refinement technology. At a minimum, EPA suggested in the NPRM that tightening test fuel tolerances would also inconvenience some manufacturers. Manufacturers, particularly those overseas, might find it difficult to obtain fuel meeting tightened fuel specifications. EPA concluded in the NPRM that tightening the fuel specifications did not appear to be a viable option to controlling fuel property variation.

In their comments, American Motors Corporation (AMC), Amoco Oil Company (Amoco), Ford Motor Company (Ford), General Motors Corporation (GM), and Volvo Cars of North America (Volvo) all concurred with EPA that the alternative of tightening fuel specifications sufficiently to preclude any future adjustments for test fuel properties would be technically and economically impractical. The Center for Auto Safety (CAS) was the only commenter which supported tightened fuel specifications. According to CAS, tightened fuel specifications would "avoid the constant adjustment of measured CAFE which is so capable of abuse." CAS did not, however, explain the basis for its statement. EPA finds no reason to conclude that tightened fuel specifications are necessary to prevent abuse. As explained later, if the revised fuel economy equation was not adopted, CAFE adjustments for variations in test fuel properties would be based on EPA test fuel; manufacturers would thus have no control over the variable upon which the adjustments were based. Revising the current fuel economy calculation equation to directly account for the fuel economy effect of actual differences in test fuel properties would similarly provide no opportunity for abuse; manufacturers would be required to keep verifiable records of their test fuel properties for use in the fuel economy calculations. In light of the impracticality of sufficiently tightening fuel property specifications, EPA has decided to leave the test fuel specifications unchanged.

2. Retain Annual Adjustment Based Upon Average EPA Fuel Properties

In the December 7, 1984 supplemental NPRM, EPA proposed calculating future fuel-related CAFE adjustments based on the average annual fuel properties of the test fuel used by EPA. This was the procedure used for determining prior model year passenger vehicle CAFE adjustments and was supported by commenters for that purpose. EPA recommended continuing this procedure for future model years because the procedure is administratively simple and technically sufficient.

Comments to the NPRM by manufacturers argued that a test-by-test adjustment would be technically superior because it would reflect the actual fuel used in each test at both the manufacturers' and EPA's test facilities. EPA concurs that this methodology is technically superior to adjustment based upon the average of EPA test fuel properties. Thus, the only other aspect potentially favoring the annual average adjustment would be its administrative simplicity. As discussed further below, the majority of manufacturers' comments and EPA's own analysis indicate that the potential additional burden on the industry of a test-by-test adjustment is very small and easily outweighed by the potentially greater accuracy afforded by the test-by-test adjustment approach. For these reasons, beginning with the 1988 model year, EPA will no longer use the annual average fuel property methodology to compensate for the effect of varying test fuel properties.

3. Revise the Fuel Economy Equation

Based upon manufacturer comments to the December 7, 1984 supplemental NPRM, EPA made an alternative proposal in its July 1, 1985 NPRM. EPA proposed to revise the current fuel economy equations to directly account for varying fuel properties beginning with the 1987 model year. The proposed revised equations would determine the fuel economy adjustment based on the actual properties of the test fuel used in a vehicle during testing and apply the adjustment to each individual city and highway fuel economy test result.

A minor disadvantage of the revised fuel economy equations is that they require manufacturers and EPA to determine the carbon weight fraction, net heating value and specific gravity for each batch of test fuel. However, there are a couple of advantages to adopting the proposed revised equations. First, the revised fuel economy equations minimize the need for manufacturers to obtain test fuel from the same supplier and production batch as EPA to maintain comparability of fuel economy test results with EPA. This allows manufacturers greater flexibility in obtaining test fuel. Second, by adjusting each test result for its specific fuel, this methodology minimizes any potential fuel-related variability between EPA and the manufacturers. This facilitates equity in CAFE determination among all manufacturers. Third, the annual average adjustment methodology is a retroactive procedure which must necessarily await the completion of a model year's testing before the adjustment can be determined. The revised equation, on the other hand, accounts for the fuel economy effects of fuel property changes on a test-by-test basis. It thus allows the manufacturer to continually track its actual CAFE, and make more informed decisions regarding whether to supply supplemental CAFE data or make production changes to assure CAFE compliance. Fourth, the revised equation allows the impact of test fuel variation to be reflected in the calculation of fuel economy labels and Gas Guzzler values. Although these values are only calculated to the nearest whole mile per gallon (in contrast to the tenth of a mile per gallon precision

required for CAFE), the revised equation could incidentally improve the accuracy of the fuel economy label and Gas Guzzler calculations.

The commenters expressed mixed views on this proposal. GM, Ford, Chrysler, AMC, and Volvo supported revision of the fuel economy equations while Volkswagen of America (VW) and Mazda did not support the proposal. Mazda and VW stated that the required fuel analysis will increase the burden on manufacturers through increased testing costs. Mazda and VW requested that the current method remain unchanged and the proposed revision be added as an alternative fuel economy calculation method which manufacturers could use at their option.

Contrary to the comments of VW and Mazda, EPA finds that the additional burden of the revised fuel economy equation is not significant. EPA estimates that the cost to complete one set of the required fuel property measurements will be approximately $60. EPA estimates that fuel sampling and analysis will be required about once a month and the annual cost to manufacturers will be approximately $720 plus handling costs. This small additional expense is insignificant and fully justified in order to eliminate CAFE adjustments for changes in test fuel properties in future model years.

EPA does not agree with the suggestion from VW and Mazda that the original fuel economy equation be retained and the proposed revised equation be added as an optional fuel economy calculation method. The original equation does not account for differences in test fuel properties that affect fuel economy results. Consequently, different testing laboratories using different fuels can and do arrive at different test results. However, EPA requires that manufacturers' test results correlate with the results obtainable in EPA's lab. If EPA suspects that a manufacturer's laboratory is yielding different test results than EPA's lab would yield, confirmatory tests are conducted at considerable expense to the Agency and the manufacturer. A major benefit of the revised equation is that it will virtually eliminate differences in test fuels as a source of lab-to-lab variability in test results. Thus, it will improve correlation between EPA and manufacturers and may reduce the need for confirmatory testing. EPA believes that the benefits to manufacturers of improved correlation far outweigh the cost of using the revised equation, and hence will not permit the optional use of the original equation.

EPA has decided to delay the implementation of the revised equation until the 1988 model year which will commence in September of 1987. At this time, with most of the testing and a good deal of production already completed for the 1987 model year, the proposed 1987 model year implementation is not feasible. The EPA laboratory can and will provide 1988 and later model year fuel economy test results calculated with the revised equation which accounts for test fuel properties.

EPA recognizes that some manufacturers may have difficulties implementing this new fuel economy calculation equation by the effective date of this rule. EPA has decided to allow manufacturers, at their option, to delay their implementation in their own laboratories to any time during the 1988 model year. However, manufacturers must implement this change by the 1989 model year. Additionally, once a manufacturer implements the revised equation, it must be used for all subsequent testing.

The 1988 test results of manufacturers opting to use the original calculation equation will not be adjusted for the fuel economy effect of variations in test fuel properties. EPA does not believe such an adjustment will be necessary, because EPA will be using the revised equation in its own testing. As noted above, manufacturers' test results must correlate with EPA's. Thus, the manufacturers' results will track the EPA results as adjusted to reflect variations in test fuel properties. This will obviate the need for any fuel-related CAFE adjustment.

All of the 1988 and later model years fuel economy test results from the EPA laboratory will be adjusted to account for test fuel property variations. EPA anticipates that practically all 1988 model year CAFE data vehicles will be tested after the effective date of these regulations. However, it is possible a few vehicles will have already been tested, including confirmatory testing by EPA. If the test fuel used by EPA is significantly different from the 1975 model year reference test fuel, these early test results will be adjusted using the revised fuel economy equation being adopted here. Manufacturers may also choose to adjust any 1988 CAFE data approved by EPA prior to the implementation of these rules.

Since the revised equation will account for the fuel economy effect of fuel property variations, the model year-specific correction coefficient, the "c" factor, of the passenger automobile average fuel economy calculation (40 CFR 600.510–86(e)) need not provide any adjustment for test fuel properties beginning with the 1988 model year. Therefore, only those "c" values specified by the Administrator for the 1986 and 1987 model years will be based on EPA laboratory humidity and test fuel data. The "c" values for 1988 and later model years will not provide any adjustment for test fuel properties. The EPA laboratory humidity data will be the sole variable used to calculate these "c" values. Given that the EPA laboratory humidity level has remained constant for several years and EPA intends to maintain this same humidity level in the future, the 1988 and later "c" value should remain fairly constant at 0.0011.

4. Fuel Economy Equation for Gasoline-Fueled Vehicles

The fuel economy of gasoline-fueled vehicles is currently calculated using the following equation:

$$FE = \frac{2421}{0.866\,HC + 0.429\,CO + 0.273\,CO_2}$$

This equation is based on the previously discussed principle of carbon mass balance and assumes that the mass of carbon in an automobile engine exhaust is equal to the mass of carbon entering the engine in the fuel. The numerator of the equation is the product of the fuel's carbon weight fraction and density expressed in units of grams carbon per gallon of fuel (gC/gal). The coefficients of the CO and CO_2 variables are derived from the molecular weight fraction of carbon in each compound. The fraction of carbon in the exhaust gas HC, represented by the HC coefficient (0.866), is based on the carbon weight fraction of the fuel. The exhaust emission variables in the denominator are in units of grams per mile. Thus, the fuel economy in units of miles per gallon is determined by dividing the numerator in units of gC/gal of fuel by the denominator in units of gC/mile of exhaust gas.

The proposed revised equation accounts for variation in the carbon weight fraction, the net heating value and the specific gravity of the test fuel.

It also incorporates an "R" term which accounts for the sensitivity of vehicular fuel economy to the heat energy of the test fuel. The revised equation accounts for the actual fuel properties of the test fuels used to calculate fuel economy values which would have resulted had the reference (1975 model year) test fuel been used.

Only one commenter expressed any concerns with the equation itself. Ford supported the revised equation as proposed but expressed some concern about the appropriateness of the fixed "R" value used in the equation. Ford stated that the fixed "R" value (of 0.6) should "be reevaluated in the future when wider application of fast burn, low friction concepts or other technological improvements can be expected to increase the value of the 'R' factor."

EPA based the proposed "R" value of 0.6 on test data from past and current technology vehicles. The proposed "R" value is representative of the current technology. However, as technological improvements allow an engine to more efficiently convert the heat energy content of the fuel to mechanical energy, the "R" value may increase. If these sorts of technological improvements became predominant throughout the automobile industry, an "R" value of 0.6 may not be representative and, thus, may require revision.

This final rule adopts the revised fuel economy equation for gasoline-fueled vehicles as proposed. EPA will evaluate any additional data provided by manufacturers and others and will initiate a future regulatory review of the "R" value if appropriate. At such time, the value of "R" would be reevaluated using vehicle data representative of predominant technologies to establish a value more representative of the in-use fleet.

5. Fuel Economy Equation for Diesel Vehicles

The fuel economy equation for diesel vehicles was developed concurrently with the equation for gasoline-fueled vehicles and is quite similar to that equation. Thus, much of the discussion in the preceding section also applies to this section.

GM, Ford, and Volvo commented on this issue. GM stated that it has examined past values of specific gravity and net heating value of diesel test fuel which was used by both EPA and GM and found only slight variations in the values of these properties compared to the reference values. Unless diesel fuel properties are shown to vary significantly in the future, GM would not support revision of the fuel economy equation for diesel vehicles. Additionally, GM stated that it could not substantiate with data the proposed "R" factor for diesel vehicles. GM requested additional time to experimentally determine the "R" factor for diesel vehicles before this value is put into a final rule. Ford also commented that additional systematic testing is required before a reasonable determination of the "R" factor value for diesel engines can be made. Volvo supported the proposal to apply the revised fuel economy calculation methodology to diesel vehicles.

EPA proposed the revised fuel economy equation for diesel vehicles so that future CAFE adjustment to account for changes in fuel property values would not be necessary. While GM stated that the properties of diesel test fuel have been relatively constant in the past, this trend may not continue. If the current equation were retained and the trend of constant diesel test fuel properties ended, CAFE adjustment might then be necessary. Thus, as in the case of gasoline-fueled vehicles, adoption of the revised equation would obviate the need for CAFE adjustments if diesel test fuel property values did change in future model years.

The GM and Ford comments did, however, raise a valid point concerning the "R" value for diesel engineers. EPA's proposed "R" value of 0.6 was based on gasoline-fueled vehicle data because no data was available to determine an "R" value for diesel engines. EPA is aware that the differences between the diesel engine and the gasoline engine will likely influence the "R" factor. It was hoped that commenters would provide the data necessary to establish an "R" factor for diesel vehicles.

Unfortunately, none of the comments provided such data. Therefore, since an empirically based "R" factor for diesel vehicles is not available, revision of the fuel economy equation for diesel vehicles is not possible at this time. In the meantime, the currently specified equation will remain in effect. Diesel fuel properties will be monitored at the EPA to determine how close they continue to correspond to the reference fuel properties. If these properties start to significantly diverge from the reference fuel properties, EPA will, in cooperation with manufacturers and other technical sources, determine an "R" factor for diesel vehicles and propose fuel-related CAFE adjustments.

6. Sampling and Analysis of Test Fuel

The revised fuel economy equation calculates fuel economy according to the particular properties of the test fuel actually used. It is thus important to maintain an accurate account of test fuel property values by performing fuel analyses on a regular basis. The frequency of such analyses must be sufficient to track any change in test fuel property values which may significantly affect fuel economy, but must not make implementation of such a test procedure economically impractical.

The NPRM considered several different approaches of test fuel sampling for analysis. EPA concluded that fuel sampling and analysis either on a batch basis or on a batch basis supplemented by periodic resampling would be the most appropriate approach and proposed both in the alternative. EPA requested comments as to the need for and cost of supplemental resampling of a batch. EPA stated that it would select one of these alternatives for fuel sampling based on comments and further analysis.

In its comments, GM recommended determination of the test fuel property values on a batch basis with the mixture of any existing fuel with the new fuel constituting a new batch of fuel. Because GM receives fuel approximately every month, it does not believe significant variation in fuel properties during storage will occur. GM added that if EPA believes that chemical or physical reactions of the fuel will be a problem for some manufacturers, a maximum time period for resampling should be specified. GM also requested that EPA measure the fuel properties of each batch of its test fuel and make available a sample of that fuel with the fuel property measurements to manufacturers for internal analysis.

Ford commented that only one fuel analysis per batch should be required due to the stable nature of the CWF, SG, and NHV properties of Ford's test fuel over the normal one- to three-month storage period. Ford also expressed concerns about the availability of qualified fuel analysis laboratories and the "turn-around" time from delivery to final analysis. Ford believes that because of the obvious disadvantages of having to wait several days or weeks before fuel deliveries can be approved for use, the domestic manufacturers and EPA should acquire fuel from suppliers who can provide fuel analysis results from an EPA approved laboratory. On-site analysis would then only be used for a quality assurance of the fuel supplier data. Finally, Ford recommended that in cases where the receiving storage tank contained any residual fuel, the properties of the resultant mix would be calculated knowing the properties of each batch and the mix volumes.

Chrysler stated that it would be easiest to rely upon fuel property values supplied by the fuel vendor. Chrysler added that the vendor's analysis may be accurate enough to calculate the required properties of the mixed batch on a weight-averaged basis for the fuels mixed in the storage tanks. A batch analysis after every delivery (once per month at Chrysler) would be a greater burden, according to Chrysler, but the task would not be insurmountable if actually necessary for greater accuracy.

AMC recommended that the fuel properties be determined by batch analysis with periodic resampling. AMC commented that the resampling rate be laboratory-specific and based on parameters such as storage tank size, temperature, and fuel usage rate. This resampling rate could be established by means of an initial program which would define an average rate of variability of the fuel characteristic over time. No substantial cost burden would result from batch plus periodic resampling requirements, according to AMC, since most companies currently analyze test fuels on a periodic basis as a means of quality control and auditing.

EPA agrees with Ford and Chrysler that it would be easier to rely on fuel analyses supplied by the vendor. However, EPA has several reservations about this approach. The test fuel, as delivered to the end user's storage facility, may not have the exact same properties as it had at the vendor's refinery. Typically, the test fuel distribution chain can include pipelines, rail cars, intermediate storage tanks and tank trucks. Even if the vendor's fuel analysis were of the test fuel at the very end of the distribution chain (probably the delivery tank truck), the fuel would probably lose some of the most volatile components or so-called "light ends" during its transfer to the user's storage facility, altering the fuel properties. Thus, EPA finds that a vendor's fuel analysis may not be representative of the fuel delivered to a manufacturers' storage tanks.

A vendor's fuel analysis may, however, be representative of the test fuel used by a vehicle testing facility in the special case where the test fuel is distributed, stored and used from barrels. The vendor's fuel analysis would be acceptable provided that the sample analyzed were taken from the fuel as it was barrelled. If this provision is met, EPA finds that a vendor's analysis is acceptable for test fuel obtained in sealed barrels.

Only the smallest vehicle testing laboratories probably obtain test fuel solely in barrels. Most manufacturers purchase fuel in tank truck quantities and maintain on-site storage facilities. EPA finds that a fuel sample should be drawn from storage following any addition of fresh fuel and the sample analyzed for its properties. The sample, a mixture of residual fuel and fresh fuel, will be representative of the storage contents.

EPA disagrees with the recommendations of Ford and Chrysler to calculate the properties of a fuel batch based upon the properties of its constituents (fresh fuel and residual fuel) for two reasons. First, it is possible that the properties of the residual fuel would be different than those of the batch from which it came. This is the result of fuel properties changing during storage. Thus, if the properties of the residual fuel are not accurately known, then any calculations which use the residual fuel properties cannot be altogether accurate. Second, neither Ford nor Chrysler were specific regarding the calculation methodologies which they would use to determine the fuel properties of the batch. EPA is also unaware of a reliable method of determining the properties of a mixed batch upon the measured properties of its constituent batches. This lack of specificity precludes any determination of the accuracy of the calculated fuel properties. Therefore, EPA will not accept the approach of calculating the batch fuel properties from the properties of its constituents.

Another sampling issue is the need for periodic resampling to account for possible fuel property changes during storage. None of the commenters disputed the need to periodically resample test fuel. AMC commented that physical characteristics of the fuel storage environment will influence the rate with which fuel properties change. AMC suggested that resampling rates specific to each storage facility be determined by test programs. GM and Ford both stated that periodic resampling is not necessary at their facilities due to the stable nature of the test fuel properties over the normal storage periods of one month for GM and one to three months for Ford.

EPA has concluded that resampling on a monthly basis is frequent enough to detect test fuel property changes during storage. However, less frequent resampling may be adequate for some fuel storage facilities depending upon the physical characteristics of the storage environment. Therefore, EPA has decided to require resampling on a monthly basis except where a manufacturer can demonstrate with data that its test fuel remains stable during storage over a longer time period; in that case EPA will permit that manufacturer to resample on a less frequent basis.

GM, Ford, and Volvo provided comments on the proposed measurement procedures. GM stated that it is inappropriate to use the American Society for Testing and Materials (ASTM) procedure ASTM D 240 to determine NHV because ASTM D 3338 was used to determine the reference NHV. If a systematic offset should exist between the NHV measured according to ASTM D 240 and the NHV calculated according to ASTM D 3338, an error would be introduced into the fuel economy equation. Since insufficient NHV data currently are available either at EPA or GM to determine if any offset exists, GM suggested ASTM D 3338 be used to calculate the NHV of test fuels to be consistent with the reference NHV.

Volvo commented that ASTM D 240 may introduce unnecessary complexity and cost into the measurement of test fuel properties. Volvo recommended that ASTM D 3338 be allowed as an alternative procedure based on the premise that it yields sufficiently accurate results at a significantly lower cost.

Ford did not support the proposed measurement techniques for SG or CWF. Ford considered the ASTM procedure D 1298 to yield more accurate and repeatable measurements of SG than ASTM D 287. Also, Ford finds that there is insufficient assurance that different laboratories using ASTM D 2789 or the Pregle (ASTM E 191) analytical methodologies to measure CWF will yield the same results. To establish a method for future CWF measurements that can be used for fuel property adjustments based on isolated fuel analysis, Ford believes that more careful study by inter-industry groups such as the Coordinating Research Council and ASTM is required.

EPA agrees with GM that an offset could exist between the proposed procedure for measuring the NHV (ASTM D 240) and the procedure which was used to establish the reference NHV (ASTM D 3338). If such an offset exists, the use of ASTM D 240 to determine the NHV of the test fuel would subsequently yield calculated fuel economy results which were not properly adjusted to reflect the reference fuel properties. Therefore, EPA concurs with GM that ASTM D 3338 should be used to determine the NHV. Additionally, as noted by Volvo, this procedure is likely to be less expensive than ASTM D 240.

The specific gravity measurement technique recommended by Ford (ASTM

D 1298) is quite similar to the proposed technique (ASTM D 287). However, it is probable ASTM D 1298 will yield more accurate and repeatable measurements. Therefore, ASTM D 1298 appears to be the preferable procedure for measuring specific gravity.

EPA proposed that the carbon weight fraction of the test fuel be determined by mass spectroscopy (ASTM D 2789) or the Pregle mass balance method (ASTM E 191). As noted by Ford, different laboratories using these different methods may not yield the same results. Therefore, EPA reconsidered the proposed procedures and evaluated another method of determining CWF. The other method, ASTM D 3343, calculates CWF from other fuel properties (distillation temperatures, density and aromatic fraction). Coincidently, these fuel properties used in ASTM D 3343 to determine CWF are the same ones used in ASTM D 3338 for determining NHV.

Data from the EPA laboratory showed ASTM D 3343 to have greater precision than D 2789 and the results using ASTM D 3343 exhibited a lower standard deviation and lower coefficient of variation than results using ASTM E 191 or ASTM D 2789. Therefore, EPA finds ASTM D 3343 to be the preferable method. Additionally, this procedure is the least costly of the three procedures.

EPA decisions regarding the determination of test fuel properties by sampling and analyzing the fuel can be summarized as follows. The test fuel properties shall be determined by analysis of samples from the test fuel supply. The sample shall be taken from the fuel supply every time fresh fuel is added to the supply. The sample shall be taken after the fresh fuel and any residual fuel have been allowed to mix in accordance with good laboratory practice. The fuel supply shall be resampled on a monthly basis to account for fuel property changes during storage. A less frequent resampling schedule will be allowed on a manufacturer-specific basis when a manufacturer demonstrates with data that the properties of its test fuel remain constant for a longer time period.

The fuel samples shall be analyzed to determine specific gravity, carbon weight fraction and net heating value. ASTM D 1298 shall be used to determine specific gravity, ASTM D 3343 shall be used to determine carbon weight fraction and ASTM D 3338 shall be used to determine net heating value. Additionally, as suggested by GM, EPA will provide samples and analyses of its test fuel to manufacturers to promote good correlation between laboratories.

II. Revised Mileage Accumulation Limits for Light Trucks

In the December 21, 1983 NPRM, EPA proposed, beginning in the 1986 model year, the application of a mileage-based fuel economy adjustment factor to all vehicles (including light trucks) with accumulated mileage greater than 4,250 miles. On July 1, 1985, EPA issued revised mileage accumulation rules for passenger automobiles. These final rules require all 1987 and later model year fuel economy test results generated by passenger automobiles tested with accumulated mileages greater than 6,200 miles to be adjusted mathematically to the equivalent fuel economy which would have been generated had the vehicle been tested at 4,000 miles. The July 1985 final rule deferred any action on light trucks.

Today's action establishes the same revised mileage accumulation limitations for 1989 and later model year light trucks. These limitations require all fuel economy test results generated by light trucks tested with accumulated mileages greater than 6,200 miles to be adjusted mathematically to the equivalent fuel economy which would have been generated had the vehicle been tested at 4,000 miles.

The December 21, 1983 NPRM proposed adjusting all data from test vehicles with accumulated mileage greater than 4,250 miles. Ford, MVMA, NV and Chrysler stated that light truck CAFE standards are based, in part, on National Highway Safety Administration (NHTSA) projections of the light truck manufacturers' ability to achieve these standards. According to these manufacturers, the fuel economy data NHTSA used to project future fuel economy capability includes vehicle tests at mileages above 4,250 miles. Thus, the commenters stated that the application of a revised mileage accumulation limit to light trucks effectively increases the stringency of previously established light truck CAFE standards. In such a case, the commenters contended a CAFE adjustment would be appropriate.

Ford and AMC also commented on this issue in response to the July 1, 1985 NPRM. Ford reaffirmed its position that no mileage-based fuel economy adjustments are justified for 1986 and later model year light trucks. However, Ford noted that EPA had adopted a 6,200-mile mileage accumulation limit for passenger automobiles rather than the 4,250-mile limit proposal. Ford added that its policy is to avoid accumulating more than 6,200 miles on fuel economy data vehicles. Therefore, Ford projected no significant adverse impact would be associated with adopting for light trucks the same mileage adjustment rules as were adopted for passenger automobiles. AMC recommended adoption of the proposed light truck mileage accumulation limits. AMC stated that this proposed change would result in less confusion in the fuel economy calculation process and would assure equity among manufacturers.

EPA recognizes that in setting CAFE standards for 1986 through 1988 model year light trucks, NHTSA may have relied on data from vehicles tested at mileages higher than 4,250. While EPA has not been able to discern the precise data base upon which NHTSA set recent standards, it is clear that the data was generated when EPA's procedures permitted fuel economy data vehicles to be tested at mileages up to 10,000. Moreover, EPA is aware that a significant number of light trucks tested for CAFE compliance in recent years had mileages well above 4,250. Consequently, applying the proposed mileage accumulation limit to 1986 through 1988 model year LDTs could effectively increase the stringency of the CAFE standards for those vehicles. While EPA is given broad discretion under EPCA to revise test procedures, it is not authorized to change the stringency of the CAFE standards. Since NHTSA has not yet set the 1989 model year light truck CAFE standard, EPA may apply the proposed mileage accumulation limit applicable to 1989 and later model year light trucks without changing the stringency of applicable standards. When NHTSA sets the standards for those years, it may take into account the limit's effect, if any, on fuel economy test results.

EPA believes application of the proposed limit to 1989 and later model year trucks is appropriate for several reasons. First, the proposed limit will improve the comparability of fuel economy test results. Current procedures permit vehicles to be tested at mileages ranging up to 10,000. Since fuel economy generally improves with increased mileage (up to about 50,000 miles), the same vehicle tested at 10,000 miles will achieve measurably better fuel economy than if tested at 4,250 miles. For CAFE standards to bring about predictable increases in fuel efficiency, a stable baseline against which fuel economy performance may be measured is necessary. Narrowing the range of permissable mileages at which vehicles must be tested will make test results more comparable and, thus, assessment of fuel economy improvements more accurate.

Applying the 6,200-mile limit to light truck test procedures will also make EPA's treatment of passenger cars and light trucks consistent. There is no indication that Congress intended different test procedures for different types of vehicles (except, of course, where necessitated by differences in engineering design). Applying the same limit to both cars and trucks will permit direct comparison of the CAFE improvements achieved by the different vehicle types. Moreover, use of the same limit for both vehicle types will simplify the processing of test results.

Finally, EPA agrees with AMC that the proposed limit will assure greater equity among manufacturers. Manufacturers currently differ as to the mileages at which they generally test their fuel economy data vehicles. Running up high mileages on test vehicles to improve their fuel economy performance increases testing costs, and some smaller manufacturers are less able to afford this practice than their competitors. Reducing the maximum mileage at which light trucks can be tested without mathematically adjusting their test results will place manufacturers on more equal footing.

The Energy Policy and Conservation Act (EPCA) which governs the CAFE program, requires that revision of the fuel economy calculation be promulgated at least one year prior to the model year to which the change applies (15 U.S.C. 82003(d)(3)). Thus, the 1988 model year is the earliest that this revision can take effect. Applying the mileage accumulation limit to 1989 model year light trucks will give manufacturers two years of leadtime, one year more than the statute requires.

In sum, beginning with the 1989 model year, EPA is adopting a 6,200-mile limit for light trucks. CAFE data generated on test vehicles with accumulated mileage greater than 6,200 miles will be adjusted to the equivalent fuel economy which would have been generated had the vehicles been tested at 4,000 miles.

III. Regulatory Analysis

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because if adopted, it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These requirements have been approved under OMB control number 2060–0104.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities such that a regulatory analysis is required. The revision of the fuel economy regulations established by this rulemaking should not significantly increase the burden including costs of compliance with fuel economy requirements, for the industry as a whole, as well as for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant impact on a substantial number of small entities.

D. OMB Review

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

List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Dated: October 6, 1986.

Lee M. Thomas,

Administrator.

PART 600—[AMENDED]

For the reasons set forth in the preamble, 40 CFR Part 600 is amended as follows:

1. The authority citation for Part 600 continues to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3295.

2. A new § 600.006–89 is added to read as follows:

§ 600.006–89 Data and information requirements for fuel economy vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, adjusted exhaust emission levels, and test fuel property values as specified in § 600.113–88.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modification (if any) form the vehicle configuration in which the mileage was accumulated. (For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.) If the vehicle was previously used for testing for compliance with Part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle, with respect to which data are submitted:

(A) Has been tested in accordance with applicable test procedures,

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed, and

(C) Is in compliance with applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make it available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, a description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances.

(iv) In the case of electric vehicles, a copy of calibrations for the electric motor, motor controller, battery configuration, or other components on the test vehicle as well as the design tolerances.

(v) If calibrations for components specified in paragraph (b)(2) (iii) or (iv) of this section were submitted previously as part of the description of

another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of Part 86 (other than those chosen in accordance with § 86.085–24 (c) and (h)), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and these test results adjusted in accordance with paragraph (g) of this section.

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in § 86.087–21, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g) (1) The manufacturer shall adjust all test data used for fuel economy label calculations in Subpart D and average fuel economy calculations in Subpart F for the classes of automobiles within the categories identified in paragraphs (a)(1) through (a)(6) of § 600.510. The test data shall be adjusted in accordance with paragraph (g) (3) or (4) as applicable.

(2) [Reserved]

(3) The manufacturer shall adjust all test data generated by vehicles with engine-drive system combinations with more than 6,200 miles by using the following equation:

$$FE_{4,000\,mi} = FE_T[0.979 + 5.25 \times 10^{-6}(mi)]^{-1}$$

Where:

$FE_{4,000\,mi}$ = Fuel economy data adjusted to 4,000-mile test point rounded to the nearest 0.1 mpg.

FE_T = Tested fuel economy value rounded to the nearest 0.1 mpg.

mi = System miles accumulated at the start of the test rounded to the nearest whole mile.

(4) For vehicles with 6,200 miles or less accumulated, the manufacturer is not required to adjust the data.

3. A new § 600.113–88 is added to read as follows:

§ 600.113–88 Fuel economy calculations.

The Administrator will use the calculation procedure set forth in this paragraph for all official EPA tests. For the 1988 model year, manufacturers may choose to use this procedure or use the calculation procedure described in § 600.113–78. However, once a manufacturer uses this procedure, it must be used for all subsequent tests. This procedure must be used by manufacturers for 1989 and later model years. The calculations of the weighted fuel economy values require input of the weighted grams/mile values for HC, CO and CO_2 for both the city fuel economy test and the highway fuel economy test. Additionally, for tests of gasoline-fueled vehicles, the specific gravity, carbon weight fraction and net heating value of the test fuel must be determined. The city and highway fuel economy values shall be calculated as specified in this section. A sample appears in Appendix II to this part.

(a) Calculate the weighted grams/mile values for the city fuel economy test for HC, CO, and CO_2 as specified in § 86.144 of this chapter. For tests of gasoline-fueled vehicles, measure and record the test fuel's properties as specified in paragraph (c) of this section.

(b)(1) Calculate the mass values for the highway fuel economy test for HC, CO, and CO_2 as specified in paragraph (b) of § 86.144 of this chapter. For tests of gasoline-fueled vehicles, measure and record the test fuel's properties as specified in paragraph (c) of this section.

(2) Calculate the grams/mile values for the highway fuel economy test for HC, CO, and CO_2 by dividing the mass values obtained in paragraph (b)(1) of this section, by the actual distance traveled, measured in miles, as specified in paragraph (h) of § 86.135 of this chapter.

(c) Gasoline test fuel properties shall be determined by analysis of a fuel sample taken from the fuel supply. A sample shall be taken after each addition of fresh fuel to the fuel supply. Additionally, the fuel shall be resampled once a month to account for any fuel property changes during storage. Less frequent resampling may be permitted if EPA concludes, on the basis of manufacturer-supplied data, that the properties of test fuel in the manufacturer's storage facility will remain stable for a period longer than one month. The fuel samples shall be analyzed to determine the following fuel properties:

(1) Specific gravity per ASTM D 1298.

(2) Carbon weight fraction per ASTM D 3343.

(3) Net heating value (Btu/lb) per ASTM D 3338.

(d) Calculate the city fuel economy and highway fuel economy from the grams/mile values for HC, CO, CO_2 and, for test of gasoline-fueled vehicles, the test fuel's specific gravity, carbon weight fraction and net heating value. The emission values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with § 86.084–26(a)(6)(iii). The CO_2 values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (c) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (c) of this section) shall be recorded to the nearest whole Btu/lb. These numbers shall be rounded in accordance with the "Rounding Off Method" specified in ASTM E 29–67.

(e) For gasoline-fueled automobiles, the fuel economy in miles per gallon is to be calculated using the following equation:

$$mpg = (5174 \times 10^4 \times CWF \times SG) / [((CWF \times HC) + (0.429 \times CO)) + (0.273 \times CO_2)) \times ((0.6 \times SG \times NHV) + 5471)]$$

Where:

HC = Grams/mile HC as obtained in paragraph (d) of this section.

CO = Grams/mile CO as obtained in paragraph (d) of this section.

CO_2 = Grams/mile CO_2 as obtained in paragraph (d) of this section.

CWF = Carbon weight fraction of test fuel as obtained in paragraph (d) of this section.

NHV = Net heating value by mass of test fuel as obtained in paragraph (D) of this section.

SG = Specific gravity of test fuel as obtained in paragraph (d) of this section.

Round the calculated result to the nearest 0.1 miles per gallon.

(f) For diesel automobiles, calculate the fuel economy in miles per gallon of diesel fuel by dividing 2778 by the sum of three terms:

(1) 0.866 multiplied by HC (in grams/miles as obtained in paragraph (d) of this section),

(2) 0.429 multiplied by CO (in grams/mile as obtained in paragraph (d) of this section), and

(3) 0.273 multiplied by CO_2 (in grams/mile as obtained in paragraph (d) of this section).

Round the quotient to the nearest 0.1 mile per gallon.

[Approved by the Office of Management and Budget under control number 2060–0104)

4. Section 600.510–86 is amended by revising paragraph (e) to read as follows:

§ 600.510–86 Calculation of average fuel economy.

* * * * *

(e) For passenger categories identified in paragraphs (a) (1) and (2) of this section, the average fuel economy calculated in accordance with paragraph (c) of this section shall be adjusted using the following equation:

$AFE_{adj} = AFE[[(0.55 \times a \times c) + (0.45 \times c) + (0.5556 \times a) + 0.4487)/[(0.55 \times a) + 0.45)] + IW$

Where:

AFE_{adj} = Adjusted average combined fuel economy, rounded to the nearest 0.1 mpg.

AFE = Average combined fuel economy as calculated in paragraph (c) of this section, rounded to the nearest 0.0001 mpg.

a = Sales-weighted average (rounded to the nearest 0.0001 mpg) of all model type highway fuel economy values (rounded to the nearest 0.1 mpg) divided by the sales-weighted average (rounded to the nearest 0.0001 mpg) of all model type city fuel economy values (rounded to the nearest 0.1 mpg). The quotient shall be rounded to 4 decimal places. These average fuel economies shall be determined using the methodology of paragraph (c) of this section.

c = 0.0022 for the 1986 model year.

c = A constant value, fixed by model year. For 1987, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available. For 1988 and later model years, the Administrator will specify the c value after the necessary laboratory humidity and test fuel data become available.

$IW = (9.2917 \times 10^{-3} \times SF_{3\ IWC} \times FE_{3\ IWC}) - (3.5123 \times 10^{-3} \times SF_{4\ ETW} \times FE_{4\ IWC})$

Note: Any calculated value of IW less than zero shall be set equal to zero.

$SF_{3\ IWC}$ = The 3000 lb. inertia weight class sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$SF_{4\ ETW}$ = The 4000 lb. equivalent test weight category sales divided by total sales. The quotient shall be rounded to 4 decimal places.

$FE_{4\ IWC}$ = The sales-weighted average combined fuel economy of all 3000 lb. inertia weight class base leves in the compliance category. Round the result to the nearest 0.0001 mpg.

$FE_{4\ IWC}$ = The sales-weighted average combined fuel economy of all 4000 lb. inertia weight class base levels in the compliance category. Round the result to the nearest 0.0001 mpg.

* * * * *

5. Appendix II is revised to read as follows:

Appendix II—Sample Fuel Economy Calculations

(a) This sample fuel economy calculation is applicable to 1978 through 1987 model year automobiles.

(1) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = .139 grams/mile
CO = 1.59 grams/mile
CO_2 = 317 grams/mile

According to the procedure in § 600.113–78, the city fuel economy or MPG_c, for the vehicle may be calculated by substituting the HC, CO, and CO_2 grams/mile values into the following equation.

$$MPG_c = \frac{2421}{(0.866 \times HC) + (0.429 \times CO) + (0.273 \times CO_2)}$$

$$MPG_c = \frac{2421}{(0.866 \times 1.39) + (0.429 \times 1.59) + (0.273 \times 317)}$$

$MPG_c = 27.7$

(2) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and calculation similar to that shown in paragraph (a) by this appendix resulted in a highway fuel economy or MPG_h of 36.9. According to the procedure in § 600.113, the combined fuel economy (called $MPG_{c/h}$) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.55}{27.9} + \frac{0.45}{36.9}}$$

$MPG_{c/h} = 31.3$

(b) This sample fuel economy calculation is applicable to 1988 and later model year automobiles.

(1) Assume that a gasoline-fueled vehicle was tested by the Federal Emission Test Procedure and the following results were calculated:

HC = .139 grams/mile
CO = 1.59 grams/mile
CO_2 = 317 grams/mile

(2) Assume that the test fuel used for this test had the following properties:

SG = 0.745
CWF = 0.868
NHV = 18,478 Btu/lb.

(3) According to the procedure in § 600.113–88, the city fuel economy or MPG_c, for the vehicle may be calculated by substituting the HC, CO, and CO_2 gram/mile values and the SG, CWF, and NHV values into the following equation:

$MPG_c = (5174 \times 10^4 \times CWF \times SG)/[[(CWF \times HC) + (0.429 \times CO + (0.273 \times CO_2))][(0.6 \times SG \times NHV) + 5471)]]$

$MPG_c = (5174 \times 10^4 \times 0.868 \times 0.745)/[[0.868 \times .139 + 0.429 \times 1.59 + 0.273 \times 317](0.6 \times 0.745 \times 18478 + 5471)]]$

$MPG_c = 27.9$

(4) Assume that the same vehicle was tested by the Federal Highway Fuel Economy Test Procedure and a calculation similar to that shown in (b)(3) resulted in a highway fuel economy of MPG_h of 36.9. According to the procedure in § 600.113, the combined fuel economy (called $MPG_{c/h}$) for the vehicle may be calculated by substituting the city and highway fuel economy values into the following equation:

$$MPG_{c/h} = \frac{1}{\frac{0.55}{MPG_c} + \frac{0.45}{MPG_h}}$$

$$MPG_{c/h} = \frac{1}{\frac{0.55}{27.7} + \frac{0.45}{36.9}}$$

$MPG_{c/h} = 31.2$

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Federal Register

Friday
October 24, 1986

Part IV

Environmental Protection Agency

40 CFR Parts 264, 270 and 271

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Assurance for Corrective Action; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264, 270, and 271

[SW-FRL-3029-6]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Financial Assurance for Corrective Action

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to amend the financial responsibility and permitting standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984 (RCRA). Today's proposed rule would implement the statutory requirement in the HSWA for demonstrating financial assurance for the costs of completing corrective actions at facilities seeking a permit. The rule would require owners or operators seeking a RCRA permit to demonstrate financial assurance for completion of any required corrective action for a release to any medium from any solid waste management unit. Acceptable mechanisms include a trust fund, surety bond guaranteeing performance, letter of credit, financial test and corporate guarantee.

The Agency is also soliciting comments today on alternative regulatory schemes for addressing the issue of financial assurance for corrective action.

DATE: EPA will accept written comments on this proposed rule and preamble on or before December 23, 1986.

ADDRESS: Commenters must send an original and two copies of their comments to the EPA RCRA Docket (S-212) (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Place the docket # F-86-FACP-FFFFF on your comments. For additional details about the OSW docket, see the **"SUPPLEMENTARY INFORMATION"** section.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline from 9:00 a.m. to 4:30 p.m., Monday-Friday, toll free at (800) 424-9346 or in Washington at (202) 382-3000; or Deborah Wolpe, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460, (202) 382-4761.

SUPPLEMENTARY INFORMATION: The public docket for this rulemaking is located at: EPA RCRA Docket (Sub-basement), 401 M Street, SW., Washington, DC. 20460. The docket is open from 9:30 a.m. to 3:30 p.m., Monday through Friday, except for Federal holidays. Call the docket clerk at (202) 475-9327 or (202) 382-4675 for an appointment to review docket materials. 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.

The contents of today's preamble are listed in the following outline:

I. Authority

These regulations are being proposed under the authority of sections 2002(a), 3004 and 3005 of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6924 and 6925).

II. Background

A. Legislative and Regulatory Overview

The Hazardous and Solid Waste Amendments of 1984 (HSWA) were enacted on November 8, 1984. In section 3004(u) of RCRA section 206 of HSWA), Congress required that all RCRA operating or post-closure permits issued to hazardous waste management facilities after November 8, 1984, provide for corrective action for releases of hazardous wastes or constituents from solid waste management units (SWMUs) located at those facilities. Section 3004(u) also requires that such facilities provide assurances of financial responsibility for the cost of completing the corrective action. Congress enacted this provision because it was concerned that the Agency might issue RCRA permits that did not address all leaking units at facilities. The financial

responsibility requirement of this section was intended to ensure that RCRA permits are not issued to owners and operators of facilities who are financially unable to complete a required cleanup.

On July 15, 1985, EPA promulgated very general regulations that codified the section 3004(u) statutory language requiring corrective action and financial assurance (hereinafter referred to as the *Final Codification Rule*, (see 50 FR 28702, 40 CFR §§ 264.90(a)(2) and 264.101(b))). Today's proposal sets out a detailed set of mechanisms to implement this statutory and regulatory requirement for financial assurance for corrective action. The proposal would allow owners and operators of RCRA permitted hazardous waste management units [1] to satisfy financial assurance for corrective action by use of a trust fund, surety bond guaranteeing performance, letter of credit, financial test or corporate guarantee. The proposal would apply to all types of units, for all known releases to any medium (e.g., air, surface water, ground water). It would require that financial assurance be demonstrated when EPA specifies the appropriate corrective action measures in the permit.

B. Scope of Today's Proposal

1. Limitations of Scope

Today's proposal addresses financial assurance for corrective action of known releases at permitted facilities. This proposal, therefore, affects only a portion of the corrective action problem, and will provide only a part of the funds necessary to accomplish all corrective action required at RCRA facilities.

Facilities not subject to today's proposal include interim status facilities and facilities that have lost interim status, but do not have a permit. For some of these facilities, the Agency may use a section 3008(h) Status Corrective Action Order to obtain the necessary corrective action funds. It is also possible that some of these facilities will be addressed under the Comprehensive Emergency Response, Compensation, and Liability Act of 1980 (CERCLA). RCRA enforcement authority may also be used at permitted facilities subject to today's proposal.

CERCLA enforcement authority may be used to obtain funding from responsible parties in cases where the Agency determines that RCRA authorities cannot ensure adequate funding for corrective action. Finally, subject to CERCLA policies and priorities, the Agency may place RCRA facilities on the Superfund National Priorities List as a means of supplementing private funding for corrective action with Federal funding.

In general, the Agency's goal is to have the responsible parties pay, to the extent possible, for any corrective action. The Agency's goal for this regulation is to maximize the portion of corrective action costs at RCRA facilities provided by responsible parties. We estimate that this proposal would increase the share for corrective action provided by owners and operators by approximately eight percent over what would be provided in the absence of this regulation.[2]

Table 1, located at the end of the "Background" section, presents estimates of the levels of private funding that may be obtained from different regulatory options for today's proposed financial assurance rulemaking. Table 2 presents preliminary estimates of the percentage of total corrective action costs that may be obtained through the use of each of the different permitting and enforcement authorities available to the Agency.

2. Sections 3004(u) and 3004(a) authorities

In addition to the authority under section 3004(u) of RCRA (section 206 of HSWA) which this rule proposes to implement, section 3004(a)(6) of RCRA (section 208 of HSWA) explicitly authorizes EPA to promulgate financial responsibility requirements for corrective action as may be necessary or desirable. Section 3004(a) is not linked to the permitting process nor is it limited to known releases. Section 3004(a) reads as follows: ". . . The Administrator shall promulgate regulations establishing . . . performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste . . . Such standards shall include . . . requirements respecting . . . (6) . . . financial responsibility for corrective action, as may be necessary or desirable;". Consequently, the section 3004(a)(6) authority gives EPA a great deal more discretion in writing regulations than EPA has under section 3004(u). This topic is discussed further in Section F, below.

3. Releases Beyond the Facility Boundary

Section 3004(v) of HSWA requires that the owner or operator institute corrective action beyond the facility boundary where necessary to protect human health and the environment, unless the owner or operator demonstrates to EPA that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action. EPA recently proposed to clarify this requirement by issuing a proposed rule that would extend the financial assurance requirements to corrective action beyond the facility boundary (see 51 FR 10706, at 10714, March 28, 1986). If EPA promulgates that rule, the requirements proposed today will apply to releases that extend beyond facility boundaries.

C. Summary of and Rationale for Today's Proposal

EPA is proposing to use the existing financial assurance for closure and post-closure care requirements as a model for implementing financial assurance for corrective action. EPA and the States have had over five years of experience (since January 12, 1981) in implementing the financial assurance requirements for closure and post-closure care under 40 CFR Part 264 Subpart H. (On January 12, 1981, EPA promulgated financial assurance for closure and post-closure care [see 46 FR 2851]. On April 7, 1982, EPA revised those rules [see 47 FR 15032].) Both regulators and the regulated community have gained an understanding of these regulations and of the available instruments for providing financial assurance. The Agency believes that the use of the existing regulatory framework in Subpart H as a guide for regulatory development will lead to efficiencies in implementing the regulations, saving both time and resources on the part of both permit writers and the regulated community.

In addition, EPA carefully analyzed the mechanisms for financial assurance for closure and post-closure care during the regulatory development process and has received comments on these mechanisms on numerous occasions from the regulated community. The Agency has, in the past, analyzed the use of several mechanisms in addition to those used in the existing Subpart H regulations. Among them are: Escrow agreements, certificates of deposit,

[1] The provision also applies to owners and operators of facilities subject to UIC or NPDES permits-by-rule under 40 CFR 270.60, as discussed in the *Final Codification Rule*. EPA requests comments on any unique issues concerning financial assurance as it relates to these permit-by-rule facilities.

[2] We have assumed that, in the absence of this regulation, permitted facilities would comply with the section 3004(u) financial assurance requirement by using one of the financial assurance mechanisms currently allowed for demonstrating financial assurance for closure and post-closure care of hazardous waste management facilities.

security interests, and pledges of collateral. We are rejecting these mechanisms for financial assurance for corrective action for the same reasons we rejected them for closure and post-closure care, as discussed in the Background Document on Parts 264 and 265 Subpart H (December 31, 1980). We are soliciting comments on whether other mechanisms EPA has not previously considered could be used effectively for financial assurance for corrective action. Any attempt, however, to develop an entirely new financial assurance framework would require substantial additional research for regulatory development and could delay the promulgation of regulations that implement the Congressional mandate.

The Agency proposes to allow owners or operators to demonstrate financial assurance for corrective action of known releases through the following mechanisms: Trust fund; surety bond guaranteeing performance; letter of credit; financial test; or corporate guarantee. The list of allowable mechanisms is the same as that for closure and post-closure care, with the exception of insurance and surety bonds guaranteeing payment into a standby trust fund. As explained in detail later, we are proposing to omit these latter two instruments as mechanisms for assuring corrective action costs. EPA is also proposing two other changes to the current closure and post-closure care financial assurance mechanisms:

(1) To modify, for purposes of assuring corrective action costs, the existing financial assurance trust fund by changing both the length of the pay-in period and the pay-in formula. We are proposing to set the pay-in period for financial assurance for corrective action required in section 3004(u) as the shorter of one-half of the length of the corrective action period of twenty years. The pay-in formula would be structured so that the trust fund is fully funded at the end of the pay-in period. Currently, for a permitted facility, the pay-in period for the closure and post-closure trust fund is the term of the initial RCRA permit or the remaining operating life of the facility, whichever period is shorter. For an interim status facility, the pay-in period is 20 years, beginning with the effective date of the regulations (July 6, 1982), or the remaining operating life, whichever is shorter; and

(2) To change the wording of the existing Subpart H mechanisms to allow their use for financial assurance for corrective action, because the present Subpart H regulations require the owner or operator to word the instruments exactly as specified in the regulations.

The Agency is also proposing that the financial assurance be demonstrated at the time the corrective action measures are specified in the permit (rather than at some point before the actual measures are specified). This may be at the time the permit is issued, or later, as described below.

EPA's 1982 regulations require owners and operators of "regulated units" to correct releases of hazardous constituents to ground water. Section 3004(u) expands the requirement for corrective action to all solid waste management units. The term "solid waste management unit" includes not only "regulated units", but also other hazardous waste units, and units that accepted solid wastes that did not meet EPA's regulatory definition of hazardous waste, but nonetheless contained hazardous constituents.

For regulated units at which ground water contamination has been detected prior to permitting, the corrective action measures, and, therefore, financial assurance, must be specified at the time of permitting. This is because the 1982 regulations already require that owners and operators of these units characterize ground water contamination and submit detailed plans and engineering studies for corrective action prior to permit issuance (40 CFR 270.14(c) through (c)(8)). Although section 3004(u) authorizes the use of schedules of compliance when appropriate to avoid the delay of permit issuance, the current regulations do not allow additional time for investigations and plans for ground water releases from "regulated units". In a separate proposed rulemaking, EPA is considering revising the regulations for "regulated units" to allow owners and operators to submit plans and engineering studies after permit issuance rather than before. If EPA makes this revision, owners and operators would be able to demonstrate financial assurance after permit issuance as described in the next two paragraphs.

Releases from "regulated units" to air, soils, and other environmental media, however, are not subject to the 1982 regulations. Nor are releases to any media (including ground water) from "non-regulated" solid waste management units. In many cases, corrective action for these types of releases may be undertaken after permit issuance through schedules of compliance as provided for in section 3004(u). Therefore, for these units, owners and operators may submit the demonstration of financial assurance after permit issuance.

If a release to any medium from any unit requiring corrective action is identified after the permit is issued, we are proposing that the cost estimate must be completed, and the financial assurance must be demonstrated when the corrective action measures are specified. The permit will then be modified to specify the changes.

Failure to Demonstrate Financial Assurance. If a facility with regulated units requiring corrective action for releases to ground water at the time of permitting fails to demonstrate financial assurance for corrective action in the permit application, EPA will not issue the permit. If the permit has already been issued, and the owner or operator does not make the necessary demonstration once corrective action measures are specified, EPA may either revoke the permit for noncompliance with a permit condition or take other enforcement action.

D. Modifications to Existing Subpart H Regulations

1. Corrective Action Trust Fund

The Agency focused its regulatory development efforts on the design of a modified trust fund for financial assurance for corrective action for known releases. EPA believes that most owners or operators who are unable to pass the financial test, or who are unable to obtain a corporate guarantee, will rely on the trust fund to meet financial assurance requirements for corrective action. Consequently, EPA developed and analyzed several options for trust fund alternatives.

The existing trust fund mechanism under Subpart H needed modification for two reasons: (1) Because the size and duration of corrective action costs are significantly greater than those for closure and post-closure care; and (2) financial assurance for corrective action costs for known releases is a current obligation, whereas the costs of closure and post-closure care are future obligations.

Due to the size and duration of corrective action costs, more stringent financial assurance requirements may induce bankruptcies among facility owners and operators, thus increasing the number of unfunded corrective actions. This would defeat the purpose of the more stringent requirements, which is to assure that all corrective action costs will be paid by owners or operators. Corrective action cost estimates are typically several times larger than closure and/or post-closure

care cost estimates. We expect that corrective actions to ground water may often take up to 50 years and may take as long as 100 years. In contrast, closure activities are normally completed within six months after receiving the final volume of hazardous waste, and post-closure care is usually limited (by 40 CFR 264.117) to thirty years after the date of completing closure (although the Agency may change the period).

In addition, the financial assurance requirements for closure and post-closure care are designed to provide assurance before the beginning of closure or post-closure care; thus, financial assurance is being provided for a future obligation. Corrective action costs for known releases will be incurred concurrently with the costs of providing financial assurance for corrective action. Particularly in the case of small firms unable to use the financial test, the Agency is concerned that the impact of current corrective action costs in addition to financial assurance costs may increase the number of bankruptcies and the amount of unfunded corrective actions.

We are proposing the following modifications to the trust fund formulae in the existing regulations:

(1) The trust fund payment formula is changed from (CE-CV)/Y (where CE is the current cost estimate, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period) to (BR-CV)/Y (where BR is the balance required at the end of the pay-in period). The new formula requires that only the costs of corrective action expected to be incurred after the end of the pay-in period be used to derive annual payments into the trust fund, whereas the existing formula would require the use of the total remaining corrective action costs expected to be incurred.

(2) The trust fund pay-in period is modified to twenty years or one-half of the corrective action period, whichever is shorter. Currently the pay-in period for the closure and post-closure care trust fund for a permitted facility is defined as the shorter of the remaining initial permit term or the remaining operating life. Neither of these criteria should apply to corrective action. The term of the RCRA permit is too variable to be used as a criterion in the case of financial assurance for corrective action. One facility may have two years left in its permit term when a release is discovered while another may know of a release at the time of permitting. The former facility would have at most two years to fund the trust fund, while the latter may have ten years to fund the trust fund. This is not true in the case of closure, for example, where the obligation to close properly is always known at the beginning of the permit term.

The other factor currently used to determine the pay-in period for closure and post-closure trust funds, the operating life, ignores the fact that these regulations apply to closed facilities with a post-closure permit and no remaining operating life, as well as applying to operating facilities.

Consequently, we rejected both methods for determining the pay-in period. In their place, EPA is proposing a pay-in period of twenty years or one-half of the corrective action period, whichever is shorter. Our analysis suggests that a twenty-year maximum pay-in period would provide greater coverage of corrective action costs by owners and operators than would pay-in periods of greater than or less than twenty years (see the Sept. 26, 1986 Background Document for further discussion of 20-year term). The one-half corrective action period is included to take into account short-term corrective actions. Otherwise, if the corrective action period is less than, or close to, twenty years duration, little or no financial assurance would be provided. By reducing the variability in length of the pay-in period, the Agency also believes it is increasing equity between firms in similar circumstances.

2. Surety Bond Guaranteeing Payment

EPA is not proposing to allow a surety bond guaranteeing payment into a standby trust fund (financial guarantee bond) as a mechanism for demonstrating financial assurance for corrective action for known releases. A financial guarantee bond for closure and post-closure care works as follows: The owner or operator must, before the beginning of final closure or post-closure care, fund a standby trust fund in the final closure or post-closure care amount. The surety only becomes liable on the bond obligation if the principal (owner or operator) fails to fulfill this obligation. The surety must then place the required funds into the standby trust fund. (See 40 CFR 264.151(b)). For closure and post-closure care obligations, this means that the facility may fund the standby trust fund at its own pace, as long as it is fully funded before the beginning of closure or post-closure. A mechanism parallel to this financial guarantee bond for corrective action would require that the owner or operator fully fund a trust fund before undertaking corrective action. Since corrective action for known releases is a current obligation, there is no time to build up a trust fund, as there is for closure and post-closure care. Therefore, the financial guarantee bond would work as follows: The need for corrective action is established at a facility. The facility must then demonstrate financial assurance immediately. If the firm is using a financial guarantee bond, it would obtain the bond, paying the applicable fees, and immediately fully fund the trust fund before beginning the corrective action. We cannot anticipate any situation where such a surety bond would be used, given that the owners or operators could use the corrective action trust fund which may have lower fees associated with it, and which does not require full funding before the corrective action measures begin.

Therefore, we are not proposing use of the financial guarantee bond for assuring the costs of corrective action for known releases. Surety bonds guaranteeing performance, however, will be allowed. Comments are requested on whether and how a financial guarantee bond should be allowed as an acceptable instrument, and whether the current Subpart H performance bond is adequate for financial assurance for corrective action.

3. Insurance

EPA believes that it does not make sense to allow insurance as a mechanism for assuring that funds are available for corrective action for known releases. Such insurance would probably not be available; it is analogous to writing fire insurance for a burning building. The premiums would have to be greater than the actual cost of corrective action in order for the insurance company to profit. Therefore, it will always be more economical for the owner or operator to adopt another mechanism (e.g., trust fund). In addition, until recently EPA was aware of only one company that offered insurance for closure and post-closure care. This company recently stopped offering such insurance, leaving no insurance companies writing insurance for closure and post-closure care.

For these reasons, and in light of the publicized problems of the liability insurance market, the Agency believes it would be futile to allow insurance as a mechanism for financial assurance for corrective action for known releases. The Agency requests comments on whether this mechanism could ever be viable for financial assurance of known releases.

E. EPA Analysis

1. Trust Fund Options

The Agency evaluated the following trust fund options with the goal of assuring that sufficient funds will be available to pay for the corrective action: (a) Use of a fully-funded trust fund; (b) use of the existing Subpart H trust fund; (c) use of a modified Subpart H trust fund; (d) use of a modified Subpart H trust fund with an extended pay-in period of limited duration based on ability to pay; and (e) use of a modified Subpart H trust fund with an unlimited extension of the pay-in period based on ability to pay.

An overview of our analysis of these options, which are listed in decreasing order of stringency, is presented below. EPA encourages comments on the chosen option, the rejected options, the analysis of these options, and any other options that EPA did not address.

(a) *Option 1—Fully funded trust fund: Rejected.* This option would require a facility owner or operator to fund a trust fund fully upon completing the corrective action cost estimate. The required balance would equal the total costs of the corrective action. All other parts of this option are similar to the existing Subpart H rules; however, this option uses a one year pay-in period in all cases.

Although this option appears to be the most stringent in terms of providing financial assurance for completion of corrective action, it actually reduces the amount of financial assurance provided relative to the other options analyzed. This is because the dual burden of concurrently providing assurance for the entire amount of corrective action costs and paying the corrective action costs would increase the likelihood of bankruptcy. There are, therefore, fewer owners and operators who are able to afford the costs of corrective action.

(b) *Baseline—Option 2: Existing Subpart H Trust Fund: Rejected.* As an alternative to full and immediate funding of a trust fund, EPA considered adopting a pay-in period equivalent to that required for closure and post-closure care trust funds at permitted facilities. Under the existing Subpart H regulations, a firm with a permit must fully fund its trust fund within the remaining operating life of the facility or the term of the initial RCRA permit (a maximum of ten years), whichever is shorter.

Because corrective action costs are paid concurrently with trust fund payments, use of the existing trust fund formula for corrective action would be impractical. Unlike the closure and post-closure care trust funds, the required balance for the corrective action trust fund would decline during the pay-in period as the ongoing corrective action is paid for. This could result in the actual trust fund pay-in period (i.e., the time necessary to reach the required balance) being less than the build-up period allowed the owner or operator (as computed by the pay-in period formula). Furthermore, some corrective actions are likely to be of short duration and, if the existing trust fund formula is used, would be completed prior to the end of the scheduled trust fund pay-in period.

(c) *Option 3—Modified Subpart H Trust Fund: Chosen.* In this option, the required trust fund balance must equal the corrective action costs remaining after the end of the pay-in period. It also changes the pay-in period from the shorter of the remaining permit term or operating life, to the shorter of twenty years or one-half of the corrective action period. This option is chosen for today's proposal because it allows a pay-in period that reflects the dual burden of concurrently providing financial assurance and paying the costs of corrective action. It also provides a good balance between flexibility in setting trust fund schedules and assurance of corrective action. In addition, it performed slightly better under the evaluative criteria than did any other option.

For further discussion, see section II.D.1 of this preamble.

(d) *Option 4—Trust Fund with a Pay-in Period Extended Up to 30 Years: Rejected.* Option 4 is similar to option 3, but has a pay-in period of the shorter of 10 years or one-half the corrective action period with a possible extension based on ability to pay, and with a minimum required payment. If an owner or operator is unable to pay the baseline payment (corrective action costs after the pay-in period ends, less the amount currently in the trust fund, divided by the number of years left in the baseline pay-in period), he may apply for an extension to the pay-in period. A firm's ability-to-pay would be determined based on the following formula: Cash flow (i.e., net income plus depreciation, depletion, and amortization) minus one-tenth of total liabilities (CF–0.1(TL)). If the amount calculated is greater than or equal to the baseline payment, the owner or operator would not be eligible for an extenion. If the amount calculated according to this formula is less than the baseline payment, the owner or operator would be eligible for an extension.

The ability-to-pay formula used in the analysis is derived from an indicator (the cash flow to total liabilities ratio) used commonly by financial analysts as a bankruptcy predictor. It also is used in the Agency's financial test calculations, and is similar to the formula that the Agency uses in its enforcement actions (see e.g., Superfund Financial Assessment System Instruction Manual, May 25, 1982).

Under this approach, once it is determined that an owner or operator is eligible for the extended pay-in period, the owner or operator would determine whether the amount calculated by the ability-to-pay formula is sufficient to assure corrective action costs, i.e., whether it is equal to or greater than the minimum payment. EPA considered a minimum payment based on a pay-in period of thirty years or one-half the corrective action period, whichever is less.

A minimum required payment is designed to meet the requirements of the Congressional mandate that financial assurance be provided. Otherwise, an owner or operator could conceivably never make trust fund payments and provide no financial assurance—a possibility clearly at odds with the Congressional intent.

The Agency believes that the extended pay-in period would be used principally by small firms unable to use the financial test and with limited ability to make the baseline trust fund payments. However, EPA rejected this option because it might not be fair to firms not eligible for the extended pay-in period and out of concern that firms may be able to structure their financial statements or corporate organization to qualify for the extension.

(e) *Option 5—Trust Fund with an Extension and Unlimited Pay-in Period: Rejected.* EPA considered using a trust fund that allowed an extension to the pay-in period similar to option 4 above, but offered an indefinite pay-in period, based on the firm's ability-to-pay, to those firms unable to make required trust fund payments. This option was rejected as not providing sufficient financial assurance. Allowing firms an unlimited time to fund their trust funds could often result in situations where no payments at all were made into the trust fund or where the trust fund was perpetually underfunded. We believe that such outcomes are clearly at odds with the Congressional mandate to require "assurances of financial responsibility for completing corrective action." Without a limit on the length of the pay-in period, there would be no assurance that the corrective action would be completed. Consequently, this option has been rejected.

2. Quantitative Analysis

To assess the economic and financial impact of the regulatory options, the Agency used the Financial Assurance for Corrective Action (FACA) model, a large scale simulation model. For a detailed description of the FACA model, see the Background Document dated August 1986. For the quantitative analysis, all FACA options were evaluated on the basis of four criteria: Coverage, cost internalization, social cost, and impact on bankruptcy incidence. Criteria denominated in dollar terms were discounted at 3%. Discount rates of 0% and 10% were also used; for a summary of model results at these discount rates, see the Background Document describing model results, dated September 1986. The results of this analysis are summarized in a table at the end of this section.

Coverage is defined as the present value of dollars available for corrective action during a 100-year period, including costs paid by owners and operators, and costs paid out of trust funds. Today's proposed rule provides coverage roughly equal to that provided by options 4 and 5 (i.e., approximately $300 million greater coverage than would be provided by the existing Subpart H mechanisms).

Cost Internalization represents the percentage of each dollar of required corrective action that the typical owner or operator can expect to pay (in the form of corrective action and financial assurance costs). It is calculated by summing the after-tax cost of corrective action paid by owners and operators and the cost of maintaining financial assurance instruments, and dividing the sum by the total cost of all corrective actions. A full internalization of cost provides market incentives for economically efficient behavior. None of the options analyzed provides a cost internalization ratio that represents a full internalization, on average, of the costs of corrective action (i.e., 54% of the total cost of corrective action, assuming a 46% marginal tax rate). The proposed rule, however, does provide a cost internalization ratio superior to that of option 2 (the existing Subpart H mechanisms). Superior cost internalization ratios are also provided by options 4 and 5.

Social Cost is the dollar value of real resources diverted from other productive uses to the provision of financial assurance. The major social cost component of financial assurance is administrative fees associated with the trust fund. We presume that these fees represent an expenditure of real resources. All else being equal, the preferred option would have the lowest social cost of all the options. The proposed rule does impose the lowest social cost of all the regulatory options, its cost being roughly equal to that of the existing Subpart H mechanisms.

Bankruptcy incidence is defined as the number of expected bankruptcies of owners of hazardous waste TSD facilities associated with each regulatory option. The chart at the end of this section reports the number of bankruptcies expected over a twenty-five year period for each option in excess of those expected for option 2 (the existing Subpart H mechanisms). These bankruptcy figures are from a simulated population of 1,911 firms. Thus, the 28 incremental expected bankruptcies simulated in option 1 represent approximately 1.5% of the total population of firms used in the simulation. All else being equal, the preferred regulatory option would have the lowest bankruptcy incidence of all the options.

Limitations of the FACA Model. EPA excluded from the FACA model three factors that we expect may have a significant impact on the evaluation criteria. We believe that the omission of these factors, while not affecting all the trust fund options similarly, is not important enough to affect materially the performance of any option relative to that of the other options. Therefore, in order to eliminate any unnecessary costs of or complexities in the modeling effort, EPA did not consider explicitly the factors noted below.

In general, economic effects are not simulated. There is no provision for firms responding to the costs of corrective action or of financial assurance by passing some of these costs on to others (e.g., to consumers). A related omission concerns the simulated replacement of waste management capacity, and entry of new firms into the RCRA-regulated universe. Presumably, simulation of entry and capacity replacement would increase the aggregate cost of corrective action (and financial assurance), but it would not change significantly the relative performance of the options.

In addition to omitting economic effects, the FACA model simplifies the response of firms to costs that are beyond the firm's "ability to pay." EPA assumed that firms without the ability to pay the costs of corrective action and financial assurance declare bankruptcy. In reality, there are several steps that firms might take before declaring bankruptcy (e.g., selling assets, cutting payroll, discontinuing some operations, etc.). Furthermore, it is assumed implicitly in the FACA model that all bankruptcies are liquidations, and that the bankrupt firms no longer retain responsibility for completing corrective action. Thus the model almost certainly overstates the number of expected bankruptcies and the amount of corrective action cost not addressed by owners and operators.

Finally, it is assumed in the FACA model that the trust fund and the financial test are the only available financial assurance mechanisms, whereas we expect that some owners or operators will use letters of credit or surety bonds. Since all the options analyzed allow the use of letters of credit and surety bonds, the inclusion of these mechanisms in the simulation would have an almost identical effect on all the options. Letters of credit and surety bonds do not require that owners or operators set funds aside; thus they impose fewer costs than does a trust fund. By excluding these mechanisms from the simulation, we overstate both the cost of financial assurance to owners and operators and the incidence of bankruptcy, and we understate the degree to which owners and operators will "cover" the cost of corrective action.

These omissions should not affect substantially the performance of any option relative to that of the other options. By themselves, however, the results of individual options almost certainly underestimate total corrective action costs and the percentage of these costs paid by owners and operators. Thus, one should be cautious in interpreting the model results as an absolute estimate of expected corrective aciton costs and their effects on owners and operators. For a fuller discussion of model limitations, refer to the September 1986 Background Document.

TABLE 1.—SUMMARY OF RESULTS OF QUANTITATIVE ANALYSIS

Option	Total cleanup cost ($mill.)	Coverage ($mill.)	Cost internalization ratio	Social cost [1] ($mill.)	Bankruptcy incidence [2]
1. Upfront Trust Fund	14,830	10,598	0.45	10	28
2. Existing Subpart H	14,734	10,800	.45		
3. Modified Trust Fund	14,633	11,086	.46	(2)	(42)
4. Modified w/limited extension	14,635	11,091	.48	30	(42)
5. Modified w/unlimited extension	14,635	11,097	.48	40	(42)

TABLE 1.—SUMMARY OF RESULTS OF QUANTITATIVE ANALYSIS—Continued

Option	Total cleanup cost ($mill.)	Coverage ($mill.)	Cost internaliza-tion ratio	Social cost[1] ($mill.)	Bankruptcy incidence[2]
No financial assurance	14,630	10,927	.40	(138)	(57)

[1] Reported as the incremental social cost relative to the existing Subpart H financial assurance mechanisms (for closure and post-closure care) (i.e., option 2).
[2] Reported as changes in the expected number of bankruptcies during the first 25 years of the simulation, relative to the existing Subpart H mechanisms. The total number of firms in the simulation from which these expected bankruptcy figures are drawn is 1911.
Numbers in parentheses represent decreases rather than increases. Dollar figures are discounted at 3%.

TABLE 2.—TOTAL CORRECTIVE ACTION COSTS OBTAINED THROUGH USE OF DIFFERENT STATUTORY AUTHORITIES

Legal authority	Who pays?	Percent obtained through different authorities—	
		With today's proposal	Without any financial assurance requirement
Technical and financial permitting standards	Owners/operators of permitted facilities	44	42
RCRA and CERCLA enforcement	Owners/operators of non-permitted facilities	25	24
Federal and state superfunds plus unfunded portion.	Federal and state superfunds or unfunded	31	34
All authorities plus unfunded	All sources plus unfunded	100	100

These results were produced from the Financial Assurance for Corrective Action (FACA) Model. The results in this table are based on *undiscounted* dollar flows, thus they may differ slightly from the results one can infer from Table 1. See the September 1986 Background Document for a discussion of model results and limitations.

F. Sections 3004(a) and 3004(u) Authorities

Congress enacted the financial assurance requirement of section 3004(u) to correct the potential problem of EPA issuing RCRA permits to owners or operators who are financially incapable of completing any necessary corrective actions at their facility. Although the option chosen today provides a better balance between the costs and benefits of financial assurance than do the other options analyzed, EPA's analysis indicates that a substantial amount of required corrective actions at both permitted and unpermitted facilities will remain unaddressed by owners or operators. Congress designed section 3004(a) to correct this broader problem of unaddressed corrective actions at both permitted and unpermitted facilities. Under section 3004(a), EPA can develop regulations that will ensure that the maximum amount of corrective action costs are paid through a combination of the owner or operator's assets and financial assurance mechanisms.

The Agency has chosen to proceed at this time with section 3004(u) alone rather than to combine the sections 3004(u) and 3004(a) authorities to provide a more comprehensive financial responsibility regulation. By statue, the requirement for financial assurance of known releases under section 3004(u) became effective on November 8, 1984. Regions and States currently have the discretion to decide whether a facility's proposed financial assurance satisfies the statutory requirements. Without today's rule, the Regions and States would have the burden of reviewing every demonstration of financial assurance on a case-by-case basis. The result could be different applications of the requirement in different Regions and States. The Regions and States may use the existing Subpart H regulations for closure and post-closure care as guidelines. The existing regulations, however, are not designed to address financial assurance for corrective action, and are less suitable to such assurance than the rules proposed today, as discussed earlier in Section II.D.

The following sections discuss the differences between sections 3004(u) and 3004(a). Although EPA has decided to proceed with section 3004(u) alone, this proposal does not preclude an integrated rule at a later date.

Universe

Section 3004(u) is aimed at facilities with known releases both from regulated units and from other solid waste management units (SWMUs) at facilities whose permits were issued after November 8, 1984. It applies to releases to any medium (e.g., surface water, ground water, air, soils, and subsurface gas).

Section 3004(a) can be applied to the same universe as above, or that universe can expand to include interim status as well as permitted units. The expanded universe may be selectively regulated. For example, it may include: (a) Facilities or units with a high probability of release; (b) regulated units only; [3] or (c) facilities or units with releases to ground water only.

Timing and Amount of Financial Assurance

The Agency has interpreted section 3004(u) as allowing two alternatives on the timing and amount of financial assurance for continuing releases. First, we could require a demonstration of financial assurance after the corrective action measures and cost estimate have been specified in the permit. The advantage of this approach is that it would not require any facility to demonstrate financial responsibility unless and until a release had been characterized, and the corrective action costs were known. A disadvantage is that there is no possibility of building up a reserve funds after a release is detected but before financial assurance must be demonstrated. In other words, there is no lead time during which a facility sets aside money for corrective action before such costs are incurred.

The second, more complicated approach would require the facility to demonstrate financial assurance once it is determined that corrective action is necessary but before the corrective action measures and cost estimate are specified in the permit. This approach would require a determination of a reasonable minimum amount of corrective action costs which would be incurred in most situations. After the corrective action measures and cost estimate are specified in the permit, additional financial assurance would be required.

This second approach would assure corrective action costs at an earlier stage. However, it may not be possible to identify a "reasonable minimum amount" for most facilities. Such an amount might be a very small percentage of most corrective action costs, thereby providing little financial assurance. The Agency has chosen to propose the first approach, but solicits comments on both approaches.

The timing and amount of financial assurance can be the same under section 3004(a) as it is under section 3004(u), or it can be modified to allow a demonstration at an earlier time. There are many alteratives on timing that the Agency will analyze before promulgating a section 3004(a) rule. Among them are: A demonstration of financial assurance at the time of

[3] "Regulated units" include surface impoundments, waste piles, landfills, and land treatment units that received waste after July 26, 1982.

permitting but before a release is detected; a demonstration after a release is detected but before the corrective action measures and cost estimate are specified in the permit; different timing and amounts of assurance for different types of facilities; and assurance of the entire amount of an average corrective action cost before a release occurs, the rest to be assured when the exact amount is known. This earlier demonstration may result in more costs being assured by owners and operators. Some of these section 3004(a) issues were described in a **Federal Register** notice dated July 26, 1982 (see 47 FR 32279).

Advantages and Disadvantages of Combining the sections 3004(u) and 3004(a) Authorities

The advantage of promulgating a rule that combines the authorities of sections 3004(u) and 3004(a) is that an earlier demonstration of financial assurance for corrective action may increase the amount of corrective action costs paid by owners and operators. It may also assure financial responsibility for the entire corrective action period. There would be one comprehensive rule on financial assurance for corrective action, which may be more effective than today's section 3004(u) proposed rule. In addition, if the demonstration of financial assurance is made before actual corrective action expenditures are necessary, as allowed under section 3004(a), owners or operators using the trust fund mechanism can avoid the financial drain of "double payments" required under today's section 3004(u) proposed rule. However, because of all the variations allowed under the very broad section 3004(a) authority, the section 3004(a) analysis will take additional time to complete. The advantage of promulgating a section 3004(u) rule first is that it will provide the regulated community with guidance needed now to implement the current statutory requirement effectively.

The Agency requests comments on whether we should proceed with section 3004(u), or delay promulgation of a regulation until the analysis for section 3004(a) is done. The analysis may show that a combined regulation on sections 3004(u) and 3004(a) would be preferable. It may also show that no regulation at all under section 3004(a) is preferable.

III. Section-by-Section Analysis of Proposed Rule

As stated earlier, the regulations proposed today on financial assurance for corrective action are derived from the current Subpart H requirements for financial responsibility for closure and post-closure care. The sections that follow do not analyze anew those points of the proposed rule that are the same as corresponding sections in the existing Subpart H regulations. Instead, the analysis focuses on only the additions or modifications to the existing regulations made by the proposed rule. We are also proposing changes to Subpart F of Part 264 on ground water monitoring, and to Part 270 on permit requirements. The analysis is arranged in a section-by-section sequence for ease of reference.

A. Standards for Owners And Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities—Ground Water Protection Standards (Part 264, Subpart F)—Corrective Action for Solid Waste Management Units (§ 264.101)

Under existing § 264.101(b), corrective action for releases of hazardous waste or constituents must be specified in the permit, and when the corrective action cannot be completed prior to issuance of the permit, the permit must contain schedules of compliance for such correction action. In the proposed codification rule (51 FR 10714, March 28, 1986), the Agency proposed to add a new paragraph, § 264.101(c), whereby an owner or operator may be required to implement corrective action beyond the facility boundary, where necessary to protect human health and the environment. Today, the Agency is proposing to add a new paragraph, § 264.101(d). When corrective action measures are specified in the permit, the schedule of compliance must include a written statement that shows the expected full duration of the corrective action, and, for each year of the corrective action, a detailed description of the activities that will be performed during that year. The corrective action measures specified in the permit are the basis for the cost estimate and subsequent demonstration of financial assurance for corrective action.

B. Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities—Financial Requirements (Part 264, Subpart H)

EPA is proposing today that Subpart H be renumbered as follows:

Old section		New section
264.140	Applicability	264.140
264.141	Definitions	264.141
264.142	Cost estimate for closure	264.142
264.143	Financial assurance for closure	264.143
264.144	Cost estimate for post-closure care	264.144
264.145	Financial assurance for post-closure care	264.145
	Cost estimate for corrective action	264.146
	Financial assurance for corrective action	264.147
264.146	Use of a mechanism for financial assurance of both closure and post-closure care	264.149
264.147	Liability requirements	264.148
264.148	Incapacity of owners or operators, guarantors, or financial institutions	264.150
264.149	Use of State-required mechanisms	264.152
264.150	State assumption of responsibility	264.153
264.151	Wording of the instruments	264.151

1. Applicability (§ 264.140)

The Agency is proposing to amend § 264.140(a) to reflect the addition of financial assurance for corrective action to the Subpart H regulations. The Agency is also proposing that a new paragraph (c) be added, stating explicitly that the financial assurance requirements apply to owners or operators required to perform corrective action pursuant to the corrective action regulations in §§ 264.100 and/or 264.101. Section 264.100 requires corrective action for releases to ground water from regulated units, while § 264.101 requires corrective action for releases to any media of hazardous wastes or constituents from any SWMU (other than regulated units) at a RCRA facility seeking a permit, and for releases to media other than ground water from regulated units.

Existing paragraph (c), exempting State and Federal governments from financial responsibility requirements, would become paragraph (d).

By expanding the scope of the current Subpart H financial responsibility requirements, EPA believes that it is fulfilling the mandate of the Hazardous and Solid Waste Amendments (HSWA) of 1984, which directs the Agency to require financial assurance for corrective action for facilities that have a release and are seeking a RCRA permit.

2. Definitions of Terms Used in this Subpart (§ 264.141)

The proposed rule adds two definitions to the existing list of terms in § 264.141. These additions are necessary to clarify the proposed financial assurance requirements for corrective action.

"Current Cost Estimate for Corrective Action": In the context of financial assurance for corrective action, the term refers to the total costs, in undiscounted current dollars summed over the duration of corrective action, of the remaining corrective action measures required in the permit or schedule of compliance in the permit. This term appears repeatedly throughout the proposed rule, particularly in those sections which describe procedures for establishing and maintaining instruments for demonstrating financial assurance.

"Required Corrective Action Trust Fund Balance": For the purpose of computing the annual trust fund payment, EPA considers it necessary to define an additional term. The "required corrective action trust fund balance" is defined as the sum of all corrective action costs to be incurred after the end of the trust fund pay/in period. When financial assurance is first provided, the "required corrective action trust fund balance" will differ from the "current cost estimate for corrective action" by the sum of the costs of all corrective action measures to be undertaken during the trust fund pay/in period. The amount being assured, therefore, is different when using the trust fund than for any other mechanism (during the trust fund pay-in period).

3. Financial Assurance for Closure and Post-Closure Care: Financial Test (§§ 264.143(f) and 264.145(f))

Today's proposed amendment to § 264.147(d) on the financial test for corrective action would require conforming changes in both §§ 264.143(f) and 264.145(f). Sections 264.143(f)(1)(i)(B) and 264.145(f)(1)(i)(B) now require that net working capital and tangible net worth be at least six times the sum of the current closure, post-closure, and plugging and abandonment cost estimates,[4] for the firm to pass the financial test. Sections 264.143(f)(1)(i)(D) and 264.145(f)(1)(i)(D) require that assets in the United States amount to at least 90% of total assets or at least six times the sum of the current closure, post-closure care, and plugging and abandonment cost estimates. With the addition of regulations for financial assurance for corrective action, these sections should include the cost estimate for corrective actions as well. A parallel change must be made also to §§ 264.143(f)(1)(ii)(B), 264.143(f)(1)(ii)(D), 264.145(f)(1)(ii)(B) and 264.145(f)(1)(ii)(D).

The proposed amendment also clarifies that only those closure, post-closure care, plugging and abandonment, and corrective action cost estimates for which the financial test is used need to be covered by these sections. We believe that the existing regulations are ambiguous and could be read to include all cost estimates, whether or not the finanical test is used. Therefore, we added the words "covered by the test" after the list of required cost estimates.

4. Cost estimate for corrective action (§ 264.146)

The proposed rule redesignates existing §264.146 as §264.149, and inserts in its place procedures for preparing, submitting, adjusting, and revising a cost estimate for corrective action.

There are two components of the contents for the cost estimate for corrective action: (1) a year-by-year current cost estimate or required corrective action in undiscounted current dollars; and (2) the sum of these year-by-year estimates of corrective action costs. This total is equivalent to the "current cost estimate for corrective action", as defined in proposed § 264.141(h). Similiar to the cost estimates for closure and post-closure care, the total correction action cost is necessary to determine the level of assurance that must be provided by an owner or operator.

Proposed §264.146 stipulates that third-party costs, as opposed to first-party costs, must be used to estimate yearly and total corrective action costs. Estimates based on first-party costs are those based on the cost to the owner or operator of supplying his own labor and equipment. Estimates based on third-party costs are those based on hiring contractor labor and renting equipment. The agency has specified using third-party costs for the development of the cost estimates for closure and post-closure case (see 40 CFR 264.142 and 264.144). EPA has discussed in the preamble to the May 2, 1986 final rule that the use of third-party, rather than first-party, costs is more consistent with the overall objective of financial assurance requirements to assure the cost of closure, post-closure care, and now, corrective action will be covered in the event that an owner or operator is not able to fulfill his obligations. (See 51 FR 16422, 16436.) In such an event, corrective action would have to be undertaken by a third-party. In addition, most corrective actions will probably be conducted by professionals (contractors) in this new technical area even if the owner or operator is able to conduct the activities himself.

Under the proposed rule, the date by which the cost estimate for corrective action must be prepared may be different for releases to ground water from regulated units than it would be for all other releases. Owners and operators of regulated units with releases to ground water identified at the time of permitting are required to submit the cost estimate for corrective action in the permit application. An owner or operator with any other type of release (from a regulated unit to any medium other than ground water, from regulated unit to ground water when the release was not identified until after permitting, or from any other SWMU other than a release to ground water from a regulated unit identified at the time of permitting) must submit a cost estimate for corrective action once the corrective action measures are specified in the permit. EPA's rationale for allowing the submission of the cost estimate for corrective action after the permit has been issued, in some cases, is that the owner or operator may not be able to gather the information needed to identify the appropriate corrective action as part of the permitting process or that the need for corrective action may not have been identified until after the permit has been issued. In such a situation, EPA or the authorized State would issue a permit that contained a schedule of compliance specifying the time frame and procedures by which the owner or operator must obtain the information necessary to determine the extent of corrective action needed. Section 3004(u) of RCRA specifically authorizes the use of schedules of compliance

EPA's proposed procedures for adjusting the cost estimate for corrective action and the required correction action trust fund balance are the same as the new Subpart H requirements promulgated on May 2, 1986 for adjusting the cost estimates for closure and post-closure care.

5. Financial Assurance for Corrective Action (§ 264.147)

The proposed § 264.147 establishes the available mechanisms for demonstrating financial assurance for the costs of completing corrective action at facilities seeking a permit, and the

[4] The plugging and abandonment cost estimate refers to underground injection wells. This was added to the regulation on May 2, 1986 (See 51 FR 16422, 16439).

timing and procedure for establishing proof of financial assurance for corrective action. Existing § 264.147 on liabiltiy insurance is redesignated intact as § 264.148.

The owner or operator must submit an originally signed duplicate to the Regional Administrator of the instrument or instruments offered for financial assurance for corrective action once the cost estimate has been completed.

Owners or operators who are responsible for performing corrective action are required to demonstrate financial assurance through one or more to the following available mechanisms: Trust fund, surety bond guaranteeing performance, letter of credit, financial test, and corporate guarantee. Section 264. 147 also would establish the conditions under which the use of multiple financial mechanisms is permitted, the rules for the use of one mechanism for multiple facilities, and the conditions under which an owner or operator is released from the requirements of this section. Finally, § 264.147 also establishes the requirement for a corrective action standby trust fund.

The Agency is proposing to establish the same framework for financial assurance for corrective action as is established for closure and post-closure care, with the following changes: Modifications to the trust fund mechanism; elimination of the surety bond guaranteeing payment into a trust fund as an allowable mechanism; and elimination of insurance as an allowable mechanism. The preamble to the April 7, 1982, regulations establishes the rational for this framework and describes the use of each individual mechanism (see 47 FR 15032). The remainder of this section describes each mechanism and explains the proposed departures from the existing Subpart H requirements.

(a) *Trust Fund.* Section 264.147(a) establishes the requirements for using a trust fund to provide financial assurance for corrective action. The proposed corrective action trust fund differs from the closure/post-closure care trust fund in the required balance, pay-in period, and payment calculations.

The rationale for these differences, as explained in detail in Section II.C of this preamble, is that use of the closure and post-closure-pay-in formula could force a significant number of firms into bankruptcy. The Agency proposes to ameliorate the potential bankruptcy problems through these modifications of the trust fund pay-in formula.

Proposed paragraph (a)(3)(i) of § 264.147 would establish the length of the pay-in period to be used to make payments into the corrective action trust fund. EPA is proposing that the length of the pay-in period be the shorter of one-half the corrective action period or 20 years.

The 20 year pay-in period is proposed as the corrective action trust fund pay-in period for corrective actions of long duration (40 years or more). Whenever the corrective action period is less than 40 years, the trust fund pay-in period is proposed to be one-half of the corrective action period, to guarantee that the trust fund will secure complete funding of remaining corrective action costs during a significant proportion (i.e., one-half) of the corrective action period. The Agency believes that a corrective action trust fund pay-in period longer than one-half the corrective action period would provide insufficient financial assurance of future costs.

Section 264.147(a)(3)(i) also requires that, at the end of the pay-in period, the corrective action trust fund balance must equal the remaining corrective action costs.

Section 264.147(a)(3)(ii) uses the required corrective action trust fund balance to establish the required payments into the corrective action trust fund. EPA believes that requiring trust fund payments to be based on the full amount of the current cost estimate for corrective action, when that estimate is different from the required corrective action trust fund balance, would cause several difficulties. First, given the concurrent nature of corrective action costs and trust fund build-up, the current cost estimate will decline during the pay-in period; this could lead to a fully funded trust fund prior to the end of the pay-in period. Second, the Agency's economic analysis shows that the use of the current corrective action cost estimate in the trust fund payment formula would increase the number of bankruptcies and the amount of corrective action that remains unfunded after firm bankruptcy. Therefore, the Agency is proposing to use the required corrective action trust fund balance in the payment formula.

The Agency analyzed various trust fund pay-in periods, in addition to extensions specifically for financially weak firms. The analysis showed that the twenty-year pay-in period for all firms has the best effect on ameliorating potential hardship on firms. It also has an advantage over an extension on a case-by-case basis for financially weak firms because it treats all firms equally. (See discussion of other pay-in periods in the Background Document on this regulation.)

Section 264.147(a)(4) permits the owner or operator to accelerate payments into the corrective action trust fund, as allowed in the closure and post-closure care trust fund regulations (see §§ 264.143(a)(4) and 264.145(a)(4)).

Section 264.147(a)(5) requires that, in the event an owner or operator establishes a corrective action trust fund after first having used other mechanisms, the first payment must equal the total of all payments that would have been made had the trust fund been used initially. In other words, he will have to make retroactive payments to the trust fund.

Section 264.147(a)(6) concerns changes in the required corrective action trust fund balance after the end of the pay-in period. Such changes could be triggered by an increase of the corrective action cost estimate, and would require additional trust fund payments by the owner or operator. It should be noted that the detection of a release from a second unit would not cause the cost estimate to increase: a separate cost estimate and required trust fund balance, if applicable, would be developed for the second unit.

Section 264.147(a)(7) allows the release of funds before the pay-in period ends, or thereafter, if the value of the trust fund is greater than the total amount of the current required corrective action trust fund balance. Funds can only be released if the Regional Administrator determines that the remaining costs of corrective action will not be greater than the current required trust fund balance.

Sections 264.147(a)(8) through 264.147(a)(11), which address substitution of alternative financial assurance, release of funds, reimbursement of expenditures, and termination of the trust, are analagous to the requirements for closure and post-closure care trust funds, as established in §§ 264.143 and 264.145.

(b) *Surety Bond Guaranteeing Performance.* Section 264.147(b) would establish requirements for demonstrating financial assurance for corrective action using a surety bond guaranteeing performance of the corrective action. The requirements follow those established in §§ 264.143(c) and 264.145(c) for a surety bond guaranteeing performance of closure and post-closure care.

We have eliminated the surety bond guaranteeing payment into a trust fund as a separate instrument for financial assurance for corrective action, as described in Section II.D.2. of this preamble.

(c) *Letter of Credit.* Section 264.147(c) would establish the letter of credit as an allowable mechanism for demonstrating

financial assurance for corrective action. These requirements are exactly the same as those in §§ 264.143(d) and 264.145(d) for closure and post-closure care.

(d) *Financial Test and Corporate Guarantee.* Section 264.147(d) would establish the requirement for demonstrating financial assurance for corrective action through the use of the financial test and corporate guarantee. These requirements are analogous to those required for the closure and post-closure care financial test and corporate guarantee.

(e) *Use of Multiple Financial Mechanisms.* Section 264.147(e) would allow the use of multiple mechanisms for meeting the requirements of financial assurance for corrective action. As in the case of financial assurance for closure and post-closure care, the financial test or corporate guarantee cannot be combined with other mechanisms to provide assurance at any single facility. EPA believes that if an owner or operator cannot pass the financial test for the full amount of the sum of the applicable current cost estimates for corrective action, closure, and/or post-closure care, then its financial condition is not strong enough to provide financial assurance without a secured instrument, and other mechanisms should be offered in its place. Likewise, the Agency believes that if a corporate parent cannot pass the financial test for the full amount of the sum of current cost estimates for corrective action, closure, and post-closure care, then its financial position is insufficient to demonstrate financial assurance through the use of a corporate guarantee, and other mechanisms should be offered in its place. If financial assurance is demonstrated using multiple financial mechanisms other than the financial test or corporate guarantee, the combined sum of the assurance provided by each mechanism must equal the current corrective action cost estimate. Note that the trust fund may be used as one of the multiple mechanisms, in which case the required trust fund balance is not the remaining corrective action costs at the end of the pay-in period, but the difference between the current corrective action cost estimate and the amount assured by other mechanisms.

(f) *Use of One Mechanism for Multiple Facilities.* Proposed § 264.147(f) would allow the use of a single financial mechanism for multiple facilities in one or more EPA regions. If a trust fund is used to assure the costs of corrective action, a separate cost estimate and trust fund balance will be required for each separate release. One trust fund instrument may be used, as long as funds are clearly identified for each release. The Agency solicits comments on the logistics of using one trust fund for separate releases or whether it is preferable for a firm to have a separate trust fund for each release.

(g) *Release from the Requirements of this Section.* Proposed § 264.147(g) establishes the procedures for releasing the owner or operator from the requirement of providing financial assurance for corrective action. These procedures are exactly the same as those established in §§ 264.143(i) and 264.145(i) for closure and post-closure care. Permit expiration does *not* release the owner or operator from financial assurance requirements.

6. Liability Requirements (§ 264.148)

Section 264.147 on liability requirements remains intact but is proposed to be redesignated as § 264.148.

7. Use of a Mechanism for Multiple Financial Responsibilities (§ 264.149)

Section 264.149 on the use of State-required mechanisms is redesignated as § 264.152. Proposed § 264.149 provides for the use of a single mechanism to meet the requirements for financial responsibility for closure, post-closure care, liability coverage, and/or corrective action that meet the specifications in §§ 264.143, 264.145, 264.147 and/or 264.148, as applicable. This section would replace former § 264.146 and amend that section by adding liability coverage and corrective action to the list of financial responsibility requirements that may be covered by a single mechanism. The addition of liability coverage is merely to correct an oversight in the existing regulations which allow liability coverage to be combined with other assurances in a single mechanism, but omitted liability coverage from this section. For liability coverage, however, the only currently allowable mechanisms are insurance, the financial test, and the corporate guarantee. For corrective action, insurance and surety bonds guaranteeing payment may not be used.

EPA believes that satisfying multiple requirements for financial responsibility for closure, post-closure care, liability coverage, and corrective action through a single mechanism could decrease the costs of administering the financial responsibility requirements without decreasing the level of financial assurance provided, as long as the funds provided through a single mechanism equal the sum that would be available through separate mechanisms for each requirement.

8. Incapacity of Owners or Operators, Guarantors, or Financial Institutions (§ 264.150)

The Agency is proposing to redesignate § 264.148 as § 264.150, and to amend the section to add a reference in paragraph (a) to the guarantor of a corporate guarantee used to assure corrective action costs (§ 264.147(d)), who must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11, if he is named as debtor.

EPA is also proposing to add a reference to the new § 264.147 in paragraph (b) and change the reference to the redesignated § 264.147 to § 264.148. Owners or operators who meet the financial assurance requirements for corrective action by obtaining a trust fund, surety bond, or letter of credit, must establish other financial assurance in the event of bankruptcy of the trustee or issuing financial institution.

9. Wording of the Instruments (§ 264.151)

The Agency is proposing in § 264.151 to amend the financial instruments currently authorized for demonstrating financial assurance for closure and post-closure care coverage, to allow their use for financial assurance for corrective action. To avoid unnecessary confusion caused by having to amend the regulatory citations in all instruments currently existing for closure and post-closure care, the Agency has revised the order of the sections in 40 CFR Subpart H to retain § 264.151 as the section providing the wording of the financial assurance instruments.

In § 264.151, the Agency is proposing to amend the regulatory language introducing the instruments in each paragraph of the section to allow use of the instrument to provide financial assurance for corrective action (except for insurance and surety bonds guaranteeing payment into a trust fund, which are not allowed as mechanisms to assure the costs of corrective action).

In addition to minor wording changes to adapt the instruments for corrective action, the Agency is proposing amendments to the text of the trust fund form to include special concepts and modes of operation of the trust fund that are designed to accommodate its use as a mechanism for providing financial assurance for corrective action. In section 2 of the trust agreement, the Agency is proposing to amend the text to refer to the cost estimate for

corrective action and current required corrective action trust fund balance.

The Agency is proposing several changes to the wording of the surety bond guaranteeing performance. Language is being added to § 264.151(c) to ensure that the obligation established by the performance bond changes with amendments to the approved corrective measures.

10. Use of State-Required Mechanisms (§ 264.152)

The Agency is proposing to redesignate the current § 264.149 as § 264.152. In addition, the section would be amended to allow the owner or operator of a facility to meet the financial assurance requirements for corrective action through the use of State mechanisms in the same manner that is currently authorized for closure, post-closure care, and liability requirements.

11. State Assumption of Responsibility (§ 264.153)

The Agency is proposing to redesignate the current § 264.150 as § 264.153 and amend it by adding references to corrective action, thereby allowing a State to assume legal responsibility for an owner's or operator's compliance with the corrective action requirements or to assure that funds will be available from State sources to meet those requirements. In addition, the Agency is proposing to amend § 264.153 to provide that if the State either assumes legal responsibility for an owner's or operator's compliance with the corrective action requirements or assures that funds will be available for corrective action, the owner or operator will be in compliance with the requirements of proposed § 264.147.

C. EPA Administered Permit Programs: The Hazardous Waste Permit Program (Part 270)

1. Contents of Part B: General Requirements (§ 270.14)

The Agency is proposing to add a new paragraph (d)(4) to § 270.14. Recently, in the proposed codification rule, the Agency proposed to amend §270.14(c) and add a new § 270.14(d). (51 FR 10713, March 28, 1986.) That proposal would require owners and operators of SWMUs at facilities seeking a RCRA permit to provide two types of information: (1) Descriptive information on the unit itself (e.g., location, dimensions, type of unit, etc.); and (2) all available information pertaining to any release from the unit. It also would require that the owner or operator conduct sampling and analysis where the State Director ascertains it is necessary to complete preliminary site investigation. Today's proposal states that if corrective action measures are specified prior to permit issuance, then the owner and operator must submit an estimate of the corrective action costs, and a demonstration of financial assurance for completion of the corrective action.

2. Major Modification Or Revocation and Reissuance of Permits (§ 270.41)

Section 270.41 currently establishes a detailed list of changes that require a modification to a permit. The Agency is proposing to amend § 270.41(a)(2) to add a specific reference to the completion of a program of information gathering concerning a release from a SWMU at a facility seeking a permit. Under certain circumstances, sufficient information may not be available at the time of permitting to allow the permit to include a complete program of corrective action under § 264.101 or a cost estimate or demonstration of financial responsibility. Alternatively, a release may be discovered after a permit is issued. In those cases the permit should be modified upon completion of information gathering, to include the specific corrective action measures, the cost estimate and a demonstration of financial assurance. The proposed amendment specifies that when the Regional Administrator or the State Director receives the information developed in the information-gathering program, he may then modify the permit to specify corrective action measures.

The Agency is also proposing to revise the regulatory references in § 270.41(a)(5)(iii) to § 264.147 to reflect the proposed renumbering of the liability requirements in § 264.148.

IV. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization). Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

Today's rule, when finalized, will be promulgated pursuant to section 3004(u) of RCRA, a provision added by HSWA. Therefore, it would be added to Table 1 in § 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in Table 1, as discussed in the following section of this preamble.

B. Effect on State Authorization

As noted above, EPA will implement today's rule, when finalized, in authorized States until they modify their programs to adopt this rule and the modification is approved by EPA. Because the rule will be promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications under section 3006(b) are described in 40 CFR 271.21. The same procedures should be followed for section 3006(g)(2).

Applying § 271.21(e)(2), States that have final authorization must modify their programs within a year of promulgation of EPA's regulations if only regulatory changes are necessary (two years, if a statutory change is necessary). These deadlines can be

extended in exceptional cases (40 CFR 271.21(e)(3)).

In the event that the "cluster" rule becomes final as proposed (50 FR 489–504, January 6, 1986), the States will have a longer time to be authorized to implement the financial assurance for corrective action requirements. EPA has proposed a one-time multi-year cluster to encompass the HSWA regulatory provisions that take effect 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 *regulatory* changes are needed, on July 1, 1989, for any specific HSWA provisions that necessitated State *statutory* changes.

States with authorized RCRA programs may already have requirements similar to those in today's rule. These State regulations have not been assessed against Federal regulations being proposed today to determine whether they meet the test for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modification is approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA may be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after promulgation of EPA's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must modify its program to include standards substantially equivalent or equivalent to EPA's within the time periods discussed above.

It should be noted that authorized States are only required to modify their programs when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. This is a result of section 3009 of RCRA, which allows States to impose standards in addition to those in the Federal program. Section 3004(u) of RCRA broadens the scope of the RCRA program. Since these regulations propose to implement section 3004(u), the standards proposed today would broaden the scope of the Federal program. Therefore, authorized States will be required to modify their programs to adopt requirements equivalent to these proposed regulations, if they are promulgated in final form.

V. Executive Order 12291

Executive Order 12291 requires each Federal agency to determine if a regulation is a "major" rule as defined by the Order, and to prepare and consider a Regulatory Impact Analysis (RIA) in connection with every major rule. The Order defines a "major rule" as any regulation that is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions; or
- Significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises or domestic or export markets.

Today's proposed regulations have been submitted to the Office of Management and Budget for review as required by Executive Order 12291.

These proposed regulations are not major. In fact, they may actually reduce the cost of financial responsibility by providing an option that will be less expensive than using the existing closure and post-closure financial assurance requirements in the corrective action context. Even if compared with a baseline that does not include a financial assurance requirement, these regulations would not meet the criteria set out above for defining a major rule. Relative to such a "no financial assurance" baseline, the costs associated with these regulations are estimated to be $10 to $20 million annually, much less than the required $100 million per year. In addition, we do not expect significant cost or price increases, nor any other significant adverse effect.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) requires each Federal Agency to prepare a Regulatory Flexibililty Analysis (RFA) when it promulgates a proposed or final rule. The purpose of the RFA is to describe the effects the regulations will have on small entities (small businesses, small government jurisdictions, and small organizations) and examine alternatives that may reduce these effects.

The effects of these regulations on small entities were examined in our model results. Most of the trust fund options we analyzed had a beneficial impact on small firms, as compared to the status quo (i.e., use of the existing regulations on financial assurance for closure and post-closure care, for corrective action). The Agency certifies that compared to the status quo, today's proposal will have a beneficial effect on small firms. This effect will be addressed further when this proposal is promulgated in final form.

VII. Supporting Documents

Supporting documents available for this proposed rule include summary of the model results, dated August 15, 1986. In addition, there are other **Federal Register** notices on financial assurance, and background documents which were prepared for other financial assurance regulations available: The May 2, 1986 final regulations on closure, post-closure care and financial responsibility, 51 FR 16433; the March 19, 1985 proposed regulations, 50 FR 11068; the July 26, 1982 interim final land disposal regulations, 47 FR 32274; the April 7, 1982 final rules on financial assurance for closure and post-closure care, 47 FR 15032; the January 12, 1981 interim final rules, 46 FR 2802; and the May 19, 1980 proposed regulations, 45 FR 33260. Supporting materials discussing the most significant issues raised by the amendments proposed today have also been prepared.

All of these supporting materials are available for review in the EPA public docket, Room S–212–E, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

VIII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Corrective action, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 270

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.

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.

Lee M. Thomas,

Administrator.

October 7, 1986.

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

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for Part 264 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004 and 3005 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), 6924, and 6925).

2. It is proposed that Subpart H of the table of contents for Part 264 is revised to read as follows:

* * * * *

Subpart H—Financial Requirements

* * * * *

3. It is proposed that 40 CFR 264.101 is amended by adding paragraph (d) to read as follows:

§ 264.101 Corrective action for solid waste management units.

* * * * *

(d) When corrective action measures are specified in the permit, the schedule of compliance will include a written statement that shows the full duration of the corrective action, and, for each year of the corrective action, a detailed description of the activities that will be performed during that year. A cost estimate of the corrective action costs required under paragraphs (b) and (c) must be submitted. The cost estimate must be in accordance with the requirements of § 264.146. Financial assurance must be demonstrated in accordance with the requirements of § 264.147.

4. It is proposed that 40 CFR 264.140 be amended by revising paragraph (a), redesignating existing paragraph (c) as paragraph (d) and revising it, and adding a new paragraph (c) to read as follows:

§ 264.140 Applicability.

(a) The requirements of §§ 264.142, 264.143, and 264.148 through 264.153 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this section or in § 264.1

* * * * *

(c) The requirements of §§ 264.146 and 264.147 apply only to owners and operators required to perform corrective action pursuant to §§ 264.100 and/or 264.101, as applicable.

(d) States and the Federal government are exempt from the requirements of this subpart.

5. It is proposed that § 264.141 be amended by adding paragraph (h) as follows:

§ 264.141 Definitions of terms as used in this subpart.

* * * * *

(h) The following terms are used in the regulations for financial assurance for corrective action. These definitions are intended to assist in the understanding of these regulations and are not intended to limit the meanings of terms in a way that conflicts with generally accepted accounting practices.

"Current cost estimate for corrective action" means the most recent of the estimates prepared in accordance with § 264.146.

"Required corrective action trust fund balance" means the sum of all costs of performing corrective action, as itemized in the cost estimate for corrective action, for each year that corrective action must be performed *after* the end of the trust fund pay-in period.

6. It is proposed that § 264.143 be amended by revising paragraphs (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), and (f)(1)(ii)(D) as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure and/or post-closure care, and/or corrective action and/or plugging and abandonment cost estimates covered by the test; and

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure, and/or post-closure care and/or corrective action, and/or plugging and abandonment cost estimates covered by the test.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure, and/or post-closure care and/or corrective action, and/or plugging and abandonment cost estimates covered by the test.

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure, and/or post-closure care and/or corrective action, and/or plugging and abandonment cost estimates covered by the test.

* * * * *

7. It is proposed that § 264.145 be amended by revising paragraphs (f)(1)(i)(B), (f)(1)(i)(D), (f)(1)(ii)(B), and (f)(1)(ii)(D) as follows:

§ 264.145 Financial assurance for post-closure.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(B) Net working capital and tangible net worth each at least six times the sum of the current closure, and/or post-closure care, and/or corrective action and/or plugging and abandonment cost estimates covered by the test; and

* * * * *

(D) Assets in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current closure, and/or post-closure care and/or corrective action, and/or plugging and abandonment cost estimates covered by the test.

(ii) * * *

(B) Tangible net worth at least six times the sum of the current closure, and/or post-closure care and/or corrective action, and/or plugging and

abandonment cost estimates covered by the test.

* * * * *

(D) Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the current closure and/or post-closure care and/or corrective action and/or plugging and abandonment cost estimates, covered by the test.

* * * * *

§§ 264.149 and 264.146 [Redesignated]

8. It is proposed that existing 40 CFR 264.149 be redesignated as § 264.152; existing § 264.146 be redesignated as § 264.149, and that a new § 264.146 be added to read as follows:

§ 264.146 Cost estimate for corrective action.

(a) *Contents of estimate.* The owner or operator of a facility required to undertake corrective action must have a detailed written estimate in current dollars of the cost of performing corrective action at the facility in accordance with the requirements of §§ 264.100 and/or 264.101, as applicable. The cost estimate for corrective action must equal the cost of completing the corrective action, and must be based on the corrective action measures specified in the permit. The cost estimate for corrective action is equal to the sum of the yearly corrective action costs. The owner or operator must provide both the estimated corrective action cost for each year of the corrective action period and the sum of the estimated yearly corrective action costs. The cost estimate for corrective action must be based on the costs to the owner or operator of hiring a third party to perform corrective action at the facility in accordance with the specified corrective action measures. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see definition of "parent corporation" in § 264.141[d]).

(1) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of hazardous wastes, facility structures or equipment, land or other facility assets at the time of partial or final closures.

(2) The owner or operator may not incorporate a zero cost for hazardous waste that might have economic value.

(b) *Preparation and submission.* The owner or operator of a facility at which corrective action is required to be performed under § 264.100 for a release identified at the time a permit application is submitted, must submit a cost estimate for corrective action to the Regional Administrator in the permit application. The owner or operator of a facility at which corrective action is required to be performed under § 264.100 for a release not identified at the time of permitting must submit a cost estimate for corrective action at the time the corrective action measures are specified in the permit. The owner or operator of a facility at which a corrective action is required to be performed under § 264.101 must submit a cost estimate for corrective action to the Regional Administrator in the permit application, or if the relevant information is unavailable at the time of permit issuance or if the release is detected after the permit has been issued, at the time the corrective action measures are specified in the permit.

(c) *Adjustment for inflation.* The owner or operator must adjust the cost estimate for corrective action, including the estimates of the yearly corrective action cost for each year of the corrective action, and the required corrective action trust fund balance, if applicable, for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with § 264.147. For owners and operators using the financial test or corporate guarantee, the cost estimate for corrective action must be updated for inflation within 30 days after the close of the firm's fiscal year and before submission of updated information to the Regional Administrator, as specified in § 264.147(d)(3). The adjustment for inflation may be made by recalculating the maximum costs of corrective action in current dollars or by using an inflation factor derived from the most recent annual Implicit Price Deflator for Gross National Product published by the U.S. Department of Commerce in its *Survey of Current Business*, as specified in paragraphs (c)(1) and (c)(2) of this section. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) *First adjustment using inflation factor.* The first adjustment is made by multiplying the current cost estimate for corrective action by the inflation factor. The result is the adjusted cost estimate for corrective action.

(2) *Subsequent adjustments using inflation factor.* Subsequent adjustments are made by multiplying the current cost estimate for corrective action by the latest inflation factor.

(d) *Adjustments for other changes.* The owner or operator must revise the cost estimate for corrective action and the required corrective action trust fund balance, if applicable, no later than 30 days after the Regional Administrator has approved a request to modify the specified corrective action measures if the change in the measures increases the cost or expected duration of corrective action. This revision must reflect any changes in the total number of years required to perform the corrective action and any changes in the estimated costs for each year of the corrective action. The revised corrective action cost estimate must be adjusted for inflation as specified in § 264.146(c).

9. It is proposed that existing 40 CFR 264.150 be redesignated as § 264.153, and that existing § 264.148 be redesignated as § 264.150 and be revised to read as follows:

§ 264.150 Incapacity of owners or operators, guarantors, or financial institutions.

(a) An owner or operator must notify the Regional Administrator by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the owner or operator as debtor, within 10 days after commencement of the proceeding. A guarantor of a corporate guarantee as specified in §§ 264.143(f), 264.145(f), or 264.147(d) must make such a notification if he is named as debtor, as required under the terms of the corporate guarantee (§ 264.151(h)).

(b) An owner or operator who fulfills the requirements of §§ 264.143, 264.145, 264.147, or 264.148 by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee or of the institution issuing the surety bond, letter of credit, or insurance policy to issue such instruments. The owner or operator must establish other financial assurance within 60 days after such an event.

10. It is proposed that newly redesignated § 264.149 be revised to read as follows:

§ 264.149 Use of a mechanism for multiple financial responsibilities.

An owner or operator may satisfy the requirements for financial assurance for closure, post-closure care, liability coverage, and corrective action singly or for any combination of those activities, for one or more facilities by using a trust fund, surety bond, letter of credit, insurance, financial test, or corporate guarantee that meets the specifications for the mechanisms in §§ 264.143, 264.145, 264.147 and/or 264.148, as applicable. The amount of funds

available through the mechansim must be no less than the sum of funds that would be available if a separate mechansim had been established and maintained for financial assurance of closure, post-closure care, liability coverage, and corrective action, as applicable. Insurance and surety bonds guaranteeing payment may not be used to provide financial assurance for corrective action. Only the financial test, corporate guarantee, and insurance may be used for liability coverage.

§ 264.148 [Redesignated from § 264.147]

11. It is proposed that existing 40 CFR 264.147 be redesignated as § 264.148 and that a new § 264.147 be added to read as follows:

§ 264.147 Financial assurance for corrective action.

An owner or operator of a facility at which corrective action is required to be performed pursuant to §§ 264.100 and/or 264.101, as applicable, must establish financial assurance for the completion of the corrective action. The owner or operator must choose from the financial mechanisms specified in paragraphs (a) through (d) of this section. The owner or operator must submit to the Regional Administrator an originally signed duplicate of the applicable instrument at the time he submits the cost estimate for corrective action to the Regional Administrator.

(a) *Corrective action trust fund.* (1) An owner or operator may satisfy the requirements of this section by establishing a corrective action trust fund which conforms to the requirements of this paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency.

(2) *Wording of trust agreement.* The wording of the trust agreement must be identical to the wording specified in § 264.151(a)(1), and the trust agreement must be accompanied by a formal certification of acknowledgement (for example, see § 264.151(a)(2)). Schedule A of the trust agreement must be updated within 60 days after a change in the amount of the current required corrective action trust fund balance covered by the agreement, as required by § 264.146(d).

(3) *Payments into the trust fund.*—(i) *Pay-in period.* The pay-in period is the time period during which the owner or operator must make payments into the corrective action trust fund. At the end of the pay-in period, the trust fund balance must equal the required corrective action trust fund balance, as defined in § 264.141(h). The length of the pay-in period shall be the shorter of the following: (A) 20 years from the time when the corrective action measures are specified in the permit; or (B) one-half of the estimated duration of the corrective action period, as indicated by the specified corrective action measures. If a revision to the corrective action measures includes a change in the estimated duration of the corrective action, the pay-in period shall be adjusted accordingly.

(ii) *Calculation of payments.* The initial payment is due 30 days after the date when the originally signed duplicate of the trust agreement is submitted to the Regional Administrator. Except as provided in § 264.147(d), the first payment must be in a sum at least equal to the required corrective action trust fund balance divided by the number of years in the pay-in period, as provided in § 264.147(a)(3)(i). Subsequent payments must be made no later than 30 days after each anniversary date of the first payment. The amount of each subsequent payment must be determined by this formula:

$$\text{Next payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required corrective action trust fund balance; CV is the current value of the trust fund; and Y is the most recent estimate of the number of years remaining in the pay-in period as determined in accordance with paragraph (a)(3)(i) of this section.

(4) *Acceleration of payments.* The owner or operator may accelerate payments into the trust fund or may deposit the full amount of the current required corrective action trust fund balance at the time the fund is established. In any event, the owner or operator must maintain the value of the fund at no less than the value the fund would have had if annual payments were made as specified in paragraph (a)(3) of this section.

(5) *Alternate mechanisms.* If the owner or operator establishes a corrective action trust fund after having used one or more alternate mechanisms specified in this section, the first payment must be in at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph.

(6) *Change in required corrective action trust fund balance after pay-in period ends.* Whenever the required corrective action trust fund balance changes after the pay-in period is completed, the owner or operator must compare the new required balance with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the new required balance, the owner or operator, within 60 days after the change in the required balance, must either deposit an amount into the fund so that its value after this deposit at least equals the amount of the required balance, or obtain other financial assurance as specified in this section to cover the difference.

(7) *Trust fund greater than required trust fund balance.* If at any time during the pay-in period, or thereafter, the value of the trust fund is greater than the total amount of the current required corrective action trust fund balance, the owner or operator may submit a written request to the Regional Administrator for release of the amount in excess of the current required corrective action trust fund balance. The Regional Administrator may release all or part of the amount in excess of the current required correct action trust fund balance if he determines that the remaining cost of corrective action will not be greater than the current required corrective action trust fund balance. If the Regional Administrator does not release funds in excess of the current required corrective action trust fund balance, he will provide the owner or operator with a detailed written statement of reasons.

(8) *Substitution of other financial assurance.* If an owner or operator substitutes other financial assurance as specified in this section for the trust fund, he may submit a written request to the Regional Administrator for release of the amount in excess of the current required corrective action trust fund balance covered by the trust fund.

(9) *Release of funds.* Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (a) (7) or (8) of this section, the Regional Administrator will instruct the trustee to release to the owner or operator such funds as the Regional Administrator specifies in writing.

(10) *Reimbursement.* After the end of the pay-in period, an owner or operator or any other person authorized to perform corrective action may request reimbursement for corrective action expenditures by submitting itemized bills to the Regional Administrator. Within 60 days after receiving bills for corrective action activities, the Regional Administrator will determine whether the corrective action expenditures are in accordance with the specified corrective

action measures or otherwise justified, and if so, he will instruct the trustee to make reimbursement in such amounts as the Regional Administrator specifies in writing. In the event an owner or operator does not complete the required corrective action and a third party undertakes corrective action, the third party may request and obtain reimbursement for corrective action expenditures in the same manner as an owner or operator, except that such a third party may request and obtain reimbursement for corrective action expenditures before the end of the pay-in period. If the Regional Administrator has reason to believe that the remaining cost of corrective action will be significantly greater than the value of the trust fund, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with § 264.147(g), that the owner or operator is no longer required to maintain financial assurance for corrective action. If the Regional Administrator does not instruct the trustee to make such reimbursements, he will provide the owner or operator with a detailed written statement of reasons.

(11) *Termination of trust fund.* The Regional Administrator will agree to termination of the trust when: (i) An owner or operator substitutes alternate financial assurance as specified in this section; (ii) the Regional Administrator releases the owner or operator from the requirement of this section in accordance with § 264.147(g); or (iii) at the end of the corrective action period, if the owner or operator does not complete the required corrective action during the corrective action period and funds remain in the trust fund after completion of corrective action by a third party.

(b) *Surety bond guaranteeing performance of corrective action.* (1) An owner or operator may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this paragraph and submitting the bond to the Regional Administrator. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recently published Circular 570 of the U.S. Department of the Treasury.

(2) The wording of the surety bond must be identical to the wording specified in § 264.151(c).

(3) The owner or operator who sues a surety bond to satisfy the requirements of this section must also establish a standby trust fund. Under the terms of the bond, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust must meet the requirements specified in § 264.147(a), except that:

(i) An originally signed duplicate of the standby trust agreement must be submitted to the Regional Adminsitrator with the surety bond; and

(ii) Until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in § 264.147(a);

(B) Updating of Schedule A of the trust agreement (see § 264.151(a)) to show current cost estimate for corrective action or the current required corrective action trust fund balance;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The bond must guarantee that the owner or operator will:

(i) Perform corrective action in accordance with the corrective action measures specified in the permit, as amended, and other applicable requirements of the permit for the facility whenever required to do so; or

(ii) Provide alternate financial assurance as specified in this section, and obtain the Regional Administrator's written approval of the assurance provided, within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the bond from the surety.

(5) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform corrective action in accordance with the specified corrective action measures and other applicable permit requirements, as amended, when required to do so, under the terms of the bond the surety will perform corrective action as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund.

(6) The penal sum of the bond must be in an amount at least equal to the current cost estimate for corrective action.

(7) Whenever the current cost estimate for corrective action increases to an amount greater than the penal sum, the owner or operator, within 60 days after the increase, must either cause the penal sum to be increased to an amount at least equal to the current cost estimate for corrective action and submit written evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section.

(8) During the time in which corrective action must be performed, the Regional Administrator may approve a decrease in the penal sum of the owner or operator demonstrates to the Regional Administrator that the amount exceeds the cost of remaining corrective action measures.

(9) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator, as evidenced by the return receipts.

(10) The owner or operator may cancel the bond if the Regional Administrator has given prior written consent. The Regional Administrator will provide such written consent when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 264.147(g).

(11) Under the terms of the bond, the surety agrees to be bound notwithstanding amendments to the specified corrective action measures or schedule of compliance in the permit or to other plans, permits, applicable laws, statutes, rules and regulations and agrees that no such amendment will alleviate the surety's obligation on the bond.

(12) The surety will not be liable for deficiencies in the performance of corrective action by the owner or operator after the Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 264.147(g).

(c) *Corrective action letter of credit.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) The wording of the letter of credit must be identical to the wording specified in § 264.151(d).

(3) An owner or operator who uses a letter of credit to satisfy the requirements of this section must also establish a standby trust fund. Under the

terms of the letter of credit, all amounts paid pursuant to a draft by the Regional Administrator will be deposited by the issuing institution directly into the standby trust fund in accordance with instructions from the Regional Administrator. This standby trust fund must meet the requirements of the trust fund specified in § 264.147(q), except that:

(i) An originally signed duplicate of the trust agreement must be submitted to the Regional Administrator with the letter of credit; and

(ii) Unless the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(A) Payments into the trust fund as specified in § 264.147(a);

(B) Updating of Schedule A of the trust agreement (see § 264.151(a)) to show the current cost estimate for corrective action or the current required corrective action trust fund balance;

(C) Annual valuations as required by the trust agreement; and

(D) Notices of nonpayment as required by the trust agreement.

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the EPA Identification Number, name, and address of the facility, and the amount of funds assured by the letter of credit for corrective action at the facility.

(5) The letter of credit must be irrevocable and issued for a period of at least 1 year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least 1 year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the Regional Administrator by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the Regional Administrator have received the notice of cancellation, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current cost estimate for corrective action, except as provided in § 264.147(e).

(7) Whenever the current cost estimate for corrective action increases to an amount greater than the amount of the credit, the owner or operator, within 60 days after the increase, must either cause the amount of the credit to be increased so that it at least equals the current cost estimate for corrective action and submit evidence of such increase to the Regional Administrator, or obtain other financial assurance as specified in this section to cover the increase.

(8) During the period of corrective action, the Regional Administrator may approve a decrease in the amount of the letter of credit if the owner or operator demonstrates in writing to the Regional Administrator that the amont exceeds the cost of remaining corrective action activities.

(9) Following a final administrative determination pursuant to section 3008 of RCRA that the owner or operator has failed to perform corrective action in accordance with the specified corrective action measures and other permit requirements, as amended, when required to do so, the Regional Administrator may draw on the letter of credit.

(10) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the Regional Administrator will draw on the letter of credit. The Regional Administrator may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the Regional Administrator will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the Regional Administrator.

(11) The Regional Administrator will return the letter of credit to the issuing institution for termination when:

(i) An owner or operator substitutes alternate financial assurance as specified in this section;

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 264.147(g);

(d) *Financial test and corporate guarantee for corrective action.* (1) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To pass this test, the owner or operator must meet the criteria of either paragraph (d)(1)(i) or (d)(1)(ii) of this section:

(i) The owner or operator must have:

(A) Two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(B) Net working capital and tangible net worth each at least six times the sum of the current cost estimates for closure, and/or post-closure care, and/or corrective action, and/or plugging and abandonment, covered by the test; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current cost estimates for closure, and/or post-closure care, and/or corrective action, and/or plugging and abandonment, covered by the test.

(ii) The owner or operator must have:

(A) A current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(B) Tangible net worth at least six times the sum of the current cost estimates for closure, and/or post-closure care, and/or corrective action, and/or plugging and abandonment, covered by the test; and

(C) Tangible net worth of at least $10 million; and

(D) Assets located in the United States amounting to at least 90 percent of his total assets or at least six times the sum of the current cost estimates for closure, and/or post-closure care, and/or corrective action, and/or plugging and abandonment, covered by the test.

(2) The terms current closure, post-closure, and corrective action cost estimates as used in paragraph (d)(1) of this section refer to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 264.151(f) or § 264.151(g) as applicable). The term plugging and abandonment as used in paragraph (d)(1) of this section refers to the cost estimates required to be shown in paragraphs 1–4 of the letter from the owner's or operator's chief financial officer (§ 144.70(f) of this title).

(3) To demonstrate that he meets this test, the owner or operator must submit the following items to the Regional Administrator:

(i) A letter signed by the owner's or operator's chief financial officer and worded as specified in § 264.151(f) or § 264.151(g), as applicable; and

(ii) A copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) A special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(A) He has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(B) As a result of the comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) An owner or operator of a facility at which corrective action is required to be performed under § 264.100 and/or § 264.101 must submit the items specified in paragraph (d)(3) of this section to the Regional Administrator once the corrective action measures and cost estimate are specified in the permit.

(5) After the initial submission of items specified in paragraph (d)(3) of this section, the owner or operator must send updated information to the Regional Administrator within 90 days after the close of each succeeding fiscal year. This information must consist of all three items specified in paragraph (d)(3) of this section.

(6) If the owner or operator no longer meets the requirements of paragraph (d)(1) of this section, he must send notice to the Regional Administrator of intent to establish alternate financial assurance as specified in this section. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator must provide the alternate financial assurance within 120 days after the end of such fiscal year.

(7) The Regional Administrator may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (d)(1) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (d)(3) of this section. If the Regional Administrator finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (d)(1)(i) or (d)(1)(ii) of this section, the owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(8) The Regional Administrator may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements (see paragraph (d)(3)(ii) of this section). An adverse opinion or a disclaimer of opinion will be cause for disallowance. The Regional Administrator will evaluate other qualifications on an individual basis. The owner or operator must provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(9) The owner or operator is no longer required to submit the items specified in paragraph (d)(3) of this section when:

(i) An owner or operator substitutes alternate financial assurance, as specified in this section; or

(ii) The Regional Administrator releases the owner or operator from the requirements of this section in accordance with § 264.147(g).

(10) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation, as defined in § 264.141, of the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (d)(1) through (d)(8) of this section and must comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in § 264.151(h). The corporate guarantee must accompany the items sent to the Regional Administrator as specified in paragraph (d)(3) of this section. The terms of the corporate guarantee must provide that:

(i) If the owner or operator fails to perform and complete corrective action at a facility covered by the corporate guarantee in accordance with the approved corrective action measures specified in the permit and other permit requirements, as amended, whenever required to do so, the guarantor will do so or establish a trust fund for such facility as specified in § 264.147(a) in the name of the owner or operator.

(ii) The corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the Regional Administrator. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the Regional Administrator, as evidenced by the return receipts.

(iii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the Regional Administrator within 90 days after receipt by both the owner or operator and the Regional Administrator of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternate financial assurance in the name of the owner or operator.

(e) *Use of multiple financial mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds and letters of credit. The mechanisms must be as specified in paragraphs (a) and (c), respectively, of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for corrective action. If the corrective action trust fund is combined with the letter or credit, the required corrective action trust fund balance shall be the amount of the difference between the amount assured by the letter of credit and the cost estimate for corrective action. A single standby trust fund may be established for two or more mechanisms. The Regional Administrator may use multiple mechanisms to provide for corrective action at the facility.

(f) *Use of a financial mechanism for multiple facilities.* An owner or operator may use any financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the Regional Administrator must include a list showing for each facility, the EPA Identification Number, name, address, and the amount of funds for corrective action assured by the mechanism. If the facilities covered by the mechanism are in more than one Region, identical evidence of financial assurance must be submitted to and maintained by the Regional Administrator of each such Region. The amount of funds available through the mechanism must be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. A separate cost estimate and trust fund balance will be required for each separate release. However, one trust fund may be used providing funds are clearly identified for each release. In directing funds available through the mechanism for corrective action at any of the facilities covered by the

mechanism, the Regional Administrator may direct only the amount of funds designated for that facility, unless the owner or operator agrees to the use of additional funds available under the mechanism. If the owner or operator uses the corrective action trust fund to provide financial assurance for more than one facility, the owner or operator must develop a separate required corrective action trust fund balance and pay-in period for each release at each facility. In addition, he must develop a separate trust fund balance for each new and separate release. However, he may establish one trust fund mechanism to secure the funds.

(g) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certification from the owner or operator and an independent registered professional engineer that corrective action has been completed in accordance with the corrective action measures specified in the permit, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for corrective action at the particular facility, unless the Regional Administrator has reason to believe that any aspect of the corrective action has not been completed in accordance with the specified corrective action measures. The Regional Administrator shall provide the owner or operator with a detailed written statement of any reason to believe that corrective action has not been completed in accordance with the specified corrective action measures.

12. In section 264.151 paragraphs (a), (c), (d), (f), (g), and (h) are revised to read as follows:

§ 264.151 Wording of the instruments.

(a)(1) A trust agreement for a trust fund, as specified in § 264.143(a) or § 264.145(a) or § 264.147(a) or § 265.143(a) or § 265.145(a) of this chapter must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Trust Agreement

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the owner or operator], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the State of _____" or "a national bank"], the "Trustee."

Whereas, the United States Environmental Protection Agency, "EPA," an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a hazardous waste management facility shall provide assurance that funds will be available to complete [closure and/or post-closure care and/or corrective action] at the facility.

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facilities identified herein.

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, Therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Facilities and Cost Estimates or Required Trust Fund Balance

This Agreement pertains to the facilities and cost estimates identified on attached Schedule A [on Schedule A, for each facility list the EPA Identification Number, name, address, and the current cost estimate(s) for closure and/or post-closure care and/or corrective action and the current required corrective action trust fund balance, or portion thereof, if applicable, for which financial assurance is demonstrated by this Agreement.]

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of EPA. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liability of the Grantor established by EPA.

Section 4. Payment for Closure and/or Post-Closure Care and/or Corrective Action

The Trustee shall make payments from the Fund as the EPA Regional Administrator shall direct, in writing, to provide for the payment of the costs of [closure and/or post-closure care and/or action] at the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the EPA Regional Administrator from the Fund for [closure and/or post closure care and/or corrective action] expenditures in such amounts as the EPA Regional Administrator shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the EPA Regional Administrator specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

Section 6. Trustee Management

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in wroting to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC 80a–2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC 80a–1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depositary even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificate issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnished to the Grantor and to the appropriate EPA Regional Administrator a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the the Trustee within 90 days after the statement has been furnished to the Grantor and the EPA Regional Administrator shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the EPA Regional Administrator, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Instructions to the Trustee

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the EPA Regional Administrator to the Trustee shall be in writing, signed by the EPA Regional Administrators of the Regions in which the facilities are located, or their designees, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or EPA hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or EPA, except as provided for herein.

Section 15. Notice of Nonpayment

The Trustee shall notify the Grantor and the appropriate EPA Regional Administrator, by certified mail within 10 days following the expiration of the 30-day period after the anniversary of the establishment of the Trust, if no payment is received from the Grantor during that period. After the pay-in period is completed, the Trustee shall not be required to send a notice of nonpayment.

Section 16. Amendment of Agreement

This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate EPA Regional Administrator, or by the Trustee and the appropriate EPA Regional Administrator if the Grantor ceases to exist.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the EPA Regional Administrator, or by the Trustee and the EPA Regional Administrator, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the EPA Regional Administrator issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of [insert name of State].

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 40 CFR 264.151(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]
[Title]
Attest:
[Title]
[Seal]
[Signature of Trustee]
Attest:
[Title]
[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §§ 264.143(a), 264.145(a), 264.147(a), 265.143(a), and 265.145(a) of this chapter. State requirements may differ on the proper content of this acknowledgment.

State of _____
County of _____

On this [date], before me personally came [owner or operator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of Notary Public]

* * * * *

(c) A surety bond guaranteeing performance of [closure and/or post-closure care and/or corrective action], as specified in §§ 264.143(c) and/or 264.145(c) and/or 264.147(b), must be worded as follows except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Performance Bond

Date bond executed: _____
Effective date: _____

Principal: [legal name and business address of owner or operator] Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]
State of incorporation: _____

Surety(ies): [name(s) and business address(es)]

EPA Identification Number, name, address, and [closure and/or post-closure care and/or corrective action] amount for each facility guaranteed by this bond [indicate closure, post-closure, and/or corrective action amounts separately]:
Total penal sum of bond: $ _____
Surety's bond number: _____

Know All Persons by These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the U.S. Environmental Protetion Agency (hereinafter called EPA), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the Resource Conservation and Recovery Act as amended (RCRA), to have a permit in order to own or operate each hazardous waste management facility identified above, and

Whereas said Principal is required to provide financial assurance for [closure and/or post-closure care and/or corrective action] as a condition of the permit, and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform [closure and/or post-closure care and/or corrective action], whenever required to do so, of each facility for which this bond guarantees [closure and/or post-closure care and/or corrective action], in accordance with the [closure plan and/or post-closure care and/or specified corrective action measures] and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended.

Or, if the Principal shall provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264, and obtain the EPA Regional Administrator's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the EPA Regional Administrator(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an EPA Regional Administrator that the Principal has been found in violation of the [closure and/or post-closure care and/or corrective action] requirements of 40 CFR Part 264, for a facility for which this bond guarantees performance of [closure and/or post-closure care and/or corrective action], the Surety(ies) shall either perform [closure and/or post-closure care and/or corrective action] in accordance with the [closure plan and/or post-closure care plan and/or specified corrective action measures] and other permit requirements or place the [closure and/or post-closure care and/or the corrective action] amount guaranteed for the facility into the standby trust fund as directed by the EPA Regional Administrator.

Upon notification by an EPA Regional Administrator that the Principal has failed to provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264 and obtain written approval of such assurance from the EPA Regional Administrator(s) during the 90 days following receipt by both the Principal and the EPA Regional Administrator(s) of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into the standby trust fund as directed by the EPA Regional Administrator.

The Surety(ies) hereby agrees to be bound by amendments to [closure and/or post-closure and/or corrective action] plans, permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the EPA Regional Administrator(s), as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the EPA Regional Administrator(s) of the EPA Region(s) in which the bonded facility(ies) is (are) located.

[The following paragraph must be included in the corrective action performance bond, but is an *optional* rider that may be included but is not required in the case of the closure and/or postclosure care performance bond.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new [closure and/or post-closure and/or corrective action] amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the EPA Regional Administrator(s).

In Witness Whereof, the Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 40 CFR 264.151(c) as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)]
[Name(s)]
[Title(s)]
[Corporate seal]

Corporate Surety(ies)]

[Name and address]
State of incorporation: _____
Liability limit: $_____
[Signature(s)]
[Name(s) and title(s)]
[Corporate seal]
[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]
Bond premium: $_____

(d) A letter of credit, as specified in § 264.143(d) or § 264.145(d) or § 264.147(c) or § 265.143(c) or § 265.145(c) of this chapter, as

applicable, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Irrevocable Standby Letter of Credit

Regional Administrator(s)
Region(s) _____
U.S. Environmental Protection Agency

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation [insert, if more than one Regional Administrator is a beneficiary, "by any one of you"] of

(1) Your sight draft, bearing reference to this letter of credit No. _____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Resource Conservation and Recovery Act of 1976 as amended."

This letter of credit is effective as of [date] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of [at least 1 year] on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and [owner' or operator's name] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unusued portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [owner' or operator's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [owner's or operator's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 40 CFR 264.151(d) as such regulations were constituted on the date shown immediately below. [Signature(s) and title(s) of official(s) of issuing institution] [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

(e) A certificate of insurance, as specified in § 264.143(e) or § 264.145(e) or § 264.143(d) or § 265.145(d) of this chapter, as applicable, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Certificate of Insurance For Closure or Post-Closure Care

Name and Address of Insurer (herein called the "Insurer"): _____
Name and Address of Insured (herein called the "Insured"): _____
Facilities Covered: [List for each facility: The EPA Identification Number, name, address, and the amount of insurance for closure and/or the amount for post-closure care (these amounts for all facilities covered must total the face amount shown below).]
Face Amount: _____
Policy Number: _____
Effective Date: _____

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified about to provide financial assurance for [insert "closure" or "closure and post-closure care" or "post-closure care"] for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 40 CFR 264.143(e), 264.145(e), 265.143(d), and 265.145(d), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the EPA Regional Administrator(s) of the U.S. Environmental Protection Agency, the Insurer agrees to furnish to the EPA Regional Administrator(s) a duplicate original of the policy listed above, including the endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 40 CFR 264.151(e) as such regulations were constituted on the date shown immediately below.

[Authorized signature for Insurer]
[Name of person signing]
[Title of person signing]
Signature of witness or notary: _____
[Date]

* * * * *

(f) A letter from the chief financial officer, as specified in § 264.143(f), 264.145(f), 264.147(d), 265.143(e), or § 265.145(e), of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter From Chief Financial Officer

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance, as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following four paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure care and/or corrective action cost estimates.

1. This firm is the owner or operator of the following facilities for which financial assurance for [closure and/or post-closure care and/or corrective action] is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current [closure and/or post-closure care and/or corrective action] cost estimates covered by the test are shown for each facility:

2. This firm guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, [closure and/or post-closure care and/or corrective action] at the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for [closure and/or post-closure care and/or corrective action] so guaranteed are shown for each facility: _____

3. In States where EPA is not administering the financial requirement of Subpart H of 40 CFR Parts 264 or 265, this firm, as owner or operator or guarantor, is demonstrating financial assurance for [closure and/or post-closure care and/or corrective action] at the following facilities through the use of a test equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current [closure and/or post-closure care and/or corrective action] costs estimates covered by such a test are shown for each facility: _____

4. This firm is the owner or operator of the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, and/or corrective action, is not demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Subpart H of 40 CFR Parts 264 and 265 or equivalent or substantially equivalent State mechanisms. The current [closure and/or post-closure care and/or corrective action] costs estimates not covered by such financial assurance are shown for each facility: _____

This firm [insert "is required" or "is not required] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

Fill in Alternative I if the criteria of paragraph (f)(1)(i) of § 264.143 or § 264.145 or of paragraph (d)(1)(i) of § 264.147, or paragraph (e)(1)(i) of 265.143 or § 265.145 of this chapter are used. Fill in Alternative II if the criteria of paragraph (f)(1)(ii) of § 264.143 or § 264.145 or of paragraph (d)(1)(ii) of § 264.174, § 265.143, § 265.145 or § 265.147 of this chapter are used.

Alternative I

(1) Sum of current closure, post-closure care, and corrective action cost estimates [total of all cost estimates shown in the four paragraphs above]: _____ $_____

* (2) Total liabilities [if any portion of the closure, post-closure care or corrective action cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] _____.

* (3) Tangible net worth: _____

* (4) Net worth: _____

* (5) Current assets: _____

* (6) Current liabilities: _____

* (7) Net working capital (line 5 minus line 6) _____

* (8) The sum of net income plus depreciation, depletion, and amortization _____.

* (9) Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) _____

	Yes	No
(10) Is line 3 at least $10 million?		
(11) Is line 3 at least 6 times line 1?		
(12) Is line 7 at least 6 times line 1?		
* (13) Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 14?		
(14) Is line 9 at least 6 times line 1?		
(15) Is line 2 divided by line 4 less than 2.0?		
(16) Is line 8 divided by line 2 greater than 0.1?		
(17) Is line 5 divided by line 6 greater than 1.5?		

Alternative II

(1) Sum of current closure, post-closure care, and corrective action cost estimates [total of all cost estimates shown in the four paragraphs above]: _____

(2) Current bond rating of most recent issuance of this firm and name of rating service: _____

(3) Date of insurance of bond: _____

(4) Date of maturity of bond: _____

(5) Tangible net worth [if any portion of the closure, post-closure care or corrective action cost estimate is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line]: $_____.

* (6) Total assets in U.S. (required only if less than 90 percent of firm's assets are located in the U.S.) $_____

	Yes	No
(7) Is line 5 at least $10 million?		
(8) Is line 5 at least 6 times line 1?		
* (9) Are at least 90 percent of firm's assets located in the U.S.? If not, complete line 10		
(10) Is line 6 at least 6 times line 1?		

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(f) as such regulations were constituted on the date shown immediately below:

[Signature]
[Name]
[Title]
[Date]

(g) A letter from the chief financial officer, as specified in § 264.148(f) or § 265.147(f) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Letter from Chief Financial Officer [to demonstrate liability coverage and/or to demonstrate both liability coverage and assurance of closure and/or post-closure care and/or corrective action].

[Address to Regional Administrator of every Region in which facilities for which financial responsibility is to be demonstrated through the financial test are located.]

I am the chief financial officer of [owner's or operator's name and address]. This letter is in support of the use of the financial test to demonstrate financial responsibility for liability coverage [insert "and closure and/or post-closure care and/or corrective action," if applicable] as specified in Subpart H of 40 CFR Parts 264 and 265.

[Fill out the following paragraph regarding facilities and liability coverage. For each facility, include its EPA Identification Number, name, and address.]

The owner or operator identified above is the owner or operator of the following facilities for which liability coverage is being demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265: _____.

[If you are using the financial test to demonstrate coverage of liability and closure and/or post-closure care and/or corrective action, fill in the following four paragraphs regarding facilities and associated closure and/or post-closure and/or corrective action cost estimates (or the required corrective action trust fund balance, if applicable). If there are no facilities that belong in a particular paragraph, write "none" in the space indicated. For each facility, include its EPA Identification Number, name, address, and current closure and/or post-closure care and/or corrective action cost estimates (or the required corrrective action trust fund balance if applicable). Identify each cost estimate as to whether it is for closure or post-closure care or corrective action.]

1. The firm identified above owns or operates the following facilities for which financial assurance for closure and/or post-closure care and/or corrective action is demonstrated through the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure care and/or corrective action cost estimates [or the required corrective action trust fund balance, if applicable] covered by the test are shown for each facility: _____.

2. The firm identified above guarantees, through the corporate guarantee specified in Subpart H of 40 CFR Parts 264 and 265, the closure and/or post-closure care and/or corrective action at the following facilities owned or operated by its subsidiaries. The current cost estimates for closure and/or post-closure care and/or corrective action, [or the required corrective action trust fund balance, if applicable], so guaranteed are shown for each facility: _____.

3. In states where EPA is not administering the financial requirements of Subpart H of 40 CFR Parts 264 and 265, this owner or operator is demonstrating financial assurance for closure or post-closure care or corrective action at the following facilities through the use of a test equivalent to the financial test specified in Subpart H of 40 CFR Parts 264 and 265. The current closure and/or post-closure care and/or corrective action cost estimates, [or the required corrective action trust fund balance, if applicable], covered by such a test are shown for each facility: _____.

4. The firm identified above owns or operates the following hazardous waste management facilities for which financial assurance for closure or, if a disposal facility, post-closure care, or corrective action, is *not* demonstrated either to EPA or a State through the financial test or any other financial assurance mechanism specified in Subpart H of 40 CFR Part 264 or 265 or equivalent to State mechanisms. The current closure and/or post-closure and/or corrective action cost estimates, [or the required corrective action trust fund balance, if applicable], not covered by such financial assurance are shown for each facility: _____.

This owner or operator [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this owner or operator ends on [month, day]. The figures for the following items marked with an asterisk are derived from this owner's or operator's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Part A if you are using the financial test to demonstrate coverage *only* for the liability requirements.]

Part A. Liability Coverage for Accidental Occurrences

"[Fill in Alternative I if the criteria of paragraph (f)(l)(i) of § 264.147 or § 265.147 are used. Fill in Alternative II if the criteria of paragraph (f)(l)(ii) of § 264.147 or § 265.147 are used.]

Alternative I

1. Amount of annual aggregate liability coverage to be demonstrated.	$_____
*2. Current assets	$_____
*3. Current liabilities	$_____
4. Net working capital (line 2 minus line 3).	$_____
*5. Tangible net worth	$_____
*6. If less than 90% of assets are located in the U.S., give total U.S. assets.	$_____

	Yes	No
7. Is line 5 at least $10 million?		
8. Is line 4 at least 6 times line 1?		
9. Is line 5 at least 6 times line 1?		

	Yes	No
*10. Are at least 90% of assets located in the U.S.? If not, complete line 11.		
11. Is line 6 at least 6 times line 1?		

Alternative II

1. Amount of annual aggregate liability coverage to be demonstrated.	$
2. Current bond rating of most recent issuance and name of rating service.	
3. Date of issuance of bond	
4. Date of maturity of bond	
*5. Tangible net worth	$
*6. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	$

	Yes	No
7. Is line 5 at least $10 million?		
8. Is line 5 at least 6 times line 1?		
*9. Are at least 90% of assets located in the U.S.? If not, complete line 10.		
10. Is line 6 at least 6 times line 1?		

[Fill in Part B if you are using the financial test (including use in conjunction with the corporate guarantee) to demonstrate assurance of both liability *and* closure and/or post-closure care and/or corrective action.]

Part B. Closure and/or Post-Closure Care and/or Corrective Action and Liability Coverage

[Fill in Alternative I if the criteria of paragraphs (f)(1)(i) of § 264.143 or § 264.145, or (d)(1)(i) of § 264.147 and paragraph (f)(1)(i) of § 264.148 are used, or if the criteria of paragraph (e)(1)(i) of § 265.143 or § 265.145 and (f)(1)(i) of § 265.147 are used. Fill in Alternative II if the criteria of paragraphs (f)(1)(ii) of § 264.143 or §264.145, or paragraph (d)(1)(ii) of § 264.147 and paragraph (f)(1)(ii) of § 264.148 are used or if the criteria of paragraphs (e)(1)(ii) of § 265.143 or § 265.145 and (f)(1)(ii) of § 265.147 are used.]

Alternative I

1. Sum of current closure, post-closure and corrective action cost estimates (total of all cost estimates listed above).	$
2. Amount of annual aggregate liability coverage to be demonstrated.	$
3. Sum of lines 1 and 2	$
*4. Total liabilities (if any portion of your closure, post-closure care or corrective action cost estimates is included in your total liabilities, you may deduct that portion from this line and add that amount to lines 5 and 6.	$
*5. Tangible net worth	$
*6. Net worth	$
*7. Current assets	$
*8. Current liabilities	$
9. Net working capital (line 7 minus line 8).	$
*10. The sum of net income plus depreciation, depletion, and amortization.	$
*11. Total assets in U.S. (required only if less than 90% of assets are located in the U.S.).	$

	Yes	No
12. Is line 5 at least $10 million?		
13. Is line 5 at least 6 times line 3?		
14. Is line 9 at least 6 times line 3?		
*15. Are at least 90% of assets located in the U.S.? If not, complete line 16.		
16. Is line 11 at least 6 times line 3?		
17. Is line 4 divided by line 6 less than 2.0?		
18. Is line 10 divided by line 4 greater than 0.1?		
19. Is line 7 divided by line 8 greater than 1.5?		

Alternative II

1. Sum of current closure, post-closure care, and corrective action cost estimates (total of *all* cost estimates listed above).	$
2. Amount of annual aggregate liability coverage to be demonstrated.	$
3. Sum of lines 1 and 2	$
4. Current bond rating of most recent issuance and name of rating service.	$
5. Date of issuance of bond	$
6. Date of maturity of bond	$
*7. Tangible net worth (if any portion of the closure, post-closure care of corrective action cost estimates is included in "total liabilities" on your financial statements you may add that portion to this line).	$
*8. Total assets in the U.S. (required only if less than 90% of assets are located in the U.S.).	$

	Yes	No
9. Is line 7 at least $10 million?		
10. Is line 7 at least 6 times line 3?		
*11. Are at least 90% of assets located in the U.S.? If not, complete line 12.		
*12. Is line 8 at least 6 times line 3?		

I hereby certify that the wording of this letter is identical to the wording specified in 40 CFR 264.151(g) as such regulations were constituted on the date shown immediately below.

[Signature] _____
[Name] _____
[Title] _____
[Date] _____

(h)(1) A corporate guarantee, as specified in § 264.143(f) or § 264.145(f) or § 264.147(d) or § 265.143(e) § 265.145(e) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

Corporate Guarantee for Closure, and/or Post-Closure Care and/or Corrective Action

Guarantee made this [date] by [name of guaranteeing entity], a business corporation organized under the laws of the State of [insert name of State], herein referred to as guarantor, to the United States Environmental Protection Agency [EPA], obligee, on behalf of our subsidiary [owner or operator] of [business address].

Recitals

(1) Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 40 CFR 264.143(f), 264.145(f), 264.147(d), 265.143(e), and 265.145(e).

(2) [Owner or operator] owns or operates the following hazardous waste management facility(ies) covered by this guarantee. [List for each facility: EPA Identification Number, name, and address. Indicate for each whether guarantee is for closure and/or post-closure care and/or corrective action.]

(3) "Closure plans" and "post-closure plans" as used below refer to the plans maintained as required by Subpart G of 40 CFR Parts 264 and 265 for the closure and post-closure care of facilities as identified above.

(4) For value received from [owner or operator], guarantor guarantees to EPA that in the event that [owner or operator] fails to perform [insert closure and/or post-closure care and/or corrective action] at the above facility(ies) in accordance with the closure, post-closure care, or corrective action measures specified in the permit and other permit or interim status requirements whenever required to do so, the guarantor shall do so or fund the standby trust fund in the name of [owner or operator] in the amount of the current closure and/or post-

closure care and/or corrective action cost estimates as specified in Subpart H of 40 CFR parts 264 and 265.

(5) Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is [are] located and to [owner or operator] that he intends to provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264 or 265, as applicable, in the name of [owner or operator]. Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless [owner or operator] has done so.

(6) The guarantor agrees to notify the EPA Regional Administrator by certified mail, of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming guarantor as debtor, within 10 days after commencement of the proceeding.

(7) Guarantor agrees that within 30 days after being notified by an EPA Regional Administrator of a determination that guarantor no longer meets the financial test criteria or that he is disallowed from continuing as a guarantor of closure and/or post-closure care and/or corrective action, he shall establish alternate financial assurance as specified in Subpart H of 40 CFR Part 264 or 265, as applicable, in the name of [owner or operator] unless [owner or operator] has done so.

(8) Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: Amendment or modification of the closure plan, post-closure care plan, or specified corrective action measures; amendment or modification of the permit; the extension or reduction of the time of performance of closure, post-closure care, or corrective action; or any other modification or alteration of an obligation of the owner or operator pursuant to 40 CFR Part 264 or 265.

(9) Guarantor agrees to remain bound under this guarantee for so long as [owner or operator] must comply with the applicable financial assurance requirements of Subpart H of 40 CFR Parts 264 and 265 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail to the EPA Regional Administrator(s) for the Region(s) in which the facility(ies) is (are) located and to [owner or operator] such cancellation to become effective no earlier than 120 days after receipt of such notice by both EPA and [owner or operator], as evidenced by the return receipts.

(10) Guarantor agrees that if [owner or operator] fails to provide alternate financial assurance as specified in Subpart H of 40 CFR Part 264 or 265, as applicable, and obtain written approval of such assurance from the EPA Regional Administrator(s) within 90 days after a notice of cancellation by the guarantor is received by an EPA Regional Administrator from guarantor, guarantor shall provide such alternate financial assurance in the name of [owner or operator].

(11) Guarantor expressly waives notice of acceptance of this guarantee by the EPA or by [owner or operator]. Guarantor also expressly waives notice of amendments or modifications of the closure and/or post-closure plan and of amendments or modifications of the facility permit(s).

I hereby certify that the wording of this guarantee is identical to the wording specified in 40 CFR 264.151(h) as such regulations were constituted on the date first above written.

Effective date: _____

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary: _____

(2) A corporate guarantee, as specified in § 264.148(g) or 265.147(g) of this chapter, must be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

* * * * *

13. It is proposed that § 264.152 be revised to read as follows:

§ 264.152 Use of State-required mechanisms.

(a) For a facility located in a State where EPA is administering the requirements of this subpart but where the State has hazardous waste regulations that include requirements for financial assurance of closure, post-closure care, corrective action, or liability coverage, an owner or operator may use the State-required financial mechanism to meet the requirements of §§ 264.143, 264.145, 264.147, or § 264.148 if the Regional Administrator determines that the State mechanisms are at least equivalent to the financial mechanisms specified in this subpart. The Regional Administrator will evaluate the equivalency of the mechanisms principally in terms of (1) certainty of the availability of funds to complete the required closure, or post-closure care activities, or corrective action, or liability coverage, and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate. The owner or operator must submit to the Regional Administrator evidence of the establishment of the mechanism together with a letter requesting that the State-required mechanism be considered acceptable for meeting the requirements of this subpart. The submission must include the following information: The facility's EPA Identification Number, name, and address, and the amount of funds for closure, or post-closure care, or corrective action, or liability coverage, assured by the mechanism. The Regional Administrator will notify the owner or operator of his determination regarding the mechanism's acceptability in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner or operator will be deemed to be in compliance with the requirements of §§ 264.143, 264.145, 264.147, or § 264.148, as applicable.

(b) If a State-required mechanism is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by increasing the funds available through the State-required mechanism or using additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

14. It is proposed that § 264.153 be revised to read as follows:

§ 264.153 State assumption of responsibility.

(a) If a State either assumes legal responsibility for an owner's or operator's compliance with the closure, and/or post-closure care, and/or corrective action, and/or liability requirements of this Part or assures that funds will be available from State sources to cover those requirements, the owner or operator will be in compliance with the requirements of §§ 264.143, 264.145, 264.147, and/or § 264.148, as applicable, if the Regional Administrator determines that the State's assumption of responsibility is at least equivalent to the financial mechanisms specified in this supbart. The Regional Administrator will evaluate the eqiuvalency of State guarantees principally in terms of (1) certainty of the availability of funds for the required closure, or post-closure care, or corrective action activities, or liability coverage and (2) the amount of funds that will be made available. The Regional Administrator may also consider other factors as he deems appropriate.

The owner of operator must submit to the Regional Administrator a letter from the State describing the nature of the State's assumption of responsibility together with a letter from the owner or operator requesting that the State's assumption of responsibility be considered acceptable for meeting the requirements of this subpart. The letter from the State must include, or have attached to it, the following information: The facility's EPA Identification

Number, name, and address, and the amount of funds for closure, or post-closure care, or corrective action, or liability coverage that are guaranteed by the State. The Regional Administrator will notify the owner or operator of his determination regarding the acceptability of the State's guarantee in lieu of financial mechanisms specified in this subpart. The Regional Administrator may require the owner or operator to submit additional information as is deemed necessary to make this determination. Pending this determination, the owner of operator will be deemed to be in compliance with the requirements of §§ 264.143, 264.145, 264.147, or § 264.148, as applicable.

(b) If a State's assumption of responsibility is found acceptable as specified in paragraph (a) of this section except for the amount of funds available, the owner or operator may satisfy the requirements of this subpart by use of both the State's assurance and additional financial mechanisms as specified in this subpart. The amount of funds available through the State and Federal mechanisms must at least equal the amount required by this subpart.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

15. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 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, 6925, 6927, 6939 and 6974).

16. In §270.14, new paragraph (d)(4) is added to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(d) * * *

(4) If corrective action measures are specified prior to or at the time of permit issuance, then the following additional information is required:

(i) An estimate of the corrective action costs satisfying the requirements of §264.146(b); and

(ii) A demonstration of financial assurance for completion of the corrective action, as required by §264.147.

Subpart D—Changes to Permits

17. In § 270.41, paragraph (a) is amended by revising paragraphs (a)(2) and (a) (5) (iii) and by adding new paragraphs (a) (5) (ix) and (a) (5) (x) to read as follows:

§270.41 Major modification or revocation and reissuance of permits.

(a) * * *

(2) *Information.* The Director has received information. A permit may be modified during its term for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. Where the permit includes a program of information gathering, the Director may modify the permit based on the information so gathered to specify a program of corrective action measures under §264.101, cost estimate fulfilling the requirements of §264.146, and a demonstration of financial assurance for corrective action, as required by §264.147.

(5) * * *

(iii) When the permittee has filed a request under §264.148(a) for a variance to the level of financial responsibility for liability coverage or when the Director demonstrates under §264.148(d) that an upward adjustment of the level of financial responsibility is required.

* * * * *

(ix) To include requirements for corrective action pursuant to §264.101 at a facility that were not previously included in the facility's permit.

(x) To release an owner or operator from a requirement to perform corrective action under §264.147(g).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

18. The authority citation for Part 271 continues to read as follows:

Authority: Sec. 1006, 2002(a), and 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6926).

19. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Date	Title of regulation
* * * * *	
[insert date of publication]	Financial Assurance for Corrective Action—Known Releases.
* * * * *	

[FR Doc. 86-23995 Filed 10-23-86; 8:45 am]
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Federal Register

Friday
October 24, 1986

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 99
Flight Plan and Transponder Requirements; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 99

[Docket No. 25099; Notice No. 86-15]

Flight Plan and Transponder Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to require that: (1) Any civil aircraft operation into, within, or out of the United States through a coastal Air Defense Identification Zone (ADIZ) be conducted under a filed flight plan regardless of true airspeed; (2) the pilot of any such operation make periodic position reports; and (3) each such operation by an aircraft equipped with a functioning air traffic control (ATC) transponder be conducted with that transponder on and replying on the appropriate code or as assigned by ATC. The proposed actions would assist in the identification of aircraft in the ADIZ and promote enforcement of laws relating to illegal smuggling activities. Smuggling activity in small aircraft presents air safety problems. This proposal would promote air safety by reducing the incidence of aircraft use in smuggling activity.

DATE: Comments must be received on or before December 23, 1986.

ADDRESSES: Comments on this NPRM may be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25099, 800 Independence Avenue, SW., Washington, DC 20591. The official docket may be examined in the Rules Docket, Room 916, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Burton Chandler, Airspace and Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this NPRM by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the addresses listed above. Commentors wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25099." The postcard will be date/time stamped and returned to the commentor. All comments received between the specified opening and closing dates for comments will be considered before taking action on any further rulemaking. All comments submitted will be available for examination in the Rules Docket, Washington, DC, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3481. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

Subpart A of Part 99 of the Federal Aviation Regulations (FAR) sets forth flight plan and position reporting requirements for aircraft operating in an ADIZ. Section 99.1(b)(1) excludes from these requirements aircraft operations conducted at a true airspeed of less than 180 knots in certain areas of the coastal and domestic ADIZ. Prior to 1982, the area excluded from the flight plan and position reporting requirements included the entire Florida Peninsula. Amendment 99-12 (47 FR 12325, March 22, 1982) reduced the excluded area to the ADIZ north of 30 degrees north latitude or west of 86 degrees west longitude. This change had the effect of imposing Part 99 flight plan and position reporting requirements on all aircraft operating in the ADIZ off of most areas of the Florida Peninsula. The action was taken because of the increasing hazard to air navigation which resulted from the use of aircraft to bring illegal drugs into the United States. Operations between Mexico or Canada and the United States require a flight plan under a separate rule, FAR section 91.84.

While the FAA does not enforce the antismuggling and related statutes, that agency is concerned with hazards to air commerce in the United States arising from the use of aircraft to escape detection in bringing narcotic drugs, marijuana, and depressant or stimulant drugs into the United States. Those hazards have increased as the number of pilots who are willing to risk the carriage of these illegal goods under severe enforcement pressures has increased. The means for detection of these aircraft include low altitude radar, pursuit aircraft, and advanced police techniques. Any pilot committed to evading detection in order to avoid severe penalties may be expected to engage in extremely dangerous flight techniques to avoid pursuit aircraft, including very low flight to avoid radar, landing and taking off from unprepared landing areas, operation without lights, and operation in weather conditions beyond the capability of the aircraft or pilot. These flight techniques create a safety hazard for all other aircraft in the area and for persons and property on the surface. Thus, while other agencies are responsible for controlling the traffic in narcotic drugs, marijuana, and depressant or stimulant drugs, and although the mere carriage of those items under normal conditions is not dangerous, the conduct of pilots smuggling these substances into the United States by air poses a direct threat to air commerce.

Related Rulemaking

For the reasons discussed in this preamble, the FAA has issued an Advance Notice of Proposed Rulemaking (ANPRM) proposing to require all aircraft operating in or through the coastal ADIZ to be equipped with an operating ATC transponder (51 FR 4756, February 7, 1986).

Current Situation

The United States Customs Service of the Department of the Treasury has requested that the FAA take measures to identify all aircraft entering the United States. A letter dated July 11, 1985, from the Deputy to the Assistant Secretary of the Treasury to the FAA Director of Civil Aviation Security summarizes the Customs Service request. A copy of that letter has been placed in the docket. The request is based on the major increase in illegal drug importation, and on the value to law enforcement officials of early positive identification of aircraft which

may be engaged in such activity. When th 1982 amendment was issued to end the exemption of flight plan and reporting requirements for the Florida Peninsula, most of the smuggling activity by air was taking place in Florida. Since that time, as a result of concentrated law enforcement efforts in that area, smuggling of illegal drugs in small aircraft has expanded into most other coastal areas. Accordingly, the FAA believes that the partial exemption of Part 99 flight plan and reporting requirements in a coastal ADIZ should be discontinued and that all aircraft penetrating a coastal ADIZ should be subject to these requirements.

Aircraft operating into the United States are subject to identification processes which, in part, involve the correlation of radar-detected targets with flight plan and position report information. Each flight plan filed under § 99.11 must contain information on the aircraft's transponder capability. However, the aircraft filing such a flight plan is not now required to operate that transponder. Continuous operation of the transponder on transponder-equipped aircraft greatly assists ATC indentification and tracking of the aircraft and enables correlation of radar information with flight plan and position reporting information, with no additional cost or burden to operators. The FAA believes, therefore, that a requirement for aircraft equipped with an operable transponder to have that transponder operating while the aircraft is in an ADIZ would support air safety directly, through improved radar target acquisition and identification, and indirectly by supporting the drug law enforcement efforts discussed above. The requirement would not require installation of a transponder in aircraft not currently transponder-equipped.

The transponder requirement would be limited to coastal ADIZ airspace because the current designation of the southern border domestic ADIZ is simply a line following the Mexican border of the United States. A simple requirement to have an operating transponder while crossing the border would not serve safety or law enforcement purposes. If a need is determined for mandatory transponder operation prior to crossing the Mexican border, as is proposed in this notice for the coastal ADIZ, that requirement will be the subject of future rulemaking.

Regulatory Evaluation Summary

The FAA has reviewed the proposed regulations to determine their economic impact and concludes that the benefits of the proposed regulations should outweigh their costs.

Costs

The costs that would result from the proposal are those associated with filing a flight plan and operating a transponder. Filing a flight plan takes from 5 to 15 minutes, depending on the complexity of the plan. Therefore, even if a pilot's time is valued as much as $30 per hour, filing a flight plan will cost from $2.50 to $7.50. The FAA cannot break out the total cost of the proposal because present data on flights penetrating coastal ADIZ does not permit breaking out flights by aircraft with a maximum airspeed of less than 180 knots.

The FAA notes, however, that two types of pilots will be impacted by this requirement: those in international operations and those in domestic operations. Most pilots in legitimate international operations file a flight plan, even in the absence of the regulation, as a safety precaution. Thus, these pilots are not expected to be extensively impacted by the proposal.

Hundreds of domestic daily operations, such as sightseers, fish spotters, flight practices, etc., take off and land in the United States but penetrate the coastal ADIZ during the flight. These flights will be impacted more severely by the proposed regulations because they are less likely to file flight plans. On the other hand, these flights are purely domestic and for the most part short. They generally will fall in the category of flights requiring the simpler $2.50 level of flight plan.

The only significant cost to United States pilots operating a transponder results from the requirement under FAR section 91.172 that transponders be maintained and inspected biennially. The required maintenance assures that transponders are properly calibrated and in good functioning order. According to various sources the maintenance required by section 91.172 costs from $75 to $100 every 2 years or $35 to $50 per year. Most pilots that invest from $875 to $6,680 in a transponder would maintain it in good operating condition, even in the absence of the regulation.

Benefits

Increased efficiency in the detection of aircraft engaged in drug smuggling, and a resulting reduction in the incidence of hazardous flight techniques to avoid detection, are the primary benefits expected to result from the proposed regulation. Aircraft operating in coastal ADIZ for illegal purposes will be more easily indentified, as they should be the only aircraft not complying with the regulations. This will reduce the number of required Government interceptions of questionable flights and, to the extent that smuggling activities are reduced, may also reduce some accidents resulting from dangerous flight methods used by drug smugglers.

According to National Transportation Safety Board data, during the period 1974–1984, 40 drug smuggling related accidents, 20 of them fatal, occurred to aircraft suspected of having flown through those coastal ADIZ that will be impacted by this proposal. More effective enforcement of the drug smuggling laws by detecting aircraft involved in such activity will reduce the incidence of accidents with such aircraft and will reduce the hazard to other aircraft and to persons and property on the surface.

While the FAA is proposing the rule for its potential benefits for air safety, a corollary benefit will also accrue to the United States Customs Service. The United States Customs Service estimates that intercepting a questionable flight costs $2,400. In Fiscal Year 1985, this United States Customs Service conducted 85 intercept missions that turned out to be unnecessary because the flights were legitimate. Thus, the United States Customs Service wasted $204,000 in resources that year. This proposal is expected to reduce these unnecessary intercepts. Consequently, the United States Customs Service will be able to utilize any resulting savings in the war against illegal drug traffic into the United States.

Also, the proposed rule may save additional lives by improving the effectiveness of rescue missions involving Coastal ADIZ accidents. The effectiveness of these missions would be improved by enhancing the ability of the rescuers to more easily and accurately identify the location of the accident as a result of filed flight plans and the use of transponders.

Cost-Benefit Comparison

As noted above, the estimated costs of the regulation are nominal while the estimated benefits could be extensive. The FAA does not have the necessary data to estimate the absolute costs and benefits of the proposal. However, even if it were assumed that the number of aircraft operating in Coastal ADIZ that would be affected by the proposal is 20 times the 85 United States Customs intercepts in 1985 and 55 percent of these aircraft are transponder equipped, with each aircraft conducting 12 flights per year in Coastal ADIZ, then the total cost of the proposed regulation to these aircraft would range from $84,000 to

$200,000 per year. These costs compare favorably with the benefits of avoiding one or more aircraft accidents and with the $204,000 that could potentially be saved by the United States Customs Service in reduced unnecessary flight intercepts. In addition, other benefits discussed above, which the FAA is unable to measure, would also result from the proposed regulations.

Initial Regulatory Flexibility Determination

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 that agencies review rules that may have a significant economic impact on a substantial number of small entities.

The FAA believes that the proposal will generally impact individuals rather than entities. Most commercial operators routinely file flight plans and use their transponders. The only entities that may be affected by the proposal are fish spotters, but they would not constitute a significant number of small entities. In any event, as noted above, the costs of filing a flight plan and operating a transponder cannot be considered significant. Thus, a regulatory flexibility analysis is not required.

Trade Impact Assessment

This proposal, if adopted, would have little or no impact on trade opportunities for both United States firms doing business overseas and foreign firms doing business in the United States. Newly manufactured aircraft for the United States market, whether made by United States or foreign manufacturers, would have to comply with the rule. The cost of compliance with the rule is minimal and most legitimate organizations currently comply with these requirements, even in the absence of the rule.

Conclusion

For the reasons stated above, the FAA has determined that this is not a major regulation as defined in Executive Order 12291. The FAA has determined that this action is not significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, it is certified that under the criteria of the Regulatory Flexibility Act this regulation, at promulgation, will not have a significant economic impact on a substantial number of small entities. A full regulatory evaluation has been placed in the public docket.

The Proposal

The FAA believes the safety concerns discussed above can be addressed, in part, by requiring all aircraft operations in a coastal ADIZ to be conducted under a filed flight plan and to provide position information to ATC. Therefore, the FAA is proposing to require that all civil aircraft operating into, within, or out of the United States through a coastal ADIZ designated in Subpart B of Part 99, regardless of the true airspeed of the aircraft, comply with the flight plan and position reporting requirements of Part 99. Additionally, the correlation of radar-detected targets with the required flight plans is enhanced when radar targets are reinforced by the target aircraft's transponder reply. Accordingly, FAA is also proposing that if an aircraft is equipped with a functioning ATC transponder, the transponder must be operated and replying on the appropriate code or as assigned by ATC during operation in or through a Coastal ADIZ.

List of Subjects in 14 CFR Part 99

Air defense zones, Identification of foreign aircraft.

The Proposed Amendment

PART 99—[AMENDED]

Accordingly, the FAA proposes to amend Part 99 of the FAR (14 CFR Part 99) as follows:

1. The authority citation for Part 99 is revised to read:

Authority: 49 U.S.C. 1348, 1502, 1510, and 1522; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 99.1 [Amended]

2. In § 99.1, paragraph (b)(1), by removing the words "Coastal or."

3. By adding new § 99.12 to read as follows:

§ 99.12 Transponder-On Requirements: Coastal ADIZ.

Unless otherwise authorized by ATC, each person who operates a civil aircraft into, within, or out of the United States through a Coastal ADIZ designated in Subpart B, if that aircraft is equipped with an operable ATC transponder, shall operate the transponder, including Mode C equipment, if installed, and reply on the appropriate code or as assigned by ATC while in the ADIZ.

Issued in Washington, DC, on October 7, 1986.

John R. Ryan,

Director, Air Traffic Operations Service.

[FR Doc. 86–24081 Filed 10–23–86; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal Laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202–275–3030).

H.R. 2224/Pub. L. 99–505

To amend the Immigration and Nationality Act to permit nonimmigrant alien crewmen on fishing vessels to stop temporarily at ports in Guam. (Oct. 21, 1986; 1 page) Price: $1.00

H.R. 4021/Pub. L. 99–506

Rehabilitation Act Amendments of 1986. (Oct. 21, 1986; 40 pages) Price: $1.25

H.R. 4212/Pub. L. 99–507

Deep Seabed Hard Mineral Resources Reauthorization Act of 1986. (Oct. 21, 1986; 1 page) Price: $1.00

H.R. 4952/Pub. L. 99–508

Electronic Communications Privacy Act of 1986. (Oct. 21, 1986; 26 pages) Price: $1.00

H.R. 5300/Pub. L. 99–509

Omnibus Budget Reconciliation Act of 1986. (Oct. 21, 1986)

H.J. Res. 517/Pub. L. 99–510

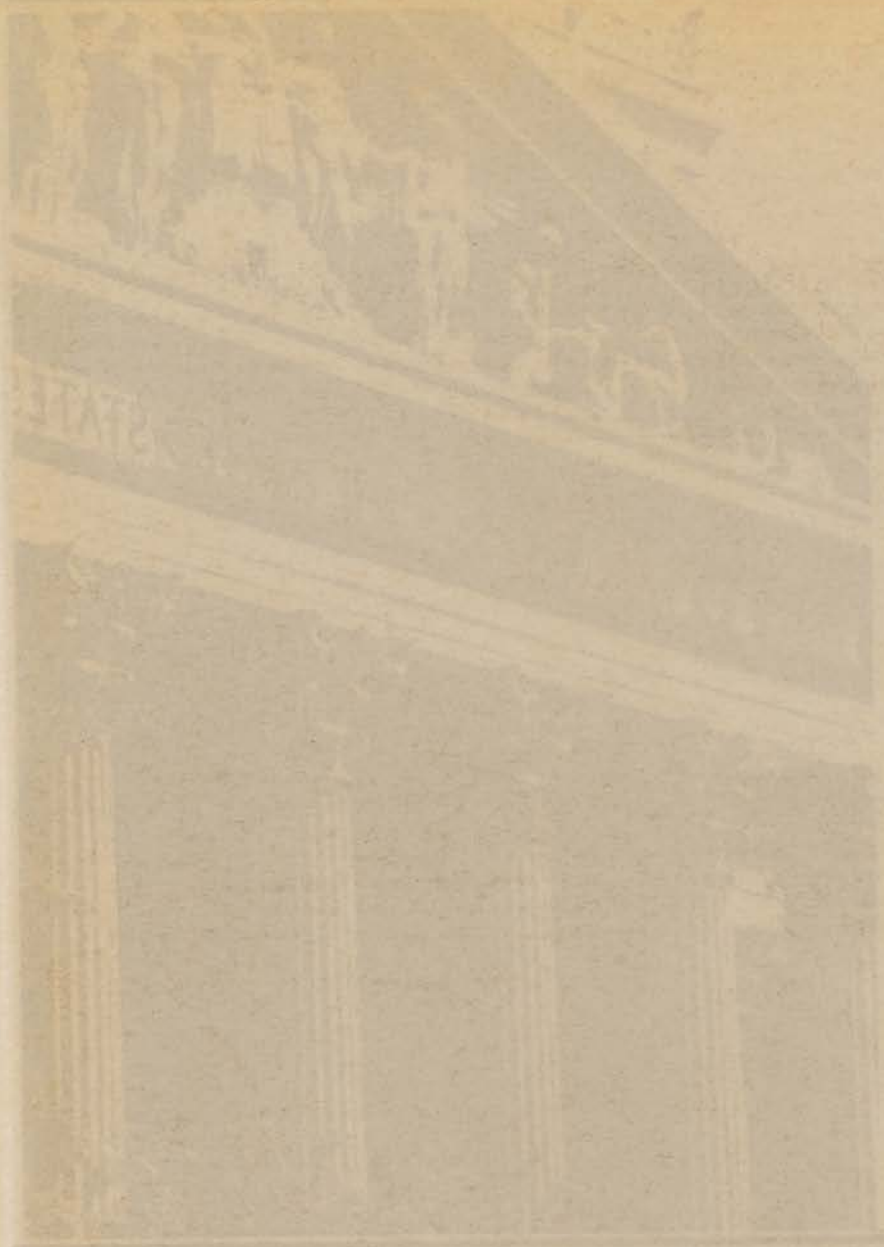
Providing for reappointment of David C. Acheson as a citizen regent of the Board of Regents of the Smithsonian Institution. (Oct. 21, 1986; 1 page) Price: $1.00

H.J. Res. 666/Pub. L. 99-511
Expressing the sense of Congress in support of a commemorative structure within the "National Park System dedicated to the promotion of understanding, knowledge, opportunity and equality for all people. (Oct. 21, 1986; 1 page) Price: $1.00

H.J. Res. 735/Pub. L. 99-512
To designate December 11, 1986, as "National SEEK and College Discovery Day." (Oct. 21, 1986; 1 page) Price: $1.00

S. 2048/Pub. L. 99-513
R.M.S. Titanic Maritime Memorial Act of 1986. (Oct. 21, 1986; 3 pages) Price: $1.00

H.R. 3838/Pub. L. 99-514
Tax Reform Act of 1986. (Oct. 22, 1986; 879 pages) Price: $24.00



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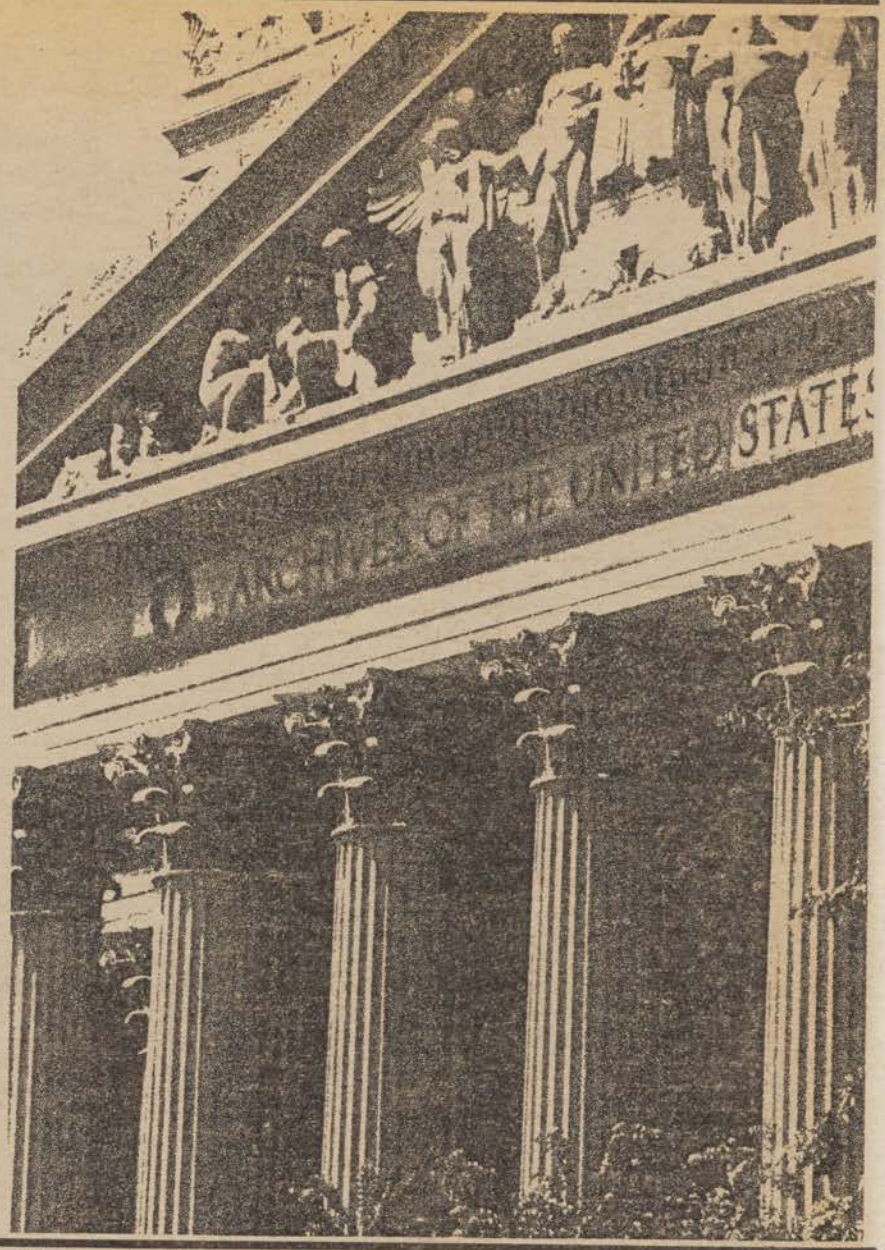

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